2024:HHC:4134

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. : 114 of 2007

Reserved on : 13.06.2024

Decided on : 28.06.2024

Ram Pyari ...Appellant

Versus

Amar Singh and others ...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] *Yes.*

For the appellant : Ms. Sunita Sharma, Senior Advocate, with Mr. Dhananjay Sharma and Mr. Twarsu, Advocates.

For the respondents : Mr. Rajesh Kumar Gautam and Mr. Pawan Gautam, Advocates, for respondents No. 1 to 6.

None for respondents No. 7 to 12.

Virender Singh, Judge.

Appellant-Ram Pyari has filed the present Regular Second Appeal, before this Court, against the judgment and

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

decree, dated 7th July, 2004, passed by the Court of learned District Judge, Bilaspur, Himachal Pradesh (hereinafter referred to as 'the First Appellate Court'), in Civil Appeal No. 71 of 1997, titled as Rampyari versus Amar Singh and others.

2. Vide judgment and decree, dated 7th July, 2004, the learned First Appellate Court has dismissed the appeal, filed by appellant-Rampyari, against the judgment and decree, dated 29th May, 1997, passed by the Court of learned Sub Judge First Class, Bilaspur, H.P. (hereinafter referred to as 'the trial Court'), in Case No. 29/1 of 1993, titled as Amar Singh and another versus Ram Piari and others.

3. By way of judgment and decree, dated 29th May, 1997, the suit filed by the plaintiffs has partly been decreed, by the learned trial Court, by granting the following relief:

> *"34. For the reasons recorded hereinabove while discussing abovesaid issues, the suit of the plaintiffs is partly decreed to the effect that plaintiffs are joint owners in possession alongwith defendant Ram Piari and Daya Ram qua the suit land comprised in khata No. 16, khatauni No. 16, khasra Nos. 21, 164, 177 and 255 (kita 4) measuring 8 bighas situated at village Tarer, Tehsil Sadar, Distt. Bilaspur H.P. and the revenue entries i.e. Jamabandi showing Ram Piari exclusive owners in possession qua the*

> *suit land are hereby set aside. Further plaintiffs are entitled to the decree of permanent prohibitory injunction to the effect that defendant Ram Piari is hereby restrained from claiming herself exclusive owners in possession of the suit land. Both the parties shall bear their own costs. Decree sheet be prepared accordingly. File after needful be consigned to record room."*

4. For the sake of convenience, parties to the present *lis*, are, hereinafter, referred to, in the same manner, in which, they were referred to, by the learned trial Court.

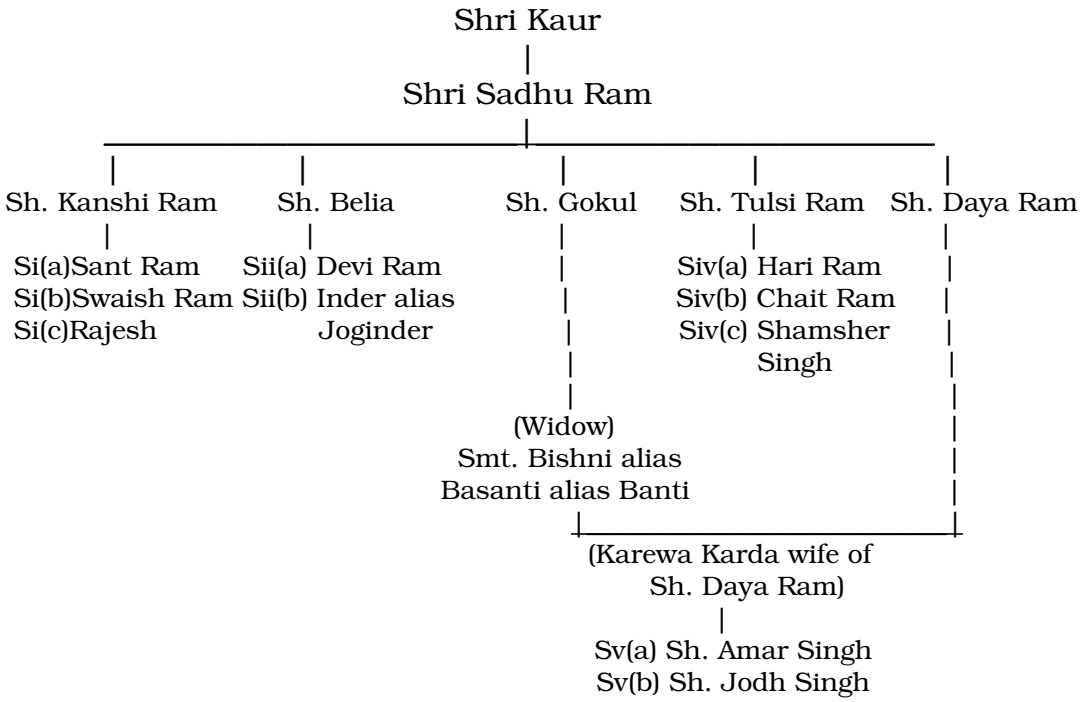
5. Brief facts, leading to the filing of the present appeal, before this Court, may be summed up, as under:

5.1. Plaintiffs-Amar Singh and Jodh Singh have filed the suit for declaration to the effect that the plaintiffs are joint owners and in self cultivating and peaceful possession of an agricultural piece of land, measuring 8 bighas, comprised in khata No. 16, khatauni No. 16, khasra Nos. 21, 164, 177 and 255, as per the jamabandi for the year 1989-90, situated in Mauja Tarer, Tehsil Sadar, District Bilaspur, H.P. (hereinafter referred to as the 'suit land'), as successors, being Class-I heirs, of the estate of their deceased mother, Smt. Bishani alias Banti alias Basanti.

5.2. The plaintiffs have also sought declaration to the effect that the revenue entries, pertaining to the mutation of inheritance of the estate of deceased mother of the plaintiffs, in favour of defendant No. 1, vide mutation No. 92, purportedly sanctioned on 25th March, 1963, and subsequent revenue entries be declared as paper entries and result of well planned conspiracy and fraud, committed on 23rd May, 1973, by defendant No. 2, the adoptive father of defendant No. 1, in connivance with the revenue officials and one Nand Lal, who falsely projected himself to be Lambardar Deh.

5.3. The plaintiffs have also sought the declaration qua the revenue entries, not binding upon the rights of the parties, with consequential relief of permanent prohibitory injunction, restraining the defendants from interfering with the peaceful and cultivating possession of the suit land, in any manner.

5.4. It has been averred in the plaint that the plaintiffs are the Kanait Rajput by caste. The family tree of the plaintiffs has been reproduced, in the plaint, which reads as under:



5.5. It is the case of the plaintiffs that Smt. Bishani alias Banti alias Basanti (hereinafter referred to as 'Bishani'), was married to Sh. Gokul, s/o Sh. Sadhu Ram, r/o Village Tarer. Said Sh. Gokul died issueless, in the year 1954 and his share in the joint ancestral property was inherited by his widow, Smt. Bishani, vide mutation No. 82, which was sanctioned on 13th May, 1954.

5.6. According to the plaintiffs, defendant No. 1-Ram Piari was born to Smt. Bishani, widow of Sh. Gokul, in October, 1954. Defendant No. 2 is stated to the real brother of Smt. Bishani. When, defendant No. 1-Ram Piari was born in the year 1952, defendant No. 2 was issueless, as no child

had born to him, despite having lived married life for years. Smt. Bishani agreed to the proposal of defendant No. 2 to give her newly born daughter (defendant No. 1), in adoption, to defendant No. 2 and thereafter, adoption ceremonies were conducted in the presence of family members.

5.7. Defendant No. 1 is stated to be brought up in the family of defendant No. 2, as his adopted daughter. Thereafter, she was married to one Amar Singh Chandel, after attaining the age of marriage.

5.8. It is the further case of the plaintiffs that Kanait Rajputs of Bilaspur District are governed by customary law law, including the custom of remarriage of the widow, in the family itself, by performing karewa marriage. According to the plaintiffs, Smt. Bishani, in the year 1958, solemnized karewa marriage with Daya Ram, who, as per the pleadings, was younger brother of Sh. Gokul. Karewa marriage was performed by offering *chaadar* and *nath* (nose ring), to Smt. Bishani, in the presence of family members. After the said marriage, Smt. Bishani and Sh. Daya Ram were blessed with two sons, i.e. the plaintiffs. Plaintiff No. 1 is stated to have been born on 21st March, 1959 and plaintiff No. 2 was born

on 5th March, 1962. Smt. Bishani is stated to have expired on 19th August, 1962.

5.9. These facts have been asserted by the plaintiffs to show that at the time of death of their mother, Smt. Bishani, only the plaintiffs, being the Class-I heirs, were entitled to succeed the estate of their mother-Smt. Bishani, however, since, the plaintiffs were minors, at that time, as such, the suit land was being cultivated by their father, being their natural guardian, on their behalf.

