

Hira Lal  
v.  
Shrimati  
Sharbati Devi  
and another  
\_\_\_\_\_  
Mehar Singh, J.

wanted possession of the land from Sharbati Devi defendant. She obviously resisted. There was the question of a legal liability of Hira Lal plaintiff to pay maintenance to her. The parties then entered into a compromise. In consequence of that compromise a consent decree was passed. It was for the first time then that Sharbati Devi defendant acquired property in the land in lieu of maintenance. Explanation to sub-section (1) of section 14 of Act 30 of 1956 says that in that sub-section 'property' includes both movable and immovable property acquired by a female Hindu in lieu of maintenance or arrears of maintenance. It was in 1951 in consequence of the settlement between the parties, arising out of a litigation started by Hira Lal plaintiff, that Sharbati Devi, for the first time acquired land, of which the land in dispute is a part, in lieu of her maintenance. It was then that she acquired this property within the meaning and scope of sub-section (1) of section 14. If her case did not come under that sub-section, in view of what is stated in the explanation to that sub-section, it would have come under sub-section (2) on the ground that she had acquired the property under a decree of the Court. The decree of the Court merely gave effect to the compromise between the parties, and under the compromise between the parties for the first time Sharbati Devi defendant acquired the land, part of which is the land in dispute, in lieu of maintenance. As to the facts of this case, sub-section (1), read with the explanation, applies, so sub-section (2) of section 14 of Act 30 of 1956 is not attracted. There is thus no substantial argument urged which justifies interference with the judgment of the learned Single Judge.

This appeal is dismissed, leaving the parties to bear their own costs.

Falshaw, C.J. D. FALSHAW, C.J.—I agree.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, Chief Justice, and Mehar Singh, J.

PURAN SINGH AND OTHERS,—APPELLANTS

versus

RESHAM SINGH,—Respondent

Execution Second Appeal No. 109 of 1964.

1965  
September 14th. *Hindu Succession Act (XXX of 1956)—S. 14—Widow forfeiting her right to her husband's estate by becoming unchaste but allowed possession of half of the land of her husband by way of maintenance*

*and a house for her residence in 1938 by compromise—Her acquisition of land and house—Whether governed by sub-section (1) or sub-section (2) of S. 14.*

*Held*, that the widow acquired the land of her deceased husband as his representative and acquired certain other land by collateral succession. At that time, according to the custom applicable to the parties, she had only life interest in that land. She forfeited that inheritance as a consequence of having become unchaste. By compromise with the next heir of her husband she was allowed the possession of half of the land of her husband by way of maintenance during her life and a house for residence but without any right to alienate the land. This compromise was incorporated in a decree and she got possession of the land as a result of that decree, apart from which she had no right to the land on the forfeiture of the estate with her on account of unchastity. The land given in her possession by the decree was thus not an acquisition of property within the scope of sub-section (1) of section 14 of the Hindu Succession Act, 1956, for that was an arrangement for payment of maintenance to her out of the income of the land, between the parties and the land in her possession was governed by sub-section (2) of section 14 of the said Act.

*Execution Second Appeal from the order of Shri Banwari Lal, District Judge, Jullundur, dated the 5th October, 1963, affirming with costs that of Shri Harbans Singh, Sub-Judge 1st Class, Phillaur, dated the 10th June, 1963, accepting the objection petition with no order as to costs.*

SHAMAIR CHAND AND PARKASH CHAND JAIN, ADVOCATES, for the Appellants.

RAJ KUMAR AGGARWAL, ADVOCATE, for the Respondent.

#### JUDGMENT

MEHAR SINGH, J.—On the death of Pala Singh, in 1915, Mehar Singh, J. his land was inherited by his widow Kishni and by his predeceased son's widow Dhanti in equal shares. Some more land came to the two ladies by collateral succession on the death of a collateral of Pala Singh, whose estate they represented. Subsequently Dhanti remarried, which resulted in the forfeiture of the half share of the land with her, which land then came to Kishni.

Resham Singh *alias* Udhe Chand respondent is a collateral of Pala Singh. In 1936, he instituted a suit against Kishni for possession of the entire land with her on the ground that she having become unchaste had forfeited her right to that land. On such forfeiture he claimed

