
(2015) 02 P&H CK 0273

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 199 of 2011 (O&M)

Parveen Kumar and Others

APPELLANT

Vs

Kamal Kishore

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2), 30

Citation : AIR 2015 P&H 70 : (2015) 178 PLR 630

Hon'ble Judges : Anita Chaudhry, J

Bench : Single Bench

Advocate : Vishal Garg, for the Appellant; Pritam Singh Saini, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anita Chaudhry, J.—This is defendants' regular second appeal against the judgment dated 29.05.2010 passed by the lower Appellate Court, allowing the appeal and decreeing the suit. It reversed the judgment rendered by the trial Court which had dismissed the suit. The substantial question of law sought to be raised in this appeal, is whether the property granted to the wife with a specific recital restraining her interest, could be taken to mean a provision for enlargement of absolute interest by operation of Section 14(1) of the Hindu Succession Act, 1956 (for brevity, "1956 Act").

2. For the sake of convenience, the parties are being referred as they were before the lower Court.

3. Kanta Devi-defendant No. 5 executed a release-deed in favour of her four sons-defendant Nos. 1 to 4 thereby passing on the suit properties in their favour. The release-deed was challenged by the plaintiff Kamal Kishore, brother of defendants Nos. 1 and 4 pleading that the mother had a life interest and the property was to pass on to all the sons in equal shares and she could not release the property and it had created a clog on his right. His claim was that he was

entitled to succeed to 1/5th share of the suit property after the death of Kanta Devi in accordance with Will of Bal Kishan (his father).

4. The suit was filed at the time when the mother was alive and had been arrayed as defendant No. 5.

5. The defendants filed written statement as well as counter-claim pleading that the plaintiff had been given in adoption to Bal Kishan's sister and he was residing with them at Meerut and had no right in the property. It was pleaded that the Will dated 30-1-1989 was null and void to the extent where all the five sons were given equal right in the property after the death of Kanta Devi. It was pleaded that the plaintiff was neither the owner nor in possession of the suit properties.

6. It would be useful to mention here that during pendency of the suit Kanta Devi had died.

7. On appraisal of the evidence, the trial Court dismissed the suit. A finding was recorded that the plaintiff had failed to prove the Will on which he was basing his claim.

8. In appeal, the first Appellate Court recorded a finding that there was no documentary evidence to support the plea raised by the defendants that the plaintiff had been adopted by sister of Bal Kishan. It was held that as per registered Will dated 30-1-1989 defendant No. 5 had a limited right and the property had to pass on to all the sons and she could not alienate the suit land and the release-deed was held to be illegal, null and void.

9. Dissatisfied with the findings, the defendants have come up in appeal.

10. I have heard learned counsel for the parties and have carefully gone through the record with their able assistance.

11. It was urged on behalf of the appellant that the lower Appellate Court was wrong in observing that Smt. Kanta Devi had restricted right to the estate of deceased Bal Kishan. He had further contended that Smt. Kanta Devi had a pre-existing interest in the properties being the widow of Bal Kishan and her such interest would blossom into a full-fledged right by virtue of operation of Section 14(1) of the Hindu Succession Act, 1956. In support of his plea, reliance has been placed on Santhosh and Others Vs. Saraswathibai and Another, AIR 2008 SC 500 : (2008) 2 CLT 27 : (2007) 13 SCALE 356 : (2008) 1 SCC 465 : (2007) 12 SCR 375 , The Brahma Vart Sanatan Dharm Mahamandal Vs. Kanhyalal Bagla and others, (2001) 8 AD 24 : AIR 2001 SC 3799 : (2001) 8 JT 396 : (2001) 6 SCALE 453 : (2001) 9 SCC 562 : (2001) AIRSCW 3835 : (2001) 7 Supreme 161 , Smt. Beni Bai Vs. Raghubir Prasad, AIR 1999 SC 1147 : (1999) 2 CTC 64 : (1999) 236 ITR 898 : (1999) 2 JT 54 : (1999) 1 SCALE 665 : (1999) 3 SCC 234 : (1999) 1 SCR 889 : (1999) 1 UJ 565 : (1999) AIRSCW 808 : (1999) 2 Supreme 361 and C. Masilamani Mudaliar and Others Vs. The Idol of Sri Swaminathaswami Swaminathaswami Thirukoli and Others, (1996) 3 AD 250 :

AIR 1996 SC 1697 : (1996) 3 JT 98 : (1996) 2 SCALE 864 : (1996) 8 SCC 525 : (1996) 1 SCR 1068 .

