
(2002) 01 AP CK 0081
In the Andhra Pradesh High Court
Case No : A.S. No. 74 of 1987

V. Laxmana Rao

APPELLANT

Vs

V.V. Ramana Rao and Others

RESPONDENT

Date of Decision : 04-01-2002

Acts Referred:

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

Citation : (2002) 3 ALD 626 : (2002) 3 ALT 462(1)

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : N.V. Suryanarayana Murthy, for the Appellant; T. Veerabhadrayya, for the Respondent

Final Decision : Dismissed

Judgement

1. The Appeal is directed against the judgment and decree of the learned Subordinate Judge, Rajahmundry in O.S.NO. 76 of 1981 dated: 1.8.1986.

2. Appellant is the Plaintiff. He filed a suit for preliminary decree for partition of the plaint schedule property into four equal shares and for allotment of one such share to the Plaintiff. Relief was also claimed for rendition of accounts by the 1st Defendant for realisation of the plaint schedule property from 27.3.1990 i.e. from the date of death of late Chellayamma till the delivery of the property allotted to him together with payment due.

3. As per the plaint averment, Plaintiff, Defendants No.1 and 2 and one Mr. Sriramamurthy are the brothers, they are sons of late Vadrevu Venkata Narasimharao. The said Narasimha Rao died on 25.11.1949 leaving behind Plaintiff, Defendants No.1 and 2 and late Sriramamurthy and also the 4th wife of Defendant Chellayamma and her daughters. He executed a Will during his life time bequeathing various properties to the family members. But, however, after the death of Narasimha Rao, disputes arose between the family members and the matter was referred to the Arbitrators namely D. Venkata Siva Rao and

others. The matter was settled during the arbitration and shares were allotted to the Plaintiffs, Defendants and Chellayamma. Accordingly, a settlement deed was drafted on 22.8.1954. The property which is allotted was enjoyed by the respective parties as per the settlement deed. Under the said settlement deed. Smt. Chellayamma was given properties mentioned in the "E" Schedule in the settlement deed. Out of the said properties of the plaint allotted to her under "E" schedule, half of them were to be enjoyed by her for life and for the vested remainder by the four sons of Vadrevu Venkata Narasimharao and other half to be enjoyed by her as absolute owner. While so, Smt. Chellayamma died on 17.3.1990. On the death of Smt. Chellayamma, the Plaintiff and the Defendants No.3 to 5 who are the children of late Sriramamurty laid a dispute and claimed 1/4th share property held by Smt. Chellayamma for life. The 1st Defendant has been managing the plaint schedule properties. A notice was issued on behalf of the Plaintiff for partition of the property of late Smt. Chellayamma and thereafter a suit was filed. The 2nd Defendant filed written statement to the effect that the suit was not maintainable. However, the relationship between the parties was accepted. The existence of settlement deed was also not disputed. It was stated that Smt. Chellayamma had pre-existig right in the properties even before the execution of the settlement deed. Under the provisions of the Hindu Women's Right to Property Act, 1937, the properties of Vadrevu Venkata Narasimharao devolved upon Smt. Chellayamma. By the time of passing Act 30 of 1956, Smt. Chellayamma was in possession and enjoyment of the property under the settlement deed and as such she acquired absolute estate u/s 14(1) of the Hindu Succession Act and therefore, the other sons of Vadrevu Venkata Narasimharao were not entitled for the share held by Smt. Chellayamma. It is also stated that Smt. Chellayamma executed a registered Will dated: 18.2.1970 bequeathing the schedule properties in favour of the Defendants No.1 and 2 and therefore, they are alone entitled to enjoy the schedule property. Plaintiff and the Defendants No.3 to 5 have no right at all and they cannot claim any right in the plaint schedule property. Defendants No.3 to 5 are sailing with the Plaintiff and they adopted the contention of the Plaintiff.

