possession, it cannot be termed that the property has been sublet or parted with.

(23) In the present case in hand, it is in the evidence of the landlord-respondents that the petitioner also had been visiting the shop. Admittedly, he has become old. Thus, he must be taken to be in legal possession. It is not the case where he has totally divested himself allowing his son to continue the business. Once he is in legal possession as is apparent from the evidence because he continues to visit the shop and the person found to be carrying on the business was none other than his son, it would not be permissible to draw inference of subletting. There is, thus, illegality and impropriety in the impugned order. The same cannot be sustained.

(24) For these reasons, the revision petition is allowed and the impugned orders of the learned Rent Controller and the learned Appellate Authority are set aside. Instead, the eviction application filed by the respondent-landlords is dismissed.

S.C.K.

Before Iqbal Singh, J.

BHOLA RAM & OTHERS R/O PEORI, TEHSIL GIDDERBAHA, DISTRICT MUKATSAR,—*Petitioners/Appellants*

versus

MADAN & ANOTHER,—*Respondents*

Regular Second Appeal No. 1800 of 1998

16th August, 1999

Hindu Succession Act, 1956—Section 14 (i) (ii)—Will in favour of widow—Will recognisition of pre-existing right—Limited right of maintenance granted—Residue in favour of sons of deceased—Whether widow becomes absolute owner.

Held that, where conferment of right to a Hindu Widow is in lieu of maintenance, sub-section (1) of Section 14 of the Act would be attracted and sub-section (2) of Section 14 of the Act would apply only where the 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. The learned counsel for the appellants, when questioned whether Daya Kaur had a pre-existing right or not, he answered in the affirmative

and rightly so. Therefore, there is no manner of doubt in the present case that Daya Kaur was conferred the limited right of maintenance in recognition of her pre-existing right in the suit land and, therefore, the said right transformed into an absolute right by virtue of the provisions of sub-section (1) of section 14 of the Act. The argument of the learned counsel for the defendant-appellants that this case is covered by the provisions of sub-section (2) of Section 14 of the Act, therefore, is without any force and repelled.

Mr. P.S. Bhangu, Advocate *for the Appellants*

Mr. D.V. Sharma, Advocate, *for the Respondents*

JUDGEMENT

IQBAL SINGH, J.

(1) The only point involved in this appeal is whether succession to the estate of the deceased Daya Kaur is governed by Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') or not. To decide this point, the following facts are necessary to be noticed :—

(2) Radha Ram was owner in possession of the suit property. Smt. Asso was his wife. After the death of Smt. Asso, Radha Ram had married Smt. Santi. Radha Ram had again married Smt. Daya Kaur after the death of his second wife Smt. Santi. Shiv Ram-defendant No. 1 (since deceased and repressented by defendant-appellant Nos. 1 to 3) was the son of Smt. Asso. Barma Nand (since deceased and represented by his daughter i.e. Krishna Devi-defendant No. 4) was born from the wed-lock of Radha Ram and Smt. Santi. Barma Nand had died in the life time of his father Radha Ram. Plaintiff-respondents Madan Lal and Mohan Lal are the sons of Daya Kaur from the loins of Radha Ram. Daya Kaur was the last owner in possession of the suit land and she executed a valid Will dated 22nd December, 1979 in favour of the plaintiff-respondents. Daya Kaur died and after her death, the plaintiff-respondents are owners in possession of the suit land as co-sharers. However, mutation of the suit land was sanctioned in favour of Shiv Ram (predecessor-in-interest of defendant-appellant Nos. 1 to 3) and Krishna Devi (defendant-appellant No. 4) along with the plaintiff-respondents by ignoring the Will dated 22nd December, 1979. Thereafter, the present suit was filed by the plaintiff-respondents challenging the said mutation and claimed themselves to be owners in possession as co-sharers of the land in dispute and also praying for a

decree of joint possession on the basis of the Will dated 22nd December, 1979.

(3) In the written statement filed by the defendants, they took the plea that Daya Kaur was not full owner of the suit property as she was given only life estate by her husband Radha Ram on the basis of the Will dated 16th November, 1964. After the death of Daya Kaur, the land was to revert back to four sons of Daya Ram and as such Daya Kaur could not execute the Will in favour of the plaintiff-respondents. They further stated that Radha Ram had excluded his male heirs, his three daughters and Daya Kaur. Therefore, the mutation was rightly sanctioned in favour of four sons of Radha Ram ignoring the Will put up by the plaintiff-respondents.

(4) On the pleadings of the parties, the trial Court framed the following issues besides that of relief :—

"1. Whether Daya Kaur deceased excuted a valid Will in favour of the plaintiffs on 22nd December, 1979 in respect of the suit land, if so, its effect ? OPP.

