
(2005) 12 AP CK 0021
In the Andhra Pradesh High Court
Case No : SA No. 334 of 1991

Chundi Bapamma (died) by LR.

APPELLANT

Vs

Boggavarapu Peda Punnaiah

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)

Citation : (2006) 2 ALD 260

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : M. Krishna Mohan Rao, for the Appellant; A. Chaya Devi, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This second appeal is directed against the judgment dated 13-9-1990 in A.S.No.85 of 1988 on the file of the Court of the District Judge, Guntur reversing the judgment and decree in O.S. No. 300 of 1981 on the file of the Court of Additional Subordinate Judge, Narasaraopet.

2. The appellant herein is the plaintiff in O.S, No.300 of 1981 which was filed seeking a declaration that she has become the absolute owner of the Items 1 to 3 of the plaint A-schedule property by virtue of the provisions of the Hindu Succession Act, 1956 and for the enhanced maintenance at the rate of Rs.5,000/- per annum and to create a charge on the plaint "B" schedule property for the said payment. The respondent herein/the sole defendant contested the suit claim. The trial Court by judgment dated 31-12-1987 partly decreed the suit declaring that the plaintiff became full owner of Item Nos. 1 to 3 of the plaint-A schedule property by virtue of Section 14(1) of the Hindu Succession Act, 1956 (for short "the Act"). However, her claim for maintenance was refused. Questioning the said judgment and decree to the extent it went against him, the defendant filed A.S.No.85 of 1988. The plaintiff preferred cross-objections so far

as the dismissal of her suit claim with regard to the maintenance was concerned. The lower appellate Court by judgment dated 13-9-1990 allowed the appeal and dismissed the cross-objections. In the result, the judgment and decree of the trial Court dated 31-12-1987 was set-aside in toto. Hence, this second appeal by the plaintiff.

3. It is to be noted that pending the second appeal the sole plaintiff died on 8-8-2003 and by virtue of the order dated 28-1-2005 in C.M.P. No. 19270 of 2003, the adopted son of the deceased plaintiff was brought on record as the legal representative.

4. For the sake of convenience, the appellant and the respondent in this appeal shall hereinafter be referred to as the plaintiff and the defendant as they were arrayed in the plaint.

5. I have heard the learned Counsel for both the parties and perused the judgments of the Courts below and the other material on record.

6. Before referring to the rival contentions raised by the parties, it is necessary to note the facts in brief.

7. The plaint schedule property, consisting of Schedule "A" and Schedule "B", originally belonged to one Chundi Chenchu Punnaiah, the deceased husband of the plaintiff. The defendant is the grandson of the maternal uncle of Chundi Chenchu Punnaiah, The plaintiff's husband Chundi Chenchu Punnaiah died on 11-8-1955 without any issues leaving behind the plaintiff as his only legal heir. The plaintiff alleged that a week prior to his death, the father of the defendant and others took him to Guntur on the pretext of getting him checked by a Doctor, but he was brought back dead. It was further alleged that when he was at Guntur, he was made to execute three documents namely a Gift Deed dated 2-8-1955, a Will dated 5-8-1955 and a Sale Deed dated 5-8-1955 for a consideration of Rs. 12,000/- for discharging certain alleged debts. The plaintiff alleged that all the said three documents were brought into existence by one Boggavarapu Peda Ammaiah (the father of the defendant) by playing fraud and exercising undue influence and coercion on late Chenchu Punnaiah. Under the Gift Deed dated 2-8-1955 late Chenchu Punnaiah conveyed several immovable properties in favour of the defendant retaining life interest for himself in those properties. Under the Will dated 5-8-1955, among several other legatees, the plaintiff was given an extent of Ac.3-34 cents of land situated in Uppalapadu Village with absolute rights. That apart, another extent of Ac.3-88 cents of land and a tiled house situated at Uppalapadu Village were also given to her granting only life interest.