4. Basing on the respective contentions, the lower Court framed the following issues:

1. Whether late Chellayamma acquired absolute rights, in the suit properties by virtue of Section 14(1) of the Act 30 of 1956?
2. Whether the Will dated: 18.2.1970 said to have been executed by late Chellayamma is true, valid and binding on Plaintiff and Defendants 3 to 5?
3. Whether the Defendants 1 and 2 are liable to render account for profits on the suit properties and if so, for what period?
4. Whether the suit is not properly valued?
5. To what relief?

5. No witnesses were examined for the Plaintiff. Exs.A-1 to A-3 were marked for the Plaintiff. Four witnesses were examined for the Defendants and Exs.B-1 and B-2 were marked for the Defendants.

6. The trial Court on the basis of the evidence available on record held that late Chellayamma acquired absolute right in the suit schedule property by virtue of Section 14(1) of Act 30 of 1956. The trial Court also found that the Will executed by Smt. Chellayamma dated: 18.2.1970 was true and valid and accordingly dismissed the suit by judgment and decree dated: 1.8.1986. Aggrieved by the said judgment and decree, the Plaintiff preferred the present appeal.

7. The learned Senior Counsel for the Plaintiff-Appellant Mr. N.V. Suryanarayana Murthy submits that the lower Court has miserably failed to construe the provisions of Section 14(1) and 14(2) of the Act 30 of 1956 and also the law governing the field as on the death of Vadrevu Venkata Narasimharao and also as on the date when the Will was executed by late Vadrevu Venkata Narasimharao. He also submits that prior to Act 30 of 1956, the widow has no absolute right; but only limited right for life and therefore, the Will executed by late Vadrevu Venkata Narasimharao Ex.B-1 dated: 24.6.1949 cannot be said to be contrary to law. Further, a family settlement was arrived at after referring the matter to the Arbitrators and a settlement Ex.A-1 was drafted on 22.8.1954 in which various properties were settled on the members of the family of late Vadrevu Venkata Narasimharao and that a settlement was executed prior to coming into force the Act 30 of 1956 and that the widow has no absolute right in the property held by late Vadrevu Venkata Narasimharao. Therefore, the contents of Ex.A-1 has to be implemented in its full vigour and Chellayamma cannot be said to have an absolute right over the properties allotted to her and therefore, the question of invoking provisions of Section 14(1) would not arise. He further submits that the lower Court has not properly appreciated the provisions 14(1) and 14(2) of Act 30 of 1956. He relies on various decisions, which will be referred during the course of discussion.

8. On the other hand, the learned Senior Counsel for the respondents-Defendants Mr. Veerabhadrayya submits that the judgment passed by the trial Court is in consonance with the principles settled down by the Supreme Court. Since the widow was found to be having pre-existing right that became her absolute right consequent on coming into force the Act 30 of 1956 and she had every right to bequeath the property as if she is the owner of the property in question. Even though it was mentioned in the settlement deed that half of the "E" schedule property will be enjoyed by her during her life time, but that will not have any effect in the wake of provisions contained in 14 of the Act 30 of 1956 and when once Smt. Chellayamma held the property prior to Act 30 of 1956 in whatever capacity, the same must be construed to have been held by her as absolute owner and therefore, the judgment of the trial Court cannot be said to be illegal and contrary to law. He also relies on certain decisions which would be referred to hereinafter. The most important and principal issue that

arises for consideration is whether the lower Court was justified in holding that the properties held by Smt. Chellayamma became absolute consequent on the introduction of Act 30 of 1956 and whether she had any pre-existing right as on the date when the Act came into force? When once this issue is decided, the other issue whether Will executed by Smt. Chellayamma was valid or not becomes insignificant inasmuch as there was no serious disputes with regard to the Will alleged to have been executed by Smt. Chellayamma. Therefore, the Court has to necessarily concentrate as to the applicability of Section 14(1) or Section 14(2) of Act 30 of 1956.

