

(2010) 01 P&H CK 0206
In the Punjab And Haryana At Chandigarh

Ram Lubhaya and Others	Vs	APPELLANT
Smt. Lachhmi and Others		RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

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

Citation : AIR 2010 P&H 137

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The plaintiff/appellants filed a suit for possession of the land, on the pleadings that they were agnates of Saria the adopted son of Jattu and, therefore, were entitled to inherit the land being preferential heirs.

2. The pedigree table given in the suit reads as under:

Kauda	
Jattu he adopted Saria Ganda Dasundhi Suba	s/o Suba as his son died issueless
	Ganda died issueless
	Chhajju
	Mela
	Mansa died issueless
	Ram Lubhaya plaintiff Janak Dulari plaintiff Raj Rani plaintiff No. 3
	No. 1 No. 2
	Ramji Lalji died Saria died issueless Ganda died issueless Babu died issueless

|-----| |Amar Chand died | |-----|

3. It was the case set up by the plaintiff/appellants, was that the suit land was allotted during consolidation of holdings of village Malhewal, in lieu of the land which had devolved upon Saria, adopted son of Jattu son of Kauda.

4. Smt. Shankari, who was firstly married in village Gondpur, Police Station and Tahsil Garshankar, started living in house of Ganda son of Suba son of Kauda as his keep. After the death of Saria, said Shankari with the help of Ganda and Lalji, his brothers and Amar Chand his nephew, and in conspiracy with the revenue staff, got mutation of inheritance of the estate of said Saria sanctioned in her name.

5. Mansa and Mela sons of Chhajju brought a suit for possession of the land left by Saria against Smt. Shankari in the Court of learned Sub-Judge, Ist Class, Hoshiarpur. The compromise was entered into in the said suit, wherein it was agreed, that Smt. Shankari was to remain in possession of the property left by Saria adopted son of Jattu till her lifetime. It was the case of the plaintiffs, that Smt. Shankari died on 23-12-1973 in village Malhewal, and after her death, plaintiffs being agnates of Saria, adopted son of Jattu, were entitled to the possession of the suit land, being preferential heirs.

6. It was the case of the plaintiffs, that the stand of the defendants, that Smt. Shankari was widow of Saria, was wrong and against the facts, as she was never a legally wedded wife of Saria.

7. Smt. Shankari being already married could not legally wed again even if she had become a widow. Saria was high caste Brahman, therefore, second marriage of Smt. Shankari with Saria was not valid. It was claimed, that Smt. Shankari had no right to inherit the estate of Saria. The plaintiffs also challenged the "Will" executed by Smt. Shankari in favour of Jagat Ram, father of defendant Nos. 1 to 6. It was also the case of the plaintiffs that even otherwise, as Smt. Shankari was only to remain in possession of the suit land during her lifetime, under the terms of the compromise decree, she had no right to will away the suit property.

8. It was further the case of the plaintiff/appellants, that her right to remain in possession stood terminated with her death and the plaintiffs were entitled to take possession of the suit land being owner as agnates of Saria. Possession of defendant Nos. 1 to 6 over the suit land was said to be that of trespassers. The suit was filed as the claim of the plaintiffs was not accepted by defendant Nos. 1 to 6.

9. On notice, defendant Nos. 1, 2, 5 and 6 appeared and filed joint written statement, whereas other defendants were proceeded against ex parte. The contesting defendants controverted the allegations made in the plaint, and raised preliminary objections, with regard to locus standi, limitation, and that the suit was not properly valued for the purpose of Court-fee and jurisdiction. The

defence was also taken, that the suit property was not properly described. That the plaintiffs were estopped from filing the suit by their act and conduct and their admission, and that the suit was not maintainable in the present form.