5.10. It has been further pleaded that although the plaintiffs and defendant No. 1 are uterine siblings, however, her relation is stated to be severed with her biological mother, after her adoption, in the year 1954. Despite this fact, according to the plaintiffs, they have given due respect to defendant No. 1, as given to a sister.

5.11. In the month of September, 1990, as per the pleaded case, defendant No. 1 visited the house of plaintiffs, alongwith her husband and children, when, she had expressed her concern about the rising prices and high cost of living and disclosed her indigent circumstances. Consequently, as a gesture of goodwill, on the advice of their

father, they decided to help defendant No. 1, by giving her food grains etc. The plaintiffs, according to them, have started giving one third of the agricultural produce and income from the ghasni to defendant No. 1.

5.12. The plaintiffs have further pleaded that in the month of May, 1993, defendant No. 1 again visited plaintiff No. 1 and requested him to give one third of the suit land for cultivation. Similar demand has also been made by her in the month of June, 1993. Thereafter, the plaintiffs obtained the revenue record and came to know about the fact on 9th June, 1993, that vide mutation, which was sanctioned on 25th March, 1963, estate of the mother of the plaintiffs stood devolved in the name of defendant No. 1, by way of inheritance.

5.13. The plaintiffs have also highlighted the fact that at the time of sanctioning the mutation, one Nand Lal, Lambardar Deh, was also present. The said mutation is stated to be a result of well planned conspiracy and fraud, played upon the plaintiffs, who were minor, at that time, by defendant No. 2, the adoptive father of defendant No. 1, in connivance with the revenue officials and said Nand Lal.

5.14. Elaborating the said fraud, according to the plaintiffs, Sh. Nand Lal was not the Lambardar of Deh (Village Tarer). No notice, whatsoever, is stated to have been given to the plaintiffs, at the time of sanctioning the mutation.

5.15. Apart from this, the plaintiffs have also asserted the fact that defendant No. 1 moved a complaint against plaintiff No. 2 and his father, with Police Station Sadar. Consequently, they were summoned to Police Station on 21st June, 1993 and were forced to sign the compromise.

5.16. The plaintiffs have also asserted the fact that from the date of death of Smt. Bishani, on 19th August, 1962, the plaintiffs are in open, hostile, notorious, uninterrupted, continuous, peaceful possession, which is stated to be adverse, not only against the whole world, but, also against defendant No. 1. The plaintiffs have claimed the title over the suit land, by way of adverse possession.

5.17. The cause of action is stated to have been accrued on 19th August, 1962, when the mother of the plaintiffs died, leaving behind the plaintiffs, as her successors (class-I heirs)

and finally, on 9th May, 1993, when, fraud played upon the plaintiffs, came to their notice/knowledge.

6. When put to notice, the suit has only been contested by defendant No. 1.

7. Defendant No. 1 has filed her separate written statement, in which, she has taken the preliminary objections that the suit is not maintainable; suit is time barred, Smt. Bishani, when contracted customary marriage with Sh. Daya Ram, by way of *nath chaddar,* the forfeiture of her estate followed automatically, unless a custom, according to which, there is no forfeiture, is pleaded.

7.1. Apart from this, preliminary objections, with regard to estoppel, *locus standi* and cause of action have also been taken by defendant No. 1.

7.2. On merits, relationship between the parties has not been disputed. Defendant No. 1 has also admitted that her mother has solemnized her second marriage with Daya Ram, after the death of Sh. Gokul and re-asserted the fact that the second marriage of Smt. Bishani has forfeited her rights in the estate, which she has inherited from Sh. Gokul and these rights had vested in the name of defendant No. 1.

7.3. The alleged adoption of defendant No. 1 by defendant No. 2 has specifically been denied by defendant No. 1, by admitting that defendant No. 2 was the real brother of Smt. Bishani (mother of defendant No. 1). The allegations, with regard to the performance of adoption ceremonies and that of fraud have also been denied. Thus, a prayer has been made to dismiss the suit.

8. The other defendants have not opted to file the written statement.

9. The plaintiffs have filed the replication, denying the preliminary objections, as well as, the contents of the written statement, by virtue of which, the suit has been contested, by re-asserting that of the plaint.