9. The learned counsel for the appellant refers to the decision in *S. SHANMUGAM PILLAI Vs. K.SHANMUGAM PILLAI*¹, and submits that in order to have peace and tranquillity in the family, whenever settlement of properties are effected, it should be recognised rather than disturbed by the Courts. It is true that the family arrangements made between the members of the family have to be assented by the Courts. The Supreme Court observed in *Sahu Madho Das and Others Vs. Mukand Ram and Another*, that the Courts lean strongly in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all. As observed in that case the family arrangement can as a matter of law be inferred from a long course of dealings between the parties.

10. In *Maturi Pullaiah and Another Vs. Maturi Narasimham and Others*, the Supreme Court held that although conflict of legal claims in praesenti or in futuro is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes present or possible, which may not involve legal claims would be sufficient. Members of a Joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the Courts would more readily give assent to such an agreement than to avoid it.

11. In *Krishna Beharilal Vs. Gulabchand and Others*, , the Supreme Court observed that the dispute between parties was in respect of a certain property which was originally owned by their common ancestor namely Chhedilal. To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in *Ram Charan Das Vs. Girjanandini Devi and Others*, , the word "family" in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement.

12. In *S.S. Pillai's case*(1st cited supra), the Supreme Court held that if in the interest of the family properties or family peace the close relatives had settled their disputes amicably, the Courts will be reluctant to disturb the same. The

Courts generally lean the favour of family arrangements. The Supreme Court observed thus:

"Equitable principles such as estoppels, election, family settlement etc. are not more technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In recent times in order to render justice between the parties, the Courts have been liberally relying on those principles. We would hesitate to narrow down their scope."

13. The principle laid down in this decision is not applicable to the facts of this case and the effect of Section 14(1) of Act 30 was not the subject matter before the Supreme Court. Even though family settlement has to be given more credence keeping in view the conduct of the parties, but at the same time, the larger question that falls for consideration is that if the family arrangement is in conflict with the statutory provisions, whether the same has to be upheld.

14. In *VADDEBOYINA TULASAMMA Vs. VADDEBOYINA SESA REDD2*, the Supreme Court held that the Hindu female acquired property under compromise in lieu of satisfaction of her right of maintenance, the compromise prescribing limited interest falls u/s 14(1). Same judgment was also relied on by the learned counsel for the respondent. Bhagawathi J. speaking for himself and A.C. Gupta J, while tracing out the history of the Shastric Hindu law, observed that a sea change was brought about to the right of Hindu female u/s 14(1). The limited right hitherto she was enjoying got transformed into a full-fledged right. Paras 3 and 4 which are relevant are extracted below:

"3. Since the determination of the question in appeal turns on the true interpretation to be placed on sub-section (2) read in the context of sub-section (1) of Section 14 of the Hindu Succession Act, 1956 it would be convenient at this stage to set out both the sub-sections of that section which read as follows:

"14(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."

Prior to the enactment of Section 14, the Hindu law, as it was then in operation, restricted the nature of the interest of a Hindu female in property acquired by her and even as regards the nature of this restricted interest, there was great diversity of doctrine on the subject. The Legislature, by enacting sub-section (1) of Section 14, intended as pointed by this Court in *S.S. Munna Lal Vs. S.S. Rajkumar and Others*, "to convert the interest which a Hindu female has in property however restricted the nature of that interest under the Sastric Hindu law may be, into absolute estate". This Court pointed out that the Hindu Succession Act, 1956 "is a codifying enactment and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu Females full rights of inheritance and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate", Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The words "any property" are, even without any amplification, large enough to cover any and every kind of property but in order to expand the reach and ambit of the Section and make it all comprehensive, the Legislature has enacted an explanation which says that property would include "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 the Act. Whatever be the kind of property, movable or immovable and whichever be the mode of acquisition, it would be covered by sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Sastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognize her status as an independent and absolute owner of property. This Court has also in a series of decisions given a most expansive interpretation to the language of sub-section (1) of Section 14 with a view to advancing the social purpose of the Legislation and as part of that process, construed the words "possessed of" also in a broad sense and in their widest connotation. It was pointed out by this Court in *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, that the words "possessed of" means "the state of owning or having in one's hand or power". It need not be actual or physical possession or personal occupation of the property by the Hindu female, but may be possession in law. It may be actual or constructive or in any form recognised by law. Elaborating the concept, this Court pointed out in *MANGAL SINGH Vs. RATTNO* (AIR 1967 S.C. 1786) that the Section covers all

cases of property owned by a female Hindu although she may not be in actual, physical or constructive possession of the property, provided of course, that she has not parted with her rights and is capable of obtaining possession of the property. 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.

