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Commissioner of Income-tax Bombay City I v. Bai Shirinbai K. Kooka

Sarkar J.

that the assessee's Taxable profits on the sale of the shares earlier held as investment are the difference between the sale price and the cost price, that is, the price at which she had actually bought those shares.

BY COURT: In accordance with the opinion of the majority, this appeal is dismissed with costs.

Appeal dismissed.

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February 23.

S. S. MUNNA LAL

v.

S. S. RAJKUMAR AND OTHERS

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Hindu Law—Jains—Adoption—Widow, if can adopt without express authority of husband—Preliminary decree for partition declaring widow's share—Whether share "possessed" by widow—Death of widow—If share reverts to estate—Hindu Succession Act, 1956 (30 of 1956), ss. 4, 14, 15 and 16.

G, a Digamber Jain of the Porwal sect, died in 1934 leaving behind his widow Smt. K, his son G who died in 1939 and three grandsons M, P and R. In 1952 M's son S filed a suit for partition of the joint family properties. Rajkumar, claiming to be a son of P adopted by his widow, claimed a 1/4th share in the joint family property. The adoption was challenged on the ground that no express authority had been given by P to his widow to adopt. The trial court held that no express authority was required by a sonless Jain widow to adopt a son and that the adoption was duly and properly made. Accordingly, a preliminary decree declaring the shares of Smt. K, the branch of M, the branch of R and of Rajkumar to be 1/4th each was passed. M and others preferred an appeal to the High Court mainly against the findings on the question of adoption. During the pendency of the appeal, the Hindu Succession Act, 1956, came into force. Shortly thereafter Smt. K died. The High Court upheld the decision of the trial court on the question of the adoption of Rajkumar. With respect to the share of Smt. K the High Court held that her interest declared by the preliminary decree was inchoate, that she never became "possessed",

of any share within the meaning of s. 14 of the Act and that it remained joint family property which became divisible amongst the parties proportionately to their shares. The appellants contended that the adoption of Rajkumar was invalid as no custom applicable to the Porwal sect of the Jains had been established empowering a widow to adopt without the authority of her husband and that the 1/4th share of Smt. K declared by the preliminary decree had become her absolute property by virtue of s. 14 of the Act and upon her death it descended to her grandsons M and R to the exclusion of other parties.

Held, that the adoption of Rajkumar was valid. A sonless Jain widow could adopt a son without the express authority of her husband. Such a custom among the Jains (not domiciled in the States of Madras and the Punjab) has been recognised by judicial decisions spread over a period longer than a century. Though none of these decisions related to the Porwal sect of Jabalpur to which the parties belonged. They laid down a general custom of the Jains which were applicable to the parties. The decisions proceeded not upon any custom peculiar to any locality or to any sect of the Jains but upon general custom which had by long acceptance become part of the law applicable to them. Where a custom is repeatedly brought to the notice of the Courts, the courts may held that custom introduced into the law without the necessity of proof in each individual case.

Pemraj v. *Mst. Chand Kanwar*, (1947) L. R. 74 I. A. 224 and *Mangibai Gulabchand* v. *Suganchand Bhikamchand*, A.I.R. (1948) P. C. 177, relied on.

Sheokuarbai v. *Jeoraj*, A.I.R. (1921) P.C. 77, *Saraswathi Ammal* v. *Jagadambal*, (1953) S.C.R. 1939, *Maharajah Govindnath Ray* v. *Gulal Chand*, (1833) 5 Sel. Rep. 276, *Bhagwandas Tejmal* v. *Rajmal* Alias *Hiralal Lachmindas*, (1873) 10 Bom. H.C. Rep. 241, *Sheo Singh Rai* v. *Mst. Dakho and Moorari Lal* (1878) L.R. 5 I. A. 87, *Lakhmi Chand* v. *Gatto Bai*, (1886) I.L.R. 8 All. 319, *Manik Chand Golecha* v. *Jagat Settani*, (1889) I.L.R. 17 Cal. 518, *Harnabh Pershad* alias *Rajajee* v. *Mangil Das*, (1899) I. L. R. 27 Cal. 379, *Manohar Lal* v. *Banarsi Das* (1907) I. L. R. 29 All. 495, *Asharfi Kunwar* v. *Rupchand*, (1908) I.L.R. 30 All. 197, *Rup Chand* v. *Jambu Prasad* (1910) I.L.R. 32 All. 247, *Jiwraj* v. *Mst. Sheokuwarbai*, A I.R. (1920) Nag. 162, *Banarsi Das* v. *Sumat Prasad*, (1936) I.L R. 58 All. 1019 and *Rama Rao* v. *Raja of Pittapur*, (1918) L. R. 45 I. A. 148, referred to.

