

(2005) 11 BOM CK 0021
In the Bombay High Court
Case No : L.P.A. No. 5 of 1984

Tulsabai Deshpande (died) through L.R. Madhavrao
Narayanrao Deshpande and Others

APPELLANT

Vs

Sakharam Bhanu Chavan and Others

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Evidence Act, 1872 — Section 110
Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)
Transfer of Property Act, 1882 — Section 8

Citation : (2006) 3 ALLMR 144 : (2006) 2 CivCC 271 : (2006) 2 MhLj 219

Hon'ble Judges : Vasanti A. Naik, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : P.R. Deshmukh and S.V. Chandole, for the Appellant; R.G. Deo, for respondent No. 2, R.M. Borde, for respondent No. 3, P.M. Shah and Mukul Kulkarni, for respondent No. 5, A.S. Deshmukh, for respondent No. 6, R.D. Deshpande and M.V. Deshpande for respondent No. 7, R.N. Dhorde and R.R. Mantri, for respondent Nos. 9 and 10, for the Respondent

Final Decision : Allowed

Judgement

Vasanti A. Naik, J.—This Letters Patent Appeal involves two important questions, one regarding the applicability of Section 14(1) and (2) of the Hindu Succession Act, 1956 and the other about interpretation of a document called Tamliknama.

2. The facts giving rise to the controversy in question are narrated as under.

The appellant is the legal heir of plaintiff Tulsabai. Plaintiff Tulsabai filed Special Civil Suit No. 94 of 1972 for declaration of right of ownership and for recovery of possession of land S. No. 100/B, commonly known as Palsa Babat admeasuring 7 acres 17 gts. and land S. No. 139 admeasuring 35 acres 4 gts. situated at Barahalli, Tq. Mukhed, District Nanded.

3. According to the plaintiff, one Gangadharrao Deshpande was the owner and

possessor of the suit lands. That Gangadharrao Deshpande died 65 years prior to the institution of the suit leaving behind him his wife Haranabai and one daughter Tulsabai - the plaintiff. That after the death of Gangadharrao, his wife Haranabai became the owner of the properties of Gangadharrao Deshpande and enjoyed the possession thereof. That the defendants Nos. 2 to 8 are the sons of one Venkatrao Deshpande, the defendants Nos. 9 and 10 are the real brothers and the defendant No. 11 is the nephew of defendants Nos. 9 and 10. The defendants Nos. 2 to 11 are the distant kindred of Gangadharrao. The mother of the plaintiff died on 26th November, 1969 after coming into operation of the Hindu Succession Act, 1956. It is the case of the plaintiff that Haranabai was the sole, absolute and full owner of the properties in dispute and the defendants Nos. 2 to 11 had absolutely no concern or right whatsoever. That Haranabai died at the age of 85 years at Degloor and before her death, had bequeathed all her properties in favour of the plaintiff Tulsabai by a registered Will dated 17th June, 1968. That after the death of Haranabai, Tulsabai intended to mutate the suit properties in her name. However, on 19-3-1969, the defendant No. 7 Malharrao submitted an application before the Talathi setting forth the plea that he was entitled to get the mutation of the lands effected in his favour. The plaintiff pleaded that the defendant Nos. 2 to 8, in collusion with the defendants Nos. 9 to 11, sought to dispute the title of the plaintiff over the suit properties. That for the year 1969-70, the defendant No. 1 Sakharam was engaged as an agricultural labourer for cultivating the disputed land on behalf of the plaintiff. The plaintiff then pleaded that the defendant No. 1 being the employee of the plaintiff, had absolutely no right to remain in possession of the disputed land but however the defendant No. 1, in collusion with defendants Nos. 2 to 10, refused to deliver possession of the suit properties in favour of the plaintiff in spite of repeated demands. The plaintiff, therefore, filed the aforesaid suit for declaration of right of ownership and for recovery of possession of the suit lands.

4. The defendant No. 1 filed his written statement and admitted the ownership of Gangadharrao and the plaintiff over the suit properties but claimed specific performance of an oral agreement of sale dated 2-8-1968 whereby the plaintiff purportedly agreed to sell the properties to defendant No. 1. The defendants Nos. 2, 3, 4 and 5 to 8, who have almost common interest, filed separate written statements with almost identical pleadings. The defendants denied that Gangadharrao was the owner of the properties and that Haranabai became the owner thereof after the death of Gangadharrao. The defendants pleaded that Vasudeorao - the grandfather of defendants Nos. 2 to 8 and his brother Raghunathrao were the owners of the suit lands. It was then pleaded in para No. 8 of the written statement that Haranabai was not the sole, absolute and full owner and possessor of the lands in dispute. It was further pleaded that the entry of the name of Haranabai in the village record in respect of the suit land as possessor and owner was erroneous and inadvertent. The written statement further recited that Haranabai was neither owner nor possessor of the suit lands though she enjoyed the yield of the suit lands as the licensee of Vasudeorao and

