NARAINI DEVI

v.

SMT. RAMO DEVI AND ORS.

December 18, 1975

[R. S. SARKARIA AND S. MURTAZA FAZAL ALI, JJ.]

Hindu Succession Act—Section 14(1) & (2)—*Scope of—Limited interest in an estate given under an award to a widow not having a pre-existing right under the Hindu Law prior to the commencement of the Hindu Succession Act, comes to an end on her death.*

'N' a widow of 'H', who, under the Hindu law then applicable and in the presence of her three sons, did not get any share or interest in the house left by her late husband and therefore got a life interest by virtue of a registered award filed a suit under Order 21 Rule 63 C.P.C. to establish her claim to the property that had been attached in execution of the decree against her second son obtained by her eldest daughter-in-law. 'N's suit was decreed by the trial Court. The first appellate court reversed that decree. The second appeal and the review in the High Court failed.

On appeal by special leave, rejecting the contention that "the appellants limited interest was enlarged into that of a full owner by the operation of sub-sec. (1) of Section 14 of the Hindu Succession Act, the Court

HELD : (1) A reading of the award as a whole, leaves little doubt, that the only interest in the house created in favour of the widow was that she would be entitled to its rent, and no more for her life time. [56 F]

(2) In the present case, the appellant did not get any share or interest in the house left by her husband under the Hindu Law as then applicable. She had no pre-existing right or interest in the property. [57 B]

(3) The award created a restricted estate for her in the house, and [57 B]

(4) The case fell squarely within the ambit of sub-section (2) of section 14 of the Hindu Succession Act and her interest came to an end on her death. [57 C]

Badri Prasad v. *Smt. Kanan Devi* [1970] 2 S.C.R. 95, not applicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 824 of 1968.

Appeal by Special Leave from the Judgment and Order dated the 23-8-1967 of the Allahabad High Court in Civil Misc. (Review) application No. 32 of 1966 (in S.A. 4357/65).

I. P. Goyal for the Appellant.

V. S. Desai and V. N. Ganpule for Respondent No. 1.

The Judgment of the Court was delivered by

SARKARIA, J. The following pedigree table illustrates the relationship of the parties :

Hira Lal=Smt. Naraini Devi (plaintiff).
(died in 1925).

Kapoor Chand (died in 1954) =Smt. Ramo Devi (Respondent 1) Decree-holder	Nemi Chand (Judgment-debtor)	Chandra Bhan (died in 1930) (extinct).

A Smt. Ramo Devi, widow of Kapur Chand (shown in the above pedigree table) obtained a money decree against her husband's brother Nemi Chand. In execution of her decree she got attached one half-share in the double storeyed House No. 4416, situated at Agra representing it to be of the judgment-debtor. Smt. Naraini Devi, widow of Hira Lal, filed an objection petition under O.21, r. 58, Code of Civil Procedure against that attachment claiming the house to be her B property. That objection was dismissed by the executing court on the 16th July, 1962. Thereafter, she filed a suit under O.21, r. 63, Code of Civil Procedure to establish her claim. The suit was decreed by the trial court. On appeal, the District Judge reversed the judgment and dismissed the suit. Naraini Devi's second appeal was summarily dismissed by the High Court. She filed a review petition which was C rejected by the High Court on August 23, 1967.

Hence, this appeal by special leave.

It is common ground between the parties that under a registered award dated January 4, 1946, the plaintiff Smt. Naraini Devi was given a life interest in the house in dispute. The appellant's contention is that her limited interest in the house was enlarged into that of a full D owner by the operation of sub-s. (1) of s. 14 of the Hindu Succession Act. As against this, the respondents maintain that her case falls under sub-s. (2) of s. 14. The question thus turns on a construction of the award Ex. 2.

We have examined an English rendering of this document filed by the appellant, the correctness of which is not disputed by the respondent. This award states in clear, unmistakable terms that she, Naraini E Devi would be entitled to the rent of this house in lieu of maintenance for her life-time, and after her death, her sons, Kapoor Chand and Nemi Chand will be owners of half share each of this house. This award further partitions this house between Kapoor Chand and Nemi Chand and allots specific portions thereof to the two brothers. A part of this house was in the occupation of a tenant at Rs. 32/- per month. Naraini Devi was given a right to get that rent. A part of it was in F the personal occupation of Kapoor Chand. The award protects and assures his right of remaining in possession of the same. A reading of this document as a whole, leaves little doubt that the only interest in this house created in favour of the widow was that she would be entitled to its rent—and no more—for her life-time. Thus the award confers on her only a restricted estate in the house within the meaning of sub-s. (2) of s. 14 which says :

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> "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."

H Mr. Goyal however, submits that her case would fall within this Court's *ruling in Badri Pershad* v. *Smt. Kanan Devi*(1) according to

(1) [1970] 2 S.C.R. 95.

which, if the widow has a pre-existing right in the property, then the case will fall under sub-s. (1), and sub-section (2) which is in the nature of a proviso to sub-s. (1) of s. 14 will not be attracted. The rule in *Badri Parshad's* case (supra) is not applicable here. In that case the widow had acquired a share in the property by virtue of the Hindu Women's Right to Property Act, 1937, on the death of her husband, which took place after the coming into operation of that Act. In the present case, Smt. Naraini Devi's husband died in 1925. In the presence of her sons, the widow did not get any share or interest in the house left by her husband under the Hindu Law as then applicable. In short, she had no pre-existing right or interest in the house in question. It was the award dated January 4, 1946, that created a restricted estate for her in the house in question. Her case thus falls squarely within the ambit of sub-s. (2) of s. 14 of the Hindu Succession Act. Her interest therefore, came to an end on her death which took place during the pendency of these proceedings.

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For reasons aforesaid the appeal fails and is dismissed with no order as to costs

S.R. *Appeal dismissed.*