Held, further that the 1/4th share of Smt. K declared by the preliminary decree was "possessed" by her and on her

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death it descended to her grandsons in accordance with provisions of ss. 15 and 16 of the Act. The word "possessed" in s. 14 was used in a broad sense meaning the state of owing or having in one's power. The rule laid down by the Privy Council that till actual division of the share declared in her favour by a preliminary decree for partition of the joint family property a Hindu wife or mother was not recognised as owner of that share cannot apply after the enactment of the Hindu Succession Act, 1956. Section 4 of the Act made it clear that the Legislature intended to supersede the rules of Hindu law on all matters in respect of which there was an express provision made in the Act.

Gumalapura Taggina Matada Kotturuswami v. *Setra Veerayya*, (1959) 1 Supp. S.C.R. 968 and *Pratapmull Agarwalla* v. *Dhanabati Bibi*, (1935) L.R. 63 I.A. 33, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 130 of 61.

Appeal by special leave from the judgment and decree dated April 25, 1959 of the Madhya Pradesh High Court in First Appeal No. 139 of 1955.

M. C. Setalvad, Attorney-General of India, S. T. Desai, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellants.

Sarjoo Prasad and *G. C. Mathur*, for respondents No. 1 and 2.

Ganpat Rai, for respondent No. 3.

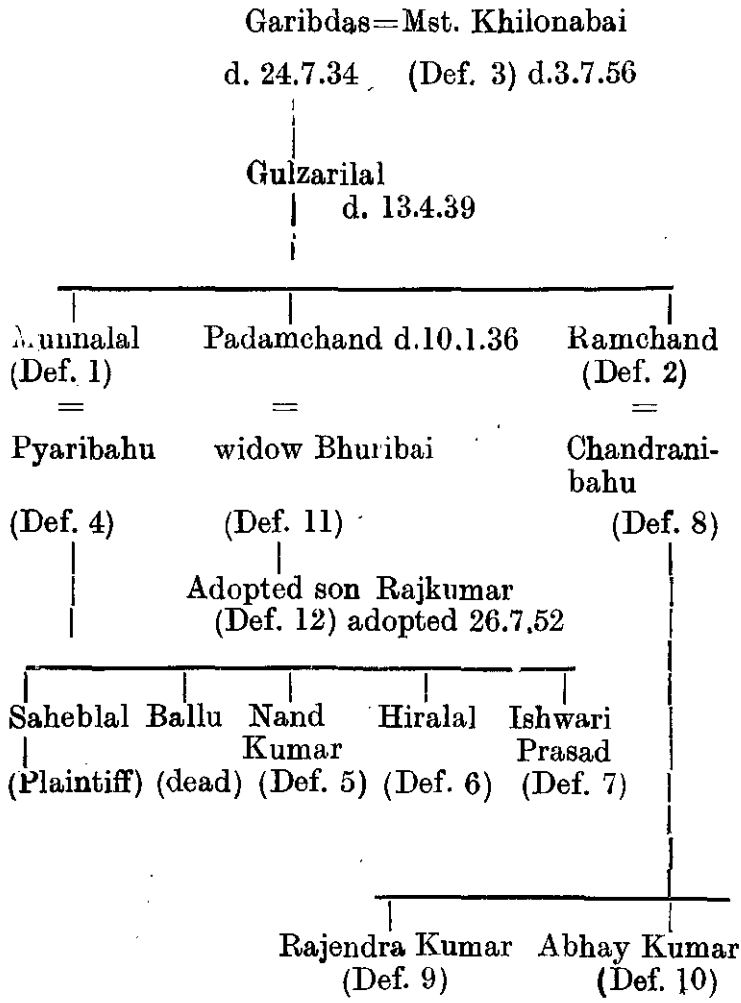
1962. February 23. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—This appeal with special leave is against the decree of the Madhya Pradesh High Court confirming the decree of the 1st Additional District Judge, Jabalpur in Civil Suit No. 12-A of 1952.