after him, as the licensee of Venkatrao - father of defendants Nos. 2 to 8. It was further pleaded in para No. 23 of the written statement that the lands in dispute were exclusively owned by the predecessors of defendants Nos. 2 to 8 - Raghunathrao and he had granted the suit lands to Gangadharrao to remain in possession thereof till his lifetime. In para Nos. 24, 25 and 26 of the written statement, it was specifically pleaded that after the demise of Gangadharrao, dispute arose between Haranabai and Vasudeorao in respect of the occupancy rights of the suit lands. That one Manikrao also claimed to be the owner in possession of the suit lands. It was then pleaded that Vasudeorao and Haranabai, with a view to drop the dispute of rival claims and to jointly contest the claim of Manikrao, arrived at a settlement whereby Haranabai accepted the title and right of possession of Vasudeorao over the suit properties. It was pleaded that Haranabai intended to enjoy the income of the suit lands till her life time with a restriction not to transfer the suit lands to anybody in any manner whatsoever. It was pleaded that Haranabai was to enjoy the suit lands as a licensee of Vasudeorao and not as a holder of widows estate derived from her husband. The written statement then recited that in pursuance of the above settlement between Haranabai and Vasudeorao - the grandfather of defendants Nos. 2 to 8 - Haranabai executed a registered deed of settlement on 31 Khurdad 1328 Fasali (May 1919) wherein she admitted the ownership of Vasudeorao to the suit lands. It was further pleaded that the possession of Haranabai over the suit lands was without any right and title. Then it was pleaded that she divested from her claim and her right to possession as limited owner. It was then pleaded that Haranabai acquired possessory right under the permission granted to her to enjoy the suit lands till her lifetime with a restriction not to transfer the suit land in any manner whatsoever. It was then pleaded that the provisions of Section 14(1) of the Hindu Succession Act, 1956 were not applicable but under the provisions of Section 14(2) of the said Act, restricted interest was prescribed in the suit lands. It was recited that after the demise of Haranabai, defendants Nos. 2 to 8 revived their right of possession over the suit lands as the heirs of deceased Vasudeorao. Alternatively, it was pleaded in para No. 30 of the written statement that on account of claim of Manikrao and his son over the property of Gangadharrao, it was not possible for Haranabai to enjoy the income of the properties and hence she entered into a settlement with the ancestor of defendants Nos. 2 to 8 and they actually contested the claim of Manikrao and his son and managed all the affairs. The defendants Nos. 2 to 8 pleaded that in consideration of such settlement, the ancestor of defendants Nos. 2 to 8 contested the claim of ancestor of defendants Nos. 9 to 11 and thus Haranabai could enjoy the properties of her husband keeping it safe from the clutches of the ancestor of defendants Nos. 9 to 11. It was finally pleaded that the plaintiff was bound by the terms of the settlement deed of May, 1919 as the deed was executed with a view to save the estate including the enjoyment of the suit lands. The defendants, therefore, prayed for dismissal of the suit with costs.

5. Madhavrao Deshpande - the adopted son of plaintiff Tulsabai the present

appellant and one Shri Sundar Gunaji tendered oral evidence on behalf of the plaintiff and Vasudeorao Venkatrao, the defendant No. 2 was examined on behalf of defendants Nos. 2 to 8. The extracts of Khasara entries, rent receipts, Ferfar entries, Will and the Tamliknama were the material documents produced on record by the respective parties. After hearing the parties, the Civil Judge, Senior Division, Nanded, by judgment dated 26-9-1975 dismissed the suit of the plaintiff. The trial Court held that it was evident that the suit lands never belonged to Gangadharrao and were given to Haranabai with life interest and she was entitled to remain in possession thereof till the end of her life. That Haranabai was not competent to bequeath the suit lands in favour of the plaintiff and consequently, the plaintiff did not get any right, title or interest in the light of the possession of the Will Exh. 72. Relying on Exh. 101 - Tamliknama, the trial Court held that after the death of Haranabai the suit lands would revert back to defendants Nos. 2 to 8 who claimed through Vasudeorao. It further held that the lands were in possession of Haranabai as a licensee of Vasudeorao. Consequently, the claim of the plaintiff for possession of the suit lands was rejected and the learned Civil Judge, Senior Division, Nanded dismissed the suit with costs. The trial Court observed that the purport of the Tamliknama is that Haranabai would hold the suit lands with the restricted estate and would be entitled to life interest and after her death the lands would revert back to Vasudeorao. The trial Court then observed that no doubt the suit lands were given to Haranabai for maintenance but since Haranabai and Vasudeorao were distant kindred, there was no obligation on Vasudeorao to maintain Haranabai and hence under the peculiar circumstances, Section 14(1) of the Hindu Succession Act, 1956 could not be applied to the instant case. The trial Court held that the lands were not given to Haranabai with the object of conferring upon her the right, title and interest. The Court further held that since Haranabai was bound to pay the land revenue, the receipt depicting payment of land revenue showed the name of Haranabai. The trial Court heavily relied on the admissions of Madhavrao about existence of documents showing that Venkatrao was Pattedar of the suit lands and that there was no revenue record to show that Gangadharrao held the lands as the owner thereof. The trial Court then proceeded to consider the Tamliknama (Exh. 101) and accepted the interpretation of the contents thereof, as canvassed by the defendants Nos. 2 to 8 to hold that the lands did not belong to Gangadharrao as owner thereof and the suit lands were possessed by Haranabai in view of the document, without any conferment of right, title or interest on her. The trial Court, therefore, reiterated that Section 14(1) of the Act was not applicable as the Explanation thereof provided that the property must be given to the female Hindu in lieu of maintenance. In other words, the trial Court held that since the maintenance was awarded under an instrument without there being any legal obligation, the female i.e. Haranabai did not become absolute owner of the properties given to her for her maintenance. The trial Court lastly held that for invoking Sub-section (2) of Section 14 of the Hindu Succession Act, the essential condition is that the instrument which limits or restricts the estate, should itself be the source of

foundation. The Court observed that if the instrument prescribed the restricted estate, the Hindu female would be entitled to enjoy the property during her lifetime and it would revert back to the person prescribing the restricted estate.

6. In First Appeal No. 151 of 1976 preferred by the plaintiff against the judgment dated 25-9-1975, the learned Single Judge of this Court, after interpreting the document Tamliknama, held that the grant of land by Raghunathrao in favour of Gangadharrao was restricted and was in the nature of a life estate. The learned Single Judge further held that it could not be said by any stretch of imagination that Gangadharrao had any interest whatsoever in the properties of Vasudeorao and by virtue of Exh. 101, Haranabai admitted that she would remain in possession of the suit land only by way of life estate during her life time and the document Tamliknama clearly showed that she accepted the two lands as a restricted estate. The learned Single Judge then observed that as Haranabai had no pre-existing right whatsoever in the properties of Vasudeorao, the case was clearly covered by Section 14(2) of the Hindu Succession Act and Haranabai's daughter i.e. the plaintiff did not get any right whatsoever in spite of the Will made by Haranabai in her favour. The learned Single Judge, however, observed that if the grant to Gangadharrao was absolute, in spite of the Tamliknama, Haranabai would have been deemed to be the owner of the lands after coming into force of the Hindu Succession Act because in that case, it could be said that these lands were given to her in lieu of pre-existing right which she had in the properties of Gangadharrao and only in such case, the restrictive clause would not operate and the matter would be covered by Section 14(1) of the Hindu Succession Act. Thus by reading the contents of the Tamliknama to the aforesaid effect, the learned Single Judge by judgment dated 18-11-1983 dismissed the appeal after observing in para No. 8 thereof to the aforesaid effect that if the grants in favour of Gangadharrao was absolute, in spite of execution of Tamliknama, the plaintiff was entitled to succeed.