4. 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 constructed 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 the beneficent provision enacted in sub-section(1), since in most of such cases, where property is allotted to the Hindu female prior to the enactment of the Act, there would be a provision, in consonance with the old Sastric 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 the reformist zeal underlying the statutory provision would be chilled. That surely could never have been the intention of the Legislature in enacting sub-section (2). It is an 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 a 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. This constructional approach finds support in the decision in Badri Prasad's case (supra) where this Court observed that sub-section(2)"can come into operation only if acquisition in any of the methods enacted therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property". It may also be noted that when the Hindu Succession Bill, 1954, which ultimately culminated into the Act, was referred to a Joint Committee of the Rajya Sabha Cl.18(2) of the Draft Bill, corresponding to the present sub-section(2) of Section 14, referred only to acquisition of property by a Hindu female under gift or will and it was subsequently, that the other modes of acquisition were added so as to include acquisition of property under an instrument, decree Order or award. This circumstance would also seem to indicate that the legislative intendment was that sub-section(2) should be applicable, only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right - a kind of acquisition akin to one under gift or will. 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."

15. After referring to the decision reported in Seth Badri Prasad Vs. Srimati Kanso Devi, and also NIRMAL CHAND Vs. VIDYAVATHI (C.A.NO. 609 of 1969, dated: 21.1.1969), the Supreme Court observed that even though the property acquired under instrument of partition which gave only limited interest to a Hindu female in the property, it fell within the sub-section (1) and not sub-section (2). The Supreme Court observed that the reasons were obvious that property was given to a hindu female by virtue of pre-existing right inhering her and when the instrument of partition provided that she would only have a limited interest in the property, it merely provided for something which otherwise she would have been in legal possession as it then to. It is only when the property is acquired by hindu female as a new grant for the first time as a restricted owner, in that event, sub-Section (2) of Section 14 would come into play. The Supreme

Court summarised the legal conclusions as follows:

"70. 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 constructed 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 operations 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 would have to be ignored. Thus, where a property is allotted or transferred to a female in lieu of maintenance or a 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 subsection(2) inapplicable to these categories which have been expressly excepted from the operation of subsection(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 would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vesting of a claim, right or title, because the Section does not contemplate the possession of any rank 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."

16. Narrating the facts of the case, the Supreme Court observed as follows:

"Applying the principles enunciated above to the facts of the present case, we find-

(i) that the properties in suit were allotted to the Appellant Tulasamma on July 30, 1949 under a compromise certified by the Court;

(ii) that the Appellant had taken only a life interest in the properties and there was a clear restriction prohibiting her from alienating the properties.

(iii) That despite these restrictions, she continued to be in possession of the properties till 1956 when the Act of 1956 came into force, and

(iv) That the alienations which she had made in 1960 and 1961 were after she had acquired an absolute interest in the properties.

It is, therefore, clear that the compromise by which the properties were allotted to the Appellant Tulasamma in lieu of her maintenance were merely in recognition of her right to maintenance which was a pre-existing right and, therefore, the case of the Appellant would be taken out of the ambit of Section 14(2) and would fall squarely within Section 14(1) read with the Explanation thereto. Thus, the Appellant would acquire an absolute interest when she was in possession of the properties at the time when the 1956 Act came into force and any restrictions placed under the compromise would have to be completely ignored. This being the position, the High Court was in error in holding that the Appellant Tulasamma would have only a limited interest and in setting aside the alienations made by her. We are satisfied that the High Court decreed the suit of

the Plaintiffs on an erroneous view of the law."