8. It is to be noted that Item No.1 of the plaint "A" schedule is a house situated at Chilakaluripet, which was one of the items gifted to the defendant under the Gift Deed dated 2-8-1955. Items 2 and 3 of the plaint "A" schedule are the two items which were given to the plaintiff under the Will, dated 5-8-1955, conferring only life interest to her i.e., Ac.3-88 cents of land and the tiled house

respectively, both situated at Uppalapadu Village.

9. Since the properties covered by the sale deed dated 5-8-1955 have nothing to do with the suit claim, it is not necessary to note the details of the said properties.

10. The plaintiff alleged that late Chundi Chenchu Punnaiah had no physical and mental capacity to execute the above said three documents out of his own free will and volition and that the dispositions made under the said documents did not reflect the wishes of her husband. It was contended that the said documents, which were vitiated by fraud and undue influence were liable to be ignored and that being the only legal heir of late Chundi Chenchu Punnaiah, she was entitled to succeed to the entire estate of her husband. Admittedly, by the date of the death of Chundi Chenchu Punnaiah, the plaintiff was in possession of Item No.I of the plaint-A schedule (house at Chilakaluripet) and she continued in possession of the same even after the death of her husband notwithstanding the fact that the said item was bequeathed in favour of the defendant under the Gift Deed dated 2-8-1955. While so, in the year 1959 the plaintiff filed O.S.No.56 of 1959 in the Sub-Court, Bapatla seeking a decree for delivery of possession of all the properties of her husband as specified in the plaint schedule except Item No. I which was in her possession or in the alternative to award maintenance at the rate of Rs.4,000/- per annum and for a declaration that she was entitled to reside in Item No.I (shown as Item No. 11 in the said suit) for her residence, the same being the family house. As noted above, her plea in the said suit was that all the three documents, namely Gift Deed, Will and Sale Deed were vitiated on account of fraud, undue influence and coercion. It was claimed that though she was living as usual in the house at Chilakaluripet, she was not allowed to take possession of the rest of the plaint schedule properties, which were in the possession of the defendants 1 to 4 in the said suit. It is to be noted that the sole defendant herein was the 1st defendant in the said suit and being a minor, he was represented by his father and natural guardian who was also made a party as 4th defendant to the said suit. Several other persons were also made defendants to the said suit alleging that they were in possession of the suit schedule properties by virtue of the alienations made by the defendants 1 and 4. The said suit was opposed by all the defendants. Their case was that all the three documents in question were executed by Chundi Chenchu Punnaiah voluntarily and that the plaintiff was also very much present at the time of the execution of the said documents. It was pleaded that all the said documents were executed by Chundi Chenchu Punnaiah after consulting his wife and the documents were also registered. It was also pleaded that the documents were acted upon and even the plaintiff took immediate possession of the three items which were given to her under the Will dated 5-8-1955. All the allegations made by the plaintiff were specifically denied and it was pleaded that the suit claim was frivolous and unsustainable.

11. During the pendency of O.S. No.56 of 1959, the defendant filed a separate

suit being O.S. No.77 of 1967 for possession of the house at Chilakaluripet claiming the same under the Gift Deed dated 2-8-1955 executed by late Chundi Chenchu Punnaiah, Both the said suits were tried together and by judgment dated 31-12-1971 the learned Subordinate Judge dismissed both O.S. No.56 of 1959 and O.S. No.77 of 1967 holding that all the three documents executed by Chundi Chenchu Punnaiah, the late husband of the plaintiff, were true and genuine and that they were not vitiated by any suspicious circumstances much less by fraud or undue influence as alleged by the plaintiff. However, it was held that the plaintiff in O.S. No.56 of 1959 was entitled to be in possession of the house at Chilakaluripet in lieu of her right of residence and that the plaintiff in O.S. No.76 of 1967 had no right to evict her from the said item. Against the said judgment, both the parties filed appeals, being A.S. No.62 of 1974 and A.S. No. 165 of 1974. The said appeals were disposed of by a Division Bench of this Court by judgment dated 23-6-1978 whereunder while confirming the dismissal of O.S. No.56 of 1959, so far as the relief in O.S. No. 77 of 1967 was concerned, it was held that when the testator intended that the plaintiff should reside at Uppalapadu and gifted the house at Chilakaluripet to the defendant, it was not open to the trial Court to substitute the said items and that the Court was expected to give effect to the intentions of the executant of the gift deed or the testator of the Will when once it came to the conclusion that the said deeds were not tainted with suspicious circumstances or fraud or undue influence. Accordingly, the appeal of the defendant was allowed granting a decree for eviction of the plaintiff from the house at Chilakaluripet. Assailing the said judgment, the plaintiff filed Civil Appeals 1962-63 of 1980 in the Supreme Court of India. In the said appeals, a memo of compromise was filed by both the parties agreeing that the plaintiff - Smt. Chundi Bapamma shall have a right to reside in the house at Chilakaluripet during her lifetime without any right of alienation. In pursuance thereof, the Supreme Court passed an order dated 5-9-1980 as under :