12. It was further contended that the plaintiff was admittedly not in possession of the suit properties and suit of the plaintiff, inasmuch as for declaration simplicitor, without claiming the consequent relief of possession and was not maintainable. Reliance was placed on Venkataraja and Others Vs. Vidyane Doureradjaperumal (D) Thr. L.Rs. and Others, (2013) 4 AD 596 : (2013) 3 CTC 440 : (2013) 4 JT 505 : (2013) 3 RCR(Civil) 176 : (2013) 5 SCALE 511 , Jeeto Vs. Santa Singh and Others, (2006) 143 PLR 407 , Meharchand Das Vs. Lal Babu Siddique and Others, AIR 2007 SC 1499 : (2007) 2 SCALE 539 : (2007) AIRSCW 2024 : (2007) 3 Supreme 95 , Vinay Krishna Vs. Keshav Chandra and another, AIR 1993 SC 957 : AIR 1992 SC 957 : (1993) 3 SCC 129 Supp , Basti Ram and Anr. v. Nahar Singh (since deceased through LRs) and others, 2011 (5) RCR (Civil) 888 and Devi Lal Vs. Shokaran and Another, (2011) 162 PLR 787 .

13. It has to be considered, whether Kanta Devi had become the absolute owner of the property which had come to her through a Will executed by her husband and whether the suit for declaration simplicitor was maintainable.

14. The execution of the Will was not disputed before me. Therefore, it is not necessary to go into that question. The counsel for the appellants had pointed out that the plea raised by them was that the execution of the Will was not denied and their plea was that the Will did not affect their rights.

15. It would be relevant to refer to Section 14 of the 1956 Act which reads 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 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 no, 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 instruments or the decree, order or award prescribe a restricted estate in such property."

16. Section 14(2) is an exception to Section 14(1) and if there is a specific recital

providing for devolution of interest by a Will restricting such interest then to that extent Section 14(1) itself would stand excluded. The position was explained by the Supreme Court in Thota Sesharathamma and Another Vs. Thota Manikyamma (Dead) by Lrs. and Others, (1992) 103 CTR 308 : (1992) 2 DMC 467 : (1991) 3 JT 506 : (1991) 2 SCALE 434 : (1991) 4 SCC 312 : (1991) 3 SCR 717 : (1991) 2 UJ 685 ; G. Appaswami Chettiar and Another Vs. R. Sarangapani Chettiar and Others, AIR 1978 SC 1051 : (1978) 3 SCC 55 : (1978) 3 SCR 520 : (1978) 10 UJ 312 .

17. Both the parties are relying upon the Will and valid execution of it is not under challenge at all. It would be important to enumerate the conditions that were set out in the Will, for true appreciation of the question involved in the suit.

18. Bal Kishan in his Will Ex. P3 had mentioned that it was his last Will so far as Kanta Devi his second wife was concerned, she would be owner till her life and after her death the properties would devolve on all the five sons in equal shares. The names of the sons were mentioned and the name of Kamal Kishore-plaintiff also figures therein. Bal Kishan had further mentioned that his wife could use the earning but had no right to alienate the properties, meaning thereby only a right to enjoy the property had been granted. There is no evidence that the property was ancestral.

19. After having referred to the recitals contained in the Will, the aspect which requires consideration is whether Bal Kishan had the power of disposition to make a devise in the manner which he wanted to make, which included a restricted right even to his wife.

