In the High Court of Punjab and Haryana at Chandigarh.

RSA No.1571 of 1985

Date of decision:31.08.2007

Rati Ram and others. .... Appellants.

Versus

Basanti Devi, represented by Legal Representatives
and others.

.... Respondents.

CORAM
HON'BLE MR. JUSTICE PERMOD KOHLI.

Present: Mr.KS Yadav and Mr. BS Yadav, Advocates,
for the appellants.

Mr.Sudhir Mittal and Mr.SN Yadav, Advocates,
for the respondents.

PPERMOD KOHLI, J.

The judgment and decree dated 03.01.1985 passed by the learned District Judge, Narnaul, allowing the appeal against the judgment and decree dated 12.06.1979 passed by the learned Sub Judge IInd Class, Rewari, is impugned in this Regular Second Appeal.

The brief facts of the case are like this:-

The plaintiffs-appellants filed a suit for possession of 1/6th share of the agricultural land measuring 348 Kanals 14 Marlas alongwith

rights in Nal Chah, well, Gatwar etc. situated in the revenue estate of village Berli Khurd, Tehsil Rewari, against defendant Nos.1 to 10. They claimed share for themselves as also for defendant Nos.11 to 31. It is alleged in the plaint that one Har Narain was ancestor of the plaintiffs. He had three more brothers, namely, Jag Ram, Jas Ram and Mukh Ram. All the three brothers died issueless and Har Narain became owner of the suit property. Har Narain had four sons, namely, Udmi, Bhoru, Shadi and Murli. Murli died during the life time of Har Narain. Murli had two sons, namely Chhaju and Chiranji, who were minors at the time of death of Murli. One Sheo Lal son of Anta and Makhan son of Chunna got their names entered in the revenue record showing themselves to be sons and heirs of Har Narain. It is further alleged that their names were entered in the revenue record but the possession of the land remained with the descendants of Har Narain. Sheo Lal and Makhan applied for partition, which was stayed by the Assistant Collector First Grade, Gurgaon as in the meanwhile their title was challenged. The Assistant Collector First Grade, Gurgaon, allowed the parties to get the question of title decided in the Civil Court. The descendant of Har Narain i.e. the plaintiffs filed suit for declaration to the effect that Sheo Lal and Makhan are not the sons of Har Narain and were not the co-sharers in the suit land. This suit was dismissed by the learned trial Court vide judgment and decree dated 23.12.1929. In an appeal preferred, the learned District Judge Gurgaon, allowed the appeal and set aside the judgment and decree of the learned trial Court, vide his judgment and decree dated 21.07.1930. Second Appeal was preferred by Sheo Lal and Makhan before the Hon'ble High Court, wherein the case was remanded giving opportunity to Sheo Lal etc. to lead evidence in rebuttal before the

learned District Judge,Gurgaon, who was seized of the case. On remand, the parties entered into a compromise and a compromise decree came to be passed. In terms of this compromise, Sheo Lal was given limited right to use the land in question without any right to alienate or mortgage the same. It was further agreed that on the death of Sheo Lal without any male lineal, his surviving wife would also have the limited right in the land, which comprises of 1/6th share of the total estate of Har Narain. Under the compromise, it was also stipulated that after the death of the widow in the absence of a male lineal, the land will revert back to the plaintiffs i.e. the heirs of Har Narain, who will be entitled to take possession and Makhan will have no right over the land. It may be relevant to reproduce the extract of the compromise decree, which reads as under:-

> "After the death of Sheolal respondent without a male lineal descendant and without the survived of his widow, if any, his share in the land in dispute will revert to plaintiffs and Makhan respondent shall not be entitled to succeed him to the extent of Sheolal's share in the land in dispute and the same condition will apply if Sheolal leaves a widow who dies after coming in possession of her husband's share or in any of the case when the rights of the last holder of this share of Sheolal are extinguished. During the life time of Sheolal he will not be

> entitled to sell or mortgage his share in any case. The plaintiffs have agreed to deliver possession of the portion of the remaining land in suit in their possession to respondents by June, 1933, and the parties will bear their own costs throughout."

Sheo Lal died somewhere in the year 1961-62. On his death, mutation was entered in favour of Smt.Chhimli and daughters of Sheo Lal. Smt.Chhimli also died in the year 1976. On the death of Smt.Chhimli, the plaintiffs filed the present suit for possession of 1/6th share, which was earlier held by Sheo Lal and after his death, Smt.Chhimli, allegedly holding a limited estate.

The suit was resisted by defendants No.1 to 10, on three counts:-

> (1) That Sheo Lal was a occupancy tenant over the land by virtue of the Punjab Act No.8 of 1951, as such he is entitled to be declared as owner;
>
> (2) That after the death of Sheo Lal, his widow Smt.Chhimli acquired absolute ownership right by virtue of Section 14 (1) of the Hindu Succession Act;
>
> (3) That Sheo Lal and his successors have acquired ownership rights by way of adverse possession.