The dispute between the parties arose in a suit for partition of joint family property. The parties are Digambar Jains of the Porwal Sect and are residents of Jabalpur which at the material time

was in Madhya Pradesh. The following pedigree explains the relationship between the parties :



Saheblal son of Munnalal filed Suit No. 12A of 1952 in the Court of the 1st Additional Subordinate Judge, Jabalpur on June 21, 1952, for a decree of partition and separate possession of his 1/12th share in the joint family property. He claimed that in the property his father's branch was entitled to have a half share and the remaining half was owned by

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Ram Chand and his branch. The Additional District Judge ordered that Khilonabai grandmother of Munnalal and Ramchand—the wives of Munnalal and Ramchand and their sons and Bhuribai (widow of Padamchand) and Rajkumar who claimed to be a son of Padam Chand by adoption by Bhuribai on July 26, 1952, be impleaded as defendants to the suit.

At the trial of the suit the right of Saheblal to a share in the property was not questioned: the dispute principally turned upon the claim made by Bhuribai and her adopted son Rajkumar to a share in the property. Padamchand had died before the enactment of the Hindu Womens' Right to Property Act, 1937, and his widow could not claim by virtue of that Act a share in the property of the family. But Bhuribai and Rajkumar pleaded that the parties were governed in the matter of adoption by the customary law prevalent amongst the Jains of Central India, Madhya Pradesh, Vindhya Pradesh, North and Western India, and Rajkumar as a son adopted by Bhuribai to Padam Chand became a coparcener in the joint family and entitled to a share in the property and accretions thereto.

The validity of the adoption of Rajkumar was challenged on many grounds, one only of which is material in this appeal. It was submitted by the contesting defendants and Bhuribai had no authority express or implied from her husband Padam Chand to adopt a son and that the adoption of Rajkumar as a son without such authority was invalid. The Additional District Judge rejected this plea and ordered a preliminary decree for partition and declared that the share of the plaintiff was 1/24th, of Munnalal, his wife and 3 sons collectively was 5/24th, of Ramchand and his sons 1/4th, of Khilonabai 1/4th and the remaining 1/4th share belonged to Rajkumar.

Against the decree, Munnalal, Ramchand, Khilonabai, wife and sons of Munnalal and the wife and sons of Ramchand who were defendants 1 to 10 preferred an appeal to the High Court of Madhya Pradesh. During the pendency of this appeal Khilonabai died on July 3, 1956 and Ramchand and Munnalal applied to be impleaded as her legal representatives in respect of the interest in the property awarded to Khilonabai by the preliminary decree. By order dated December 12, 1957, the District Judge held that the interest of Khilonabai devolved upon the applicants by virtue of ss. 15 and 16 of the Hindu Succession Act, 1956 which was brought into operation on June 14, 1956, and that the sons of Munnalal, Ramchand and Padam Chand could not take a share in Khilonabai's interest.

Before the High Court two questions were canvassed: (1) as to the factum and validity of the adoption of Rajkumar, and (2) devolution of the share of Khilonabai declared by the preliminary decree on her death. The High Court upheld the finding of the trial Court that Rajkumar was in fact adopted by Bhuribai as a son to her husband on July 26, 1952, and that amongst the Jains residing in the North West Province, Central India, Northern India and in Bombay a widow could adopt a son to her deceased husband without any express authority in that behalf. In so holding the High Court relied upon the judgments of the Privy Council in *Pemraj* v. *Mst. Chand Kanwar* and *Mangibai Gulabchand* v. *Suganchand Baikamcand* (1). But the High Court declined to accept the view of the trial Court that the right of Khilonabai declared by the preliminary decree devolved upon Munnalal and Ramchand alone. In their view, Khilonabai's interest under the decree being incohate was not "possessed" by her within the meaning of s. 14

(1) (1947) L.R. 74 I.A. 254.
(2) A.I.R. (1948) P.C. 177.