17. Therefore, the facts in Tulsamma's case (2nd cited supra) would fit in the facts of the present case. Even though the partition took place between the family members much prior to 1956 and by virtue of partition widow was granted the "E" schedule properties and out of "E" schedule properties half of the properties were to be enjoyed till her life time. Therefore, to that extent whether she gets absolute rights by virtue of the Act 30 of 1956 is a question. But, the Supreme Court considered in Tulsamma's case (2nd cited supra) and held that it falls u/s 14(1). However, the learned counsel petitioner Mr. Suryanarayana relied on the decision of the Supreme Court reported in VANKAMAMIDIVENKATA SUBBA RAO Vs. CHATLAPALLI SEETHARAMARATNA RANGANAYAKAMMA³, where a widow obtained properties from her husband, prior to Act, in recognition of her pre-existing right to maintenance and in subsequent documents relating to said properties, she had acknowledged that what she obtained was a limited right with provision that property would revert to her son in those circumstances the Supreme Court held that the situation was covered by Section 14(2) and not Section 14(1). The Supreme Court observed at paras 9 and 10 as follows:

"9. It is well settled legal position that if the right by a Hindu woman under any instrument is in recognition of pre-existing right, the limited right though prescribed under the instrument, gets enlarged into an absolute right by operation of Section 14(1) of the Act. On the other hand, if a right is acquired for the first time under the document, then sub-section (2) of Section 14 gets attracted and, therefore, the right acquired under the instrument by operation of sub-section (2) of Section 14 does not get enlarged.

10. This controversy was considered by this Court in a recent judgment rendered in C. Masilamani Mudaliar and Others Vs. The Idol of Sri Swaminathaswami Swaminathaswami Thirukoli and Others, . In paragraph 27, this Court, after consideration of the entire case law, has held as under (AIR 1788 SCW 26) :

"As held by this Court, if the acquisition of the property attracts sub-section (1) of Section 14, sub-section (2) does not come into play. If the acquisition is for the first time, without any vestige of pre-existing right under the instrument, document or device etc. then sub-section (2) of Section 14 gets attracted. Sub-section (2) being in the nature of an exception, it does not engulf and wipe out the operation of sub-section (1). Sub-section (2) of Section 14 independently operates in its own sphere. The right to disposition of property by a Hindu u/s 30 is required to be understood in this perspective and if any attempt is made to put restriction upon the property possessed by a Hindu female under an instrument, document or device, though executed after the Act had come into force, it must be interpreted in the light of the facts and circumstances in each case and to construe whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she gets the rights for the first time under the instrument without any vestige of pre-existing right. If the answer is in the positive, sub-section (1) of Section 14 gets attracted. Thus construed, both sub-

sections (1) and (2) of Section 14 will be given their full play without rendering either as otiose or aids as means of avoidance."

18. The Supreme Court observed that even though under compromise decree, a limited estate was conferred on the widow, but the question was how she had understood her limited right and how she reflected the said right in the subsequent documents to which she was admittedly a party and dealt with after the Act came into force. Therefore, the conduct of the Hindu female was taken into consideration for determining the applicability of Section 14(1) and Section 14(2). The learned counsel for the appellant submits that after the settlement, Challayamma executed Registered Will Ex.B-1 dated: 18.2.1970 bequeathing her property to her sons Defendants No.1 and 2. Even in that Will, she had stated that she had acquired the properties under the settlement deed. Therefore, it has to be presumed that she had only a limited right for life. The said contention cannot be accepted. There is no evidence or documents to show that she conducted herself in a way as to treat herself as a limited owner for life. In fact after the Act came into force, she dealt with the property as if she was the full owner. That itself shows that she never gave her consent either express or tacit that she could enjoy the right during her life time. Therefore, this decision is of no help to the Appellant.

