

(1978) 07 BOM CK 0001
In the Bombay High Court
Case No : Second Appeal No. 1607 of 1969

Bhagwan Dattatraya Budukh

APPELLANT

Vs

Vishwanath Pandharinath Joshi and Others

RESPONDENT

Date of Decision : 26-07-1978

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)

Citation : AIR 1979 Bom 1 : (1978) 80 BOMLR 539 : (1979) MhLj 112

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : M.L. Dudhat, for the Appellant; B.P. Apte, for the Respondent

Final Decision : Allowed

Judgement

1. The above second appeal raises an interesting point of law u/s 14 of the Hindu Succession Act and arises out of a suit for possession filed by respondent No. 1 Vishwanath Pandharinath Joshi.

2. The relevant facts may be briefly stated as under:--

3. One Mathurabai, the widow of Narhar Joshi, died on or about May 29, 1965. The plaintiff Vishwanath and defendants Nos. 4 to 6 are the nephews of her deceased husband Narhar. The genealogy of the family, as set out by the learned District Judge in his judgment, is as follows:--

NARAYAN | _____ |
| Abaji Pandharibnath | | _____ |
| _____ | | | | | | | Narhari
Mathura Devi- Godubal wife Pitff. Deft. Deft. Def. Died on 29.5.1965 as of Shankar No.4
No.5 No.6 Deshmukh | _____ |
| | Dattatraya Kashi Sundra

4. The suit lands were owned by Narhar. After his death, Mathurabai was in possession thereof. On November 19, 1945, she executed a sale-deed in

respect of the suit lands in favour of the father of defendant No. 2 in the present suit, Vasudeo Gopal Haveli.

5. The plaintiff Vishwanath filed Civil Suit No. 324 of 1951 on October 17, 1951 in the Court of the Joint Civil Judge, Junior Division, Barsi, against the said Vasudeo Gopal Haveli as defendant No. 1, Mathurabai as defendant No. 2 and the present defendants Nos. 4, 5 and 6, Bhau, Rangnath and Ambadas, his brothers, as defendants Nos. 3, 4 and 5. The suit ended in a decree declaring that the sale-deed executed by Mathurabai was not binding on the reversioners. The plaintiff and defendants 3 to 5 in that suit. The certified copy of the judgment dated December 19, 1952 in that case is produced at Ex. 102 and the certified copy of the decree is produced at Ex. 103.

6. On May 22, 1965, Mathurabai repurchased the suit lands from the present defendant No. 2 and on May 28, 1965, almost on the date of her death, she sold them to defendant No.- 1, the appellant in the above second appeal, Bhagwan Dattatraya Budukh for Rs. 3,000/-.

7. The sale in favour of defendant No. 1 was challenged in the present suit by Vishwanath who claimed to be the nearest reversioner, on behalf of himself and the other reversioners, defendants Nos. 4, 5 and 6, contending that the decision in Civil Suit No. 324 of 1951 was binding on Mathurabai and defendant No. 2; and hence the re-sale in favour of Mathurabai and the sale in favour of defendant No. 1 Bhagwan were not binding on the reversioners, as defendant No. 2 had only a life estate in the property which was repurchased by Mathurabai and sold to Bhagwan.

8. The suit was resisted by defendant No. 1, contending, inter alia, that by virtue of Section 14 of the Hindu Succession Act, after the re-purchase Mathurabai became the full owner of the suit lands acquired under the re-purchase; and hence the plaintiff or defendants Nos. 4 to 6 had no right to challenged the subsequent sale-deed dated May 28, 1965 on the ground that their rights to succeed were secured by the decree in Civil Suit No. 334 of 1951.

9. The learned Joint Civil Judge, Junior Division, Barsi, by his judgment and decree dated January, 11, 1968, dismissed the plaintiff's suit with costs overruling all the points which were raised on behalf of the plaintiff, as he was of the view that Mathurabai, when she regained the suit lands from the present defendant No. 2 on May 22, 1965, became a full owner u/s 14 of the Hindu Succession Act, observing in paragraph 14 of his judgment as under :--

"14. Issue No. 4.-- This brings us to consider whether Mathurabai had become the absolute owner of the property after the 22nd May 1965. I am inclined to hold that she had become the absolute owner by virtue of Section 14 of the Hindu Succession Act. Mathurabai held a life estate in the suit fields in 1945, which interest she had alienated to Shri Haveli, but when she repurchased it on the 22nd May 1965, that life interest enlarges itself into absolute estate by virtue of Section 14 of the Hindu Succession Act. The word "possessed" in Section 14 is

now interpreted to mean "the state of owning". It is held that the possession contemplated is not actual physical possession only but may be possession in law, (vide Mulla's Hindu Law p. 827, 13th Edition). In a recent case, the Supreme Court has held that a share of a widow declared by a preliminary decree in a partition suit is also a share "possessed" by her. In view of this position, I find that Mathurabai who had regained the property from Shri Haveli on the 22nd May 1965 had been full and absolute owner of it since that date."

