

SMT. BENI BAI

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v.

RAGHUBIR PRASAD

FEBRUARY 24, 1999

[V.N. KHARE AND S.S. MOHAMMED QUADRI, JJ.]

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*Hindu Law—Hindu Succession Act, 1956—Sections 14(1), 14(2)—Hindu Women's Right to Property Act, 1935—Conferment of limited interest by Will on a widow—in lieu of maintenance—Whether the right is absolute—Held, since the limited interest is by virtue of pre-existing right of maintenance and not a fresh right the said right is transformed into an absolute right.*

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The father of the Appellant executed a Will in 1935, bequeathing the suit property in favour of Respondent. In the said Will a life interest was given for appellant's mother in lieu of her maintenance. In 1962, the appellant's mother executed a gift deed in respect of the suit property in favour of the appellant. The respondent filed a suit for declaration that the Gift Deed was illegal and void. The Trial Court dismissed the suit on the ground that the mother of the appellant having possessed the house in lieu of the pre-existing right she became the absolute owner under Section 14(1) of the Hindu Succession Act, 1956 and the Gift Deed executed by her was valid.

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The first appeal filed by the Respondent was allowed and suit was decreed on the ground that the present case is governed by Section 14(2) of the Act of 1956, as the source of right was conferred for the first time on the widow by virtue of the Will. On second appeal, the judgment of First Appellate Court was upheld.

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The appellant before this Court contended that once the widow of the testator had been given the right of possession in lieu of her maintenance, it was in recognition of her pre-existing right, that the said limited right was transformed into an absolute right by virtue of Section 14(1) of the Act of 1956 and as such she was legally competent to gift the property in favour of her daughter. The respondent contended that since the widow got the right by virtue of a Will for the first time her rights would be governed by Section 14(2) of the Act 1956, and in that case she was not

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- A** legally competent to execute the Gift Deed in favour of the appellant.

Allowing the appeal, the Court

**HELD : 1. The judgment of the First Appellate Court as well as the Second Appellate Court is set aside and the suit filed by the plaintiff-**

- B** respondent is dismissed. [894-F-D]

**2. Section 14(1) of the Hindu Succession Act applies to cases where the conferment of right to a Hindu widow was in lieu of maintenance or in recognition of her pre-existing right as provided under the Shastric law and Hindu Women's Rights to Property Act. Section 14(2) of the Act would apply only to such cases where grant conferred a fresh right or title for the first time and while conferring the said right certain restrictions were placed by the grant or transfer. [894-B-C]**

- C** *V. Tulasamma v. Sesha Reddi*, [1997] 3 SCC 99(125); *Ram Kali v. Choudhri Ajit Shankar*, [1997] 9 SCC 613 and *Raghbir Singh v. Gulab Singh*, [1998] 6 SCC 314, referred to.

**3. The widow was conferred the limited right in lieu of maintenance in recognition of her pre-existing right. The limited interest conferred upon her by virtue of the Will being in lieu of maintenance and in recognition**

- E** **of her pre-existing right, the said right transformed into an absolute right by virtue of Section 14(1) of the Act. The said right was not conferred on her for the first time. Thus sub-section (2) of Section 14 of the Act has no application to the present case. Under such circumstances, the widow became the absolute owner of House No. 27 and was fully competent to execute the Gift Deed in favour of her daughter. The Gift Deed executed by the widow was thus valid. [894-D-E]**

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2595 of 1983.**

- G** From the Judgment and Order dated 19.2.82 of the Allahabad High Court in S.A. No. 2643 of 1974.

Mrs. Shobha Dikshit, Pradeep Misra and T. Mahipal for the Appellant.

- H** Manoj Swarup, Ms. Lalita Kohli and Ms. Maulina Swarup for the

Respondent. A

The Judgment of the Court was delivered by

V.N. KHARE, J. One Nanho Dubey, father of the appellant herein, was the owner in possession of House No. 27 situate in Mohalla purani Kotwali, in the town of Jhansi. During his life time Nanho Dubey executed a Will on 16.12.1935 in respect of his properties, including House No. 27, which was duly registered. It was the last Will of Nanho Dubey whereunder Raghbir Prasad, the respondent herein, was to be the owner of the House No. 27 only after the death of testator's wife Smt. Bhagwati Bai. Smt. Bhagwati Bai, widow of Nanho Dubey was given only life interest in the said house in lieu of her maintenance. Nanho Dubey died in May, 1943. After the death of the testator, his widow Smt. Bhagwati Bai entered into the possession of the house for her life time. On 28.3.62, Smt. Bhagwati Bai executed a Gift Deed in respect of House No. 27 in favour of her daughter who is the appellant before us. It is at this stage, the plaintiff-respondent filed a suit for declaration that the Gift Deed dated 28.3.62 executed by Smt. Bhagwati Bai in favour of her daughter is illegal and void. The Trial Court dismissed the suit on the ground that Smt. Bhagwati Bai having possessed the house in lieu of her pre-existing right she became the absolute owner under sub-section (1) of Section 14 of the Hindu Succession Act (hereinafter referred to as "the Act") and the Gift Deed executed by her was valid. The First Appellate Court allowed the appeal and decreed the suit on the premise that the present case is to govern by sub-section (2) of Section 14 of the Act as the source of right was conferred for the first time on Smt. Bhagwati Bai by virtue of the Will. The judgment of the First Appellate Court was affirmed by the High Court in the second appeal. F