19. The learned counsel for the appellant would rely on the decision of the Supreme Court reported in DR. MAHESH CHAND SHARMA Vs. SMT. RAJ KUMARI SHARMA⁴, referring to the effect of Hindu Succession Act, 1956, the Supreme Court observed as follows:

Now, we come to the third important event, viz., the enforcement of the Hindu Succession Act and its effect. The Act came into force in June 1956. By operation of Section 14 of the said Act, the right of residence given to Satyawati in the first floor of the Doctor's Lane house ripened into an absolute title inasmuch as the said right was given to her in recognition of a pre-existing right to maintenance inhering in her. Even under the Hindu law obtaining prior to the enforcement of Hindu Adoptions and Maintenance Act, 1956, the son was under a personal obligation to maintain his mother and he was bound to maintain her whether or not he inherited property from his father. [See para 548 of Mulla's Hindu Law at p. 552 (16th Edn.).] Under the settlement, Satyawati was given not only the right of residence in the first floor but also a sum of Rs. 125.00 per month in cash towards her maintenance. It was further provided under the settlement that if Satyawati did not intend to reside in the aforesaid portion, the first defendant shall pay her Rs. 150.00 per month as maintenance instead of Rs. 125.00 per month. This clearly indicates that the right of residence was given to her in lieu of and in recognition of her pre-existing right to maintenance. Once this is so, it is Ss. (1) of Section 14 that applies and not Ss. (2) vide V. TULASAMMA Vs. SETHA REDDY. It has recently been held by a bench of this court (S.P. Bharucha, J. and one of us, S.B. Majmudar, J.) in Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others, that a right of residence given for life to a female

Hindu in a property plus a sum of money in lieu of her right to maintenance ripens into full ownership on the coming into force of the Act. Accordingly, it must be held that on the date of coming into force of the Hindu Succession Act, 1956, Satyawati became the absolute owner of the first floor of the Doctor's Lane house property."

20. Referring to the effect of Will and also the events, the Supreme Court observed as follows:

"30. WE may pause here and append a note of explanation. It is true that under the 1942 Will, the bequest to Satyawati was only for her life and the bequest to "the legal heirs of the testator", i.e., to the first defendant, vested in him on the death of the testator, as held by us and for the reasons assigned hereinbefore. But all this is subject to the statutory provisions contained in Section 14(1) of the Hindu Succession Act. This statutory provision supersedes the recitals in the Will. By virtue of Section 14(1) of the said Act, the limited estate of Satyawati (given to her under the 1942 Will) would have ripened into absolute estate if Satyawati had been "possessed" of the entire Doctor's Lane house on the date of commencement of the Hindu Succession Act. But she was not. She had given up her possession and right to possession over the ground floor under the 1955 Settlement. She was "possessed" of only the first floor of the house. Secondly, and more important, first defendant is basing his title to the Doctor's Lane house on the 1955 Settlement. As stated hereinabove, both Satyawati and the first defendant arrived at a particular settlement notwithstanding their respective claims and contentions. Satyawati never challenged the said settlement during her lifetime. The settlement cannot, therefore, be held to be involuntary or inoperative. Satyawati, in fact, acted for a number of years as the General Power of Attorney of her son, the first defendant, and managing his properties in India. Merely because in these proceedings, the 1942 Will is held to be the last and valid Will of Ram Nath, the settlement of 1955 cannot be ignored or brushed aside. It is also nobody's case that the settlement was not bona fide or that it was not acted upon. For these reasons, it must be, and is, held that Satyawati became the absolute owner only of the first floor of the Doctor's Lane house - and not of the whole house. The Plea of Limitation"

21. Even this case also does not come to the aid of the Appellants, inasmuch as, Satyawati was not found to be possessed of the entire premises when the Act came into force.

22. The learned counsel for the respondent Mr.T. Veerabhadrayya apart from relying on Tulasamma's case (2nd cited supra), he also relies on the following decisions:

The decision of the Supreme Court reported in GULLAPALLI KRISHNA DAS Vs. VISHUMOLAKALA VENKAYYA⁵, wherein it was held that whether widow was placed in possession of certain joint family properties in lieu of her right of maintenance and her right to property in question became enlarged into an

absolute estate u/s 14(1).