10. From the pleadings of the parties, the following issues were framed/re-framed, by the learned trial Court, vide orders, dated 2nd April, 1994/20th December, 1996:

> *"1. Whether the plaintiffs are joint owners in self cultivating possession of the suit land as Class-I heir of Smt. Bishni deceased as alleged?*
>
> *OPP*
>
> *2. Whether sanctioning of mutation No. 92 of inheritance of the estate of Smt. Bishni in favour of defendant No. 1 and subsequent revenue entries are only paper entries and the result of well planned conspiracy and fraud played upon plaintiffs during their minority as alleged?*
>
> *OPP*

3. Whether defendant No. 1 was given in adoption by Smt. Bishani, by performing the ceremony of giving and taking?

OPP

4. Whether Smt. Bishani re-married Sh. Daya Ram as per custom pleaded in para No. 9 and 10 of the plaint?

OPP

5. Whether the plaintiffs are entitled to the relief of permanent prohibitory injunction as prayed for?

OPP

6. Whether the suit is within limitation?

OPP

7. Whether the suit is liable to be dismissed in view of preliminary objection No. 3?

OPD

8. Whether the plaintiffs are estopped from filing this suit by their act and conduct?

OPD

9. Whether plaintiffs have no right to file this suit in view of preliminary objection No. 5?

OPD

10. Whether the suit in the present form is not maintainable?

OPD

11. Whether Smt. Bishani forfeited all her rights in the estate which she inherited from Gokal after her second marriage with Daya Ram as alleged?

OPD (onus objected)

11-A. Whether the plaintiffs have acquired title over the suit land on the basis of adverse possession as alleged?

OPP

12. Relief."

11. Thereafter, parties to the *lis* were directed to adduce the evidence. Consequently, both the parties have led oral, as well as, documentary evidence.

12. The learned trial Court, after perusal of the evidence and on hearing the learned counsel for the parties, vide judgment and decree, dated 29th May, 1997, has decreed the suit of the plaintiffs partly, by granting the relief, as reproduced above.

13. Feeling aggrieved from the said judgment and decree, the plaintiffs have assailed the same, by way of First Appeal, before the learned First Appellate Court, however, the said appeal has been dismissed, vide judgment and decree, dated 7th July, 2004.

14. Aggrieved from the said judgment and decree, the present Regular Second Appeal has been preferred, before this Court, mainly on the ground that the judgment and decree passed by the learned trial Court and affirmed by the learned First Appellate Court, is against the bare provisions of Hindu Succession Act, 1956.

15. The findings of the learned Courts below have further been assailed on the ground that the learned Courts below have failed to consider the fact that when Sh. Gokul died, defendant No. 1 was in womb and as per Section 20 of the Hindu Succession Act, she shall have the same right to inherit the property to the intestate, as, if she had been born before the death of intestate.

16. The findings of the learned trial Court, on issue No. 6, have been challenged, on the ground that when the mutation, Ex. P-6, was in the knowledge of the plaintiffs, then their suit, which was filed after thirty years, is barred by limitation.

17. According to the appellant-defendant No. 1, the learned trial Court has not considered the fact that the plaintiffs are sons of Sh. Daya Ram from his wife, Smt. Chamkho. The learned trial Court is stated to have wrongly held that issues No. 7 to 11 have not been pressed by defendant No. 1.

18. The findings of the learned trial Court have also been assailed on the ground that it has wrongly been held that she is entitled to one third share in the property.

19. On the basis of the above facts, a prayer has been made to allow the appeal, by setting aside the judgment and decree, passed by the learned trial Court, and, affirmed by the learned First Appellate Court.

20. The present Regular Second Appeal has been admitted, by this Court, on the following substantial question of law, vide order, dated 18th May, 2007:

> *"1. Whether the judgment and decree of the learned courts below is against the provisions of Sections 15 and 20 of the Hindu Succession Act?"*

21. In this case, from the record, it is not in dispute that Smt. Bishani (mother of defendant No. 1-Ram Pyari) was married to Sh. Gokul. It has also not been disputed that Sh. Gokul expired in the year 1954. At that time, Sh. Gokul left behind his widow, Smt. Bishani. Defendant No. 1-Ram Pyari born after the death of Sh. Gokul. Although, a futile attempt has been made to show that defendant No. 1-Ram Pyari was adopted by her maternal uncle (mama), but, on the record, there is no such evidence adduced. Hence, the learned trial Court has rightly appreciated the evidence, adduced by the parties, in this regard.

22. In the absence of any evidence, mere pleading the fact that defendant No. 1-Ram Pyari was given in adoption, by her mother to defendant No. 2, cannot be taken as gospel truth, merely on the basis of pleadings.