The learned trial Court vide its judgment and decree dated

12.6.1979 held that Sheo Lal was not a occupancy tenant. He came in possession of the suit property by virtue of the compromise decree and, thus, could not claim ownership rights under the Punjab Act No.8 of 1951. The plea of defendants No.1 to 10 regarding adverse possession was also not accepted. The learned trial Court also held that Smt. Chhimli is not entitled to the benefit of Section 14 (1) of the Hindu Succession Act,1956 (herein after referred as "the Act") as she had limited right under the decree of the Court and in this way the provisions of Section 14 (1) of the Act, will not apply and her estate is not enlarged into full ownership. It has also been held that the limited right granted to Smt.Chhimli is not heritable by her heirs and the same will revert to the plaintiffs in terms of the compromise decree dated 23.12.1932. The learned trial Court found that by virtue of Section 14 (2) of the Act, Smt.Chhimli's right of limited estate cannot be converted into a full fledged ownership rights.

This judgment and decree became the subject matter of challenge before the learned District Judge, Narnaul, who has reversed the same. The First Appellate Court reversed the findings of the learned trial Court as regards the right of Sheo Lal under the compromise is concerned, by holding that Sheo Lal and Makhan were entered as sons of Har Narain and, thus, they had pre-existing right and the compromise decree cannot restrict their rights. The learned First Appellate Court also ruled that by virtue of Section 14 (1) of the Act, the limited estate of Sheo Lal is enlarged into full fledged ownership rights by operation of the law and thus, the plaintiffs could not enforce the compromise decree against Smt.Chhimli and her heirs were entitled to inherit the property of

Smt.Chhimli under the Act aforesaid. The learned First Appellate Court, accordingly, set aside the judgment and decree of the learned trial Court and dismissed the suit of the plaintiffs-appellants.

I have heard the learned counsel for the parties at length and perused the record of the case.

The only question argued in this appeal is whether Smt.Chhimli had a limited right in the estate of Sheo Lal or her right matured into a full fledged ownership rights by virtue of Section 14 (1) of the Act. With a view to appreciate respective contentions of parties, it is necessary to examine Section 14 of the Hindu Succession Act. Section 14 of the Act reads as under:-

> 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."

Sub-section (1) of Section 14 of the Act, confirms full ownership rights to a female Hindu in respect to the property possessed by her whether acquired before or after the commencement of this Act. Explanation appended to Sub-section (1) of Section 14 of the Act also provides various modes of acquiring such property which is capable of convertion into a full fledged ownership. The modes provided are by inheritance or devise, partition, in lieu of maintenance including arrears of maintenance, by gift from any person, by her own skill or exertion, 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. Sub-section (2) of Section 14 of the Act, however, carves out an exception to sub-section (1) and starts with a non

abstante clause whereby provisions of sub-section (1) are not made applicable to the 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 terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Learned counsel for the appellants has vehemently argued that Smt. Chhimli had a limited interest in the property in terms of the compromise decree of the Court and, thus, she was not entitled to the benefit of Section 14 (1) of the Act as her case is squarely covered under Section 14 (2) of the Act.

On the other hand, learned counsel appearing for the respondents, has canvassed that Smt.Chhimli had a pre-existing right in the property and, thus her right cannot be restricted under the decree. According to the learned counsel, Smt.Chhimli got the property by virtue of inheritance in lieu of maintenance and, thus, her right matures into a full fledged ownership over the suit property in terms of Section 14 (1) of the Act. Learned counsel has placed reliance upon Vaddeboyina Tulasamma and others Versus Vaddeboyina Sesha Reddi (dead) by L.Rs., AIR 1977, Supreme Court, 1944, wherein the following observations have been made:-

> ".....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 S.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."

The Hon'ble Supreme Court has further observed in paragraph 4 of the judgment aforesaid as under:-

"..... 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."

On the contrary, learned counsel for the appellant had referred to a Full Bench judgment in the case of Jaswant Kaur Vs. Major Harpal Singh and others, 1977, P.L.R., 523, wherein it has been held as under:-

"7. In order to decide whether a case falls under sub-section (1) or sub-section (2) the facts of each case have to be taken into consideration. In this regard I may refer to observations of the Supreme Court in Badri Parshad v. Smt. Kanso Devi which supports the above view. It was held in that case that while determining whether a particular case is governed by sub-section (1) or sub-section (2) of Section 14, the section has to be read as a whole and it would depend on the facts of each case to come to the

conclusion as to by which section it is governed. It is further observed that sub-section (2) is more in the nature of a proviso or an exception to sub-section (1) and it comes into operation only if acquisition is by any of the methods indicated therein and made for the first time without there being any pre-existing right by the female Hindu who is in possession of the property."

Learned counsel for the appellants has also relied on Bhura and others Vs. Kashiram, AIR 1994 Supreme Court, 1202. In paragraph 6 of the judgment, it has been held as under:-

"6. The limited estate conferred upon Sarjabai by the Will (W.P.4) could not even be enlarged into an absolute estate under the Hindu Succession Act, 1956, even though she was possessed of that property at the time of the coming into force of the Hindu Succession Act, 1956. S.14 (2) of the Act mandates that nothing contained in sub-sec. (1) of S. 14 of the Hindu Succession Act, 1956 shall apply to any property acquired by way of gift or under a Will or by any other instrument prescribing a restricted right in such property. In view of our findings that the Will (Ex.P.4) itself prescribed a

> restricted right or life-estate in the property in favour of Sarjabai, that estate could not be enlarged into an absolute estate in view of the express provisions of the Hindu Succession Act, 1956.