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of the Hindu Succession Act, 1956, and on her death it merged into the estate. The High Court observed : "The result is that the interest of Smt. Khilonabai remained incohate and fluctuating so that after her death, the interest declared by the preliminary decree is available for partition as joint family property and consequently ss.15 and 16 of the Hindu Succession Act are inapplicable to the interest. As the property never became her absolute property by virtue of s.14 of the Act, the same remained joint family property." Accordingly the decree of the trial Court was modified and 1/3rd Share in the joint family property was awarded to Rajkumar, 1/3rd to the branch of Munnalal and the remaining 1/3rd to the branch of Ramchand and adjustments were made on that footing in the shares of the plaintiff and other members of the family.

In this appeal by defendant No. 1 (Munnalal) 2 (Ramchand) and 4 to 10, three contentions were raised : (1) in the absence of express authority from her husband, Bhuribai could not adopt a son, (2) that the interest of Khilonabai under the preliminary decree became her absolute property by virtue of s.14 of the Hindu Succession Act, 1956 and on her death it devolved upon her grandsons Munnalal and Ramchand—defendants 1 and 2—and (3) the trial Court was in error in delegating to a Commissioner judicial function, such as, ascertainment of property to be divided and effecting partition.

The third question is easily answered. The trial court appointed a commissioner to *propose* a partition of joint family property, and for that purpose the court authorised him to ascertain the property, the debts which the family owed and also the individual liability of the parties for the debts. For deciding those questions the Commissioner was empowered to record statements of the parties, frame

issues and to record evidence as might be necessary. The commissioner was also directed to submit his proposals relating to the right of Bhuribai to be maintained out of the joint family property. This order, it appears, was passed with the consent of all the parties. It is true that the decree drawn up by the trial Court is not strictly in accordance with the directions given in the judgment. But it is manifest that the trial Judge only directed the Commissioner to submit his *proposals* for partition of the property, and for that purpose authorised him to ascertain the property which was available for partition and to ascertain the liability of the joint family. By so authorising the Commissioner, the trial Court did not abdicate its functions to the comissioner : the commissioner was merely called upon to make proposals for partition, on which the parties would be heard, and the Court would adjudicate upon such proposals in the light of the decree, and the contentions of the parties. The proposals of the commissioner cannot from their very nature be binding upon the parties nor the reasons in support thereof. The order it may be remembered was made with the consent of the parties and no objection to the order was, it appears, pressed before the High Court. We do not think that any case is made out for modifying that part of the order.

The parties to this dispute are Digamber Jains of the Porwal sect and are resident of Jabalpur. Jains have generally been regarded as heterodox Hindus and in the absence of special custom they are governed by the rules applicable to Hindus. As observed by the Privy Council in *Sheokuarbai* v. *Jeoraff*.(1) The Jains are of Hindu origin ; they are Hindu dissenters, and although as was pointed out by Mr. Mayne in paragraph 46 of his Hindu Law and Usages—"Generally adhering to ordinary Hindu law, that is, the law of the three

(1) A.I.R. (1921) P.C. 77.

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superior castes, they recognise no divine authority in the Vedas and do not practise the Shradhs, or ceremony for the dead." "The due performance of the Shradhs, or religious ceremonies for the dead, is at the base of the religious theory of adoption, but the Jains have so generally adopted the Hindu law that the Hindu rules of adoption are applied to them in the absence of some contrary usage x x x." But amongst the Jains a custom enabling a widow to adopt a son to her husband without express authority has been recognised by judicial decisions spread over a period longer than a century. In *Pemraj* v. *Musammad Chand Kanwar*(1), the Judicial Committee of the Privy Council after a review of the case law observed: "x x x x, in many other parts of India" (parts other than the Provinces of Madras and the Punjab) "it has now been established by decisions based on evidence from widely separated districts and from different sects that the Jains observe the custom by which a widow may adopt to her husband without his authority. This custom is based on religious tenants common to all sects of Jains, and particularly their disbelief of the doctrine that the spiritual welfare of the deceased husband may be affected by the adoption, and though it cannot be shown that in any of the decided cases the parties were of the Khandelwal sect, yet in none of the cases has a distinction been drawn between one sect and another. It is now in their Lordships' opinion no longer premature to hold that the custom prevails generally among all Jains except in those areas in which there are special reasons, not operative in the rest of India, which explains why the custom has not established itself. Mayne, in his treaties on Hindu Law and Usage, at page 209, has lent the weight of his authority to the proposition that among the Jains, except in the Madras Presidency a sonless widow can adopt a son to her

(1) (1947) L.R. 74 I.A. 254.

husband without his authority or the consent of his sapindas". This view was reiterated by the Privy Council in a case reported in *Mangibai Gulabchand* v. *Suganchand Bhikamchand* (1).