By consent of parties the decrees passed by the High Court in Appeal Nos.62 and 165 of 1974 on the file of the High Court are confirmed with the variation set out in Paragraphs-1 and 2 of the Memo of Compromise filed on behalf of the petitioner and 1st respondent in this Court. There will be no order as to costs.

12. It is also necessary to note the contents of the Compromise Memo, which runs as under :

(1) It is hereby agreed between the petitioner and the 1st respondent that the petitioner shall have a right to reside in the building at Chilakulupeta during her lifetime without any right of alienation.

(2) If the petitioner is willing to give up the house at Uppalapadu Village to the 1st respondent it will be open to her to do so on receipt of compensation from the 1st respondent, such compensation to be mutually agreed upon.

13. It is not in dispute that in pursuance of the above said order of the Supreme

Court dated 5-9-1980, the plaintiff Chundi Bapamma was allowed to reside in the house at Chilakaluripeta. While continuing in possession of the said house, the plaintiff Chundi Bapamma filed O.S. No. 300 of 1981 on the file of the Court of the Additional Subordinate Judge, Narasaraopet, out of which the present second appeal arose, seeking a declaration that she had become absolute owner of Items 1 to 3 of Plaint-A schedule properties by virtue of the provisions of the Hindu Succession Act, 1956 and for enhanced maintenance at the rate of Rs.5,000/- per annum and to create a charge on the plaint "B" schedule property for the said payment.

14. As noted above, Item No. 1 is the house situated at Chilakaluripet, which was bequeathed to the defendant under the gift deed dated 2-8-1955 executed by Chundi Chenchu Punnaiah in which the plaintiff was continuing in possession by virtue of the compromise decree passed by the Supreme Court. Item No.2 is the land to an extent of Ac. 3-88 cents situated in Uppalapadu Village. Item No.3 is a tiled house situated at Uppalapadu Village. Both the said Items 2 and 3 were given to the plaintiff under the Will dated 5-8-1955 executed by her late husband Chundi Chenchu Punnaiah with limited rights of enjoyment for her life and granting vested remainder to the defendant after the lifetime of the plaintiff.

15. In O.S.No. 300 of 1981, the plaintiff claimed that by virtue of the decree of the Supreme Court dated 5-9-1980, under which she was allotted Item No.1 of the plaint "A" schedule (house at Chilakaluripet) for her residence without right of alienation, she acquired absolute rights as laid down by the Supreme Court in Tulasamma v. Sesha Reddi AIR 1977 SC 1944. She contended that even in the Compromise Memo filed in the Supreme Court her right to alienation alone was restricted and the same in no way affects her absolute right to inheritance u/s 14(1) of the Hindu Succession Act as explained by the Supreme Court in Tulasamma's case (supra). So far as Items 2 and 3 are concerned, it was pleaded that the said properties were given to her by her late husband, in lieu of her right to maintenance and therefore, she was entitled to hold the same as full owner u/s 14(1) of the Act.