Learned counsel for the appellants further argued, that a widow who succeeds to properties of her deceased husband on the strength of will executed by the husband in her favour cannot claim any rights in the properties other than those conferred by the will. In support of this contention learned counsel has relied upon Mst. Karmi Vs. Amru and others, AIR 1971 Supreme Court, 745. In the aforesaid case, in paragraph 2 of the judgment it is held as under:-

> "2.....The concurrent finding of the Ist Appellate Court as well as the High Court that the will executed by Jaimal on November 13, 1937, is genuine is a finding of fact and the same cannot be assailed in this Court. Nihali having succeeded to the properties of Jaimal on the strength of that will cannot claim any rights in those properties over and above that given to her under that will. The life estate given to her under the will cannot become an absolute estate under the provisions of the Hindu Succession Act. Therefore, the appellant cannot claim any title to the suit

properties on the basis of the will executed by Nihali in her favour."

Learned counsel for the appellants further argued that a consent decree cannot be interfered with or modified by the Court unless the parties agree for the same. In support of this contention, learned counsel placed reliance on Gupta Steel Industries Vs. M/s. Jolly Steel Industries Pvt. Ltd. & Anr., 1996 (2) Apex Court Journal, 696 (S.C.). Learned counsel has further placed reliance on Chanan Singh and others Vs. Balwant Kaur and others, AIR 1984, Punjab and Haryana, 203. In paragraphs 10 and 11 of the judgment it is held as under:-

"10.....It was clearly provided in the Will that after her death her one-third share will revert back to the other two legatees under the Will or their male descendants. Thus, the question of restricting any rights of alienation etc. of Balwant Kaur as such did not arise because she was never made the absolute owner under the Will, and, therefore, the authorities referred to above, as stated earlier, have no applicability to the facts of the present case. Moreover, it will be pertinent to note that Balwant Kaur defendant appeared as D.W.1 and categorically admitted that she was given only the life estate in the suit property.

> 11. Under these circumstances, in view of the provision of S.14 (2) of the Hindu Succession Act, she could not claim herself to be the absolute owner after the death of her father Sham Singh, because in the Will Exhibit P-1 she was only given life estate during her lifetime."

The test laid down by the Hon'ble Apex Court to differentiate between the rights under Sub-section (1) of Section 14 and Sub-section (2) of Section 14 of the Act is where a female had a pre-existing right in the property devolved/acquired with limited estate; she will be entitled to be conferred with full ownership right under Section 14 (1) of the Act. However, where a female acquires a right by virtue of an instrument, gift, will or a decree or order of a Court for the first time with restrictions on the right, Sub-section 14 (2), will apply.

Now the question arises is whether Smt. Chhimli, widow of Sheo Lal, had any pre-existing right or she acquired the right under the compromise decree alone.

A perusal of the compromise deed itself reveals that Smt.Chhimli was to acquire right on the death of Sheo Lal, her husband. Sheo Lal himself had a limited right in the property as during his life time, he could not even sell, alienate or mortgage the land. His successors including his wife Smt.Chhimli, could have acquired ownership right only in the event of a male lineal is born. It is admitted case of the parties that there was no male issue out of the wedlock of Sheo Lal and Smt.Chhimli. They had only daughters, whose successors are defendants No.1 to 10.

There is nothing on record to show that the property in the hands of Smt.Chhimli came in lieu of maintenance or on account of arrears of maintenance. As a matter of fact, the property in her hands came as a successors of Sheo Lal. Smt.Chhimli could not have acquired a better right than Sheo Lal had in the property in dispute. Right of Sheo Lal as also Smt.Chhimli flow from the decree. They were given possession of the land only after the compromise decree came to be passed and, thus, the restrictions imposed on the rights of Sheo Lal and Smt.Chhimli under the decree have to operate as it was not in recognition of pre-existing right. This is particularly in case of Smt.Chhimli that she acquired right by virtue of the compromise decree. The findings of the learned First Appellate Court to the effect that Sheo Lal had pre-existing right, are erroneous in law. Since Smt.Chhimli acquired right under the decree with restrictions and coupled with facts that she has acquired the land from Sheo Lal, who himself had also a limited estate, her right cannot mature into full fledged ownership by virtue of Section 14 (1) of the Act. In the present case, Section 14 (2) of the Act, will apply and not Section 14 (1) of the Act.

In view of the above, this appeal is allowed. The impugned judgment and decree dated 03.01.1985, passed by the learned District Judge, Narnaul, is hereby set aside and that of the learned trial Court is restored. However, the parties are left to bear their own costs.

(PERMOD KOHLI)
JUDGE

August 31 , 2007.
BLS

Note: Whether to be referred to the Reporter: YES