2. Whether the plaintiffs are estopped to file the suit by their own act and conduct ? OPD.

3. Whether the plaintiffs are entitled to declaration prayed for ? OPP.

4. Whether the plaintiffs are entitled to possession of the suit land ? OPP.

5. Whether the plaintiffs have no *locus standi* or cause of action to file the suit ? OPD."

(5) Under issue No. 1, the trial Court held that Daya Kaur was the limited owner of the land in dispute and that she could not bequeath away the same in favour of the plaintiffs through will dated 22nd December, 1979 and, accordingly, decided this issue in favour of the defendants and against the palintiffs. Issue No. 2 was decided in favour of the plaintiffs and against the defendants (wrongly mentioned as in favour of the defendants and against the plaintiffs in the judgment of the trial Court dated 20th July, 1989). Issue Nos. 3 and 4 were decided against the plaintiffs and in favour of the defendants whereas issue No. 5 was decided in favour of the defendants and against the plaintiffs. The trial Court dismissed the suit of the plaintiff-respondents.

(6) Aggrieved against the judgment and decree passed by the trial Court, the plaintiffs went in appeal before the lower appellate Court, which was allowed and suit of the plaintiffs for declaration and joint possession was decreed.

(7) In this Regular Second Appeal, the defendant-appellants have challenged the judgment and decree passed by the lower appellate Court.

(8) I have heard Mr. P.S. Bhangu, Advocate, for the appellants and Mr. D.V. Sharma, Advocate, for the respondents and have gone through the records of the case.

(9) The contention of the learned counsel for the appellants is that the present case is covered by the provisions of section 14(2) of the Act because the property had been given to Daya Kaur by her husband Radha Ram by way of will dated 16th November, 1964 only for her life time and she had limited interest in the same and, therefore, she could not validly execute the will dated 22nd December, 1979 in favour of her sons i.e. plaintiff-respondents.

Section 14 of the Act reads 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 stridhan 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."

(9) It is now well-settled that if a female Hindu acquires property under a written instrument or a decree of the Court and if such acquisition is not traceable to any antecedent right, then sub-section

(2) of Section 14 of the Act alone would be attracted. But where an antecedent right is traceable, a document in the nature of Will is of no consequence and the case will be covered by provisions contained in section 14(1) of the Act. It is common case of the parties that it was mentioned in the Will (Exhibit D-1) executed by Radha Ram that Daya Kaur will get maintenance by sale of produce of 1/5th share of the land of Radha Ram i.e. the land in dispute and that after her death the land would go to the four sons of Radha Ram. And from this, the learned counsel for the defendant-appellants states that Daya Kaur was given limited right in the suit property by Radha Ram and she was not made absolute owner of the same. A similar dispute arose between the parties in the case of *Smt. Beni Bai* v. *Raghubir Prasad* (1) and their Lordships of the Supreme Court observed as under :—

> "3. 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 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 spiriual 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 quality 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 of maintenance given to a widow would crystalised 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*.

(1) JT 1999 (2) S.C. 54

4. This Court in *V. Tulasamma* v. *Sesha Reddi (2)* has held as under :—

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

(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 virute 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 ;

(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 of 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)."

(10) From a reading of the above observations of the Apex Court in *Smt. Beni Bai's case (supra),* it becomes crystal clear that where conferment of right to a Hindu widow is in lieu of maintenance, sub-section (1) of Section 14 of the Act would be attracted and sub-section (2) of Section 14 of the Act would apply only where the 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. The learned counsel for the appellants, when questioned whether Daya Kaur had a pre-existing right or not, he answered in the affirmative and rightly so. Therefore, there is no manner of doubt in the present case that Daya Kaur was conferred the limited right of maintenance in recognition of her pre-existing right in the suit land and, the said right transformed into an

(2) 1997 (2) S.C. 742

absolute right by virtue of the provisions of sub-section (1) of Section 14 of the Act. The argument of the learned counsel for the defendant-appellants that this case is covered by the provisions of sub-section (2) of section 14 of the Act, therefore, is without any force and repelled.

(11) For the aforesaid reasons, I do not find any merit in this appeal and the same is hereby dismissed.

S.C.K.

Before Jawahar Lal Gupta & V.M. Jain, JJ

BAHADUR SINGH,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents.*

C.W.P. No. 12982 of 1999

7th October, 1999

Punjab Small Industries and Export Corporation Employees Service Bye-laws—Bye-law 3—Sources of recruitment—One such source by promotion—No provision for passing examination for promotion in the bye-laws—Non-passing of such test—Effect of.

Held that, a perusal of the bye-laws shows that the promotion has to be made on the basis of merit-cum-seniority. In other words, it is only when the merit of two candidates is equal that the senior one has to be preferred. It is not disputed that in the Service Bye-laws, there is no provision for passing any departmental examination before a person becomes eligible for promotion from the post of Sub Divisional Engineer to that of Executive Engineer. Once a provision has been made regarding promotion in the bye-laws, the provisions of the rules governing the employees in other departments of the State Govt. cannot be invoked. It has been admitted on behalf of the Corporation that persons who have been promoted hither-to-fore were never rejected or denied promotion only on the ground that they had not passed the departmental professional or departmental revenue examination. In view of these facts, it appears to us that the bogey of test is only a camouflage for defending the indefensible. It cannot be said that the petitioners were ineligible to be considered for promotion merely because they had not passed the departmental examination.

(Paras 12 & 13)