7. The dismissal of First Appeal No. 151 of 1976 gave rise to this Letters Patent Appeal. We heard the appeal for quite a number of days with the able assistance from learned Senior Counsel Shri P. R. Deshmukh, learned Senior Counsel Shri P. M. Shah, Shri R. D. Deshpande, Shri R. G. Deo, Shri R. N. Dhorde, Shri R. M. Borde and number of other Advocates who appeared on behalf of several respondents. Since the matter was hotly contested and involved the question of applicability of the provisions of Section 14 of the Hindu Succession Act and the interpretation of an interesting document i.e. Tamliknama, we have gone through the original record minutely and have also given thoughtful consideration to the contents of the Tamliknama. Since the suit property is situated in Mukhed taluka, District Nanded, which was a part of the dominion of Hyderabad, the Tamliknama is scribed in Urdu. The scribing of the document in Urdu was not a hurdle in understanding the contents thereof as learned Senior Counsel Shri P. R. Deshmukh and learned Advocate Shri R. D. Deshpande, who appeared on behalf of the contesting parties and who also had the opportunity of arguing legal matters in Urdu before severance of district Nanded from the State of Hyderabad

in 1953, translated and orally explained the terms of the document to us. Both the Learned Counsel were ad idem over the meaning and translation of the terms and contents of the Tamliknama. Shri P. R. Deshmukh, learned Senior Counsel appearing on behalf of the appellant, submitted that the provisions of Section 14(1) of the Hindu Succession Act were clearly applicable to the facts of the instant case. The Tamliknama - a document produced by the defendants - showed that it was executed in May, 1919 and it was the oldest document produced on record. The other relevant documents which were produced by the parties were Khasara entries in respect of the suit lands which pertain to the year 1954-55 and the Ferfar or the mutation entries which pertain to the year 1959. It was submitted on behalf of the appellant that even if it is assumed that the Tamliknama was executed in the year 1919, it was not acted upon till the year 1954-55. The Khasra Pahani Patrak showed that Haranabai was in possession of the land. The entry further showed that she was in possession as [^][^][kqncIjhus** means for maintenance of oneself. Similarly, the Ferfar or mutation entries showed that Venkatrao Vasudeorao Deshpande was the Pattedar of the lands and Haranabai was in possession of the lands as [^][^][kqncIjhus**. It is conspicuous to note that this mutation entry was made for the first time in the year 1959. In the column of remarks, it was stated that Haranabai and Venkatrao Vasudeorao belonged to one Biradari i.e. one family. That the lands were given in her name for her maintenance as per her statement made in 1328 Fasali i.e. in the year 1919. It was then written in the remarks column that Haranabai was in possession of the lands and the entry of her possession be continued. The learned Senior Counsel, Shri Deshmukh then submitted that the document Tamliknama did not restrict the right of Haranabai over the said property.

8. Learned Senior Counsel Shri P. R. Deshmukh submitted that the trial Court as well as the learned Single Judge misconstrued the document Exh. 101 Tamliknama to hold that the grant in favour of Gangadharrao by Raghunathrao and Vasudeorao was restricted grant creating only a life estate in his favour. He submitted that reading of the document in its entirety clearly showed that the suit lands were transferred to Gangadharrao by Raghunathrao and Vasudeorao. He submitted that the document Tamliknama clearly showed that Gangadharrao had only consented for mutation of the said Patta (lands) in the name of Vasudeorao in the revenue department. The contents of the document further unequivocally pointed out that Haranabai was in possession of the lands on the date of execution of the document in May, 1919 and she had only undertaken not to transfer the lands by way of sale or mortgage or any other manner whatsoever. He submitted that the document further recited that Vasudeorao would come in possession of these lands as owner thereof and be benefited from them as owner thereof only after the death of Haranabai. He, therefore, submitted that the document Tamliknama which was relied on by the defendants Nos. 2 to 8, clearly showed that Raghunathrao had granted the lands to Gangadharrao as an absolute owner thereof. It was submitted on behalf of the

