
(2014) 06 KAR CK 0002
In the Karnataka High Court
Case No : Regular Second Appeal No. 7126/2008

Tarabai	Vs	APPELLANT
Venkatesh		RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2), 6, 8

Citation : (2015) 1 KCCR 980

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Ameet Kumar Deshpande, Advocate for the Appellant; Shivakumar M. Birdri, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—RSA No. 7126/2008 has been tagged along with RFA No. 1317/2007. As the result in this appeal, would have a direct bearing on the said appeal in RFA No. 1317/2007, both are heard and are disposed of by separate judgments. The facts leading up to the appeals are as follows:

The appellants in RSA No. 37126/2008, were defendant Nos. 1 and 2, before the Trial Court. Respondent No. 1 is the legal representative of the deceased plaintiff and respondent No. 2 is defendant No. 3 namely the State of Karnataka which is a formal party to the present proceedings. In order to appreciate the case put forward by the plaintiff, it would be necessary to reproduce the genealogical tree of the family to which the plaintiff belonged and as regards which there is no dispute.

2. As can be seen, Kishan Rao claiming as the elder son of Mudagal Rao, who was the first son of Sheshagiri Rao, was the plaintiff. The case of the plaintiff was that he was the nearest heir and reversioner of Bhima Bai widow of Raghavendra Rao and that the suit property as per the suit schedule, namely, the land bearing Sy. Nos. 25, 127 and 128 of Jewargi and land bearing Sy. No. 289 and houses bearing Nos. 2-50, 2-51 and 1-34 of Jewargi, belonged to Bhima Bai, widow of Raghavendra Rao. It was claimed that the suit properties were ancestral

properties in her hands. That the husband of Bhima Bai had predeceased his father Bhima Rao and consequently the succession of Bhimrao was sanctioned in favour of his grand son Venkat Rao. Venkat Rao is said to have died much earlier and after the death of Venkat Rao who was the only son of Raghavendra Rao, Bhima Bai his mother became the owner and successor to the entire property including the suit schedule properties and the properties were shown in the revenue records as her properties. It was the plaintiff's case that after the death of his father the succession was sanctioned in favour of Sheshagiri Rao with a shikmi of the plaintiff and his brother Shrinivas Rao. It was alleged that the family was joint. But after the death of Sheshagiri Rao, due to differences, the lands were partitioned by way of a family settlement and thus the plaintiff became separate member of the family. It was also contended that the succession of Sheshagiri Rao, the elder brother of the plaintiff was sanctioned in favour of Govind Rao who was the eldest son and the plaintiff and his other brother who continued as Shikmidars until 1953-1954, when the lands were in their respective possession were entered in the revenue records as their separate lands. It was also claimed that the office of Patwari was with Govind Rao and after his death, his brother Mudgal Rao who died in succession, the office had remained in the enjoyment of Tara Bai - defendant No. 1. It was further claimed that by virtue of the office of Patwari of Jewargi, the suit lands belonging to Bhima Bai were entered in her name at the time of Khasara revenue settlement that took place in the year 1953-1954. It is also claimed that the defendants and Tara Bai widow of Sheshagiri Rao started living with Bhima Bai in the suit houses and they continued in occupation of those houses. It was alleged that this was with the malafide intention of depriving the plaintiff and his brother of their right over the suit properties. It was further alleged that this was evident from the manner in which the revenue records had been manipulated and in any case, the said entries were made in the records without the knowledge of the plaintiff and behind his back and it is alleged that in order to strengthen their rights, a false suit was instituted by defendant No. 1 against Bhima Bai in O.S. No. 243/1 of 1959-60 for the relief of declaration, possession and injunction on the file of the Court of Munsiff, Gulbarga, and that by fraud and misrepresentation, a consent written statement of the defendant in that suit, namely, Bhima Bai, was filed and a false consent decree dated 23.12.1959 was obtained in favour of the plaintiffs therein. This was not to the knowledge of the present plaintiff and was not binding on him. It is further stated that Bheem Bai was an innocent woman and was not worldly-wise. On the other hand the elder Tara Bai, widow of Sheshagiri Rao was cunning and wily and had taken advantage of Bhima Bai's innocence and had further manipulated the records and finally obtained the consent decree to complete her designs of usurping the property to the detriment of the plaintiff. It is thus claimed that defendant Nos. 1 and 2 acquired possession of the entire suit properties. It was also claimed that there were other lands which had been alienated by the defendants, which were all illegal, as Bhima Bai herself was not competent to alienate the same nor would the transactions bind the plaintiff. It is in this context that the suit was filed claiming that the alienation by Bhima Bai

were incompetent and illegal and not binding on the plaintiff.