Learned counsel appearing for the appellant urged that once Smt. Bhagwati Bai - widow of Nanho Dubey had been given the right of possession in lieu of her maintenance, it was in recognition of her pre-existing right. The said limited right was transformed into an absolute right by virtue of sub-section (1) of Section 14 of the Act and as such she was legally competent to gift the property in favour of her daughter. On the other hand, the contention on behalf of respondent in that since the widow of Nanho Dubey got the right by virtue of a Will for the first time, her rights would be governed by sub-section (2) of Section 14 of the Act and H

- A in that case, she was not legally competent to execute the Gift Deed in favour of the appellant.

- According to old Shastric Hindu law, marriage between two Hindus is not a contract but a sacrament. The marriage is regarded as a holy union of wife and husband and by such union the wife becomes part and parcel of the husband. Under the Shastric Hindu law, after marriage it is a pious obligation on the part of the Hindu husband to maintain his wife during his life time and after his death the widow is to be maintained out of the property of the husband if the husband has left any property. This was on account of spiritual relationship between a Hindu husband and wife. This principle was statutorily recognized by the enactments known as Hindu Women's Rights to Property Act, 1937 and Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946. Under these two Acts, the right to maintenance of a Hindu widow was preserved as a pre-existing right. After independence it was felt necessary to assure the equality of right in property to a Hindu female and to remove the artificial disparity in right to property where a male was entitled to obtain full ownership in the property and a Hindu female would only be contained by limited ownership because of the restrictions imposed on her by the Hindu law. With this object in mind, Parliament enacted the Hindu Succession Act, 1956. After the Act came into force, the question arose whether the right to maintenance given to a widow would crystallised into a full-fledged right by virtue of Section 14(1) of the Act. After a number of decisions by this Court, the said question is no longer *res integra*.

- F This Court in *V. Tulasamma v. Sesha Reddi*, [1997] 3 SCC 99 at 125 has held as under :

"38 Thus the following propositions emerge from a detailed discussion of this case :

- G (1) that the widow's claim to maintenance is undoubtedly a tangible right though not an absolute right to property so as to become a fresh source of title. The claim for maintenance can, however, be made a charge on the joint family properties, and even if the properties are sold with the notice of the said charge, the sold properties will be burdened with the claim for maintenance;

(2) that by virtue of the Hindu Women's Rights to Property Act, 1937, the claim of the widow to maintenance has been crystallized into a full-fledged right and any property allotted to her in lieu of maintenance becomes property to which she has a limited interest which by virtue of the provisions of Act of 1956 is enlarged into an absolute title;

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(3) Section 14(2) applies only to cases where grant is not in lieu of maintenance or in recognition of pre-existing rights but confers a fresh right or title for the first time and while conferring the said title certain restrictions are placed by the grant or transfer. Where, however, the grant is merely in recognition or in implementation of a pre-existing right to claim maintenance, the case falls beyond the purview of Section 14(2) and comes squarely within the explanation to Section 14(1).

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The aforesaid case was followed in *Ram Kali v. Choudhri Ajit Shankar*, [1997] 9 SCC 613. This Court held in *Ram Kali's* case as under :

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"16. The only argument raised before us by the learned counsel for the respondents was that on the facts of this case Section 14(2) of the Hindu Succession Act applies and not Section 14(1). According to the learned counsel for the respondents the Hindu women have no pre-existing right for maintenance and assuming she had so, that must be pursuant to Hindu Women's Right to Property Act, 1937 and not earlier. This argument is not available in view of the clear pronouncement to the contrary in *Tulasamma* case."

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This Court in *Raghubar Singh v. Gulab Singh*, [1998] 6 SCC 314, held as under :

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"26. It is by force of Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. So far as sub-section (2) of Section 14 is concerned, it applied to instruments, decrees, awards, gifts, etc., which create an independent or a new title in favour of the female for the first time. It has no application to cases where the instrument/document either declares or recognizes or confirms her share in the property or her "pre-existing right to maintenance" out of that property. As

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A held in *Tulasamma* case sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own, without interfering with the operation of Section 14(1) of the Act."

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

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

For the foregoing reasons, the view taken the First Appellate as well as the Second Appellate Court deserve to be set aside. We accordingly set aside the judgment of the First Appellate Court as well as the Second Appellate Court and the suit filed by the plaintiff-respondent shall stand dismissed. The appeal is allowed. There shall be no order as to costs.

V.M.

Appeal allowed.