appellant that the Tamliknama was not taken cognizance of by the revenue authorities nor was it pressed into service by the ancestors of defendants till 1959 as no record prior to 1959 refers to Tamliknama (Exh. 101). It was then submitted that the revenue entries were inconsistent with each other and the expression of right of enjoyment by Haranabai as ^{^^}[kqncijhus** clearly appears to have been imported by the Village Officer or Patwari without any basis and the entry was managed at the behest of the ancestor of defendants Nos. 2 to 8. That Column No. 5 of Exh. 111, which is the Mutation Register, showed that the mutation entry was changed only in the year 1959 and column No. 5 showed that the name of Venkatrao Deshpande as Pattedar against these two suit lands was recorded only after the mutation. It was submitted that all the revenue record showed that the mutation entries taken in Exh. 111 were already taken a day prior to the endorsement in Exh. 113. It was then pointed out that apart from this, it was not further clear that even in Exh. 113 there was no mention that the lands were given to Haranabai by Venkatrao or Raghunathrao since she was already in possession thereof. It was, therefore, submitted that both the Trial Judge as well as the learned Single Judge have dismissed the suit of the plaintiff without proper perusal of the record. Once again referring to Exh. 101 - the Tamliknama - it was canvassed on behalf of the appellant that by placing reliance on Exh. 101, the defendants have in fact admitted that at the time of its execution i.e. in the year 1919, neither Raghunathrao nor Vasudeorao had any right, title or interest in the suit properties. It was submitted that the document will have to be governed by Section 14(1) of the Hindu Succession Act. The learned Senior Counsel Shri Deshmukh strenuously canvassed that Exh. 101 - the Tamliknama appears to have been procured to see that after the demise of Haranabai, properties should go to the family of Vasudeorao and it should be inherited by the direct heirs of Haranabai like Tulsabai or others. Learned Senior Counsel Shri Deshmukh then submitted that the provisions of Section 14 of the Act have been given a wider effect and it includes all cases wherein a female is possessed of the property acquired before or after the commencement of the Act of 1956. It was canvassed that Section 14(1) of the Act does not confine to any particular mode of acquisition and the property becomes her absolute property except in cases which are covered by Sub-section (2). It was submitted that since Haranabai - the widow of Gangadharrao was possessed of the suit lands since the death of Gangadharrao (in whatsoever manner), she was entitled to succeed to the estate. He then submitted that Nanded district where the properties are situated, was part of the dominion of the State of Hyderabad and Vyavahar Mayukha or the Bombay School of the Hindu Law was applicable to this part of the region. He relied on the Full Bench judgment of this Court in the case of Aniruddha v. Babarao 1983 Mh.LJ. 379, wherein it was held that Hindus in the Marathwada Region were governed by the Vyavahar Mayukha or the Bombay School of Hindu Law. Learned Senior Counsel Shri Deshmukh further submitted that be it under the Mitakshara School of Hindu Law or the Bombay School of Hindu Law, the widow of the deceased had the right to be maintained out of the estate held by her husband. The Mitakshara Law as well as the Bombay School of

Hindu Law i.e. the Vyavahar Mayukha recognised the widow as a female heir to succeed to the estate of deceased husband, to own property during the lifetime and exercise those rights with certain restrictions. It was submitted that it would be too late in the day to say that the widow had no right to the estate of her husband before 1937 Act came into force. It was further submitted that the widow had a right to get maintenance out of the property belonging to her husband and this right was in existence even before promulgation of 1937 Act. It was lastly submitted on behalf of the appellant that there was no quarrel about the proposition that there should be a pre-existing right for invoking Section 14(1) of the Act and only the ranked trespassers would be debarred from claiming to be the absolute owners of the property u/s 14(1) of the Act. To fortify the submissions on the applicability of Section 14(1) of the Hindu Succession Act, the learned Senior Counsel for the appellant relied on the decisions of the Apex Court in the cases of V. Tulasamma and Ors. v. V. Shesha Reddi AIR 1977 SC 1944 and Raghubar Singh and Others Vs. Gulab Singh and Others, .

9. Contra, the learned Senior Counsel Shri P. M. Shah, appearing on behalf of respondent No. 5 submitted that the judgment of the trial Court as well as the learned Single Judge was just and proper. The Tamliknama, which was a registered document, was executed by the predecessor of the plaintiff and the plaintiff cannot go behind it. It was submitted by learned Senior Counsel Shri Shah that there was no pleading or proof as to the source or the evidence of acquisition of title to the suit lands by Gangadharrao and in fact Gangadharrao did not acquire any title to the suit properties. It was then submitted that there was no pleading in the plaint about Section 14(1) of the Act and, therefore, the plaintiff was not entitled to invoke Section 14(1) of the Hindu Succession Act. It was pointed out that de hors Exh. 101 - the Tamliknama, the plaintiff did not have any right to possess the suit lands and hence the case would fall u/s 14(2) of the Act. It was then submitted that since the trial Court as well as the learned Single Judge had recorded a finding that the plaintiff had failed to prove that Gangadharrao was exclusive owner of the suit properties and that Haranabai had no pre-existing right qua the property and that it could not be enlarged in full ownership u/s 14(1) of the Hindu Succession Act, the reversal of the judgments of both the Courts on a question of fact, would be unwarranted. The learned Senior Counsel Shri Shah then took us through the evidence of Madhavrao, who was examined on behalf of the plaintiff to point out the admission that Madhavrao did not have any record to show that the suit lands were held by Gangadharrao as owner or that they were inherited by Haranabai. Referring to the Tamliknama, it was pointed out that Raghunathrao was the original owner of the property and it was not the ancestral property of Gangadharrao. It was then submitted that if the transfer of the property in favour of Gangadharrao was absolute then there was no reason for Haranabai to execute the Tamliknama in the year 1919. It was further submitted that in respect of the suit lands, only life interest was created in favour of Haranabai under the Tamliknama and this encumbrance of maintenance would stand extinguished on her demise. It was

submitted on behalf of the respondents that in the absence of pleadings invoking Section 14 of the Act, relief could not be granted as the plaintiff did not claim any right on the basis of Section 14(1) of the Act. Reliance was placed on the judgment in the case of Gulabrao Balwantrao Shinde and Others Vs. Chhabubai Balwantrao Shinde and Others, in support of the aforesaid submission. It was then submitted that even otherwise, Section 14(1) of the Hindu Succession Act was inapplicable to the facts of the case as mere possession and existing right as a limited owner is not sufficient to invoke Section 14(1) of the Act. That since Gangadharrao expired in the year 1909 and Haranabai, a Hindu widow, had no right to the property of Gangadharrao prior to coming into force of the Hindu Women's Right to Property Act, 1937, the maintenance provided to Haranabai under Exh. 101, the Tamliknama, will fall u/s 14(2) of the Act and not u/s 14(1) of the Act. Shri Dhorde, Learned Counsel appearing on behalf of respondent No. 8 submitted that the plaintiff had no document to show that Gangadharrao was the owner and it was necessary to show the source of title. He relied on the judgments in the cases of Brahma Nand Puri Vs. Neki Puri, and Smt. Naraini Devi Vs. Smt. Ramo Devi and Others, . Shri R. D. Deshpande, Shri R. M. Borde Learned Counsel appearing on behalf of respondent No. 3, Shri R. G. Deo, Learned Counsel appearing on behalf of respondent No. 2, Shri Mantri, Learned Counsel appearing on behalf of respondent Nos. 9 and 10 as well as the other lawyers appearing on behalf of several respondents adopted the submissions made by learned Senior Counsel Shri P. M. Shah.