10. Defendant Nos. 1 to 6 also claimed to have become owners of the suit land by way of adverse possession, being in open, hostile and notorious possession. It was also pleaded, that Smt. Shankari was the married wife of Saria son of Suba and was not living as a keep. It was the case of the defendants, that Smt. Shankari had succeeded her husband being sole legal heir under the law. That she became absolute and full owner of his share by inheritance and without any objection from any corner. It was also the case of the defendant/respondents, that the mutation was sanctioned in the name of Smt. Shankari.

11. It was the case of the defendants, that Mansa etc. had no right to file a suit nor any such suit was filed, and, if filed, it had no effect on the rights of the defendants.

12. The factum of compromise was denied, and it was pleaded that the compromise had no binding effects on the rights of the defendants, as Smt. Shankari was owner in possession as full and absolute owner till her life.

13. After her death, defendants and other legal heirs of Smt. Shankari succeeded her as legal and natural heirs as full and absolute owner. It was also the case of the defendants, that the right of lifetime in property to widow had matured into full ownership on coming into force of Hindu Succession Act, 1956.

14. It was the case of the defendants that Smt. Shankari had died, but not in the year 1973, rather much prior to 1970-71. It was denied that the plaintiffs were agnates of Saria or that they were entitled to succeed to the property. The claim of the plaintiffs to seek possession was denied. It was denied, that plaintiff/appellants were the preferential heirs. As already noted above, the suit was said to be time-barred. It was also the case of the defendants that Saria and Smt. Shankari lived as husband and wife for a long time, and at that time, elder brothers of Saria and others were alive. It was pleaded that Smt. Shankari succeeded Saria. The right of the plaintiffs to challenge the status of Smt. Shankari was also questioned. It was also the case of the defendants, that "Will" was executed in favour of Jagat Ram, father of defendant Nos. 2 to 6 and husband of defendant No. 1, in lieu of services rendered, out of love and affection by Smt. Shankari. It was also pleaded that she had absolute right, to bequeath the property by way of "Will" in favour of defendant Nos. 1 to 6.

15. In replication, plaintiffs denied the averments made in the written statement and reiterated those of plaint.

16. On the pleadings of the parties, the learned trial Court framed the following issues:

1. Whether the plaintiffs are agnates of Saria deceased, if so, its effect ? OPP

2. Whether the suit land was allotted in lieu of old land, if so, its effect? OPP
3. Whether there had been a compromise effected on 26-3-42 in Civil Suit No. 392 of 8-11-41, as alleged, if so, its effect? OPP ;,
4. Whether; Smt. Shankari was the keep of Ganda, if so, its effect? OPP
5. Whether the suit is within time? OPP
6. Whether the suit has been properly valued for the purposes of court-fee and jurisdictions? OPP
7. Whether the plaintiffs are estopped from filing the suit? OPD
8. Whether the suit is not maintainable? OPD
9. Whether the defendant Nos. 1 to 6 have become owners of the land by adverse possession? OPD
10. Whether Shankari was the wife of Ganda, if so, its effect? OPD
11. Whether Shankari executed a valid Will in favour of Jagat Ram, if so, its effect? OPD
12. Whether Smt. Shankari remarried with Saria, If so, its effect? OPD
13. Relief.
17. The learned trial Court, on appreciation of evidence, held that the plaintiffs were agnates of deceased-Saria. However, they were not held entitled to seek possession of the property as Smt. Shankari was held to be wife of Saria.
18. On issue No. 2 it was held that suit land was allotted in lieu of the old land during consolidation.
19. The learned trial Court held, that the plaintiffs failed to prove that there was compromise effected on 26-3-42 in Civil suit No. 392 of 18-11-1948. This finding, however, was reversed by the learned lower appellate Court, and it was held that the compromise decree was duly proved.
20. On issue No. 4, it was held that Smt. Shankari was not a keep of Ganda.
21. Issue Nos. 5, 6 and 9 were not pressed and, therefore, issue Nos. 5 and 6 were decided against the plaintiffs and issue No. 9 against the defendants.
22. On issue No. 7, it was held that plaintiffs were estopped from filing the suit, as the property devolved on the basis of "Will".
23. On issue No. 8, it was held, that suit filed by the plaintiffs was not maintainable in view of the "Will", executed by Smt. Shankari in favour of Jagat Ram.
24. On issue No. 10, it was held that Smt. Shankari was not proved to be wife of Ganda. On issue No. 11 it was held that Smt. Shankari executed a valid "Will" in

favour of Jagar Ram and accordingly he became owner of land in dispute after her death.