The Attorney General for the appellants, however, contends that there is no evidence of a custom authorising the widow of a Porwal Digamber Jain residing in Jabalpur to adopt a son to her husband without express authority. Counsel submitted that the observations in the two cases relating to the custom of adoption must be restricted to the sects to which the parties to these cases belonged, and in so far as they purport to extend the custom to all Jain residents in India outside Madras and the Punjab they are mere dicta and not binding upon this Court. In *Pemraj's case* the parties belonged to the Khandelwal sect domiciled and resident in Ajmer and in *Mangibai's case* the parties were Marwari Jains of the Vis-Oswal sect who having migrated from Jodhpur had settled down in the Thana District of the Bombay Province, but the opinion of the Judicial Committee expressly proceeded upon a well-recognised custom applicable to all Jains in the territory of India (excepting Madras and the Punjab) and not upon proof of a restricted custom governing the sects of Jains to which the parties belonged. Undoubtedly, as observed by this Court in *Saraswathi Ammal* v. *Jagadamhal* (2) in dealing with the quantum of proof required to prove a family or local custom, "it is incumbent on a party setting up a custom to allege and prove the custom on which he relies and it is not any theory of custom or deductions from other customs which can be made a rule of decision but only any customs applicable to the parties concerned that can be the rule of decision in a particular case. x x x

(1). A.I.R. (1948) P.C. 177. (2) (1953) S.C.R. 939.

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Theory and custom are antitheses, custom cannot be a matter mere of theory but must always be a matter of fact and one custom cannot be deducted from another. A community living in one particular district may have evolved a particular custom but from that it does not follow that the cummunity living in another district is necessarily following the same custom." But the application of the custom to the parties to this appeal does not appear to proceed upon analogies or deductions. It governs the parties, because the custom has become a part of the law applicable to Jains in India (except in Madras and the Punjab) by a long and uninterrupted course of acceptance.

A review of the cases decided by different Courts clearly shows that the custom is generally applicable to Jains all over India, except the Jain domiciled in Madras and the Punjab. The earliest case of which a report is available is *Maharaja Govindnath Ray* v. *Gulal Chand* (1) decided by the Saddar Court Calcutta in 1933. In that case the validity of an adoption by a Jain widow of a son without express authority from her husband was questioned. The Court after consulting the *Pandits* held that by Jain law a sonless widow could adopt a son just as her husband for the performance of religious rites and that the section of the *vitis* or priests to the adoption is not essential. In *Bhagwandas Tejmal* v. *Rajmal* alias *Hiralal Lachmidas*(2) the Bombay High Court opined that the widow of a Jain was a delegate either by express or implied authority to adopt a son, but she could not delegate to another person that authority to adopt a son to her husband after her death. In *Sheo Singh Rai* v. *Mussumut Dakho and Moorari Lal*, (3) decided in 1878, the Privy Council affirmed the view of the North West Provinces High Court that a sonless widow of a Jain had the right of adoption without the permission of her husband or the consent

(1) (1833) 5 Sel. Rep. 276. (2) (1873) 10 Bom. H.C. Rep. 241.
(3) (1878) L.R. 5 I.A. 87.