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the land as the next collateral heir to Pala Singh. A copy of the judgment, dated August 31, 1937, of the District Judge, in appeal, in that suit is on the file. The learned District Judge first found that Kishni had become unchaste and then he found that because of unchastity, under the custom applicable to the parties, she had forfeited the whole of the land in her possession as representative of her deceased husband Pala Singh. After those findings the learned Judge considered the question of claim for maintenance of Kishni. The counsel for the respondent did not question her right to maintenance. In view of the litigation between the parties, the learned District Judge was of the opinion that to grant a monthly sum as maintenance would only plunge the parties into perpetual difficulties and litigation because of the strained relations between them. He was of the view that Kishni be allowed to remain in possession of certain amount of land out of which she should maintain herself during her lifetime. To this course Resham Singh respondent agreed. On that the learned District Judge proceeded to grant a decree to Resham Singh respondent for possession of the entire suit land with the exception of 33 Kanals and 16-1/3 Marlas, which land was to remain in her possession so as to enable her to maintain herself during her lifetime. Against the decree of the learned District Judge there was a second appeal in the High Court. The parties entered into a compromise in that appeal and on February 14, 1938, a Division Bench of the Lahore High Court (Addison and Din Mohammad, JJ.) delivered this judgment in that second appeal — "Musammat Kishni will be allowed half the suit land by way of maintenance as well as her husband's house for her residence, with no power of alienation with regard to the land or house. To this extent the decree of the District Judge is modified, plaintiff getting immediate possession of only half of the land in suit." This judgment of the High Court proceeds on the basis of upholding the findings of the learned District Judge as regards the unchastity of Kishni and on that account forfeiture of the land with her as inheritance representing her deceased husband Pala Singh. She was given half of the land then in dispute as maintenance with no power of alienation with regard to it. Resham Singh, respondent obtained decree for possession of the remaining half on the affirmance of the findings of the learned District Judge.

There was consolidation of holdings in village Bilga of the parties and the land now in dispute came to be allotted to Kishni in lieu of the half share of land that remained with her under the decree of the High Court. But of this land possession was taken by Resham Singh respondent. On that Kishni brought a suit for possession of the land in dispute against this respondent. She obtained a decree in that respect on January 5, 1961. The decree relates to 36 Kanals and 13 Marlas of land in dispute. Before, however, she could execute the decree and take possession under it, Kishni died. Puran Singh and Baldev Singh appellants are real brothers and Surjit appellant is their sister. On the death of Kishni, they claim succession to her and on that basis they made an application for execution of the decree for possession obtained by Kishni against Resham Singh respondent. In the application, they show themselves as legal representatives of Kishni deceased. To that execution application Resham Singh respondent took an objection under section 47 of the Code of Civil Procedure that there was no executable decree because Kishni deceased had been given the land for her maintenance, obviously during her lifetime, and, her life having come to an end, with it has come to an end any estate that was with her, so that she has left behind nothing transmittable by inheritance. The Subordinate Judge of Phillaur by his order of June 10, 1963, accepted the objection application of Resham Singh respondent with the result that he dismissed the application of the appellants for execution of the decree in favour of Kishni deceased and against Resham Singh respondent for possession of the land in dispute. On appeal, in his judgment of October 5, 1963, the learned District Judge of Jullundur has affirmed the order of the executing Court and dismissed the appeal of the appellants. This is a second appeal by the appellants against the judgment of the learned District Judge.

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There is only one question that arises for consideration in this appeal and that has been the subject of argument, and no other question has been urged on the side of the appellants at the hearing of this appeal. The question is whether, on the facts as stated and undisputed, it is sub-section (1) or sub-section (2) of section 14 of the Hindu

Puran Singh and others v. Resham Singh Succession Act, 1956 (Act 30 of 1956), that applies ? Section 14 of that Act reads thus—

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“14. (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.”

Kishni acquired the land as inheritance of her deceased husband Pala Singh and also by collateral succession as his representative, some in 1915, on the death of Pala Singh, and some later by collateral succession, and again when her daughter-in-law Dhanti remarried. At the time, according to the custom applicable to the parties, she had only life interest in that land. On a finding in 1936 and 1937, which was obviously confirmed by the High Court in 1938, that she had become unchaste, she forfeited that inheritance. So on that finding and forfeiture she no longer had the right to that land as representing her deceased husband. Her estate in that capacity came to an end with the forfeiture. In that litigation the learned District Judge made a decree for possession in her favour for an area of 33 Kanals and 16-1/3 Marlas. He remarked that she was being given possession of the above land so that she could maintain herself during her life. In the High Court

