

**(2009) 08 P&H CK 0143**

**In the Punjab And Haryana At Chandigarh**

**Case No : Regular Second Appeal No. 132 of 1988**

Romesh Chander

APPELLANT

Vs

Sohan Lal

RESPONDENT

**Date of Decision : 03-08-2009**

**Acts Referred:**

Hindu Succession Act, 1956 — Section 14, 30  
Succession Act, 1925 — Section 63

**Citation : (2010) 2 RCR(Civil) 6**

**Hon'ble Judges : Hemant Gupta, J**

**Judgement**

Hemant Gupta, J.

1 Legal heirs of defendant No. 1 Jagan Nath are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court whereby the suit of the plaintiffrespondent for partition of the properties in respect of his 1/3rd share described in the plaint was sought.

2 The following pedigree table will facilitate to understand the issue arising in the present appeal

See Table

Hazari Lal

|

| | |

Kanshi Ram Tulsi Ram Gopi Ram

[died 1920] [died 1951] [died 1930]

| | |

| Issueless Dwarki Devi widow

| (died on 27.11.73)

|

||

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Sohan Lal

Jagan Nath Mava Devi (on the basis of Will

(defendant No 1) (defendant No.1) dt. 27.1.1953 and 11.10.1960)

3 Plaintiff Sohan Lal claims possession of 1/3rd share in the suit property along with Jagan Nath defendant No. 1 and Maya Devi defendant No.2. After the death of Gopi Ram, his widow Dwarki Devi succeeded to his 1/3rd share in the estate of Hazari Mal. She bequeathed her entire movable and immovable properties through testamentary disposition dated 27.1.1953 and 11.10.1960 in favour of Sohan Lal being her brother's son. The said bequest was upheld in earlier litigation vide judgment dated 26.07.1979 passed by the Additional District Judge, Ferozepur. The second appeal against the judgment was dismissed. The claim of the plaintiff is in respect of partition of urban immovable properties situated at Ferozepur city and Kot Kapura as the agricultural land cannot be partitioned before the civil Court. Since plaintiff and Jagan Nath both have alienated some part of the property, vendees were impleaded as defendants No. 3 to 9. The primary contest of the suit of Sohan Lal is by defendants No. 1 and 2.

4 It was asserted that the suit property including the agricultural land was a coparcenary property of Hazari Mal, Kanshi Ram, Tulsi Ram and Gopi Ram and that the said defendants have succeeded to the aforesaid property by survivorship. It was denied that Dwarki Devi executed any Will in favour of Sohan Lal. It was denied that she was legally entitled to execute the Will.

5 The learned trial Court found that earlier Jagan Nath defendant No. 1 has filed a suit against Sohan Lal present plaintiff claiming a declaration that he was legal heir of Dwarki Devi deceased and entitled to suit property comprising of 1/3rd share in agricultural land in different villages and bank deposits which stood in her name. Sohan Lal in his written statement took up a plea that limited right to property in Dwarki Devi matured into perfect right. The said suit was dismissed on 15.02.1977 vide judgment PW8/6. The appeal was dismissed on 26.7.1979 Exhibit PW8/7. The learned trial Court also found that Will dated 27.1.1953, Exhibit PW5/1, and 11.10.1960, Exhibit PW5/2, stood established on the basis of issues decided in the aforesaid judgment. It was found that in the previous litigation, Jagan Nath has not raised a plea of coparcener but claimed himself to be the legal heir of Dwarki Devi, therefore, change in the stand cannot be permitted. Jagan Nath cannot be permitted to approbate and reprobate. It was also found that bequest by Dwarki Devi was not qua agricultural land but was to urban property as well. Therefore, the suit was decreed holding that Gopi Ram's 1/3rd share in the estate of his father Hazari Mal devolved upon Dwarki Devi in the year 1930 as the mutations of inheritance were duly sanctioned in her favour.

so far as agricultural lands in various villages was concerned but the urban immovable properties at Ferozepur City and Kot Kapura remained in the common hotchpotch and that Dwarki Devi shifted her residence from Kot Kapura to Ferozepur city and lived in a part of the said Ahata inside Magazine Gate; Ferozepur City and also occasionally resided at her parental place at Jagraon. Therefore, Sohan Lal was found justified in asserting his right to possession of 1/3rd share in the suit properties by way of partition except property mentioned at serial No. (ii) in the heading of the plaint. A preliminary decree was, thus, passed accordingly.

6 Two appeals were filed against the aforesaid judgment and decree, one filed by the plaintiff and one by another defendant No. 1 and Darshan Lal. The challenge in the plaintiffs appeal was to the exclusion of the property situated at Ahta Behlanwala inside Magazine Gate, Ferozepur City . The said finding was also set aside as alienation by a cosharer, who is in possession of specific portion, was found to be subject to the rights of other cosharers in the partition proceedings. The findings on other issues returned by the learned trial Court were maintained in an appeal preferred by defendants No. 1 and 2 and consequently the said appeal was dismissed.