20. In Shivdev Kaur (D) By L.Rs. and Others Vs. R.S. Grewal, (2013) 4 AD 196 : AIR 2013 SC 1620 : (2013) 2 CTC 587 : (2013) 8 JT 306 : (2013) 171 PLR 671 : (2013) 3 RCR(Civil) 20 : (2013) 4 SCALE 573 : (2013) 4 SCC 636 : (2013) AIRSCW 2228 : (2013) 3 Supreme 186 , a life estate was created by a Will. The question involved was whether such limited right got converted into absolute right on commencement of 1956 Act. It was held that if a Hindu female had been given only a life interest through Will or any other document referred to in Section 14, that right would not stand crystallized into absolute ownership by virtue of provisions of Section 14(1) of 1956 Act. The law on the issue was summarized and para Nos. 7 to 9 read as under:--

"7. It is evident from the aforesaid part of the Will that only a life interest had been created in favour of the appellant by that Will. Therefore, the sole question for our consideration remains as to whether such limited right got converted into absolute right on commencement of the Act 1956.

8. Section 14 of the Act 1956 reads 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.

(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."

(Emphasis added)

9. The aforesaid statutory provisions provide for conversion of life interest into absolute title on commencement of the Act 1956, however, sub-section (2) carves out an exception to the same as it provides that such right would not be conferred where a property is acquired by a Hindu female by way of gift or under a Will or any other instrument prescribing a restricted estate in that property.

21. In *Mst. Karmi Vs. Amru and Others*, AIR 1971 SC 745 : (1972) 4 SCC 86 : (1971) 3 UJ 140 , a similar issue was considered by the Supreme Court and after examining the contents of the Will came to the conclusion that where a woman succeeded to some property on the strength of a Will, she cannot claim any right in those properties over and above what was given to her under that Will. The life estate given to her under the Will would not become an absolute estate under the provisions of the Act 1956 and, thus, such a Hindu female could not claim any title to the suit property on the basis of the Will executed in her favour. Reference here is also made to *Navneet Lal alias Rangi Vs. Gokul and Others*, AIR 1976 SC 794 : (1976) 1 SCC 630 : (1976) 2 SCR 924 ; and *Jagan Singh (Dead) through L.Rs. Vs. Dhanwanti and Another*, (2012) 1 JT 369 : (2012) 1 SCALE 497 : (2012) 2 SCC 628 : (2012) AIRSCW 893 : (2012) 1 Supreme 262 .

22. In *Sadhu Singh Vs. Gurdwara Sahib Narike and Others*, AIR 2006 SC 3282 : (2006) 4 CTC 773 : (2006) 8 JT 525 : (2006) 9 SCALE 83 : (2006) 8 SCC 75 : (2006) 5 SCR 799 Supp : (2006) AIRSCW 4790 : (2006) AIRSCW 3058 : (2006) 8 Supreme 578 : (2006) 5 Supreme 230 , the Supreme Court again considered the issue and held as under:

"When he thus validly disposes of his property by providing for a limited estate to his heir, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otiose. It will also make redundant, the expression "property possessed by a female Hindu" occurring in Section 14(1) of the Act. An interpretation that leads to such a result cannot

certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance.

(Emphasis added)

23. The Supreme Court in para No. 13 concluded as under:--

13. Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a "life interest", through Will or gift or any other document referred to in Section 14 of the Act 1956, the said rights would not stand crystallised into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the Act 1956, the provisions of Sections 14(2) and 30 of the Act 1956 would become otiose.

Section 14(2) carves out an exception to rule provided in sub-section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain the same even after commencement of the Act 1956, and such a Hindu female cannot acquire absolute title."

24. The consistent view is that provision of Section 14(1) of 1956 Act would be attracted if any of the conditions contained in Section 14(1) stood fulfilled, if, however, a right is created in Hindu female for the first time in respect of any property under any instrument or under a decree or order of a civil Court etc., where a restricted estate in such property is prescribed, the provision of sub-section (1) of Section 14 of 1956 Act would have no application by virtue of sub-section (2) thereof.