3. The suit was contested by defendant Nos. 1 and 2 by filing a common written statement admitting the genealogical tree but denying that the plaintiff was the reversioner of Bhima Bai widow of Raghavendra Rao. It was also contended that Bheem Rao S/o. Sheshagiri Rao had gone in adoption to another family and that the suit property belonged to that family and the plaintiff could not no longer claim any connection with the family of Bheem Rao. It was also denied that the suit property was ancestral property and the other plaint averments were generally denied and it was stated that defendant No. 1 was the daughter of the brother of Bhima Bai and that she was brought up by Bhima Bai since her childhood and there was much love and affection between Bhima Bai and defendant No. 1. It is stated that there was no male member in the family of Bhim Bai and that she lost her husband and therefore she brought Mudgal Rao the uncle of defendant No. 2 into her family and gave defendant No. 1 in marriage to him and she donated the suit land as a wedding gift. This was forty years prior to the suit. Mudgal Rao had come into possession of the suit lands in the above manner. After his premature death, defendant No. 1 is said to have come in to possession of the land and had been in possession ever since and further that Bhima Bai of her own accord had made a gift of the suit property in favour of the defendants and put them in possession of the suit house in the year 1953. The gift deeds were duly executed and registered on 01.12.1953 and the defendants claim to be in possession of the suit houses pursuant to the gift deeds. As there was a misunderstanding between defendant No. 1 and Bhima Bai, it is alleged that there was interference in the year 1959-1960 by Bhima Bai who sought to oust them from the property and therefore they had preferred a suit in O.S. No. 243/1 of 1959-60 arraying Bhima Bai as the defendant for the relief of declaration of title and injunction. The same was contested but was decreed in their favour. Therefore the title to the property was perfected by virtue of the same. Bhima Bai was alive when the Hindu Succession Act, 1956 (Hereinafter referred to as the "HS Act" for brevity) Act 30 of 1956, came into force and the gift deed which was executed in the year 1953 even if it was claimed to be invalid by virtue of Bhima Bai allegedly being a limited owner with the coming into force of the HS Act, full title vested with the defendants by virtue of the alleged limited right of Bhima Bai blossoming into an absolute right under the provisions of the Act and therefore it was asserted that the properties being claimed as ancestral properties was misleading and that it was the absolute property of Bhima Bai which the defendants were conferred with and claimed that the suit was not maintainable. It is on the basis of these pleadings that the Trial Court had framed the following issues:

"1) Whether the suit is valued properly for court fee?

2) Does plaintiff prove that he is the nearest and legal reversioner of Bhimbai?

3) Does he prove that the suit property was of Bhimrao, his son Raghavendra Rao and Bhimbai?

- 4) Do defendants prove that Bhimbai gifted the suit lands to Mudgalrao at the time of his marriage with defendant 1 and put him in possession of the same?
- 5) Do they prove that Bhimbai gifted the suit house to him in 1953 as per registered gift-deed dated 01.12.1953 and put them in possession of the same?
- 6) If so, are the said gifts legal and valid?
- 7) Do defendants prove that defendant has become owner of the suit lands by adverse possession and prescription?
- 8) Do they prove that they have been full owners as per Hindu Succession Act?
- 9) Does plaintiff prove that the decree in O.S. Nmo. 243/1 of 1959-60 is not binding on him?
- 10) Is that suit in time?
- 11) Is plaintiff entitled to the declaration and possession?
- 12) What order?
- 13) Do defendants prove that Bhimrao S/o. Sheshagiri Rao has gone in adoption to a different family?
- 14) Do they prove that the suit property belonged to that family?

Additional issues:

- 15) Whether the suit abates? "

The Trial Court answered issue Nos. 2, 3, 9, 10, 11 in the affirmative and issue No. 1 was held as not surviving for consideration and issue Nos. 4, 5, 6, 7, 8, 13, 14 and 15 were held in the negative.