10. In order to resolve the controversy, it is necessary to determine the question as to whether Gangadharrao was the absolute owner of the suit properties at the time of his death sometime in the year 1909. The plaintiff has pleaded that Gangadharrao was the owner. The defendant Nos. 2 to 8 as well as the other contesting defendants, on the other hand, claimed that Vasudeorao and Raghunathrao were the owners of the suit lands and Raghunathrao had granted the suit lands to Gangadharrao to remain in possession thereof during his lifetime. That according to the contesting respondents, it was only with a view to jointly contest the claim of one Manikrao over the suit properties. The settlement deed or the Tamliknama was executed by Haranabai, Now neither the plaintiff nor the defendants have produced any document of title showing the ownership either of Gangadharrao, Vasudeorao or Raghunathrao over the suit properties. Tulsabai, the plaintiff could not enter the witness box due to her old age and serious condition of health and her son Madhavrao, who was examined on her behalf, deposed that the lands belonged to Gangadharrao and after him to Haranabai, who bequeathed the properties to plaintiff Tulsabai. In his cross-examination, he admitted that he had no record to show the ownership of Gangadharrao. Sunder Gunaji was examined only with a view to prove the Will executed by Haranabai. Vasudeorao Venkatrao examined on behalf of defendants Nos. 2 to 8 deposed that he got knowledge about the Tamliknama in the year 1958. He stated in the cross-examination that the lands were given to Haranabai for her maintenance. That the documents like the Ferfar Register (1959),

Khasara Entries (1954-55), rent receipts pertained to a period much subsequent to the execution of Tamliknama and hence the Tamliknama is the oldest document " throwing light on the rights of the parties to the suit lands. It is, therefore, necessary to read the contents of the Tamliknama. It is a settled rule of construction that a document has to be construed as a whole. The Tamliknama which was purportedly signed by Haranabai and produced on record by the defendants, recited that the family of Haranabai and that of Vasudeorao was one and that the brother of Vasudeorao namely Raghunathrao, had granted to Gangadharrao, Patwargiri of village Newali and lands S. Nos. 91, 99, 102 and 130 of village Barahalli. The deed further recites that the Patta of the lands was in the name of her husband Gangadharrao and she has consented to the mutation of the said Patta in the name of Vasudeorao in the Revenue department. She would hold the possession of S. Nos. 91 and 130 (suit lands) of which she was then in exclusive possession till her lifetime and would enjoy the same. The other relevant part of the deed recited that Haranabai would not transfer the suit and during her lifetime by sale, mortgage or in any manner whatsoever and after her death, Vasudeorao Deshpande would be in possession of the lands as the owner and shall enjoy the same as the owner thereof. The deed further recited that none else than Vasudeorao shall have any rights over the same.

11. On careful scrutiny of the contents of the document Tamliknama, it can be clearly gathered that the properties originally belonged to Raghunathrao who gave it to Gangadharrao. The document does not speak of any limitation or restriction on the grant of lands by Raghunathrao to Gangadharrao. In view of Section 8 of the Transfer of Property Act, unless a different intention is expressed or necessarily implied, the transfer of the property passes forthwith to the transferee, the interest which the transferor is then capable of passing in the property and the legal incidents thereof. The contents of the Tamliknama, a document which is produced and relied on by the defendants, does not show any such other intention. Moreover, it is conspicuous to note that it is clearly pleaded by defendants Nos. 2 to 8 in their written statement that this document was got executed from Haranabai to united fight against Manikrao, who also claimed ownership over the same. It is surprising that neither the trial Court nor the learned Single Judge has even referred to these important pleadings in the written statement of defendants Nos. 2 to 8 about the necessity to execute the Tamliknama, which according to them, was brought into existence to jointly fight with Manikrao. In the backdrop of these facts, at the most, it could be said that by the document Tamliknama. Haranabai had imposed restriction on her right to transfer the property. Moreover, the document clearly recited that it is only after her death that Vasudeorao shall possess the property as owner thereof. Hence ownership, according to the document, would be transferred to Vasudeorao only on the death of Haranabai and Haranabai died in the year 1969 after coming into force of the Hindu Succession Act, 1956.

12. The document Tamliknama further shows that even prior to the execution of

the document, Haranabai was in possession of the suit property and that Gangadharrao was given the Patta (land) by Raghunathrao. Hence Tamliknama cannot be said to be a source of title of possession of the plaintiff but by the said document in fact the defendants admit that Raghunathrao or Vasudeorao did not have any right or interest in the suit property at the time of its execution in the year 1919 as even according to the pleadings of the defendants, this document was executed to jointly fight with Manikrao. That according to the Tamliknama, Haranabai had only agreed to mutate the Patta of the lands in favour of Vasudeorao and had expressed her intention to retain the suit lands with her till her death and it was only thereafter that Vasudeorao would be in possession thereof as its owner.

13. It can also be clearly gathered from the document (Exh. 101) Tamliknama, which is banked upon by the defendant Nos. 2 to 8 that prior to 1919, the Patta (lands) was recorded in the name of Gangadharrao. That all these relevant documents namely the Khasara Pahani Patrak and the Ferfar (mutation entries) were of the subsequent period i.e. they pertain to the years 1954-55 and 1959 as referred to hereinabove. In this background, the plea of the plaintiff that due to unscrupulous tactics of the predecessor of defendants Nos. 2 to 11, an entry to the effect that the disputed lands were in the possession of Haranabai in lieu of maintenance was managed to be manipulated in the revenue record, assumes much significance more so, when there is a clear admission by the defendant No. 2 in his cross examination that some Gumastas appointed by his father were working in the office of Patwari who deals with correction of revenue entries.

