
(1981) 02 BOM CK 0001
In the Bombay High Court
Case No : S.A. No. 96 of 1968

Shantabai Tajaram Kunbi

APPELLANT

Vs

Kashiram Doma Kunbi and others

RESPONDENT

Date of Decision : 05-02-1981

Acts Referred:

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

Citation : (1982) MhLj 264

Hon'ble Judges : B.C. Gadgil, J

Bench : Single Bench

Advocate : G.S. Padhye, for the Appellant; M.B. Badiye, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Gadgil, J.—The plaintiff, whose suit No. 43 of 1964 of the file of the Civil Judge (Jr. Division), Brahmapuri has been dismissed at the appellate stage, has preferred this second appeal. The suit was originally decreed and in appeal No. 160/1965, that decree has been set aside. In this appeal the question is about the, interpretation and the scope of section 14 of the Hindu Succession Act. At the stage of this appeal, there are a number of admitted facts. The property in question was originally owned by Jana, who died in 1918, leaving behind his widow Rukhma. This Rukhma inherited the property as a widow of Jana. In 1930, she made a gift in favour of her daughter Jamna. Rukhma died in 1943, leaving behind Jamna as the heir. It is not in dispute that Jamna continued to be the limited owner of the property after the death of Rukhma. On 20-1-1945, she executed a gift of the suit property in favour of her husband Arjun. In 1950, the reversioners of Jana viz. Watu and Kashiram (the two brothers of Jana) filed suit No. 48-A of 1950, challenging the alienation by Jamna in favour of Arjun. On 21-6-1954, the suit was decreed with a declaration that the gift was not binding on the reversioners. By that very time, Arjun died leaving behind his wife Jamna as the only heir. Thus, the property was inherited by Jamna as the heir of Arjun. On 30-11-1964, Jamna executed a will making a bequest of the suit property in

favour of plaintiff Shantabai. It seems that at that time Doma and Watu were dead and Doma's son Kashiram and Kashiram's son Shriram and Hari were alive. These three persons (who were original defendants in the trial Court) took forcible possession of the property. Hence Jamna and Shantabai filed a suit under appeal against these persons claiming possession and damages for wrongful dispossession. Jamna died pending suit and the suit was prosecuted by Shantabai in her capacity as a legatee of Jamna.

2. The suit was resisted by the defendants on various grounds. However, the only material contention is that after the death of Jamna, the property has reverted to the heirs of the last male holder of Jana and in that capacity it is the defendants who have become owners. As against that, the contention, of Shantabai is that in view of the provisions of section 14 of the Hindu Succession Act, Jamna became full owner of the property and, as such, after her death, Shantabai got absolute title under the will of Jamna. There were certain other contentions about quantum of damages for the alleged wrongful dispossession, but that aspect is not relevant.

3. The trial Court accepted the case of Shantabai that she is the full owner of the property. Hence a decree for possession was passed This decree was challenged by Kashiram and others and as stated earlier, the appeal was allowed and the suit was ordered to be dismissed.

4. The decision of this appeal, therefore, rests mainly on the question as to whether the property has gone to the defendants as the reversioners of Jana or whether after the Hindu Succession Act, Jamna became the absolute owner of the property u/s 14 of the Hindu Succession Act.

5. Section 14 (1) of the Hindu Succession Act lays down that 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. The various transactions entered into by Rukhma and Jamna as also the litigation fought out by the reversioners of Jana would show that Jamna was having a limited estate in the property. The property was liable to be reverted to the heirs of Jamna and those reversioners have successfully challenged the gift-deed in favour of Arjun in suit No. 48-A of 1950. Mr. Padhye for the appellant, however, submits that the Hindu Succession Act, 1956, (which came into force after the above mentioned decree in favour of the reversioners was passed) has annulled the said decree. He laid much stress on the fact that after the death of Arjun, Jamna became the heir of the property and that thus in 1954, Jamna got a limited estate which Arjun has possessed under the gift deed. Mr. Padhye further submitted that the suit property, which went to Jamna as heir of Arjun, was possessed by Jamna and hence Jamna became full owner and did not continue as a limited owner. It is in this way that he argued that Jamna has a right to will away the property in favour of the plaintiff. As against this, Mr. Badiye for the respondents urged that Arjun has only a limited interest in the property as he had obtained the property under a gift from a limited owner viz.