4. In so far as the question whether the plaintiff proved that he was the nearest legal reversioner of Bhima Bai and whether the defendants proved that Bheem Rao S/o. Sheshagiri Rao had gone in adoption to a different family and therefore the properties took on a different colour which could not be claimed as the ancestral property of plaintiff, were considered by the Trial Court at length. While holding that the adoption as claimed by the defendants was not proved; on the question, whether the plaintiff had proved that he was a reversioner of Bhima Bai, after addressing the rival contentions, the Trial Court has extracted the description of reversioners as contained in Mulla's Hindu Law and has held thus:

"17. Section 175 of the Mulla's Hindu Law by Sri S.T. Desai describes who are "Reversioners". It reads as under:-

"The heirs of the last full owner, who would be entitled to succeed to the estate of such owner on the death of a widow or other limited heir, if they be then living, are called "Reversioners". A reversioner may be a male or a female."

Now question is whether plaintiff Kishan Rao would be a reversioner who would

be entitled to succeed to the estate of Venkatrao, after the death of Bhimbai. The advocate for defendant No. 2 submitted that the reversioner claims through the last male owner and not through the last female owner and that reversioner does not claim through limited owner and in the instant case plaintiff Kishan Rao would claim as a heir of Bhimbai and not as reversioner of Venkatrao and that when Bhimbai was full owner of the suit property, plaintiff Kishanrao ought to have sought for cancellation of alienations made by Bhimbai. It was further argued on behalf of defendant No. 2 that in Issue No. 3, name of last male owner Venkatrao does not appear and this shows that plaintiff Kishanrao does not claim through last male owner and therefore plaintiff Kishanrao cannot be reversioner. Learned advocate for plaintiff submitted that Bhimbai held property as a heir and successor of her son Venkatrao and that plaintiff Kishanrao could not have claimed property when Bhimbai was alive. In my opinion whether the name of Venkatrao is or is not mentioned in issue No. 3 is not very material. But it is clear from the case of plaintiff that Raghavendra rao husband of Bhimbai pre-deceased his father Bhimrao and on the death of Bhimrao succession was granted in the name of Venkatrao and it is only after the death of Venkatrao, Bhimbai came into possession of the property and that Bhimbai died in 1962 and it is only after the death of Bhimbai plaintiff Kishanrao would succeed to the estate of Venkatrao and after the death of Bhimbai. It may be noted that in plaint para 3 it is averred that Raghavendra Rao husband of Bhimbai pre-deceased his father Bhimrao and consequently the succession of Bhimrao uncle of the plaintiff Kishanrao was sanctioned in favour of Venkatrao grand son of Bhimrao and that Venkatrao also died at his early age and after the death of Venkatrao Bhimbai became the owner and possessor of entire property including the suit property. In the written statement the defendants have contended that these averments made in para 3 of the plaint have been admitted. It is undisputed that Srinivasrao younger brother of deceased Kishanrao died in or about 1962. It is also undisputed that Sheshagirrao elder brother of plaintiff Kishanrao had died prior to death of Srinivasrao. So at the time of death of Bhimbai plaintiff Kishanrao was the only person among the sons of Mud gal Rao. So all these facts are undisputed. It is also undisputed that Venkatrao died prior to coming into force of Hindu Succession Act. So after the death of Venkatrao Bhimbai, his mother got limited interest in the suit properties and it is continued by that Bhimbai gifted the suit land to Mudgal rao as his marriage gift about 40 years back and that gifted the suit houses in favour of defendants and put them in possession in the year 1953. It is further the case of defendants that gift deeds were executed and registered on 01.12.1953. So when Bhimbai gifted the suit properties as stated above, she was still a limited owner of the suit properties, because Hindu Succession Act 1956 had not come into force at the time of said alienation. It is also undisputed that Bhimbai died in 1962 after coming into force of Hindu Succession Act, 1956. In this connection learned advocate for the plaintiff relying on a decision reported in 1974 (1) Mysore Law Journal at page 59 submitted that in view of the above discussed facts the Provisions of Section 8 of Hindu Succession Act would apply in this case and plaintiff Kishanrao would be reversioner after the death of

Bhimbai. In the above case, it is laid down as under:

"The provisions of S. 8 Hindu Succession Act apply to the case in which a last male holder governed by the Mitakshara Law died prior to the coming into force of that Act, leaving behind him mother who succeeded him as a limited owner and who died after the coming into force of the Act, for the purpose of determining the next reversioner to the estate of the last male holder."