25. On issue No. 12, it was held that Smt. Shankari had remarried Saria and, therefore, was held to be his wife, therefore, was entitled to inherit the property as legal heir.

26. As already observed above, the suit was dismissed.

27. In appeal, the findings recorded by the learned trial Court were upheld except on issue No. 3, as referred to above, and the appeal was also dismissed.

28. Learned Counsel appearing on behalf of the appellants contends, that the appeal raises the following substantial questions of law:

1. Whether in view of the proved fact that Smt. Shankari had got the property in dispute under the terms of compromise, executed between the parties till her lifetime, the judgment and decree passed by the learned Courts below dismissing the suit filed by the appellant is outcome of non-application of mind, and therefore, unsustainable in the eye of law ?

2. Whether the Courts below have wrongly applied the provisions of Section 14(1) of the Hindu Succession Act, 1956 despite the fact that as per the pleadings, the case squarely falls within the ambit of Section 14(2) of the Hindu Succession Act 1956?

29. In support of substantial questions of law learned senior counsel for the appellants vehemently contended, that the judgment and decree of the learned Courts below cannot be sustained in law, as transfer in favour of Smt. Shankari was governed by Section 14(2) of the Hindu Succession Act (for short the Act) as she acquired the life estate under a compromise Ex. P.1, entered into between the parties.

30. The contention of the learned senior counsel, therefore, was that once the right of inheritance of Smt. Shankari was not u/s 14(1) of the Act, it could not mature into absolute ownership entitling the defendant-respondents to the possession of the land by way of inheritance from Shankari. Under the compromise Ex. P. 1, it was to revert back to the appellants in view of the order passed by the learned civil Court in their favour by way of compromise decree.

31. In order to appreciate this contention, it is necessary to reproduce Section 14 (1) and (2) of the Act which read 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 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.

32. The contention of the learned senior counsel for the appellants was, that on the death of Saria the predecessor-in-interest of the appellants being agnates were entitled to possession of the property in which Shankari has no right. The life estate gave her right to retain possession under the decree, therefore, it was a right given under the instrument. The case, therefore, fell within the purview of Section 14(2) of the Act.

33. Mr. Hemant Sarin, learned Counsel appearing on behalf of the respondents, on the other hand, contended that the learned Courts below on appreciation of evidence have recorded a concurrent finding of fact that Shankari as widow of Saria having remarried, would lead to only one conclusion that Smt. Shankari being widow of Saria had right of life estate before coming into force of the Act, and thereafter limited estate matured into absolute ownership u/s 14(1) of the Act.

34. It was also the contention of the learned Counsel for the respondents, that it is not open to challenge the concurrent finding of fact on appreciation of evidence. Specially, when the findings are based on documents produced by the defendants, i.e. death certificate and mutations wherein Shankari was shown to be widow of Saria.

35. The contention of the learned Counsel for the respondents further was that even if a decree was passed restricting her right to claim absolute ownership it would have no effect on her right as under the statute the right was vested in her of absolute ownership, irrespective of judgment and decree, passed to the contrary.

