

**(1968) 11 DEL CK 0010**

**In the Delhi High Court**

**Case No :** Regular First Appeal No. 25-D of 1959

Chhajju Ram

APPELLANT

Vs

Bhuri and Others

RESPONDENT

**Date of Decision :** 29-11-1968

**Acts Referred:**

**Citation :** AIR 1969 Delhi 273 : (1969) 5 DLT 372

**Hon'ble Judges :** I.D. Dua, C.J.; V.S. Deshpande, J

**Bench :** Division Bench

**Advocate :** H.R. Khanna, for the Appellant; Sahai Mathur, for the Respondent

## Judgement

1. The short point which, in the final analysis, requires determination in this regular first appeal is whether Smt Bhuri had become the absolute owner of the property in question.

2. The following pedigree table may be reproduced for understanding the relationship between the parties :

(See Pedigree Table on next page)

Shri Chhajju Ram son of Shri Nathu Par-shad instituted the suit, out of which this appeal arises, for a declaration that the alienation by gift of one-half portion of house No. 3472 described in the plaint by defendant No. 1 in favor of Subhash Chandra and Suresh Chandra, defendants Nos. 2 and 3, by means of a registered deed dated 26-7-1957, is null and void, being against Hindu Law and that it should not affect the reversionary rights and interests of the plaintiff after Smt. Bhuri's death or remarriage. In the plaint, it has been very clearly stated that defendant No. 1 has a widow's estate in one half of the house No. 3472, but it is claimed that this estate was acquired as the result of a declaratory decree in suit No. 108 of 1937 (Chhajjn v. Ridhi) decided by Shri Kartar Singh Chadha, Subordinate Judge 3rd Class, Delhi on 14-2-1938 and again in suit No. 1009 of 1950 (Bhuri v. Gopi Kishan) decided by Shri Om Nath Vohra, Subordinate Judge, 1st Class, Delhi, on 21-12-1953. One half share allotted by the preliminary

decree was separated by the final decree dated 20-5-1954 made by Shri Brij Lal Mago, Subordinate Judge 1st Class, Delhi.

3. The trial Court came to the conclusion that by virtue of Section 14(1) of the Hindu Succession Act No. 30 of 1956, Smt. Bhuri had become full owner of the property in dispute with the result that the gift made by her was not open to challenge by the plaintiff.

4. On appeal, the only point raised by Shri H. R. Khanna, learned counsel for the appellant, is that Smt. Bhuri's case falls within Section 14(2) of the Hindu Succession Act of 1956 because it was only under a decree or order of a Civil Court that she acquired the property in question.

5. Section 14 may now be reproduced: "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 device, 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."

Sub-section (2), on a plain reading of the entire section, would seem to us to be an exception to Sub-section (1), with the result that unless the appellant shows that Smt. Bhuri had acquired the property in question in one of the ways mentioned in subsection (2), she must be held to be a full owner thereof and not a limited owner. The learned counsel has not drawn our attention to any decree of a competent Court On the record showing acquisition by Smt. Bhuri of the property in question. The Judgment by Shri Kartar Singh Chadha, Subordinate Judge Iii Class, Delhi, (Exhibit P-1) was given in a suit by Chhajju and Smt. Bhuri against Smt. Riddi Bai and Tara Chand in which a declaration was sought to the effect that the plaintiffs and Tara Chand were owners and in possession of house No. 1755/3679, Ward No. 13, situated in Gali Lallu Missar and that Smt. Riddi Bai was only entitled to realize rent during her lifetime, without being entitled to mortgage, sell, gift or otherwise alienate it by any other means and further that any alienation made by her would be null and void as against the rights of the plaintiffs. Smt. Riddi Bai was also sought to be restrained from alienating the property in any way. This suit was decreed and the judgment to which alone our attention has been drawn, allowed the plaintiff's claim in the following words :--

"I, Therefore, grant the plaintiff Mst. Bhuri a declaration to the effect that she has got a widow's estate in one-half of the house in dispute, subject to defendant Riddi Rai's rights under the deed dated 8-2-1899 Ex. P/1. Defendant Riddi Bai is, Therefore, restrained by an injunction from further alienating this one-half of the house in any way in contravention of plaintiff's rights as above declared\*\*\*."

The Judgment of Shri Om Nath Vohra, Subordinate Judge 1st Class, Delhi (Exhibit P-2) in a suit by Smt. Bhuri against Gopi Kishan and others shows that Smt. Bhuri was given a declaration that she was entitled to her widow's estate in one-half of the house in dispute and she was also entitled to partition and separate possession. The mortgage created by Gopi Kishan in favor of other defendants was held not binding on Smt Bhuri's share. A preliminary decree for partition was on this view granted to her. The house in dispute was stated to bear municipal No. 4765 to 4372 (old) and No. 347.2 (new).

6. From these documents, we do not find it possible to hold that Smt. Bhuri had acquired the property in question under a decree or order of a civil Court as contemplated by Section 14(2), Hindu Succession Act. This Act amends and codifies the law relating to intestate succession among Hindus. The Explanation to Section (1) of Section 14 enlarges the meaning of the word "property" of which the female of a Hindu in possession is made full owner. The wide sweep of this Sub-section, construed in the light of the Explanation is the culmination of the progressive realisation of the justice of improving the status of women in Hindu society with reference to their rights to own property. In view of this egalitarian purpose and object. Section 14(1) deserves a liberal construction and Courts have liberally construed the expression "property possessed" as used therein, Sub-section (2) appears to us to be designed to serve as an exception to Sub-section (1). It must accordingly be construed as such. Unless, Therefore, Smt. Bhuri is shown to have acquired the property in question under a decree, as argued by Shri H. R. Khanna, the appellant cannot successfully assail her right as a full owner. Acquisition under the decree means that the decree should be the source of her title to the property. When the limited title in the property exists prior to the decree, it would be incorrect to say that the property has been acquired by the limited owner under the decree. If, Therefore, Smt. Bhuri can be said to have a claim to the property prior to, and independently of the decree, and the decree merely declares, as a result of adjudication, her pre-existing right to the property in question as a widow's estate, then Section 14(2) cannot be attracted, and by virtue of Sub-section (1), she must be held to be full owner of the property. It is noteworthy that Smt. Bhuri was already in possession of the property in question and in the previous litigations, she claimed the property by virtue of inheritance. The previous decisions merely upheld her previous title as a result of Judicial trial and they did not create or confer on her the right in the property for the first time. Section 14(2) is, Therefore, of no avail to the appellant and the challenge to the lower Court's decree must be repelled. Mst. Kirpo v. Bakhtawar Singh 1964 Pun Lr 846, cited on behalf of the appellant is a

case to acquisition under the compromise which settled the conflicting claims and is, Therefore, distinguishable. In fact, in the reported judgment itself, the declaratory decrees have been considered to have effect different from a compromise decree. *Bharat Singh v. Bhagirathi* Air 1966 Sg 405 also cited by *Shri Khauna* does not deal with Section 14, Hindu Succession Act, and is, Therefore, besides the point.

7. No other point having been pressed, this appeal fails and is dismissed with costs.

8. Appeal dismissed.