25. The argument put forth on behalf of the appellants was that the wife had a preexisting interest in the property, therefore, the estate would enlarge and the wife would become full owner and she could release/relinquish the property in the manner she liked. Such a contention had been rejected in two recent decisions reported as Jagan Singh (Dead) through L.Rs. Vs. Dhanwanti and Another, (2012) 1 JT 369 : (2012) 1 SCALE 497 : (2012) 2 SCC 628 : (2012) AIRSCW 893 : (2012) 1 Supreme 262 and Shivdev Kaur (D) By L.Rs. and Others Vs. R.S. Grewal, (2013) 4 AD 196 : AIR 2013 SC 1620 : (2013) 2 CTC 587 : (2013) 8 JT 306 : (2013) 171 PLR 671 : (2013) 3 RCR(Civil) 20 : (2013) 4 SCALE 573 : (2013) 4 SCC 636 : (2013) AIRSCW 2228 : (2013) 3 Supreme 186 .

26. The testator had given the properties to his wife only for her lifetime and had no intention to make her the absolute owner. Mayne of Hindu Laws 15th edition page 1171 reads as under:-

"On a reading of sub-section (1) with explanation, it is clear that wherever the property was possessed by a female Hindu as a limited estate, it would become

on and from the date of commencement of the Act her absolute property. However, if she acquires property after the Act with a restricted estate, sub-section (2) applies. Such acquisition may be under the terms of a gift, will or other instrument or a decree or order or award."

27. Thus it is clear from the above discussion, that Section 14(1) of the Act is attracted to only those cases where as Hindu female has been in possession of the property as a limited owner on coming into force of the Hindu Succession Act. Hon"ble Supreme Court in Gaddam Ramakrishnareddy and Others Vs. Gaddam Rami Reddy and Another, AIR 2011 SC 179 : (2011) 111 CLT 131 : (2010) 10 JT 125 : (2010) 9 SCC 602 : (2010) AIRSCW 6589 has dealt with a similar matter. In that case husband namely G. Pullareddy executed a registered deed of gift giving a limited right in his share of the properties to his wife Smt. Gaddam Sheshamma. In terms of the gift deed wife was given a limited right of alienation and after her death the property was to devolve on G. Ramireddy. G. Pullareddy (the husband) died in or about 1957. Thereafter his widow Sheshamma executed a deed of relinquishment which was challenged. After the death of Sheshamma G. Ramireddy filed a suit for possession of the suit properties seeking mesne profits. The defendants of the said suit denied his claim and asserted their independent right to the properties and asserted that Sheshamma had pre-existing right of maintenance in the properties of husband G. Pullareddy and the life estate created under the gift deed had blossomed into a absolute estate. Hon"ble Supreme Court held that the wife had no pre-existing right and she acquired the properties as a limited owner under the gift deed and the same did not blossom into full ownership.

28. The next submission of the appellant was that the suit was not maintainable as the plaintiff was not in possession of the property and the suit for declaration simplicitor was not maintainable. The argument has no force. What has to be seen is whether the suit for possession was maintainable during the lifetime of Smt. Kanta Devi. Could a suit for possession be filed by the son when the mother was alive. The answer is emphatically in the negative. The plaintiff, during the lifetime of his mother could not seek possession as under the Will, she had a life interest. The suit was maintainable in the form it was presented. During the lifetime of his mother the plaintiff could only seek declaration regarding the release-deed. It is another matter that Kanta Devi died during trial. The Courts have the power to grant the relief which the plaintiff is found entitled to in the event there is a change in the circumstances during trial.

29. Since Kanta Devi had a limited right she could not execute the release deed and give the property to the four sons only. The defendants had failed to prove that the plaintiff had been given in adoption. Therefore, Kamal Kishore plaintiff also become a co-owner in the suit property along with his brothers on the death of his mother. In law possession of one co-sharer is possession of all the co-sharers. As a consequence and in the light of aforesaid reasons, I find no illegality in the judgment of the appellate Court. The findings are affirmed. No

question of law, much less substantial question of law, arises in the instant regular second appeal. The appeal is dismissed.