of his heirs. In that case before the Subordinate Judge and before the High Court evidence was recorded of the custom applicable to Jains generally, in different place such as Delhi, Jaipur, Mathura, Banaras and it was held that the custom was established by evidence. The parties to the suit were Agarwal Jains of Meerut District, but decision of the Board proceeded upon a custom found on evidence to be common to all Jains. In *Lakhmi Chand* v. *Catto Bai.* (1) decided in 1886, again the power of a Jain widow to adopt a son to her deceased husband was held proved. In *Manik Chand Golecha* v. *Jagat Settani,* (2) decided in 1889, the High Court of Bengal upheld a custom in respect of adoption by a widow of an Oswal Jain. The decision of the Court did not proceed upon any custom peculiar to the Oswal sect. In *Harnabh Pershad alias Rajajee* v. *Mangil Das*(3) decided in 1899, it was held upon the evidence consisting partly of judicial decisions and partly of oral evidence that the custom that a sonless Jain widow was competent to adopt a son to her husband without his permission or the consent of his kinsmen, was sufficiently established and that in this respect there was no material difference in the custom of the Aggarwal, Choreewal (Porwal), Khandwal and Oswal sects of the Jains ; and that there was nothing to differentiate the Jains at Arrah from the Jains elsewhere. The judgment of the case proceeded upon an elaborate examination of numerous instances in which the custom was held established. In *Manohar Lal* v. *Banarsi Das*(4) and in *As harfi Kunwar* v. *Rupchand*(5) a similar custom was held established. In the latter case a large number of witnesses were examined at different places and on a review of the decisions and the evidence the Court held the custom proved. The judgment of the Allahabad

(1) (1886) I.L.R. 8 All. 319. (2) (1889) I.L.R. 17 Cal. 518.
(3) (1899) I.L.R. 27 Cal. 379. (4) (1907) I.L.R. 29 All. 495.
(5) (1908) I.L.R. 30 All. 197.

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High Court in *Asharfi's case* was affirmed by the Privy Council in *Rup Chand* v. *Jambu Prasad*. (1) It may be stated that the right of a Jain widow to adopt without authority of her husband was not questioned before the Privy Council. In *Jiwraj* v. *Mt. Sheokuwarbai* (2) the Court of the Judicial Commissioner, Nagpur held that the permission of the husband was not necessary in the case of a Jain widow to adopt a son. This case was also carried to the Privy Council and the judgment was affirmed in *Sheokuarbai* v. *Jeoraj* (3). In *Banarsi Das* v. *Sumat Prasad* (4) a similar custom was held established. The decisions in all these cases proceeded not upon any custom peculiar to the locality, or to the sect of Jains to which they belonged, but upon the view that being Jains, they were governed by the custom which had by long acceptance become part of the law applicable to them. It is well-settled that where a custom is repeatedly brought to the notice of the Courts of a country, the courts may hold that custom introduced into the law without the necessity of proof in each individual case. (*Rama Rao* v. *Raja of Pittapur*) (5).

The plea about the invalidity of the adoption of Rajkumar by Bhuribai must therefore fail.

Khilonabai died after the Hindu Succession Act was brought into operation on June 14, 1956. This Act by s. 2(1)(b) applies to Hindus and also to persons who are Jains by religion. The preliminary decree was passed on July 29, 1955, and thereby Khilonabai was declared entitled to a fourth share in the property of the family. Section 14 of of the Hindu Succession Act, 1956 provides:

> "14(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be

(1) (1910) I.L.R. 32 All. 217. (2) A.I.R. (1920) Nag. 162.
(3) A.I.R. (1921) P.C. 77. (4) (1936) I.L.R. 58 All. 1019.
(5) (1918) L.R. 45 I.A. 148.

held by her as full owner thereof and not as a limited owner.

EXPLANATION. In this sub-section "property" includes both movable 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 by 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."

Section 15 provides:

"15 (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

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(d) fourthly, upon the heirs of the father;

(e) lastly, upon the heirs of the mother;

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

Section 16 which prescribes the order of succession and manner of distribution among the heirs of a Hindu female provides by Rule :

"Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously."

Counsel for Rajkumar concedes, and in our judgment he is right in so conceding, that if the share declared by the preliminary decree in favour of Khilonabai is property possessed by her at the date of her death, it should devolve upon her grandsons—Munnalal and Ramchand, to the exclusion of Rajkumar adopted son of Padam Chand.