16. The defendant filed a written statement stating that he never agreed for creating a right in favour of the plaintiff in respect of Item No.1 of the Plaint "A" schedule properties. It was also stated that what was given under the compromise decree was neither life interest, nor limited interest, but it was only a right to reside without any powers of alienation and therefore, the possession of the plaintiff in respect of Item No.1 was only that of a licensee. It was further pleaded that since her right to reside in the said building was negated in the earlier round of litigation by the High Court and even the Supreme Court confirmed the judgment of the High Court, but only passed a decree in terms of the compromise, thereby permitting the plaintiff to reside in item No.1 house property during her lifetime without any right of alienation, the plaintiff cannot plead or claim any relief regarding the said item, which was once for all negated by the Supreme Court. The Compromise Memo, being purely a

contract creating a licence in favour of the plaintiff, did not confer a right in her to invoke Section 14(1) of the Hindu Succession Act. The decision in Tulasamma's case (supra) had no application at all since she was allowed to reside in the said house out of gratis, but not in lieu of any existing right of maintenance. The plaintiff was estopped from claiming any relief contrary to the admissions made in the Compromise Memo which restricted her right to alienate and that the suit was specifically barred by res judicata by virtue of the decision of the Supreme Court in the earlier round of litigation with regard to all the items of the suit property. Item Nos.2 and 3 of the plaint "A" schedule properties which were given to the plaintiff under the Will were not in lieu of maintenance and therefore Section 14(1) of the Act had no application at all. Further, her claim regarding the said two items is barred by res judicata since having raised the said contention she had withdrawn the same in the Supreme Court in the earlier round of litigation. Hence, the suit claim is frivolous and the suit being misconceived was liable to be rejected.

17. On the basis of the aforesaid pleadings, the trial Court settled the following issues :

1. Whether the Compromise Memo filed in Supreme Court confers right of enlargement of estate of Item No. 1 of the suit property ?
2. Whether this suit is barred by res judicata and estoppel ?
3. Whether the plaintiff's estate is enlarged in Items 2 and 3 as per the Will executed by the Chenchu Punnaiah ?
4. Whether the plaintiff is entitled to any enhanced maintenance ? If so to what amount ?
5. To what relief ?

18. In support of the suit claim, the plaintiff got herself examined as P.W. 1 and marked Exs.A1 to A3 documents. Ex.A-1 is the common judgment of the Sub-Court, Bapatla, dated 31-12-1971 in O.S.No. 66 of 1959 and O.S.No. 19 of 1967. Exs.A-2 and A-3, dated 5-9-1980, are the copies of the Judgment and Decree of the Supreme Court of India in Civil Appeal Nos. 1962-637 1980 respectively. On behalf of the defendant, two witnesses were examined and Exs. B1 to B3 documents were marked.

19. The trial Court on appreciation of the evidence on record, both oral and documentary, by judgment dated 31-12-1987 partly decreed the suit, declaring that the plaintiff had become full owner with regard to Items Nos. 1 to 3 of the plaint schedule properties by virtue of Section 14(1) of the Act. However, her claim for full maintenance was rejected.

20. Aggrieved by the said judgment and decree, the defendant filed A.S. No.85 of 1988. The plaintiff filed Cross-objections insofar as the rejection of her claim for enhancement of maintenance by the trial Court. The lower Appellate Court,

on re-appreciation of the entire material on record, reversed the findings recorded by the trial Court and held that the plaintiff had not acquired absolute rights in respect of any of the Items - 1 to 3 of the Plaint-A schedule property. It was also held that her claim for enhanced maintenance was untenable, and accordingly the appeal preferred by the defendant was allowed and the Cross-objections filed by the plaintiff were dismissed, thereby, the judgment and decree of the trial Court dated 31-12-1987 was set-aside in toto. Hence this second appeal.