In my opinion the above observations apply to the facts of the present case on all force. In Mulla's Hindu Law 14 Edition by S.T. Desai it is mentioned in the commentary under Section 14 at page 903 as under:

"It is true that a reversion gets abolished as a consequence of the woman's estate being enlarged to full ownership where the limited owner "possessed" the property at the commencement of the Act. In respect, however of property other than property to which this section applied by reason of its being "possessed" by her the position is different. As already pointed out the section has no application where a Hindu female having acquired property as a limited owner happens to have lost her title thereto by alienation, surrender or otherwise and of which she was not or could not be in juridical possession at the commencement of the Act. The right of a reversioner to repudiate the alienation made without legal necessity or other transaction in any such case effected before the Act came into operation and his claims to possession thereof from the transferee on the death of the female Hindu, or on the extinction of the limited of the limited estate otherwise has not been adversely affected or taken away by this Section (18). Reference may also be made to the Notes at pp. 900-901 supra where mention has been made of the decision of the Supreme Court in Kotturuswami V. Veeravva and other decisions on the subject. The question of maintainability of such a suit was again examined by the Supreme Court and the same view was taken (19). The maintainability of a suit by a reversioner in any such case is not affected by this section or section 15(110)."

In the instant case it is undisputed that Venkatrao died long before Hindu Succession Act came into force. It is also undisputed that Bhimbai lost possession in the suit properties in favour of Mudgal rao and the defendants, even before coming into force of Hindu Succession Act. That means when she lost possession of the suit properties she was not full or absolute owner of the suit properties and she had only limited interest in them. Therefore when Bhimbai died in 1962 plaintiff Kishanrao would become reversioner of Venkatrao under law. Learned advocate for defendant placed reliance on a decision reported in Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others, and another decision reported in A.I.R. 1973 Gujrat at page 227 . On going through these two authorities I find that they cannot help the defendants to show that plaintiff Kishanrao can lay his claim to the suit property not as reversioner but as heir of Bhimbai. Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others, meaning of word "possessed" has been laid down. According to this decision the said word has been used in Section 14 in a

broad sense and in the context means the state of owning or having in one's hand or power. In A.I.R. 1973 Gujarat at page 227 it is laid down that if a widow alienates the property prior to Hindu Succession Act, such alienation cannot bind the reversioner though it binds widow. It is further laid down that widow cannot claim any right under Section 14 in the absence of evidence that alienee has agreed to treat sale as cancelled by parting with possession in her favour. I fail to understand how these two authorities would help the defendants to show that plaintiff Kishanrao can lay his claim to suit properties not as reversioner but as a heir of Bhimbai. For all these reasons I hold plaintiff Kishanrao can lay his claim to suit properties as reversioner of Bhimbai. I answer this issue No. 2 in the affirmative."

And has concluded that Bhima Bai had lost possession of the suit properties in favour of Mudgal Rao and the defendants even before the coming into force of the Hindu Succession Act, 1956 and when she lost possession she was not a full or absolute owner of the properties and had only a limited interest and therefore when she died in the year 1962 the plaintiff Kishan Rao would become reversioner of Venkat Rao and concluded that he was indeed entitled to the relief prayed for on the basis that he was the reversioner of Bhima Bai. It is this finding which lead to a decision of the Trial Court that the suit ought to be decreed as prayed for. Consequently, the consent decree on the basis of which defendant Nos. 1 and 2 were claiming the property was held to be not binding on the plaintiff and the suit was decreed in favour of the plaintiff.

5. This was challenged in an appeal by the defendants in R.A. No. 40/1989 before the Fast Track Judge-VI at Gulbarga who by his judgment dated 22.11.2008 affirmed the judgment and decree of the Trial Court and has held that since it is on record that Bhima Bai had lost the entire suit property since she had alienated the entire suit property as early as in the year 1953 and as the date of Hindu Succession Act 1956 came into force she was not in possession of any of the properties so as to lay claim under Section 14(1) of the HS Act. The same would not be applicable as she was not possessed of the properties and on the date she alienated the properties she was only a limited owner not being in dispute and the suit having been filed by the reversioner in the year 1972 it is his right that required to be decided in the suit which has been decided in accordance with law and in its opinion, the line of reasoning of the trial Court was upheld and the lower Appellate Court had dismissed the appeal. The same having been carried in second appeal before this Court, this Court had framed the following substantial questions of law:

"1) Whether late Bhimabai acquired limited or absolute right in the property belonging to Seshagiri Rao after the death of her son Venkat Rao as her husband Raghavendra Rao predeceased his father Bhimarao as the death of her son was prior to 1956?