23. In para-10 of the plaint, it has been pleaded that Smt. Bishani had solemnized customary marriage (Krewa marriage) with Sh. Daya Ram, s/o Sh. Sadhu Ram, who was younger brother of Sh. Gokul. Thereafter, the plaintiffs born on 21st March, 1959 and 5th March, 1962.

24. Considering the above admitted position, this Court is of the view that the succession never remains in abeyance and the law, prevalent, at the time, when succession opens, will apply. The Hindu Succession Act was not applicable, when, Shri Gokul died. The Hindu Succession Act came into force on 17th June, 1956.

25. Although, a futile attempt has been made by the plaintiffs, to plead that Sh. Gokul died issueless, but, it has been proved that defendant No. 1-Ram Pyari is the daughter of Sh. Gokul and Smt. Bishani and as such, it cannot be said that Sh. Gokul died issueless. Merely, that defendant No. 1 has born alive after the death of Sh. Gokul does not

mean that Sh. Gokul died issueless. Hence, defendant No. 1-Ram Pyari is proved to be the daughter of Sh. Gokul and Smt. Bishani.

26. In the year 1954, when, Sh. Gokul expired, the Hindu Women's Rights to Property Act, 1937 was applicable. Sh. Gokul died intestate and as per the provisions of Section 3 (2) of the Hindu Women's Rights to Property Act, his estate devolved upon his widow-Smt. Bishani (mother of defendant No. 1-Ram Pyari).

27. The provisions of Section 3 of the Hindu Women's Rights to Property Act, are reproduced, as under:

> *"**3. Devolution of property.** - (1) When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow, all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son:*
>
> *Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a sons son if there is surviving a son or sons son of such predeceased son:Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.*
>
> *(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga School or*

> *by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.*
>
> *(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.*
>
> *(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act, 1925, applies."*

28. The Hindu Women's Rights to Property Act puts the widow as a member of the joint family, in the place of her husband and the husband's interest in the joint family, in Mitakshra Law, though, undefined, vest immediately, upon his death, on the widow. Sh. Gokul was not having any son, at the time of his death and he was survived by his widow and daughter. As per the provisions of Section 3 (2) of the Hindu Women's Rights to Property Act, the estate of Sh. Gokul does not devolve by survivorship. As per the Hindu Women's Right to Property Act, defendant No. 1 will not inherit the estate of Sh. Gokul.

29. The provisions of the Hindu Women's Rights to Property Act have elaborately been discussed by the Hon'ble Supreme Court, in case, titled as **Satrughan Isser versus Sabujpari and others,** reported in **AIR 1967 Supreme Court 272.** Relevant paras-4 and 7, of the judgment, are reproduced, as under:

> *"4. The Act seeks to make fundamental changes in the concept of a coparcenary and the rights of members of the family in coparcenary property. The Hindu law as laboriously developed by the Anglo-Indian Courts in the light of certain basic concepts expounded by the ancient law givers, had acquired a degree of consistency and symmetry. The Act in investing the widow of a member of a coparcenary with the interest which the member had at the time of his death has introduced changes which are alien to the structure of a coparcenary. The interest of the widow arises not by inheritance, nor by survivorship, but by statutory substitution : Lakshmi Perumallu v. Krishnavenamma [AIR (1965) SC 825] . Her interest in the property is the limited interest known as a Hindu woman's estate, but the Act gives her the same power to claim partition as a male owner has. The Act is however silent about the mode of devolution of the property obtained on partition, on termination of her estate, about the rights of the surviving coparceners qua the interest vested in the widow, about the rights of the widow qua the interest of the surviving coparceners, and about several other matters. To resolve the problem raised before us, we may in the first instance refer to the principal characteristics of a Hindu coparcenary and of the limited estate held by Hindu females known as a Hindu women's estate.*
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> * * *

7. By the Act certain antithetical concepts are sought to be reconciled. A widow of a coparcener is invested by the Act with the same interest which her husband had at the time of his death in the property of the coparcenary. She is thereby introduced into the coparcenary, and between the surviving coparceners of her husband and the widow so introduced, there arises community of interest and unity of possession. But the widow does not on that account become a coparcener : though invested with the same interest which her husband had in the property she does not acquire the right which her husband could have exercised over the interest of the other coparceners. Because of statutory substitution of her interest in the coparcenary property in place of her husband, the right which the other coparceners had under the Hindu law of the Mitakshara school of taking that interest by the rule of survivorship remains suspended so long as that estate enures. But on the death of a coparcener there is no dissolution of the coparcenary so as to carve out a defined interest in favour of the widow in the coparcenary property : Lakshmi Perumallu v. Krishnavanamma [AIR (1965) SC 825] . The interest acquired by her under Section 3(2) is subject to the restrictions on alienation which are inherent in her estate. She has still power to make her interest definite by making a demand for partition, is a male owner may. If the widow after being introduced into family to which her husband belonged does not seek partition, on the termination of her estate her interest will merge into the coparcenary property. But if she claims partition, she is severed from the other members and her interest becomes a defined interest in the coparcenary property, and the right of the other coparceners to take that interest by survivorship will stand extinguished. If she dies after partition or her estate is otherwise determined, the interest in coparcenary property which has vested in her will devolve upon the heirs of her husband. It is true that a widow obtaining an interest in coparcenary property by Section 3(2) does not inherit that interest but once her interest has ceased to have the character of undivided interest