21. The learned Counsel for the appellant Sri M.S. Ramachandra Rao submitted that the right of residence granted to the plaintiff in Item No.I of the Plaint-A schedule was in lieu of her right of maintenance and therefore the compromise decree passed by the Supreme Court granting a right of residence in favour of the plaintiff during her lifetime enlarged into an absolute estate in terms of Section 14(1) of the Act. He also submits that no estoppel arises against a statute, and therefore, even in the absence of a specific observation by the Supreme Court in the compromise decree, the effect of Section 14(1) of the Act cannot be said to be nullified. The further contention of the learned Counsel is that the relief sought by the plaintiff in the present suit cannot be said to be barred by principles of constructive res judicata since the earlier litigation was on a totally different aspect altogether. According to the learned Counsel since the effect of Section 14(1) of the Hindu Succession Act was not in issue either directly or substantially in the earlier round of litigation, the suit is not barred by the principles of res judicata. It is also contended that since the compromise decree passed by the Supreme Court gave a fresh cause of action to the plaintiff in respect of Item No. I of the suit schedule property, Order n Rule 2 of CPC does not arise, and therefore, the suit is also not barred under Order 2 Rule 2 of the Code of Civil Procedure.

22. On the other hand, Smt. A, Chaya Devi, the learned Counsel for the respondent contended that Sub-section (1) of Section 14(1) of the Act had no application at all to the facts and circumstances of the case on hand. The learned Counsel points out that the claim of the plaintiff for maintenance was rejected by all the Courts concurrently in the earlier round of litigation. Therefore, according to the learned Counsel the right acquired by the plaintiff by virtue of the compromise decree granted by the Supreme Court to reside in Item No.I of the suit schedule property was only a grant or a concession but it cannot be termed as a right in lieu of pre-existing right of maintenance. Therefore, the learned Counsel contends that Sub-section (2) of Section 14(1) of the Act is attracted to the case on hand and Sub-section (1) of Section 14(1) of the Act has no application at all. The learned Counsel submitted that having regard to the facts and circumstances of the case, the lower Appellate Court had rightly set-aside the judgment and decree of the trial Court and the same did not warrant any interference by this Court in this second appeal.

23. For proper appreciation of the contentions raised by the learned Counsel, it is

necessary to refer to Section 14(1) of the Hindu Succession Act, which runs as under :

14. Property of a female Hindu to be her absolute property :-(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 moveable 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 items of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property.

24. The object and scope of Section 14(1) of the Act was analysed in detail by the Supreme Court in Tulasamma's case (supra) and it was held that it should be interpreted in its broader sense so as to include any property possessed by a female Hindu as on the commencement of the Act. In the said case the appellant Smt. V. Tulasamma claimed maintenance out of the joint family properties in the hands of the respondent therein, who was the brother of her deceased husband. The claim was decreed and in execution of the decree a compromise was arrived at allotting certain properties to Smt. Tulasamma for her maintenance and she was given a limited interest in those properties without any power of alienation. The appellant-Tulasamma continued to be in possession and after the Hindu Succession Act, 1956 came into force, she sold out the said properties. The respondent filed a suit seeking a declaration that the alienations were not binding on him and they could remain valid only till the lifetime of the appellant-Tulasamma. Though Smt. Tulasamma claimed that she had become a full owner u/s 14(1) of the Act, the same was not accepted by the trial Court and the suit was decreed on the ground that her interest was not enlarged in view of Section 14(2) of the Act. On an appeal by Smt. Tulasamma, the 1st Appellate Court reversed the decree of the trial Court. However, in the second appeal, the High Court restored the decree in favour of the respondent-plaintiff. Aggrieved by the same when Smt. Tulasamma preferred a further appeal, the Supreme Court held that since the properties were acquired by the appellant-Tulasamma, under the compromise in lieu of or in satisfaction of her right of maintenance, it is Sub-section (1) and not Sub-section (2) that would be applicable, and therefore, the appellant must be deemed to have become full owner notwithstanding that the compromise prescribed a limited interest to her.