2) If a limited right was acquired by her prior to coming into force of 1956 Hindu Succession Act, whether such limited right gets enlarged by virtue of Sec. 14 of

Hindu Succession Act?

3) If the defendants had questioned the very adoption of Venkatesh S/o. Late Kishan Rao, whether the Courts below were justified in holding that Venkatesh would be entitled for the compensation for the acquisition of lands originally belonging to Seshagir Rao?"

6. The learned counsel for the appellant Shri Ameet Kumar Deshpande would, while drawing attention of the pleadings and the evidence as well as the findings of the respective Courts below, would assert that the legal position with regard to the facts and circumstances has not been correctly analyzed by the Courts below. It is contended that the alienation by Bhima Bai in favour of the defendants had attained finality by virtue of the compromise decree dated 23.12.1959 and since Bhima Bai died after coming into force of the 1956 Act she would have been in a position to even recover the properties in question on the ground that she had alienated the same when she had a limited right prior to 1956 and that coming into force of the HS Act, her limited right had become an absolute right and that she was entitled to seek such recovery as the alienation was bad in law and void for want of absolute title to the properties in question. Bhima Bai not having done so and if her right had become an absolute right on coming into force of the HS Act, it would enure to the benefit of the defendants. This is even assuming that the case put forward by the plaintiff is to be accepted. In this regard, he would submit that the primary reasoning of the Courts below is that Bhima Bai had lost physical possession of the properties in question before coming into force of the HS Act and that she could claim absolute right over the properties only if she had remained in possession of the properties after the date of coming into force of the HS Act. On this, it is pointed out, the law is no longer *res Integra* and the possession of a female Hindu has been addressed and the colour of Section 14 of the Act which indicates that the female should be "possessed of such property would sufficiently cover even such properties which are not in her physical possession but of which she is capable of recovering and therefore if that argument is extended, it was an incorrect finding by the Courts below that she was not possessed of any right over the property with the coming into force of the HS Act. This is settled law as laid down by the Apex Court in the case of *Mangal Singh and Others Vs. Shrimati Rattno and Another*, and is discussed at paragraph Nos. 3, 4, 6 and 7 thereof namely, even if a female Hindu has parted with possession of property or has been dispossessed of the property in question before the coming into force of the HS Act, if she is capable of establishing her absolute right over the property when it was a limited right prior to the HS Act, it would have to be construed that she was possessed of the property and that she would be able to recover the same. It is further contended that Bhima Bai had died in the year 1962 and it is the law applicable as on the date of her death which would be relevant and would have to be applied to the facts and circumstances of the case, which the Courts below have cardinally failed to observe and apply. This proposition is well settled in a catena of cases which have been reviewed and the case law has been discussed in the decision of the

Supreme Court in *Daya Singh (Dead) through Lrs. and Another Vs. Dhan Kaur*, as to the position of reversioners thus:

"4. In the case before this Court the two women were in possession of property whose last male holder, who had died before coming into force of the Hindu Succession Act, was their step son. They were not, therefore in legal possession of the properties of the last male holder. The question that had to be decided was whether because of the coming into force of the Hindu Succession Act they were entitled to succeed under Section 8 and the further question whether Section 14 would be attracted as they were actually in possession. It was held that as they were not legally in possession Section 14 would not apply. It was in that context that it was said that where a male Hindu died before the Act came into force i.e., where succession opened before the Act, Section 8 of the Act will have no application. The point that succession might open not only when the male Hindu died but also subsequently again when a limited owner who succeeds him dies was not taken into account. There was no need and no occasion to consider such a contingency in that case. There was the further fact that the last male holder was succeeded on his death by persons who were then his nearest heirs and the property vested in them could not be divested by the Hindu Succession Act coming into force subsequently though this fact was not adverted to in the judgment. This Court had therefore also no occasion to consider the effect of the earlier decisions on the question as to what happens when a female limited owner, whether she is a widow, mother or daughter who succeeds the last male holder dies.