> *in the property, it will upon termination of her estate devolve upon her husband's heirs. To assume as has been done in some decided cases that the right of the coparceners to take her interest on determination of the widow's interest survives even after the interest has become definite, because of a claim for partition, is to denude the right to claim partition of all reality."*
> *(self emphasis supplied)*

30. In view of the above, when, Sh. Gokul died, Smt. Bishani acquired the limited interest, known as a Hindu woman's estate/limited estate, in the suit land.

31. Smt. Bishani, thereafter, solemnized customary marriage with Sh. Daya Ram, s/o Sh. Sadhu Ram, in the year 1958. The above factual position, which has been pleaded in para 10 of the plaint, has not been disputed by defendant No. 1-Ram Pyari. The fact, which has been admitted, need not be proved by the opposite party.

32. The date of marriage of Smt. Bishani, with Sh. Daya Ram, in the year 1958, assumes significance, as, after the death of Sh. Gokul, Smt. Bishani had acquired the limited interest, regarding the suit land, which is known as a Hindu woman's estate. In the meantime, Hindu Succession Act, 1956 came into force on 17th June, 1956. This Act has brought some fundamental and radical changes in the law of

succession, relating to intestate succession among Hindus. The Hindu Succession Act lays down a uniform and comprehensive system of inheritance and applies, *inter alia,* to persons, governed by Mitakshra and Dayabagha School.

33. In view of the provisions of Section 14 of the Hindu Succession Act, the limited interest of Smt. Bishani in the suit property enlarged into her absolute interest.

34. The provisions of Section 14 of the Hindu Succession Act, are reproduced, 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."*

35. The Hon'ble Supreme Court, in case, titled as, **Bai Vajia (dead) by LRs. Versus Thakorbhai Chelabhai and others, reported in (1979) 3 Supreme Court Cases 300,** has elaborately discussed the provisions of Section 14 of the Hindu Succession Act. Relevant paras-14 to 16, of the judgment, are reproduced, as under:

> *"14. A plain reading of sub-section (1) makes it clear that the concerned Hindu female must have limited ownership in property, which limited ownership would get enlarged by the operation of that sub-section. If it was intended to enlarge any sort of a right which could in no sense be described as ownership, the expression "and not as a limited owner" would not have been used at all and becomes redundant, which is against the well-recognised principle of interpretation of statutes that the Legislature does not employ meaningless language. Reference may also be made in this connection to Eramma v. Verrupanna [AIR 1966 SC 1879 : (1966) 2 SCR 626, 630, 631] wherein Ramaswami, J., speaking on behalf of himself, Gajendragadkar, C.J., and Hidayatullah, J., interpreted the sub-section thus:*
>
> > *"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. 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."

15. This interpretation of sub-section (1) was cited with approval in Mangal Singh v. Shrimati Rattno [AIR 1967 SC 1786 : (1967) 3 SCR 454, 465] by Bhargava, J., who delivered the judgment of the Court and observed:

"This case also, thus clarified that the expression 'possessed by' is not intended to apply to a case of mere

possession without title, and that the legislature intended this provision for cases where the Hindu female possesses the right of ownership of the property in question. Even mere physical possession of the property without the right of ownership will not attract the provisions of this section. This case also, thus, supports our view that the expression 'possessed by' was used in the sense of connoting state of ownership and, while the Hindu female possesses the rights of ownership, she would become full owner if the other conditions mentioned in the section are fulfilled. The section will, however, not apply at all to cases where the Hindu female may have parted with her rights so as to place herself in a position where she could, in no manner, exercise her rights of ownership in that property any longer."