14. Before we consider the question of the applicability of the provisions of Section 14(1) to the facts of the case, it is necessary to deal with the objection raised by the respondents to the effect that the plaintiff cannot invoke the provisions of Section 14(1) of the Hindu Succession Act, 1956 in the absence of pleadings to that effect. It is apparent from the record that the defendants Nos. 2 to 8 themselves raised a plea in their written statements that Haranabai was not to enjoy the suit lands as holder of widows estate but as a licensee of Vasudeorao. In para 28 of the written statement, defendants specifically pleaded that Section 14(1) was not applicable to the facts of the case and that it was governed by Section 14(2) of the Act. Moreover, the trial Court has seriously considered this aspect after dealing with the arguments advanced on behalf of the parties as also the case law referred. For the aforesaid reasons and more particularly in view of the pleadings of the contesting defendants, which gave rise to the framing of the issue in that regard, it would not be just to uphold the objection raised on behalf of the respondents. The decision reported in the case of Gulabrao Balwantrao Shinde and Others Vs. Chhabubai Balwantrao Shinde and Others, cannot, therefore, be of any assistance to the respondents.

15. Now turning to the applicability of the provisions of Section 14 of the Hindu Succession Act, 1956, it is necessary to consider the provisions which read thus :

Section 14. Property of a female Hindu to be her absolute property --(1) Any

property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation : In this Sub-section, "property includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or 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.

16. In the instant case, Haranabai - the widow of Gangadharrao, was in possession of the suit lands since the death of Gangadharrao. That the right of a widow to succeed as heir to her husband is recognised since ages. Para No. 176 of Mulla's Hindu Law (16th Edition) which deals with the right of a Hindu widow to succeed to the estate of her husband, reads thus :

A widow or other limited heir is not a tenant for life but is owner of the property inherited by her subject to certain restrictions on alienation and subject to its devolving upon the next heir of the last full owner upon her death. The whole estate is for the time vested in her and she represents it completely. Her right is of the nature of a right of property, her possession is that of the owner. Her powers in that character are very limited but so long as she is alive, no one has any vested interest in the succession.

According to almost all the Schools of Hindu Law, a widow is one of the female heirs who succeeds as heir to the property of a male. Similarly in para No. 526 of the commentary of the Mayne's Hindu Law and Usage, the right of the widow to succeed as heir to her husband, is stated as under :

526. Right of a widow - The right of the widow to succeed as heir to her husband was recognised at least two thousand years ago. Vriddha Manu, Yajanavalkya, Vishnu, Brihaspati, Katyayana, Sankha Likhita and Devala fully recognise her right to succeed to her husband. Narada's refusal to recognise her, evidently after the time of Vishnu and Yajnavalkya, is puzzling. It must have been due to a difference in the usages of his country where remarriage evidently, prevailed as, about the same time, Brihaspati is most emphatic in her favour. She is in fact the first heir to the property of a man who dies without male issue. In all the authoritative Digests and Commentaries, the widow's right of succession to her husband is universally acknowledged.

Thus applying the principles of Hindu Law, be it the Mitakshara School thereof or the Vyavahar Mayukha i.e. Bombay School, it is clear that a widow has right to succeed, as heir to the property of her deceased husband. The Privy Council, in the case of Janaki Anmal v. Narayanaswami Aiyer AIR 1916 PC 117 has also considered these principles of Hindu Law dealing with the nature or the right of a widow to succeed to the property of her husband. The relevant portion of the judgment reads thus:

The rule of the Hindu Law with regard to the nature of the widow's estate may have been subject to various forms of expression, but in substance it is not doubtful. Her right is of the nature of a right of property; her position is that of owner; her powers in that character are, however, limited; but, to use the familiar language of Mayne's "Hindu Law", paragraph 625, page 870, "so long as she is alive no one has any vested interest in the succession". These propositions were not disputed.

Thus, it is evident that Haranabai had a right in the property left behind by her deceased husband at the relevant time i.e. death of Gangadharrao in the year 1909.

17. The authorities on Hindu Law unequivocally point out that a Hindu widow, at the relevant time i.e. in or about the year 1909-10 had a right to the property of the husband and under certain conditions, a widow was also entitled to transfer the property by justifying legal necessity. In the instant case, as already; held hereinabove, the document Tamliknama showed that Gangadharrao was the owner of the suit property and after his death, Haranabai was possessed of the suit properties as his widow. It is undisputed that Haranabai was in possession of the property and was enjoying the same when the Hindu Succession Act, 1956 came into force. Considering the scope and amplitude of the provisions of Section 14(1) of the Hindu Succession Act, 1956, the Apex Court in the case of V. Tulsamma v. V. Shesha Reddy observed as under :

It will, therefore, be seen that Sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property.

Now, Sub-section (2) of Section 14 provides that 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. This provision is more in the nature of a proviso or exception to Sub-section (1) and it was regarded as such by this Court in Seth Badri Prasad Vs. Srimati Kanso Devi, . It excepts certain kinds of acquisition of property by a Hindu female from the operation of Sub-section (1) and being in the nature of an exception to a provision which is

calculated to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in Sub-section (1). It cannot be interpreted in a manner which would rob Sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by Sub-section (1). The language of Sub-section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property. But that would virtually emasculate Sub-section (1) for in that event, a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under an instrument, order or award would be excluded from the operation of beneficial provision enacted in Sub-section (1), since in most of such cases, where property is allotted to Hindu female prior to the enactment of the Act, there would be a provision in consonance with the old Shastric Law then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of Sub-section (1). The explanation to Sub-section (1) which includes within the scope of that Sub-section property acquired by a female Hindu at a partition or in lieu of maintenance would also be rendered meaningless, because there would hardly be a few cases where the instrument, decree, order or award giving property to a Hindu female at a partition or in lieu of maintenance would not contain a provision prescribing restricted estate in the property. The social purpose of the law would be frustrated and a reformist zeal underlying the statutory provision would be chilled. That surely would never have been the intention of the Legislature in enacting Sub-section (2). It is elementary Rule of construction that no provision of a Statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the Statute so as, as far as possible, to make consistent enactment of the whole statute. Sub-section (2) must, therefore, be read in the context of Sub-section (1) so as to leave as large a scope for operation as possible to Sub-section (1) and so read. It must be 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.

Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, 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 prescribes a

restricted estate in the property.

Fazal Ali, J. exhaustively dealt with the pre-existing rights of a Hindu widow and summarized the conclusions flowing there from for interpretation of Section 14(1) and (2) of the Act of 1956 as under :

We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Section 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 pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing 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 socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases, a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the Sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document will have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or share at partition, the

instrument is taken out of the ambit of Sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance" "or arrears of maintenance" etc. in the Explanation to Section 14(1) clearly makes Sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of Sub-section (2).

(6) The words "possessed by" used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she could get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the Section does not contemplate the possession of any ranked trespasser without any right or title.

(7) That the words "restricted estate" used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee.

In yet another case of the Apex Court in the case of Raghubar Singh and Others Vs. Gulab Singh and Others, , which was relied upon by the Learned Counsel appearing on behalf of the appellant, the Apex Court observed in para Nos. 22, 23, 24 and 25 thereof as under :

Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case of a widow as "a pre-existing right", which existed under the Shastric Hindu Law long before the passing of the 1937 or the 1946 Acts. Those Acts merely recognised the position as was existing under the Shastric Hindu Law and gave it a "statutory" backing. Where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance. It is by force of Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. So far as Sub-section (2) of Section 14 is concerned, it applies to instruments, decrees, awards, gifts etc., which create an independent or a new title in favour of the female for the first time. It has no application to cases where the instrument/document either declares or recognises or confirms her share in the property or her "pre-existing right to maintenance" out of that property. As held in Tulasamma's case (supra),

Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own, without interfering with the operation of Section 14(1) of the Act.

The two Apex Court decisions referred to hereinabove clearly support the case of the plaintiff appellant and lay down that the widow had a pre-existing right of maintenance under the old Shastric law and by virtue of Section 14(1), the widow's unlimited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. Section 14(2) would, therefore, only apply to instruments which create independent or a new title in favour of the female for the first time.

18. Reliance was also placed on behalf of the respondents on a judgment in the case of *Eramma Vs. Verrupanna and Others*, wherein the Supreme Court in para No. 7 observed that:

The property possessed by a female Hindu, as contemplated in the Section is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the Section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of Sub-section (1) of Section 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, Section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this Section. The object of the Section is to extinguish the estate called "limited estate" or "widow's estate" in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to Sub-section (1) of Section 14 defines the word property as including "both movable and immovable property acquired by a female Hindu by inheritance or devise...". Sub-section (2) of Section 14 also refers to acquisition of property. It is true that the Explanation has not given any exhaustive connotation of the word property but the word acquired used in the Explanation and also in Sub-section (2) of Section 14 clearly indicates that the object of the Section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the Section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the

commencement of the Act when she is only a trespasser without any right to property.

19. There is no doubt about the proposition laid down in the aforesaid ruling that Section 14(1) cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any right on a mere trespasser. However, coming to the facts of this case, it could be seen that according to the principles of Hindu Law, the property of late Gangadharrao was held by Haranabai after his demise in the capacity as already discussed hereinabove and hence by no stretch of imagination, it could be said that the possession of Haranabai over the suit properties was in the capacity of a ranked trespasser. Moreover, it is also admitted by the contesting defendants that Haranabai was in possession of the suit properties in lieu of her right to maintenance as has been deposed by DW 1 Vasudeorao.

20. It can be seen that in the instant case also, Haranabai was holding the property till her death undoubtedly under a pre-existing right which existed under the Hindu Law long before the passing of the Act of 1937 and, therefore, since Haranabai was in possession of the suit properties under the pre-existing right, u/s 14(1) of the Hindu Succession Act, 1956, the suit properties so possessed by her would be held by her as an absolute owner thereof. At this juncture, it is necessary to refer to the case of Ram Vishal v. Jagannath and Anr. : (2004)9SCC302 relied on by the respondents. The case would be of no assistance to the respondents so far as the applicability or otherwise of the provisions of Hindu Women Right to Property Act, 1937 is concerned, because in the instant case, neither is the plaintiff claiming any right to suit property on the coming into force of the Act of 1937 nor are the provisions of the Act of 1937 applicable to the facts of the case as the Act of 1937 would not apply to a Hindu male dying intestate before the commencement of the Act. Regarding the other part of the ruling holding that the widow must possess the property under some vestige of a claim, right or title to invoke Section 14(1) of the Act, we have already held hereinabove that under the Hindu Law, the widow possesses the property as an owner thereof subject to certain restrictions on its alienation and subject to its devolving upon the next heir of the last full owner upon her death. As such, the limited ownership of Haranabai over the suit properties prior to coming into force of 1956 Act ripened into full ownership by virtue of Section 14(1) of the Act. The submission of the respondents that Section 14(2) of the Act of 1956 would be applicable in the instant case as the Tamliknama is itself the foundation and source of Haranabai's possession for providing her maintenance, cannot be accepted for the reasons recorded by us earlier, to the effect that Tamliknama cannot be said to be the source of title or possession of the plaintiff. In fact, the document (Exh. 101) shows that Raghunathrao or Vasudeorao did not have any right or interest in the suit properties at the time of execution of Tamliknama in 1919. The submission on behalf of the respondents that even otherwise Haranabai could not claim any right in the property of Gangadharrao; before coming into force of the Hindu Women's Right to Property Act, 1937 is

also liable to be rejected in view of the reasons already stated hereinabove.