Jamna. He further contended that after Arjun's death, his heir cannot get anything more than what he possessed. According to Mr. Badiye, it was sheer accident that a female was the heir of Arjun. He posed a query as to what would happen if someone else, particularly the male person, would have become the heir. Thus, the main contention of Mr. Badiye is that the restricted or limited ownership of Arjun cannot be enlarged into a full ownership of his heir by invoking the provisions of section 14. Mr. Padhye replied that the plain reading of section 14 does contemplate bestowing of absolute ownership in favour of Jamna and that it would be necessary to give effect to the provisions of section 14 by accepting the claim of Jamna as a full owner.

6. The rival contentions of Mr. Padhye and Mr. Badiye deserve a detailed discussion. It is necessary to find out as to what the Legislature intended while enacting section 14 of the Hindu Succession Act. The Supreme Court in *S.S. Munna Lal Vs. S.S. Rajkumar and Others*, , considered this aspect in the following words:

By section 14(1) the Legislature sought to convert the interest of a Hindu female which under the Sastric Hindu Law would have been regarded as a limited interest into an absolute interest and by the Explanation thereto gave to the expression "property" the widest connotation..... By section 14(1) manifestly it is intended to convert the interest which a Hindu female has in property however restricted the nature of that interest under the Sastric Hindu law may be into absolute estate.....

In a recent decision of the Supreme Court, in *Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi* AIR 1977 SC 1944, same view has been taken. In the above mentioned case, decision in *S.S. Munna Lal Vs. S.S. Rajkumar and Others*, has been approved and in paragraph 3, it is further stated as follows:

Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by sub section (1) of section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Sastric Law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognize her status as an independent and absolute owner of property.

This Court also had an occasion to consider the aspect in the case reported in *Ramchandra Vishwanath Karve Vs. Savitribai*, . In paragraph 6, it is observed as follows:

How, under the uncodified Hindu Law, rights of the women in the property were subjected to several restrictions, limitations and discriminations in view of the then notions of the law makers about the incapacity of the women to manage, protect and preserve the properties and their pliability at the hands of unscrupulous relatives or friends. The Act of 1956 aims at eliminating this approach of distrust against the women as a whole as also discriminatory

treatment conceived thereunder for them.

It is thus clear that the very purpose of section 14 is to do away with the limitations on the estate held by females under the old Sastric Law. The provisions of section 14 will have, therefore, to be construed in this background.

7. However, Mr. Padhye relied upon certain decisions of the various High Courts for the purpose of contending that section 14 contemplates not only the limited estates under the old Sastric Law but also other type of limited estates which a female would possess. He drew my attention to a decision of the Full Bench of the Punjab and Haryana High Court in Jagat Singh and Others Vs. Teja Singh and Others, . In that case a widow was holding certain property as limited owner. She made alienation of that property before the Hindu Succession Act came into force. The reversioners challenged that alienation. The alienee therefore reconvened the property to the widow after the Act. The widow thereafter sold the property and the question arose as to whether the purchaser got full title irrespective of the claim of the reversioners. The Full Bench held that in view of section 14 of the Act, and more particularly, after reconveyance in favour of the widow, she became full owner and hence she was able to convey complete title to the purchaser. The reasoning for this decision is, however, material. The effect of reconveyance by the alienee in favour of the widow has been considered by the Full Bench in the following words:

It is a reconveyance to the person from whom the property was originally taken and, therefore, it amounts to cancellation of the ORIGINAL document. No doubt this cancellation takes place not retrospectively from the date of the original alienation but from the date that the reconveyance is made. However, on the date on which the reconveyance is actually effected, the result of such reconveyance is the annulment of the original alienation. In other words, on 3rd of June 1959, in the present case when Daulat Singh made a gift back to the widow of the property originally gifted to him by her, the widow became owner in possession of whatever interest she originally had on the 18th February, 1938, the date on which she had made a gift to Daulat Singh.