16. Limited ownership in the concerned Hindu female is thus a sine qua non for the applicability of sub-section (1) of Section 14 of the Act but then this condition was fully satisfied in the case of Tulasamma to whom the property was made over in lieu of maintenance with full rights of enjoyment thereof minus the power of alienation. These are precisely the incidents of limited ownership. In such a case the Hindu female represents the estate completely and the reversioners of her husband have only a spes successionis i.e. a mere chance of succession, which is not a vested interest and a transfer of which is a nullity. The widow is competent to protect the property from all kinds of trespass and to sue and be sued for all purposes in relation thereto so long as she is alive. Ownership in the fullest sense is a sum-total of all the rights which may possibly flow from title to property, while limited ownership in its very nature must be a bundle of rights constituting in their totality not full ownership but something less. When a widow holds the property for her enjoyment as long as she lives,

> *nobody is entitled to deprive her of it or to deal with the property in any manner to her detriment. The property is for the time being beneficially vested in her and she has the occupation, control and usufruct of it to the exclusion of all others. Such a relationship to property in our opinion falls squarely within the meaning of the expression "limited owner" as used in sub-section (1) of Section 14 of the Act. In this view of the matter the argument that the said sub-section did not apply to Tulasamma case for the reason that she did not fulfil the condition precedent of being a limited owner is repelled."*
>
> *(self emphasis supplied)*

36. Similar view has again been taken by the Hon'ble Supreme Court, in case, titled as **V. Tulasamma and others versus Sesha Reddy (dead) by L.Rs.,** reported in **(1977) 3 Supreme Court Cases 99.** Relevant para-28 of the judgment, is reproduced, as under:

> *"28. Hukam Singh and Sukh Ram were two brothers. Chidda, the second appellant was the son of Sukh Ram and thus Chidda, Hukam Singh and Sukh Ram were members of a joint Hindu family governed by the Benares School of Mitakshara Law. Hukam Singh died in 1955 leaving behind his widow Krishna Devi. On December 15, 1956, Krishna Devi sold half share of the house belonging to the joint family. This sale was challenged by the other members of the joint family on the ground that Krishna Devi had merely a life interest. The question raised was whether Krishna Devi acquired an absolute interest in the properties after coming into force of the Hindu Succession Act, 1956. It was argued before this Court that according to the Benares School, a male coparcener was not entitled to alienate even for value his undivided interest in the coparcenary without the consent of other*

coparceners and, therefore, Krishna Devi could not have higher rights than what her husband possessed. This Court, however, held that in view of the express words of Section 14 of the 1956 Act, once the widow was possessed of property before or after the commencement of the Act, she held it as full owner and not as a limited owner and, therefore, any restriction placed by Shastric Hindu law was wiped out by the legislative intent as expressed in the Act of 1956. The Court observed thus:

> *"But the words of Section 14 of the Hindu Succession Act are express and explicit: thereby a female Hindu possessed of property whether acquired before or after the commencement of the Act holds it as full owner and not as a limited owner. The interest to which Krishna Devi became entitled on the death of her husband under Section 3(2) of the Hindu Women's Right to Property Act, 1937, in the property of the joint family is indisputably her 'property' within the meaning of Section 14 of Act 30 of 1956, and when she became 'full owner' of that property she acquired a right unlimited in point of user and duration and uninhibited in point of disposition."*

This case indirectly supports the view that if the intention of the Legislature was to confer absolute interest on the widow, no limitation can be spelt out either from the old Shastric law or otherwise which may be allowed to defeat the intention. This Court went to the extent of holding that the words in Section 14(1) are so express and explicit that the widow acquired a right unlimited in point of user, though a male member governed by the Benares school had no power of alienation without the consent of other coparceners. Under the Act the female had higher powers than the male because the words of the statute did not contain any limitation at all. On a parity of reasoning, therefore, where once a property is given to the widow in lieu of, maintenance and she enters into possession of that property, no

amount of restriction contained in the document can prevent her from acquiring absolute interest in the property because the contractual restriction cannot be higher than the old Hindu Shastric law or the express words of the Act of 1956."

37. On the enforcement of Hindu Succession Act on 17th June, 1956, the limited interest/estate of Smt. Bishani enlarged into her absolute interest and the fact that she had solemnized customary marriage with Sh. Daya Ram, in the year 1958, does not have any effect on the rights of Smt. Bishani.

38. Smt. Bishani expired on 19th August, 1962 and on her death, her estate would devolve, as per the provisions of Section 15 of the Hindu Succession Act.

39. So far as the stand of the plaintiffs, that they are born from the womb of Smt. Bishani, is concerned, the customary marriage of Smt. Bishani with Sh. Daya Ram has not been disputed even by defendant No. 1, as, she has admitted all these facts in para 10 of the written statement.