7 Still aggrieved, legal heirs of defendant No. 1 are in second appeal. Initially, Darshan Lal, vendee from Jagan Nath vide sale deed dated 28.8.1984, has also joined the appeal but during the pendency of the appeal, a compromise was arrived at and in terms of the said compromise, Darshan Lal has withdrawn his appeal.

8 I have heard learned counsel for the parties on the following questions of law

1. Whether Dwarki Devi can claim to be limited owner after the death of her husband in 1930 i.e., before coming into operation of Hindu Women Right to Property Act, 1937

2. Whether in view of Section 14 of the Hindu Succession Act, 1956, Dwarki Devi became absolute owner of the suit property and whether she has any right to Will the property so vested with her

9 Admittedly, defendant No. 1 Jagan Nath has earlier filed a suit for declaration claim ing the estate of Dwarki Devi as legal heir of Dwarki Devi. The property claimed was agricultural land situated in village Kamalwala and village Alewala, Tehsil and District Ferozepur, and the amount of fixed deposit. In the said suit. Sohan Lal propounded Will and the following issues were framed

1. Whether Dwarki Devi Wills in favour of Sohan Lal defendant. If so. with what effect OP

2. Whether the plaintiff is entitled to the declaration claimed OP

3. Relief

10 The suit was dismissed holding that Sohan Lal is a legatee of Dwarki Devi and

plaintiff is not entitled to the declaration sought for.

11 In view of the findings recorded in the aforesaid suit, two things emerge that Sohan Lal is a legatee of Dwarki Devi. The plea of defendant No. 1 that he is heir of Dwarki Devi was negatived. Once he has unsuccessfully claimed the estate of Dwarki Devi as a heir, Jagan Nath can not be permitted to claim the estate on the basis of survivorship. Jagan Nath cannot be permitted to approbate and reprobate. The plea that the estate of Hazari Mal devolves upon Jagan Nath by survivorship was available at the time of filing of previous suit in the year 1974 and having failed to raise such plea, the appellant cannot be permitted to raise such plea in the subsequent present suit.

12 Still further, in the aforesaid suit, a plea was raised by Sohan Lal (defendant in that suit) that Dwarki Devi was full fledged owner and competent to dispose of her movable and immovable property through Will but there is no specific discussion on the said plea though suit of Jagan Nath was dismissed.

13 With this background, learned counsel for the appellant has argued that Gopi Ram husband of Dwarki Devi died in the year 1930 i.e., before the commencement of the Hindu Womens Right of Property Act, 1937, therefore, it is the said Act which has given right to maintenance to a Hindu widow and it is the said right which ripen into full ownership if the widow is in possession of immovable property so granted to her in lieu of maintenance. Since in the present case, Gopi Ram died in the year 1930, therefore, Dwarki Devi cannot claim any right of maintenance against the property of Gopi Ram. It was argued that even if she has a right of maintenance, which was sufficiently granted in the shape of agricultural land, subject matter of earlier litigation, and, thus, Dwarki Devi cannot claim any interest in the urban immovable property, subject matter of the present suit. It is further contended that since Dwarki Devi cannot be said to have any right of maintenance and was not in possession of the entire property of Gopi Ram, therefore, she cannot claim absolute ownership in the suit property.

14 The question whether a Hindu widow has any right of maintenance prior to the commencement of Hindu Womens Rights to Property Act, 1937 has been examined by the Supreme Court in *Vaddeboyina Tulasamma and others v. Vaddehoyina Sesha Reddi (dead) by L.Rs.*, AIR 1977 SC 1944. Justice Fazal Ali has quoted Colebrooke from his book "Digest of Hindu Law" and also Gopalchandra Sarkar Sastri in his treatise "Hindu Law". The following extract reproduced from the judgment is relevant for the present discussion

"16. Colebrooke in his Digest of Hindu Law Vol. 11, quotes the Mahabharata at p. 121 thus "Where females are honoured, there the deities are pleased; but where they are unhonoured, there all religious acts become fruitless."

This clearly illustrates the high position which is bestowed on Hindu women by the Shastric Law. Again Colebrooke in his book Vol. II at p. 123, while describing the circumstances under which the maintenance is to be given to the wife,

quotes Manu thus

"MANU Should a man have business abroad, let him assure a fit maintenance to his wife, and then reside for a time in a foreign country; since a wife, even though virtuous, may be tempted to act amiss, if she be distressed by want of subsistence While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities; but if he leave no support, let her subsist by spinning an other blameless arts."

This extract clearly shows that there is a legal obligation on the part of the husband to make arrangements for his wives due maintenance even if he goes abroad for business purposes. Colebrooke again quotes Yajñawalkya at p. 243 of his book Vol. thus

"When the father makes an equal partition among his sons, his wives must have equal shares with them), if they have received no wealth either from their lord or from his father. If he makes an equal partition among his sons by his own choice, he must give equal shares to such of his wives also as have no male issue."

This shows that when a partition is effected, the Hindu Law enjoins that the wife must get an equal share with the sons, thus reinforcing the important character of the right of maintenance which a Hindu wife or widow possesses under the Hindu Law.