25. While explaining the scope of the two sub-sections of Section 14(1), the Supreme Court held as under :

Section 14(1) provides that 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 or Will or other instrument or decree, order or award prescribe a restricted estate in such property. This provision is in the nature of a proviso or exception to Sub-section (1). It excepts certain kinds of acquisition of property by a Hindu female from the operation of Sub-section (1) and being in the nature of an exception to a provision, which is calculated to achieve the social purpose of bringing about a change in the social or economic possession of woman in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in Sub-section (1).

26. Placing strong reliance on the aforesaid principles laid down in Tulasamma's case (supra), the learned Counsel for the appellant contended that the facts in the case on hand are also identical since the appellant in the instant case was also allotted Item No. I of the Plaint-A schedule property for her residence under a compromise decree. The learned Counsel submits that since right of residence is part of right of maintenance, though a limited interest was given to the appellant under the compromise decree without any power of alienation, as held in Tulasamma's case (supra), by virtue of Sub-section (1) of Section 14(1) the appellant acquired absolute rights in respect of the said property,

27. However, the learned Counsel for the respondent vehemently contended that the facts in the case on hand are entirely different from the facts in Tulasamma's case (supra) and therefore, Sub-section (1) of Section 14 of the Act cannot be made applicable.

28. On a careful analysis of the facts in the present case, I find force in the submission of the learned Counsel for the respondent.

29. In Tulasamma's case (supra), the parties entered into a compromise in Execution Proceedings. By that time there was already a decree in favour of Smt. Tulasamma for maintenance out of the joint family properties. In the circumstances, though as per the compromise Smt. Tulasamma was given a limited interest in respect of certain properties without any power of alienation, the Supreme Court held that it was in lieu of her preexisting right of maintenance and therefore Section 14 of the Act alone would apply. However, in the case on hand, there was no decree at all in favour of the appellant for her maintenance. It is to be noted that the relief in O.S. No.56 of 1959 included a prayer for grant of maintenance of Rs. 4,000/- and for declaration that she was entitled to reside in Item No. I house property for her residence. Though the trial Court held that the plaintiff was entitled to continue in possession of the Item No.I house in lieu of her right maintenance, the High Court" in appeal negated the said claim. The Supreme Court, while recording the compromise arrived at between the parties,

specifically ordered that the decree passed by the High Court was confirmed with the variation set out in Paragraphs 1 and 2 of the Memo of Compromise. As noted above, under the Memorandum of Compromise the plaintiff was only granted a right to reside in the house at Chilakaluripet (Item No. 1 of the plaint schedule) during her lifetime without any right of alienation. Thus, it is clear that the finding recorded by the High Court that the plaintiff cannot claim any right of residence in Item No.1 house property was upheld by the Supreme Court, however, she was permitted to reside in the said house during her lifetime in terms of the compromise entered into between the parties. Admittedly, the said right of residence granted to the plaintiff by the Supreme Court under the compromise decree was for the first time, but it was not in lieu of her pre-existing right of maintenance. It is also relevant to note that the said compromise decree was passed on 5-9-1980, long after the commencement of the Hindu Succession Act, 1956. In spite of the specific provision under the Act conferring absolute rights in respect of the properties acquired by a Hindu woman, the parties to the compromise have chosen to confer only limited right i.e., right to reside in Item No. 1 of the property without any right of alienation. The said fact itself makes clear the intention of the parties to the compromise and both the parties are bound by the terms agreed upon under the Compromise Memo which was merely recorded by the Supreme Court while passing the decree. Hence, Sub-section (1) of Section 14 of the Act has no application at all and Sub-section (2) of Section 14 of the Act alone would apply. Therefore, in my considered opinion, the right of residence given to the plaintiff in Item No.1 of the Plaint "A" schedule property under the Compromise Decree passed by the Supreme Court cannot be held to be enlarged into absolute right and the lower appellate Court has rightly negated the claim of the plaintiff.

30. The lower appellate Court was also right in holding that the subsequent suit i.e., O.S.No.300 of 1981 is barred by principles of res judicata and is liable to be dismissed on that ground also.