21. About the proposition of law, as sought to be reinforced by Shri Dhorde, Learned Counsel appearing on behalf of respondent No. 8 that it is necessary for the plaintiff to convincingly plead and prove his title, there can be no two opinions. Yet in the instant case, we have already discussed that the document Exh. 101 i.e. the Tamliknama, if read in the right perspective, clearly spells out that Gangadharrao was the owner of the property as Raghunathrao had given the said Patta (lands) to Gangadharrao and Haranabai was in possession thereof after the death of her husband Gangadharrao though neither the plaintiff nor the defendants had produced any document of title to prove the absolute title of either Gangadharrao, Vasudeorao or Raghunathrao. The document (Exh. 101) the Tamliknama produced by the defendants in fact strengthened the case of the plaintiff and helped the plaintiff to prove that the property was owned by Gangadharrao as a Pattedar and was held by her after the death of her husband. After the parties lead evidence on the basis of the respective pleadings and tender oral as well as documentary evidence on record, the case of the plaintiff could be proved even on the basis of the admission by the defendants in their pleadings, oral evidence or by the documents produced by the defendants, which may in fact support the plaintiff. In the case in hand, though the document (Exh. 101) the Tamliknama was in fact produced by the defendants to show that the lands were held by Haranabai the predecessor of the plaintiff Tulsabai - in lieu of maintenance, the contents of the document showed that it was otherwise. We have already discussed the said aspect at length in the earlier paragraphs. Hence it cannot be said that the plaintiff has failed to prove the ownership of Gangadharrao merely because he failed to produce any document of title in respect of the properties. Even otherwise, in cases where source of title relates to a period prior to the coming into force of the Transfer of Property Act, 1872, insistence on production of document of title would not be well founded.

22. Lastly, we cannot lose sight of the provisions of Section 110 of the Evidence Act, which enjoin upon the defendant the burden of proving that Haranabai was not the owner of the property when admittedly Gangadharrao was in possession of the property till 1909 and thereafter Haranabai had the long standing possession over the suit lands since 1909 to 1969 i.e. till her death. Section 110 gives effect to the principle that long standing possession is prima facie evidence of complete title. At this juncture, it is necessary to make a reference to an Apex Court decision in the case of Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and Others, wherein the Apex Court has observed that in view of long standing possession, presumption of an origin in lawful title could be drawn. The Apex Court considered a Privy Council decision in the case of Syed Md. Mazaffaralmusavi v. Bibi Jabeda Khatun AIR 1930 PC 130 wherein it was observed that the Court had so often readily made presumption in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming. It was resorted to because of the failure of actual evidence. The Apex Court further considered the case of AIR 1936 60 (Privy Council)

wherein it was held that the presumption u/s 110 should be allowed to fill in the gap disclosed in the evidence. In view of the observations of the Apex Court and the Privy Council referred to hereinabove, the case of the plaintiff gets further strengthened.

23. Reliance placed by the respondents on the case of Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jumayath Palli Dharas Committee and Others, to canvass that reversal of the judgment of the first Appellate Court on a question of fact in the absence of pleadings, issue and supporting evidence is not proper, is also not well founded as the said proposition of law related to a second appeal u/s 100 of the CPC where the matter has to be strictly decided on a substantial question of law. However, the instant case is a Letters Patent Appeal filed under Clause 15 of the Letters Patent of the Bombay High Court and about the scope and power of Division Bench hearing a Letters Patent Appeal under similar clause, has already been dealt with by the Apex Court in the judgment in the case of Smt. Asha Devi Vs. Dukhi Sao and Another, . The Apex Court, while referring to a similar clause under the Letters Patent of Patna High Court held that the power of the Division Bench hearing a Letters Patent Appeal from the judgment of a Single Judge in the first appeal is not limited and observed thus :

The power of a Division Bench hearing a Letters Patent Appeal under Clause 10 from the judgment of a Single Judge in first appeal is not limited only to a question of law u/s 100, CPC but it has the same power which the Single Judge has as a first Appellate Court in respect of both questions of fact and of law. The limitations on the power of the Court imposed by Sections 100 and 101 CPC cannot be made applicable to an Appellate Court hearing a Letters Patent Appeal for the simple reason that Single Judge of the High Court is not a Court subordinate to the High Court.

The decision of the Apex Court is followed by this Court in the case of Tata Press Limited and another Vs. Mahanagar Telephone Nigam Limited and another, to hold that in an appeal under the Letters Patent, the Court is entitled to go into all findings of fact. Even otherwise, in the instant case, we had an opportunity to deal not only with the question of facts but with the substantial questions of law relating to the applicability of the provisions of Sections 14(1) and (2) of the Hindu Succession Act, 1956, the principles of Hindu Law and also the interpretation of the document Exh. 101 the Tamliknama.

24. Thus after dealing with the respective pleadings of the parties, the short oral evidence which is produced on record and the relevant documents, which are produced by the respective parties for substantiating their claims over the suit properties, we are of the considered view that the learned trial Court as well as the learned Single Judge was not justified in dismissing the suit of the plaintiff for a declaration of the ownership of the suit lands and for possession thereof. In view of the observations made hereinabove, we hold that Gangadharrao was the absolute owner of the suit property and after his demise in the year 1909, Haranabai, his widow, succeeded to the property of her husband subject to

certain restrictions. That the possession of Haranabai over the suit properties prior to 1919 and even thereafter, could not be said to be without any right or interest therein. As already discussed hereinabove, it was Section 14(1) and not Section 14(2) of the Act which applied to the case. Hence, after 1956, the limited ownership of Haranabai transformed into full ownership. That in view of the Will executed by Haranabai, her only daughter Tulsabai, the plaintiff, became the absolute owner of the suit property. Having held so, we set aside the judgment of the learned Civil Judge, Senior Division, Nanded dated 26-9-1975 and also the judgment dated 18-11-1983 passed by the learned Single Judge and we hereby declare that the plaintiff is the absolute owner of the suit lands and is also entitled to the possession thereof. The respondents are directed to place the appellant in possession of the suit properties. We further direct an enquiry into mesne profits as accruing from the period commencing three years preceding the institution of the suit until the delivery of possession.

25. We, therefore, allow the Letters Patent Appeal. However, in the facts of the case, there would be no order as to costs.

26. After pronouncement of the judgment, the counsel appearing on behalf of the respondents make a prayer that the effect and operation of the judgment may be stayed for a period of eight weeks. That since the respondents are in possession of the property for nearly 30 years, we feel that it would be in the interest of justice to stay the effect and operation of the judgment for a period of eight weeks from today.