the variation was that that area was increased to half of the area of land then in dispute, and a condition was superimposed that she had no power of alienation with regard to the land. It is clear that in consequence of that decree all that Kishni was given was right to possess the land by way of maintenance, as the judgment of the High Court said, but with no power of alienation. Apart from that decree she had no right to the land on the forfeiture of the estate with her on account of unchastity. So that the property that she acquired in the land in consequence of the inheritance from her deceased husband, and of which she was a limited owner, was lost to her on the forfeiture of her estate on account of unchastity. The land given in her possession by way of maintenance by the decree, dated February 14, 1938, by the High Court, was thus not an acquisition of property within the scope of sub-section (1) of section 14, for that was an arrangement, for payment of maintenance to her out of the income of the land, between the parties. She had no right by enforcement of which she could obtain land from Resham Singh respondent. She had forfeited her life estate coming to her from her deceased husband. So the right to possession of the land by way of maintenance was acquired by her in consequence of the decree of the High Court in 1938 and subject to the terms of that decree. This clearly falls within the scope of sub-section (2) of section 14. It is thus a case of re-acquisition of possession of the land in the terms of the decree of the High Court which does not come under sub-section (1) of section 14. *Kirpo v. Bakhtawar Singh* (1) was exactly a similar case. The female there forfeited her estate on account of remarriage. In litigation arising out of her remarriage there was compromise in consequence of which she was allowed to retain possession of property in dispute in that case on conditions specified in the compromise. Mahajan, J., on such facts, observes—"In this situation and in the peculiar circumstances of this case, it must be held that she acquired the property in the year 1928 under the compromise. If there was no forfeiture of her estate by reason of the remarriage, she would not have entered into the compromise, because even before the compromise she was holding the estate on the same terms and conditions under which she was to hold it after the compromise.

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Section 14(2) is an exception to section 14(1) and in order that section 14(2) applies, it has to be established that the property was acquired under a decree or order or instrument. But if the estate is lost and it is re-acquired by reason of a compromise it will be tantamount to acquisition within the meaning of section 14(2)." I agree, with respect, with this approach of the learned Judge, and the present case is exactly the same. The learned counsel for the appellants refers to *Gadam Reddayya v. Varapula Venkataraju* (2) in support of his argument that it is sub-section (1) of section 14 that applies to the present case and not sub-section (2). In that case the adoptive mother was in possession of the property. After adoption of the adopted son, the latter stated in a clause of the maintenance deed in favour of the former that she could raise crops and enjoy the fruits, but she could not contract any debt on the security of the lands during her lifetime. Subsequently she repudiated the adoption. That dispute was settled by mediation. After her death the question arose whether because of section 14 of Act 30 of 1956 she had become full owner of the lands under sub-section (1) of that section or had only a life estate under sub-section (2). The learned Judges held that the maintenance deed evidenced a family settlement in which the differences between the parties were resolved and the pre-existing rights of each other were recognised; no new right was conferred upon the adoptive mother under the document. The restrictions stated in it merely set out the legal effect on her estate as a maintenance-holder. It is immediately clear that on facts this case is nowhere near parallel to the present case. The compromise on the basis of which the High Court made the decree on February 14, 1938, was not reciting any pre-existing rights of the parties. The pre-existing rights of Kishni in the land had come to an end with the forfeiture of her estate on account of unchastity. This was maintained up to the High Court. She obtained entirely new rights to the possession of half of the land then in dispute by way of maintenance, and subject to the terms as in the judgment of the High Court. It was the decree of the High Court which put her in this new position. It is that decree which comes directly under sub-section (2) of section 14. It is obviously not a case of the applicability of sub-section (1) of that section.

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(2) A.I.R. 1965 And. Prad. 66.

In consequence this second appeal is dismissed, but the parties are left to their own costs.

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B.R.T.

CIVIL MISCELLANEOUS  
Before R. S. Narula, J.  
PURAN SINGH,—Petitioner  
versus  
STATE OF PUNJAB AND OTHERS,—Respondents

Civil Writ No. 847 of 1965

*Punjab Agricultural Produce Markets (Election to Market Committee) Rules (1961)—Rule 5(2)—Whether mandatory—Seven clear days—Whether must intervene between the publication of an election programme and last date for filing nomination papers—Seven clear days—How to be calculated.*

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September, 14th

Held, that sub-rule (2) of rule 5 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961, is mandatory in nature and provides for a vital matter, the breach of which cannot be overlooked or condoned.

Held also, that Rule 5(2) provides that the election programme has to be published "not less than" seven days before the date fixed for filing nomination papers. The phrase "not less than" so many days before refer to the entire days intervening the *terminus a quo* and the *terminus ad quem* and both the terminal days will have to be excluded in computing the period described in this manner. Hence seven clear days must intervene between the date of publication of the election programme and the last date of filing nomination papers. Publication of the programme on the 1st of March, 1965, fixing the last date for filing the nomination papers as 8th of March, 1965, does not, therefore, comply with the mandatory requirements of the aforesaid rule as after excluding both the 1st and the 8th March, 1965, less than seven days are left as the intervening period.

*Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the Notification of the Deputy Commissioner calling for the election from the producers and the proceedings regarding the nomination and scrutiny be annulled and further praying that the election of the producer members by the Panches and Sarpanches under section 12 of the Act be stayed pending the final decision of the Writ Petition.*

H. B. SINGH, ADVOCATE, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE GENERAL, WITH P. R. JAIN, ADVOCATE, for the Respondents.