Similar view about cancellation or annulment of the original alienation has been taken by the Madras High Court in Chinnakolandai Gounder Vs. Thanji Gounder and Others, , and by the Gujarat High Court in Bai Champa v. Chandrakanta AIR 1963 Guj 227. The principle enunciated in these three cases is that the transaction of the original alienation has been wiped out and there was restoration of a position as if the female owner was holding the property in a limited manner under the old Sastric Hindu Law. It is true that in paragraph 10 of the decision of the Punjab High Court, there are certain observations which favour the contention of Mr. Padhye and they read as follows :

Similarly, if the estate of a limited male owner is inherited by his widow, then she would have an absolute right of alienation which was not enjoyed by her husband from she had inherited the property.....

In my opinion, these observations do not lay down a correct proposition of law. This can be seen from the following discussion of the legal position.

8. In the above mentioned three cases there was reconveyance by the alienation to the widow herself and such reconveyance has been treated as cancellation or annulment of the previous alienation. Mr. Badiye submitted that this theory of cancellation or annulment of the original alienation supports his contention that if there would not have been such cancellation or annulment, the position would have been different. He, therefore, urged that the above decision would not help the plaintiff as in the present case, there is no such cancellation or annulment.

9. What would be the effect of transfer by alienee to the limited owner has been considered by the Calcutta High Court in *Anath Bandhu Sen Mondal Vs. Sm. Chanchala Bala Dasi*, . Before the Calcutta High Court, the property was owned by Matibala as widow's estate. She had sold it to a woman. After the death of Matibala, the plaintiff, i.e. the daughter of Matibala, filed a suit as the sole reversioner of the last male holder claiming possession of the property on the ground that the defendant purchaser had no right to possess it. The High Court accepted the case of the plaintiff and the relevant head note is as follows:

On a plain reading of section 14 it must be held that the section contemplates only cases of those limited owners who are in possession of the property either, actual or constructive, at the time of the commencement of the Act and the section does not contemplate cases where the limited owner before the commencement of the Act has already parted with possession by way of deed of gift or deed of sale. Section 14 was not meant to benefit an alienee. Where the limited owner has transferred the limited interest to another woman before the passing of the Act, it cannot be said that the latter's limited interest, if any, ripened into absolute interest in terms of section 14.

On page 308 of the above judgment it is observed as follows:

.....section 14 was not meant to benefit an alienee. Section 14 wanted to benefit those female Hindus who were limited owners of the then existing Hindu Law before the commencement of the Act.

Of course, Mr. Padhye relied upon the Full Bench decision of the Delhi High Court in *Chinti etc. Vs. Daultu etc.*, , where contrary view has been taken and it has been held that a female donee from a limited owner before 1956 can claim full title if the donee is in possession of the property when the Act came into force.

10. While considering this question, as to whether a female donee from a limited owner would be the full owner u/s 14, a number of aspects will have to be taken into account. Mr. Badiye took an instance of a female limited owner making two gifts before 1956--one in favour of a male and the other of a female. According to him, if each of these donees have been in possession of the property in terms of the gift deed, a male donee would continue to be the limited owner as his donor was herself a limited owner; while the female donee would get absolute

title u/s 14 if the contention of Mr. Padhye is accepted. He argued that section 14 should not be interpreted in a manner which would lead to such incongruous results. Similar contention was raised before the Full Bench of the Punjab and Haryana High Court in the case of Mst. Parmeshwari (Deceased) Represented by her Legal Representatives Vs. Mst. Santokhi, . In that case, the facts were that a female limited owner has gifted certain property to another donee who was herself a female and the dispute arose as to whether this female donee has a better title than the reversioners of the last male owner. As in this case, before the Punjab and Haryana High Court also, the main contention was that u/s 14 the female donee became the full owner, while the other side argued that the female donee continued to be the limited owner. Reliance was placed on section 14 by both the sides for these contentions. I would like to reproduce the following observations from the Full Bench decision:

Even assuming for a moment (without holding so) that two constructions are possible on the language of section 14, it appears that the interpretation sought to be placed on the statute on behalf of the appellant would lead to three patent anomalies.