He also relies on the decision of the Supreme Court reported in SMT. BENI BAI Vs. RAGHUBIR PRASAD⁶. In the said case, the widow was given life interest in the disputed house in lieu of her rights to maintenance i.e. her pre-existing right and it was held that widow becomes absolute owner by virtue of the of Section 14(1) and that the Gift executed by her in favour of her daughter was held to be valid. Paras 7 and 8 are extracted below:

"(7) From the aforesaid pronouncement of law by this court, it is clear that Ss. (1 of Section 14 applies to the cases where the conferment of right on a Hindu widow was in lieu of maintenance or in recognition of her pre-existing right as provided under the Shastric law and the Hindu Women's Rights to Property Act. Sub-section (2 of Section 14 of the Act would apply only to such cases where grant conferred a fresh right or title for the first time and while conferring the said right, certain restrictions were placed by the grant or transfer.

(8) In the present case, the widow was conferred the limited right in lieu of maintenance in recognition of her pre-existing right. The limited interest conferred upon her by virtue of the will being in lieu of maintenance and in recognition of her pre-existing right, the said right transformed into an absolute right by virtue of Section 14(1) of the Act. The said right was not conferred on her for the first time. Thus Ss. (2 of Section 14 of the Act has no application to the present case. Under such circumstances, the widow became the absolute owner of House No. 27 and was fully competent to execute the gift deed in favour of her daughter. The gift deed executed by the widow was thus valid."

23. He also relies on the decision of the Supreme Court reported in SMT. VIDYA Vs. NAND RAM ALIAS ASOOP RAM⁷, wherein the Supreme Court held that expression female hindu in Section 14 of Hindu Succession Act cannot be given a restricted interpretation of wife only, observed in para 5 as follows:

"The submission that third wife would have no right to claim maintenance, hence Section 14(1) will not apply, has no merit. The language of Section 14(1) in this respect is very clear. Sub-section (1) of Section 14 refers to 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 and not as a limited owner. Smt. Durga is a female Hindu, acquired her right in lieu of maintenance, under the Will dated 30th September, 1932, executed by her husband Khimi Ram. The Explanation clarifies that property referred in Subsection (1) of Section 14 includes a property held by her in lieu of maintenance. If that be so, right of such female Hindu would be covered by Sub-section (1) making her absolute owner. The submission for the appellant is against the very language of this Sub-section. To read differently than what is referred is contrary to all canons of interpretation. To read "female Hindu" as only "wife" is totally misconceived. Both Subsection (1) and Explanation refer significantly the word "female Hindu and not wife". It would not only be too

limited an interpretation, but an interpretation against the plain language of this Sub-section (1). The interpretation is totally misconceived. From the admitted facts, as we have recorded, Smt. Durga becomes the absolute owner by virtue of Sub-section (1) of Section 14 of the 1956 Act. Once she becomes absolute owner, she can give such property to any one she likes. Another submission was made half heartedly, by the learned Counsel for the appellant, that she gave this property through a Will in favour of one Nand Ram, who was the son from her first husband, which could not be competent. This submission also has no merit. There could be no restriction on the right of Smt. Durga; once she became the absolute owner, she can give it to anyone she likes. Thus the Will dated 27th February, 1965, executed by her in favour of plaintiff Nand Ram, was validly executed. It is not in dispute that the present appellant has already got 50% of the property left by her father Khimi Ram after her mother died in the year 1965. This gives equal distribution to both."