5. That position may now be considered. It was authoritatively laid down by the Privy Council in its decision in (1880) L.R. 7 I.A. 115 (Privy Council) that

"According to the Hindu Law, a widow who succeeds to the estate of her husband in default of male issue, whether she succeeds by inheritance or survivorship-as to which see the *Shivagunga* case (1861) 9 Moo Ind. App 539 (PC) - does not take a mere life-estate in the property. The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her estate is an anomalous one, and has been compared to that of a tenant-in-tail. It would perhaps be more correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But whatever her estate is, it is clear that, until the termination of it, it is impossible to say who are the persons who will be entitled to succeed as heirs of the husband (1861) 9 Moo Ind. App 539 at p. 604 (PC). The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon the termination of that estate the property descends to those who would have been the heirs at the husband if he had lived up to and died at the moment of her death, (1861) 9 Moo Ind. App 539 at p. 604 (PC).

In the subsequent decision in AIR 1946 173 (Privy Council), the Privy Council observed:

".... during the lifetime of the widow, the reversioners in Hindu Law have no vested interest in the estate but have a mere spes successions or chance of succession, which is a purely contingent right which may or may not accrue, that the succession would not open out until the widow died, and that the person who would be the next reversioner at that time would succeed to the estate and the alteration in the rule of the Hindu Law brought about by the Act would then be in full-force.

In the argument before their Lordships, reliance was placed upon the words "dying intestate" in the Act as connoting the future tense, but their Lordships agree with the view of the Lahore High Court in AIR 1936 124 (Lahore), that the words are a description of the status of the deceased and have no reference and are not intended to have any reference to the time of the death of a Hindu male. The expression merely means "in the case of intestacy of a Hindu male". To place this interpretation on the Act is not to give a retrospective effect to its provisions, the material point of time being the date when the succession opens, namely, the death of the widow.

On the position of reversioners in Hindu Law, opinions have been expressed by this Board from time to time with which the views of the learned Chief Justice in *Mt. Rajpali Kunwar Vs. Surju Rai and Others*, mentioned above, are in agreement. It was said, for instance, that until the termination of the widow's estate, it is impossible to say who are the persons who will be entitled to succeed as heirs to her husband *Kathana Natchiar v. Rajah of Shivgunga*, (1861) 9 Moo Ind. App 539 at p. 604 (PC). The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon its termination, the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death. (1880) L.R. 7 I.A. 115 (Privy Council).

It would be noticed that the Privy Council interpreted the words "dying intestate" as merely meaning "in the case of intestacy of a Hindu male" and said that to place this interpretation on the Act is not to give retrospective effect to its provisions. Those are the very words found in Section 8. These may be contrasted with the words of Section 6 "where a male Hindu dies after the commencement of this Act." Here the reference is clearly to the time of the death. In section 8 it is only to the fact of intestacy. The material point of time, as pointed out by the Privy Council, is the date when the succession opens, namely, the death of the widow. It is interesting to note that the Privy Council was interpreting the provisions of the Hindu Law of Inheritance (Amendment) Act, 1929 where the two contrasting expressions found in the Hindu Succession Act, 1956 are not found. The case for the interpretation of the words "dying intestate" under the Hindu Succession Act is stronger. The words "where a male Hindu dies after the commencement of this Act" in Section 6 and their absence in Section 8, are extremely significant. Thus two propositions follow: (1) Succession opens on the death of the limited owner, and (2) the law then in force would

govern the succession."

It is thus contended that the reasoning of the Courts below is totally contrary to the legal position and hence the substantial questions of law that were framed will have to be answered in favour of the appellant in the light of the legal position as emanating from the aforesaid authorities, which the Courts below have not followed. In other words, it is contended that though the legal position has been spelt out by the Supreme Court and that the question framed in this appeal as substantial questions of law already stood answered since the Courts below had not taken note of the same and or had applied the legal position as it pertains, the same would have to be answered in favour of the appellant.