Firstly, one may take the case of an absolute gift purported to be made by a female limited owner in favour of a male donee prior to the commencement of the Act. It is a plain on the language of the statute itself that such a gift cannot possibly be enlarged into an absolute one in the hands of a male donee by virtue of section 14(1). This was fairly conceded by Mr. Mittal on behalf of the appellant. The plain result of this situation would be that if the same limited female owner were to make two gifts at the same time of identical property, one to a female and the other to a male, prior to the enforcement of the Act, the gift in favour of the female donee would become enlarged into absolute ownership according to the learned counsel for the appellant whilst that in favour of the male donee can never be so enlarged. Even when pressed, the learned counsel was unable to give any rationale for such divergent and contradictory results arising in law on an identical set of facts.

Secondly, in the reverse one may take into consideration the example of gift by a male limited owner in favour of a female Hindu who is put in possession thereof prior to the coming into force of the Act. On the construction canvassed on behalf of the appellant, even more startling results would ensue. Such a gift, according to him, would fall again within the ambit of section 14(1) and the property would get enlarged into absolute ownership in the hands of the female donee. Now it is evident that if the self same property had continued with the original donor who himself was a limited owner, no such beneficial results could possibly accrue to him by any provision of the Hindu Succession Act. Would it be possible to envisage that the right to property which was essentially of a limited nature in the hands of the original male Hindu owner would become of an absolute nature by the mere incident of transfer to a female donee? It seems inconceivable that the Legislature intended that the known incidents of a limited ownership in the

hands of a Hindu male should get enlarged into absolute ownership by an alienation in favour of a female who is put into possession. Further, the contradiction noticed in the preceding example would also repeat itself in this context as well i.e. where a gift is made to a female donee as against the one made to a male donee....

.....It is evident from the above that the construction canvassed on behalf of the appellant leads not to one but to numerous anomalous results. It is a settled canon of construction that an interpretation should be avoided which on the face of it leads to irrational consequences. The language of section 14(1) is not of a nature which is possible of a single construction only. Therefore, where plainly two constructions are possible, then one must obviously tilt to the one which reasonably avoids illogical and untenable results.

.....The argument that female alienees would be entitled to the benefit of enlargement again leads to this incongruous results that such property passes neither into absolute ownership of the female limited heir nor does it revert to the heirs of the proceeding male owners but by the pure accident of an alienee being a female, the latter acquires it absolutely. Such a fortuitous result could hardly have been deliberately intended by the Legislature.

In my opinion, section 14 will have to be construed after bearing in mind the intention of the Legislature when it enacted that section. As mentioned above, that intention is to do away with the limitations that were existing under the old Sastric Hindu Law. The other limitations under the ordinary law of property are not intended to be fortified by section 14.

11. In the present case, Jamna divested herself of her interest in the suit property when she gifted it to Arjun. On Arjun's death, she inherited the property as that of Arjun Arjun was himself holding the property as a limited owner. Just as he could not have claimed full title to that property, neither his alienee nor his heir can claim such title. The fact that the heir is a female heir is a pure chance or an accident. Similarly, the fact that the widow who has gifted the property to Arjun has herself become the heir of Arjun on his death is another chance or accident. But Jamna will not be able to say that the limited ownership which she possessed as a widow under the Sastric Hindu Law has been restored to her by inheritance. She would, no doubt, be a limited owner but her capacity has changed viz. after the death of Arjun she held the limited estate as the heir of Arjun. This type of limited estate which is unconnected with the limited estate known to the old Hindu Law is not contemplated to be covered by section 14 of the Hindu Succession Act. Here the limited nature of the estate in the hand of Jamna is the result of the ordinary law of property that a limited owner Arjun cannot convey more than what he possessed. Section 14 is not aimed at enlarging such limited estate into an absolute one. The result, therefore, is that after the death of Jamna, her legatee would not get any title and the property would revert back to the heirs of the original male holder. The respondents are such reversioners and they have a right to the property. In view

of this legal position, the decision of the appellate Court is quite legal and the appeal deserves to be dismissed. However, in the peculiar circumstances of the case, it will be in the fitness of things to order the parties to bear their own costs, throughout.

The appeal is, therefore, dismissed with no order as to costs throughout.