24. He also relies on the decision of the Supreme Court reported in BAI VIJIA Vs. THAKORBHAI CHELABHAI⁸, wherein the Supreme Court relying on Tulasamma's case^(2nd cited supra), observed as follows:

"The widow's right to maintenance, though not an indefeasible right to property, is undoubtedly a "pre-existing" right. It is true that a widow's claim for maintenance does not ripen into a full-fledged right to property, but nevertheless it is undoubtedly a right which in certain cases can amount to a right to property where it is charged. It cannot be said that where a property is given to a widow in lieu of maintenance, it is given to her for the first time and not in lieu of a pre-existing right. The claim to maintenance, as also the right to claim property in order to maintain herself, is an inherent right conferred by the Hindu Law and, therefore, any property given to her in lieu of maintenance is merely in recognition of the claim or right which the widow possessed from before. It cannot be said that such a right has been conferred on her for the first time by virtue of the document conferred and before the existence of the document the widow had no vesting of a claim or right at all."

25. From reading of the above decisions, it is clear that a female Hindu who holds the property by virtue of a pre-existing right to maintenance or possess the property in the capacity referred to in Section 14(1), her limited rights enlarge into absolute rights and if the right is created for the first time, after the Act came into force, Section 14(1) would not come into play.

26. The facts in the case before us are very clear that there was a partition dehors the Will of the Testator and the properties were dealt with under a family arrangement in which Hindu female Chellayamma got schedule "E" properties with a limited right in respect of the half of the "E" schedule properties. The learned counsel for the appellant vehemently submits that the widow is entitled to enjoy only to half of the "E" schedule properties as absolute owner and the balance half for life time as per the settlement. He further submits that the settlement is binding on her and she cannot be said to acquire enlarged right in

respect of the half of the "E" schedule properties. Though the contention appears to be appealing, but a close scrutiny of the said contention with reference to the dicta laid down by the Supreme Court in the case referred above and also keeping in view the evidence adduced by the parties, it clinchingly establishes that the right in the half of the "E" schedule properties for life got enlarged by virtue of the of Section 14(1). It is no doubt true that as on the date when the settlement was entered between the parties Act 30 of 1956 was not ruling the field and what she was entitled was only the limited ownership till her life time. Mr. Suryanarayana submits that is the reason why 50 per cent of "E" schedule properties were allowed to be treated as absolute owner and the balance 50 per cent was treated as having life interest and the parties were well aware of the settlement and therefore, she cannot get the absolute ownership. But, this contention has to be rejected in the wake of the principles laid down by the Supreme Court in Tulasamma's case (2nd cited supra).

27. Admittedly "E" schedule properties fell to the share of Chellayamma and when a limited right which is sine qua non for applying Section 14(1) is conferred, the said limited right would transform into an absolute right. Admittedly, the property was acquired under a partition with a limited ownership in lieu of her pre-existing right for maintenance. . Under those circumstances, the rights fructifies into absolute right. The learned counsel Mr. Suryanarayana Murthy, however, submits that the conduct of Chellayamma was also reflective of the fact that she was entitled to enjoy the property till her life time. Therefore, the family settlement has to be respected and it has to be treated that she was having the power to exercise the right during her life time. But, this contention has to be negatived for the reason that any settlement or instrument which is in conflict with the statutory provisions has to be declared as invalid to that extent. The right which flows to her under a statute has to be allowed to reach her and it cannot be obstructed in the guise of the settlement entered prior to Act. Then in such an event, the very purpose of engrafting Section 14(1) would be frustrated in respect of the previous settlements, awards and decrees. Under those circumstances I have to necessarily reject the contention raised by the learned counsel for the appellant. Thus, I do not find any illegality or infirmity in the judgment under appeal.

28. Before closing the case, I must place on record that both the learned Senior Counsel Mr. N.V.Suryanarayana Murthy and Mr. T. Veerabhadrayya appearing for the parties in the appeal ably assisted this Court by skilfully invoking and articulating their great asset of perseverance, patience and persuasion. The greatness in advocacy not only lies in protecting the interest of his client, but also assisting and enabling the Court to arrive at a right conclusion. This Court records great appreciation for their scholarly exposition of law and hopes that junior counsel would imbibe such qualities.

29. Accordingly, the appeal is dismissed, but without costs.