7. While the learned counsel for the respondents - plaintiffs would contend that the so called compromise decree under which the defendants have set up their claim to the property in question was directly challenged in the suit filed and the primary question was whether the said decree was binding on the plaintiff and as on the date of decree obtained by the defendants, whether Bhima Bai had an absolute right over the property and the same having been held in favour of the plaintiffs, namely, that Bhima Bai did not have an absolute right to part with the property in favour of the defendants and the compromise decree which was entered into by Bhima Bai and the defendants allegedly was a collusive decree, namely, that the written statement was filed on the very day, that the defendants entered appearance and the suit also came to be decreed in terms of the compromise on the same day. This would indicate that there was active collusion in obtaining such a decree and taking advantage of Bhima Bai's innocence, which contention has been accepted by the Trial Court. Hence, the right and title of Bhima Bai as on the date of entering into the compromise decree with the defendants in respect of the properties in question was the relevant date on which the Trial Court has determined the rights of the parties and if the said compromise decree is set at naught, the plaintiff would have been in a position to claim as reversioner and since she was not in possession of the property in the year 1956 and the said transaction by virtue of which she claimed to have parted possession, having been challenged in the suit, the Courts below have rightly held that the transaction was void and if Bhima Bai had continued in possession of the property beyond 1956, it is the plaintiff who would be entitled to claim the property as a reversioner in the usual course and therefore if the transaction in favour of the defendants is eschewed the plaintiff would have become the reversioner in the usual course. It is in this light that the Courts below have decided the case in favour of the plaintiff and that cannot be faulted. In this regard, reliance is placed on the decision in Gopal Singh and Another Vs. Dile Ram (Dead) by Lrs. and Others, where in a suit for declaration of gift of properties made before the coming into force of the Hindu Succession Act, 1956 by a widow who had only a life interest, was held not binding. A compromise decree was passed and it was declared that the gift was ineffective. Therefore, the widow continued to be the limited owner of the properties after the decree, until 1956. When the Hindu Succession Act came into force and by virtue of

Section 14 of the Act, the limited estate became absolute estate. Thereafter she having made a Will of the properties subsequent to coming into force of the HS Act, it was held to be a valid Will. Applying the law as interpreted in the said decision, if the alienation by the widow in the present case on hand in favour of the defendants was invalid and if Bhima Bai had continued to be the absolute owner of the properties after the HS Act coming into force, the plaintiff automatically becomes the reversioner as claimed by him and since the defendants were not members of the family, the defendants would have no right over the suit property. Reliance is also placed on the decision in Smt. Naresh Kumari (Dead) By Lrs. and Another Vs. Sh. Shakshi Lal (Dead) By Lrs. and Another, to contend that where a Hindu widow had transferred her right over the property through a sale deed before the coming into force of the HS Act and without any legal necessity, whether she could be said to be possessed of the property and the Apex Court had held that by her own conduct she had relinquished her right and even lost her possession through the said transfer and therefore she could not be said to be possessed of the property before coming into force of the HS Act and hence could not seek benefit under Section 14(1) of the Act and he would submit that this would apply on all fours to the present case on hand. He would also submit that, from the record it is evident that though there was a so called consent decree in the year 1959, between the defendants and Bhima Bai, the same was not registered before the Sub-Registrar and therefore the title over the property in question did not pass to the decree holders and hence the property remained as that of Bhima Bai to which the plaintiff was the reversioner.

8. In the light of the above facts and circumstances and the findings of the Courts below, as rightly contended by the learned counsel for the appellant, the substantial questions of law framed are not being decided for the first time. They are questions of law that have been settled. In the light of the rival contentions as to the applicability of the law as laid down in the authorities that are cited are only to be decided which would in fact decide the fate of the claim of the plaintiff and the defendants.

9. In so far as the first substantial question of law that is framed, as to whether Bhima Bai acquired a limited or an absolute right over the property belonging to Sheshagiri Rao after the death of her son Venkat Rao, as her husband Raghavendra Rao had predeceased his father Bhima Rao. As the death of her son was prior to 1956, Bhima Bai could only inherit the property with a limited right since Venkat Rao had died before the coming into force of the 1956 Act and her right was certainly a limited right.

10. The second substantial question of law namely as to whether the right acquired by Bhima Bai prior to coming into force of 1956 Act, whether it would get enlarged into an absolute right by virtue of Section 14(1) of the Hindu Succession Act, 1956 is answered in terms of the language of Section 14(1) of the Act itself. It is not the case that Bhima Bai had acquired right to the

properties in question under Section 14(2) of the Act though the learned counsel for the respondents sought to canvas an argument that Bhima Bai had acquired these properties in lieu of maintenance and therefore it was in terms of Section 14(2) of the Act, which in fact was not the case. She had merely succeeded to the properties on the death of her son Venkat Rao and the right acquired by her was a limited right which blossomed into an absolute right under Section 14(1) of the Act. Hence, the second substantial question of law would also stand answered.