10. The above judgment and decree of the learned Joint Civil Judge were set aside in an appeal before the District Judge Sholapur, by his judgment dated September 27, 1969. The learned District Judge was of the view that the judgment in Civil Suit No. 324 of 1951 bound not only Mathurabai but also defendants Nos. 1 and 2 in the present suit and as Mathurabai had transferred only a limited interest to defendant No. 2's father, she could not re-purchase any interest higher than the limited interest or confer on defendant No. 1 absolute ownership.

11. According to the learned District Judge, the judgment in Civil Suit No. 324 of 1951 was *res judicata* between the plaintiff and his brothers on the one side and the widow and other representatives on the other side. He reversed the finding of the learned Joint Civil Judge on the point u/s 14 of the Hindu Succession Act, observing as under :--

"At the outset, it must be borne in mind that as a necessary consequence of the decree in Civil Suit No. 324 of 1951, what was left with Vasudeo Haveli was only the right to enjoy the suit property till the lifetime of Mathurabai. In these circumstances, Defendant No. 2, as a legal representative of Vasudeo Haveli, was not competent to transfer anything more than that what his father possessed. It is the cardinal principle of law that nobody can give what one does not possess. Thus, by the sale-deed at exhibit 104 Defendant No. 2 only transferred the right to enjoy the suit property till the lifetime of Mathurabai. Thus, what Mathurabai acquired under the sale-deed was only the right to enjoy the property till her lifetime. I am unable to hold that anything beyond this was acquired by Mathurabai under this sale-deed. I am unable to follow the reasoning of the trial Court when it observes that after the transfer in favour of Mathurabai, the decree in Civil Suit No. 324 of 1951 became automatically nullified. If there is any magic in the transfer of the life estate back into the hands of a widow even after an alienation was held to be not binding on the reversionary estate, there would be no sanctity in the solemn declaration given by a Court of law. This would be the easiest way for all the alliances to get rid of the invalid transfers by transferring back the properties in favour of the limited owner. Mathurabai, when she purchased the property was a perfect stranger to the estate and she had purchased the right to enjoy the property till the widow's lifetime, like any other person in the world. Only because the purchaser in this case happens to be the same widow, no magic would enter into the transaction so as to nullify the solemn decree passed by competent Court, and transform the life estate into an

absolute estate. I am, therefore, unable to hold that only because the property was purchased by Mathu- rabai from Defendant No. 2, Mathurabai can claim the benefit of Section 14(1) of the Hindu Succession Act. In fact, Mathurabai was not possessed of the property as a Hindu widow, as she had already transferred it in favour of Vasudeo Haveli, who was in actual possession as an owner. It was not within the power of Mathurabai to annul the transaction as she had executed a full-fledged sale-deed in favour of Vasudeo Haveli. If, thereafter, she again purchased the property from Defendant No. 2, it was not in her capacity as a Hindu widow but in her personal capacity. Furthermore, what she purchased was not the Hindu widow's estate, but the right to enjoy the suit property till the lifetime of Narhari's widow Mathurabai. I fail to understand what the trial Court means by saying that by repurchasing the property on the 22nd May 1965, Mathurabai again became the owner of the property and hence, the decree in Civil Suit No. 324 of 1951 had become ineffective."

12. The error in the reasoning of the learned District Judge could have been avoided if he had only looked at Section 14 of the Hindu Succession Act carefully. Section 14 is as under :--.

"14. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.-- In this Sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

13. The learned District Judge has assumed that there is some difference between a widow and some other person, because his attention does not appear to have been drawn to the words "a female Hindu" in Section 14(1) of the Hindu Succession Act.

14. The learned District Judge also failed to note that Sub-section (1) of Section 14 of the Hindu Succession Act speaks of "whether acquired before or after the commencement of the Act." The Explanation to Section 14(1) further refers to "purchase" as one of the modes of such acquisition.