40. Plaintiff No. 1 has been proved to be born on 21st March, 1959 and plaintiff No. 2 has been proved to be born on 5th March, 1962, during the subsistence of the marriage between Sh. Daya Ram and Smt. Bishani.

41. As per the provisions of Section 112 of the Indian Evidence Act, the birth, during marriage, is an exclusive proof of legitimacy. The provisions of Section 112 of the Indian Evidence Act, are reproduced, as under:

> *"**112. Birth during marriage, conclusive proof of legitimacy.** - The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."*

42. Although, the onus was upon defendant No. 1 to prove that the plaintiffs are not born out of the wedlock of Smt. Bishani with Sh. Daya Ram, however, if the statements of PW-8, PW-9, PW-10 and PW-11 are seen, in the touchstone of Section 50 of the Indian Evidence Act, then, the plaintiffs have probabilized their case that they are the sons of Sh. Daya Ram and Smt. Bishani. All the above witnesses are from the village of the plaintiffs and as such, the above witnesses can be having the special knowledge, regarding the relationship of the plaintiffs with Smt. Bishani.

43. The evidence of DW-1, Ram Pyari (defendant No. 1) is too short to prove that the plaintiffs are sons of second

wife of Sh. Daya Ram, namely, Janki Devi, as, the said fact is beyond the pleadings.

44. The plaintiffs have pleaded the fact that they are the sons of Sh. Daya Ram and Smt. Bishani, in para 11 of the plaint. The contents of para 11 of the plaint have evasively been denied by defendant No. 1 that they are not the sons of Smt. Bishani. As such, the assertion of DW-1, Ram Pyari, qua the fact that the plaintiffs are the sons of Sh. Daya Ram and Janki Devi, cannot be accepted, as, evasive denial amounts to admission, as, defendant No. 1-Ram Pyari was not under any legal disability.

45. Not only this, defendant No. 1, while appearing as DW-1, has admitted that she had written letters, Ex. P-14 and P-16, to the plaintiffs. In those letters, she has referred the plaintiffs as her brothers.

46. The stand of defendant No. 1 that when, Smt. Bishani solemnized customary marriage with Sh. Daya Ram, in the year 1958, she has been divested from the estate of her husband, Sh. Gokul, is liable to be rejected straightaway, as, the custom has not been proved by defendant No. 1.

47. The Hon'ble Supreme Court, in a case, titled as **Cherotte Sugathan (D) by L.Rs. & Ors. versus Cherotte Bharathi & Ors.,** reported in **AIR 2008 Supreme Court 1467,** has held that the subsequent re-marriage by widow does not divest her of property. Relevant para-13 of the judgment, is reproduced, as under:

> *"13. Succession had not opened in this case when the 1956 Act came into force. Section 2 of the 1856 Act speaks about a limited right but when succession opened on 2-8-1976, the first respondent became an absolute owner of the property by reason of inheritance from her husband in terms of sub-section (1) of Section 14 of the 1956 Act. Section 4 of the 1956 Act has an overriding effect. The provisions of the 1956 Act, thus, shall prevail over the text of any Hindu Law or the provisions of the 1856 Act. Section 2 of the 1856 Act would not prevail over the provisions of the 1956 Act having regard to Sections 4 and 24 thereof."*

48. Judging the facts and circumstances of the present case, in view of the decision of the Hon'ble Supreme Court, in **Cherotte Sugathan**'s case (supra), this Court is of the view that Smt. Bishani had acquired the absolute interest in the property of her husband, Sh. Gokul, under Section 14(1) of the Hindu Succession Act, and, her re-marriage/customary marriage, with Sh. Daya Ram, in the year 1958, cannot take away her right, merely on this count,

out of the suit property. On 17th June, 1956, Smt. Bishani became absolute owner of the estate of Sh. Gokul.

49. No other point urged or argued.

50. In view of the discussion made above, this Court is of the opinion that the learned trial Court has rightly granted relief to the plaintiffs, in view of Section 15 (1) (a) of the Hindu Succession Act. The appeal, under Section 96 of the CPC has rightly been dismissed by the learned First Appellate Court.

51. Consequently, the substantial question of law is decided against the appellant and the final conclusion drawn by the learned trial Court is upheld, but, for the reasons, recorded hereinabove.

52. Pending miscellaneous applications are also disposed of accordingly.

53. Decree sheet be prepared accordingly.

54. Record be sent back.

(Virender Singh)
Judge

June 28, 2024
(rajni)