17. Similarly Gopalchandra Sarkar Sastri dealing with the nature and incidents of the Hindu widows right to maintenance observes in his treatise Hindu Law at p. 533 thus "When the husband is alive, he is personally liable for the wife's maintenance, which is also a legal charge upon his property, this charge being a legal incident of her marital co ownership in all her husband's property .....But after his death, his widow's right of maintenance becomes limited to his estate, which, when it passes to any other heir, is charged with the same....."

Later, summing up, it was observed as under

"To sum up, therefore, according to Sastri's interpretation of Shastric Hindu Law the right to maintenance possessed by a Hindu widow is a very important right which amounts to a charge on the property of her husband which continues to the successor of the property and the wife is regarded as a sort of coowner of the husband's property though in a subordinate sense, i.e. the wife has no dominion over the property"

15 After describing the incidents and characteristics of Hindu Wives right to maintenance by Mulla in "Hindu Law" 14th Edn., it was concluded to the following effect

"We might further mention that the Hindu women's right to maintenance finally received statutory recognition and the entire law on the subject was consolidated and codified by the Hindu Married Women's Right to Separate Maintenance and Residence Act, 1946 herein after to be referred to as the Act of 1946 which came

into force on April 23, 1946. Thus there appears to be complete unanimity of the various schools of Hindu law on the important incidents and indicia of the Hindu women's right to maintenance which has now received statutory recognition and which only shows that the right to maintenance though not an indefeasible right to property is undoubtedly a preexisting right. We shall now refer to some of the authorities which have dealt with this aspect of the matter".

16 After such quote, it was concluded to the following effect

"We would now like to summarise the legal conclusions which we have reached after an exhaustive consideration of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Sections 14(1) and (2) of the Act of 1956. These conclusions may be stated thus "(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a preexisting right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the preexisting rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socioeconomic ends sought to be achieved by this long needed legislation"

17 In *Smt. Beni Bai v. Raghubir Prasad*, 1999(2) R.C.R.(Civil) 210 AIR 1999 SC 1147, Supreme Court held to the following effect

" According to old Shastric Hindu law, marriage between two Hindus is not a contract but a sacrament. The marriage is regarded as a holy union of wife and husband and by such union the wife becomes part and parcel of the husband. Under the Shastric Hindu law, after marriage it is a pious obligation on the part of the Hindu husband to maintain his wife during his life time and after his death the widow is to be maintained out of the property of the husband if the husband has left any property. This was on account of spiritual relationship between a Hindu husband and wife. This principle was statutorily recognized by the enactments known as Hindu Women's Rights to Property Act, 1937 and Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946. Under these two Acts, the right to maintenance of a Hindu widow was preserved as a preexisting right. After independence it was felt necessary to assure the

equality of right in property to a Hindu female and to remove the artificial disparity in right to property where a male was entitled to obtain full ownership in the property and a Hindu female would only be contained by limited ownership because of the restrictions imposed on her by the Hindu law. With this object in mind, Parliament enacted The Hindu Succession Act, 1956 . After the Act came into force, the question arose whether the right of maintenance given to a widow would crystallised into a fullfledged right by v irtue of Section 14 (1) of the Act. After a number of decisions by this Court, the said question is no longer res integra".

18 In view of the above, the argument raised by the learned counsel for the appellant that since Gopi Ram died in the year 1930, therefore. Dwarki Devi will not have any right of maintenance is not legally sustainable as a Hindu widow has always right to claim maintenance against the property of her husband as per Shastric law as well.

19 The other part of the argument that agricultural land would be) deemed to be given in lieu of maintenance alone is again not tenable. It was not the stand of Jagan Nath in the aforesaid proceedings. Still further, as per the text quoted by the Supreme Court in v. Tulasammas case (supra), a Hindu female has a right against the entire property of her husband. It is not n respect of part of the property which she takes as a coowner on husbands property though in subordinate sense, the wife has no dominance on the property. The subordinate sense, as noticed by the Supreme Court in v. Tulasammas case (supra), stands obliterated with the enactment of Section 14(1) of the Hindu Succession Act, 1956 . Therefore, a Hindu widow has a right of maintenance not only against some part of the property of her husband but against his entire property.

20 The argument that Dwarki Devi was not in actual physical possession of some of the property, therefore, her right of maintenance will ripen into full ownership in that much of the property which is in her physical possession. The said argument is not tenable. Dwarki Devi is deemed to be a coowner in respect of unpartitioned urban immovable property and as a coowner she is deemed to be in possession of the entire joint property till such time it is actually partitioned. It is further noticed that it is not necessary as held in Gummalapura Taggina Matada Kotturuswaml v. Setra Veeravva, AIR 1959 SC 577 that possession referred to in Section 14 of the Hindu Succession Act, 1956 , need not be actual physical possession or personal occupation of the property by the Hindu female but possession may be in law. Therefore, Dwarki Devi is deemed to be in possession of the entire immovable property as coowner.

21 In view of the above, the limited estate which vested with Srnt. Dwarki Devi after the death of her husband in 1930 ripened into full ownership with the commencement of Hindu Succession Act and, thus, Will executed in favour of Sohan Lal is legal, valid and within her competency.

22 In view of the above, I do not find any merit in the present appeal. The same

is dismissed.