15. In other words, u/s 14(1) of the Hindu Succession Act, whether it was

Mathurabai or any other female who had acquired the property, she could have held the property as absolute owner under the sale-deed dated May 22, 1965 after the coming into force of the Hindu Succession Act. The fact that it is a re-purchase by a widow who had previously alienated and whose alienation was challenged makes no difference at all to the operation of Section 14(1) under which full ownership is conferred on the female who has acquired before or after the commencement of the Act.

16. Mr. Dudhat, the learned counsel for the appellant-defendant No. 1, submitted that the learned District Judge was wrong in not taking notice of the change in the law u/s 14 of the Hindu Succession Act when considering the effect of the declaration made in the decree in Civil Suit No. 324 of 1951.

17. It is true that decrees passed by Civil Courts must be considered as binding, but nothing prevents the Parliament from making laws affecting such decrees. That is why Section 14(2) specifically excludes property acquired under the decree or order of the Civil Court, where the decree, order or award prescribes a restricted estate in such property. Now, the decree in Civil Suit No. 324 of 1951 was not the decree under which Mathurabai acquired the suit lands.

18. Mr. Apte, the learned counsel for respondent No. 1 plaintiff submitted that although the property may not be acquired under the decree, the terms of the decree prescribed a restricted estate which could not be, therefore, enlarged into absolute estate u/s 14(1) of the Hindu Succession Act.

19. But Sub-section (2) of Section 14 of the Hindu Succession Act applies only where property is acquired by a female Hindu under a decree or other instruments mentioned therein. It is not enough for the decree to prescribe the restricted estate. It is further unnecessary that the female Hindu should acquire the property under the very decree. In the present case, instead of Mathurabai acquiring any property under the decree, all that was done was to declare that the alienation made by her was not binding on the reversioners; and hence Mr. Apte's argument based on Sub-section (2) of Section 14 of the Hindu Succession Act must be rejected.

20. Mr. Dudhat cited a decision in *Teja Singh v. Jagat Singh*, AIR 1964 Punj 403, in which a widow had gifted away property inherited by her from her husband in 1938 and when the alienation was declared inoperative as against the reversioners of her husband, the vendee gifted back the property received by him to the widow and put her in possession of the same. After the gift back on June 3, 1959, the widow sold the property to defendants Nos. 5 and 6. It was held that in view of the fact that, in the meanwhile, the Hindu Succession Act had come into force, the widow became the full owner when the gift was made in her favour and the presence or the absence of a declaratory decree made no difference on her rights.

21. This view was approved by the Full Bench of the Punjab and Haryana High Court in *Jagat Singh and Others Vs. Teja Singh and Others*, . In *Bai Champa and*

Others Vs. Chandrakanta Hiralal Dahyabhai Sodagar and Others, and in Chinnakolandai v. Thanji Gounder, AIR 1985 Mad 497, the same view was taken; and these cases were relied upon by Mr. Dudhat.

22. In V. Tulsamma v. V. Sesha Reddi, AIR 1977 SC 1944, with great respect, it has been rightly said :--

"Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by Sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Sastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognize her status as an independent and absolute owner of property."

23. As against the decisions of the various High Courts cited by Mr. Dudhat, the only decision which Mr. Apte could rely upon was the decision of a Single Judge of the Orissa High Court in Ganesh Mahanta and Others Vs. Sukria Bewa and Others, , where a view appears to have been taken that where a done to whom the widow had gifted property gifts back the property to the widow after the coming into force of the Hindu Succession Act, she acquires only a limited interest in the property. With great respect, the interpretation put by the learned Judge appears to me to be in conflict with the plain terms of Section 14(1) of the Hindu Succession Act and the decisions of the various High Courts referred to above.

24. Following the majority of the High Courts, and what appears to me to be plainly intended by the enactment of Section 14(1), I must, therefore, hold that notwithstanding the decree which the plaintiff Vishwanath had obtained in Civil Suit No. 324 of 1951, Mathurabai became the absolute owner of the suit lands when she re-purchased them from defendant No. 2 on May 22 1965 and she conveyed her full title to defendant No. 1 on May 28, 1965. The plaintiff and defendants Nos. 4, 5 and 6 have no right as reversioners to challenge the sale in favour of defendant No. 1.

25. Although many other points were agitated in the two Courts below, none were referred to in the course of the arguments here as they were all findings of fact which were unassailable in law.

26. In the result, the judgment and decree passed by the District Judge, Sholapur, on September 27, 1969 are set aside and the decree passed by the Joint Civil, Judge, Junior Division, Barsi, on January 11, 1968, dismissing the plaintiffs suit with costs is restored. The second appeal is allowed with costs throughout.

27. Appeal allowed.