36. In support of this contention learned Counsel for the respondents placed reliance on the judgment of Hon''ble Supreme Court in the case of Santhosh and Others Vs. Saraswathibai and Another, wherein Hon''ble Supreme Court approved its earlier judgment in the case of Nazar Singh and others Vs. Jagjit Kaur and others, which, reads as under:

16. In Nazar Singh and others Vs. Jagjit Kaur and others, , this Court following Tulasamma (supra) (AIR 1977 SC 1944) held as under:

The principles enunciated in this decision have been reiterated in a number of

decisions later but have never been departed from. According to this decision, Sub-section (2) is confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. It has also been held that where the property is acquired by a Hindu female in lieu of right of maintenance inter alia, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Sub-section (2) even if the instrument decree, order or award allotting the property to her prescribes a restricted estate in the property. Applying this principle, it must be held that the suit lands, which were given to Harmel Kaur by Gurdial Singh in lieu of her maintenance, were held by Harmel Kaur as full owner thereof and not as a limited owner notwithstanding the several restrictive covenants accompanying the grant. (Also see the recent decision of this Court in *Mangat Mal v. Punni Devi*, where a right to residence in a house property was held to attract Sub-section (1) of Section 14 notwithstanding the fact that the grant expressly conferred only a limited estate upon her.) According to Sub-section (1), where any property is given to a female Hindu in lieu of her maintenance before the commencement of the Hindu Successive Act, such property becomes the absolute property of such female Hindu on the commencement of the Act provided the said property was "possessed" by her. Where, however, the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award whereunder the property is given to her. (Emphasis in original). This proposition follows from the words in Sub-section (1), which insofar as is relevant read: "Any property possessed by a female Hindu after the commencement of this Act shall be held by her as full owner and not as a limited owner". In other words, though the instrument, grant, award or deed creates a limited estate or a restricted estate, as the case may be, it stands transformed into an absolute estate provided such property is given to a female Hindu in lieu of maintenance and is placed in her possession. So far as the expression "possessed" is concerned, it too has been the subject-matter of interpretation by several decisions of this Court to which it is not necessary to refer for the purpose of this case.

37. The learned senior counsel for the appellants also placed reliance on the judgment of Hon"ble Supreme Court in the case of *Santhosh and Others Vs. Saraswathibai and Another*, to contend that as Smt. Shankari had no existing right on the date when the suit was filed and compromised. The case was covered u/s 14(2) of the Act and not Section 14(1) of the Act, as contended.

38. Learned senior counsel for the appellants also contended that there was no evidence, of date of marriage to hold that Shankari was the widow of Saria as held by the learned Courts below.

39. However, on consideration of matter, I find no force in the contentions raised by the learned Counsel for the appellants.

40. Once on appreciation of evidence a finding of fact has been recorded, that Shankari had remarried Saria and was his widow, merely because the date of marriage is not mentioned is of no consequence, specially when it is well settled law, that long association of the parties as husband and wife which is accepted by the public at large leads to the presumption of marriage. The presumption in this case stood fortified, from the fact that the document produced by the appellants themselves showed Smt. Shankari, to be widow of Saria in the death certificate as well as in the mutation. Therefore, in view of the documentary and oral evidence, the Courts below had answered issue No. 12 in favour of the defendant-respondents, which is not open to challenge in regular second appeal.

41. Once Smt. Shankari is held to be widow of Saria, merely because in the previous suit a compromise was entered into, cannot come in the way of Smt. Shankari to acquire full ownership u/s 14(1) of the Act as she being a widow had a existing right in the land, which matured into absolute ownership on coming into force of the Act.

42. Ex. P. 1 cannot be said to be an instrument of transfer, in favour of Smt. Shankari u/s 14(2) of the Act, as contended by the learned senior counsel for the appellants. The property right u/s 14(2) of the Act, is one given by a person holding right in the property, which is capable of being transferred in the name of the lady. Every judgment and decree, therefore, cannot take away right of widow to claim absolute ownership right u/s 14(1) of the Act. The Hon'ble Supreme Court has held that any decree or judgment passed is of no consequence, in conferring of absolute right in the widow on coming into force of the Act.

43. Consequently, the substantial question of law raised in this appeal is answered against the appellants.

44. Finding no merit in the appeal, it is ordered to be dismissed, but with no order as to costs.