31. Though the learned Counsel for the appellant while placing reliance upon the decisions of the Supreme Court in Venkata Subba Rao v. Jagannadha Rao 1964 (2) ALT 359 and Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, , contended that since the compromise decree is not a decision by the Court, but it was only acceptance by the Court of something to which the parties had agreed to, the compromise decree passed by the Supreme Court in Civil Appeal Nos.1962-63 of 1980 does not operate as res judicata, I am unable to agree.

32. At the outset, it is to be noted that the cause of action for the former suit i.e., O.S. No.56 of 1959 was accrued to the plaintiff on the death of her husband on 11-8-1955. It is true that in the said suit, she claimed that the Will dated 5-8-1955 executed by her late husband conferring only life estate on her in respect of item Nos.2 and 3 was not genuine and vitiated by fraud, undue influence and coercion. However, she also made an alternative claim for

maintenance in the event of the Court coming to a conclusion that the said Will was valid and binding on her, contending that the provision made under the said Will towards her maintenance was not adequate and unreasonable. As noted above, the trial Court negated the said claim of the plaintiff. However, even in her appeal before the Division Bench she failed to raise a plea that she acquired absolute rights by virtue of Section 14 of the Hindu Succession Act, 1956. In the appeal before the Supreme Court, though a vague ground was raised, she never pressed the same and the compromise decree in no way dealt with the said two items covered by the Will. In the circumstances, as contended by the learned Counsel for the respondent, I am of the view that the compromise decree under Exs.A-2 and A-3 undoubtedly operates as *res judicata* so far as Item Nos.2 and 3 are concerned. With regard to Item No. 1, as already noted above, the finding recorded by this Court in the appeal against O.S.No.56 of 1959, that the plaintiff cannot claim the right of residence in Item No. 1 house property was confirmed by the Supreme Court, however, she was permitted to reside in the said house as per the compromise entered into between the parties during her lifetime. Thus it was nothing but a concession and her claim with regard to the said item was already decided conclusively and cannot be re-agitated. Hence, the said finding as affirmed by the Supreme Court operates as *res judicata* and the ratio laid down in the decisions of Venkata Subba Rao and Baldevdas (*supra*) is not applicable to the facts of this case.

33. That apart, admittedly the plaintiff filed O.S.No.56 of 1959 long after the Hindu Succession Act came into force and also long after the death of her husband. According to the plaintiff, the cause of action accrued to her on the death of her husband and accordingly she claimed recovery of possession of the properties left by her husband, contending that being the only legal heir she was entitled to succeed to the entire estate of her late husband. By the date of filing of the said suit, though the Hindu Succession Act has already come into force, she did not choose to pray for an alternative relief in respect of Items 2 and 3 seeking a declaration that the life interest conferred on her got enlarged by virtue of Section 14 of the Hindu Succession Act. On the other hand, she merely claimed maintenance at the rate of Rs. 4,000/- per annum in case the Will executed by her was found to be true and valid. Her claim was that the properties given to her were not sufficient for her maintenance. No explanation is forthcoming for her failure to seek a declaration in the previous suit that she acquired absolute rights in respect of Items 2 and 3. Admittedly, she did not obtain the leave from the Court to raise such a claim subsequently in the event of her plea with regard to the invalidity of the Will is not accepted by the Court.

34. However, the learned Counsel for the appellant contended that the subsequent suit is based on a different cause of action arising from the compromise decree passed by the Supreme Court and therefore the bar under Order II Rule 2 of C.P.C. does not attract. The submission is without any substance since apparently the consent decree did not deal with Items 2 and 3 at all. Thus, the claim of the plaintiff with regard to Item Nos.2 and 3 is also barred

under Order II Rule 2 of the Code of Civil Procedure.

35. For the aforesaid reasons, the lower appellate Court has rightly reversed the judgment and decree granted by the trial Court. The conclusions of the lower appellate Court in the impugned judgment are in accordance with the settled principles of law and the same do not warrant any interference.

36. Accordingly, the second appeal is dismissed. No costs.