11. The third substantial question of law which is framed, is really not relevant, as it addresses certain factual assertions made by the plaintiff and denied by the defendants. Hence, that substantial question of law framed stands eschewed. This Court therefore, has framed the following third substantial question of law which would replace the same namely:

"(iii) Whether the plaintiff can claim as a reversioner to the suit properties by virtue of Bhima Bai having parted with possession of the properties prior to coming into force of the Hindu Succession Act, 1956?"

12. The primary contention of the plaintiff is that Bhimabai as a Hindu female can claim an absolute right in respect of the suit properties only if she was possessed of the same as on the date of the Hindu Succession Act, 1956 coming into force and since admittedly she had parted with the suit properties much earlier and defendant Nos. 1 and 2 claiming to have acquired the properties from Bhimabai having been challenged by the plaintiff on the premise that Bhimabai had no right to part with the properties when she had a limited interest in the same and the point of law on which the plaintiff sought to rest his case and which the Courts below have accepted that Bhimabai having parted with possession and having transferred the limited right that she could no longer lay claim to the same by virtue of Section 14(1) of the Hindu Succession Act and therefore, on the death of Bhimabai, the plaintiff as reversioner could recover possession of the properties. It is this premise which is sought to be canvassed and in respect of which reliance is placed on the case of Smt. Naresh kumari vs. Sakshi Lal supra to contend that once a female Hindu has parted with possession and conveyed the rights that she had over the property before the coming into force of the Hindu Succession Act, 1956, she would have no right to reclaim the property and that in the instant case on hand, the defendants could seek to retain possession of the properties only if Bhima Bai had a right to recover the same as her absolute properties after the coming into force of the Hindu Succession Act, 1956. However, the decision in Smt. Naresh Kumari vs. Sakshi Lal does not proceed on the basis, as the plaintiff would wish or seeks to interpret. On facts, it was a case where a widow who had a limited right in the property had conveyed the same by way of a sale deed in favour of another Hindu woman and with the coming into force of the 1956 Act when the sale was sought to be challenged on the ground that the vendor did not have an absolute interest in the property to convey the same. That challenge was sought to be

defeated to contend that a limited interest if it were transferred in favour of a Hindu female, the same would blossom into an absolute title with the coming into force of the HS Act was negated in allowing the claim of reversioner. The difference being that the right was being claimed by a female Hindu who had purchased a limited right from another female Hindu and therefore, the said decision would not advance the case of the plaintiff. The learned counsel has also placed reliance on the decision of Gopal Singh and another vs. Dile Ram supra that in a decision where a Hindu widow having a life interest, made a gift of the properties before coming into force of the Act, such gift would be unaffected is not a proposition which is in dispute. In that decision, the further circumstance was; there being a compromise decree that the said gift deed was ineffective and the same having been so declared as ineffective, the Hindu widow had thereafter made a Will in respect of the properties subsequent to coming into force of the Hindu Succession Act, 1956 and it was held that the Will was valid. If the second part of the circumstance there is taken into consideration, the said decision also would not advance the case of the plaintiff in any manner. The Trial Court having referred to the description of a reversioner in Hindu Law as stated by Mulla in his commentary on Hindu Law and referring to the alienation by a Hindu widow of her limited interest in properties before coming into force of the Hindu Succession Act, 1956 and proceeding on the basis that she was not in possession of those properties as on the date of 1956 Act coming into force and therefore holding that the transfer made by her was void, as she did not possess an absolute right over the properties and on that footing to hold that the reversioner could recover possession of the property in decreeing the suit in favour of the plaintiff is directly opposed to the settled legal position as declared by the Supreme Court in Dayasingh vs. Dhan Kaur supra and the principles enunciated there having been reproduced hereinabove, the question whether the plaintiff can claim as reversioner of the suit properties by virtue of Bhimbai having parted with possession prior to the coming into force of the HS Act, would have to be answered in the negative in the light of the law as laid down by the Supreme Court hereinabove. Consequently, the judgment and decree of the trial Court and as affirmed by the lower Appellate Court are set aside and the suit is dismissed.