This Court in *Gumalapara Taggina Matada Kotturuswami* v. *Setra Veeravva* (1) held that "The word "possessed" in s. 14 is used in a broad sense and in the context means the state of owning or having in one's power". The preliminary decree declared that Khilonabai was entitled to a share in the family estate and the estate being with the family of which she was a member and in joint enjoyment, would be possessed by her. But counsel for Rajkumar submitted that under the preliminary decree passed in the suit for partition the interest of Khilonabai in the estate was merely inchoate, for she had a mere right to be maintained out of the estate and that her right continued to retain that character till actual division was made and the share declared by the preliminary decree was separated to her: on her death before actual division the inchoate interest again reverted to the estate out of which it was carved. Counsel relied upon the judgment of the judicial committee in *Pratpamull Agarwalla* v. *Dhanabati Bibi* (2) in support of his plea that under the Mitakshara law, when the family estate is divided a wife or mother is entitled to a share, but is not recognised as the owner of such share until the division of the property is actually made, as she has no pre-existing right in the estate except a right of maintenance. Counsel submitted that this rule of Hindu law was not affected by anything contained in s. 14 of the Hindu Succession Act.

By s. 14 (1) the Legislature sought to convert the interest of a Hindu female which under the

(1) [1959] 1 Supp. S.C.R. 968.
(2) (1935) L.R. 63 I.A. 33.

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Sastric Hindu law would have been regarded as a limited interest into an absolute interest and by the explanation thereto gave to the expression "property" the widest connotation. The expression includes property acquired by a Hindu female 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 what-so-ever. By s. 14(1) manifestly it is intended 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. *Pratap mull's case* undoubtedly laid down that till actual division of the share declared in her favour by a preliminary decree for partition of the joint family estate a Hindu wife or mother, was not recognised as owner, but that rule cannot in our judgment apply after the enactment of the Hindu Succession Act. The Act 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 dispositions which were regarded under the Hindu law as inherent in her estate. She is under the Act regarded as a fresh stock of descent in respect of property possessed by her at the time of her death. It is true that under the Sastric Hindu law, the share given to a Hindu widow on partition between her sons or her grandsons was in lieu of her right to maintenance. She was not entitled to claim partition. But the Legislature by enacting the Hindu Womens' Right to Property Act, 1937 made a significant departure in that branch of the law: the Act gave a Hindu widow the same interest in the property

which her husband had at the time of his death, and if the estate was partitioned she became owner in severalty of her share, subject of course, to the restrictions on disposition and the peculiar rule of extinction of the estate on death actual or civil. It cannot be assumed having regard to this development that in enacting s. 14 of the Hindu Succession Act, the Legislature merely intended to declare the rule enunciated by the Privy Council in *Pratapmull's case*. Section 4 of the Act gives an overriding effect to the provisions of the Act. It enacts: "Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act :

(b) x x x x x"

Manifestly, the legislature intended to supersede the rules of Hindu law on all matters in respect of which there was an express provision made in the Act. Normally a right declared in an estate by a preliminary decree would be regarded as property, and there is nothing in the context in which s. 14 occurs or in the phraseology used by the Legislature to warrant the view that such a right declared in relation to the estate of a joint family in favour of a Hindu widow is not property within the meaning of s. 14. In the light of the scheme of the Act and its avowed purpose it would be difficult, without doing violence to the language used in the enactment, to assume that a right declared in property in favour of a person under a decree for partition is not a right to property. If under a preliminary decree the right in favour of a Hindu male be regarded as property the right declared in favour of a Hindu female must also be regarded

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as property. The High Court was therefore, in our judgment, in error in holding that the right declared in favour of Khilonabai was not possessed by her, nor are we able to agree with the submission of the learned counsel for Raj Kumar that it was not property within the meaning of s. 14 of the Act.

On that view of the case, by virtue of ss. 15 and 16 of the Act, the interest declared in favour of Khilonabai devolved upon her sons Munnalal and Ramchand to the exclusion of her grandson Rajkumar. The decree passed by the High Court is therefore modified in this respect and the decree passed by the trial Court restored. Having regard to the partial success of the parties, there will be no order as to costs in this appeal and in the High Court.

Appeal partly allowed.

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(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Railway -- Suit for recovery of cess—Limitation—Maintainability -- Consignee, if liable--Indian Limitation Act, 1908 (IX of 1908), Arts. 149, 120.50 -- Constitution of India, Arts 265, 372 -- Ordinance No. 39 of 1944 -- Ordinance 6 of 1947, s.3—Coal Production Fund Rules, 1944, rr.6, 3, 3(a), 3(b) —Supreme Court Rules, 1950, as amended, O. XVIII, r.2.