APPELLATE CIVIL

Before H. R. Sodhi, J.

NAND LAL AND ANOTHER,—*Appellants.*

versus

KHILLIAN AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 411 of 1968.

October 14, 1969

Hindu Succession Act (XXX of 1956)—Section 14—Hindu female's right of full ownership of the property—Possession of the female over the property—Whether has to be of a limited owner—A widow, not being heir, possessing property for 30 years—Possession not challenged by those interested in the property—Such widow—Whether entitled to benefit of section 14—"Trespasser"—Meaning of.

Held, that in order to enable a Hindu female to become a full owner of the property under section 14 of Hindu Succession Act, 1956, all that is required is that she must have been possessed of the said property, whether the possession was acquired before or after the commencement of the Act. The possession must, however, be lawful as distinct from that of a trespasser. A plain reading of the section shows that the property referred to is not necessary to be held by a female Hindu as a limited owner. All that is necessary is that the lawful possession must exist on the date of commencement of the Act unless she becomes possessed of the property thereafter. Some of the modes of acquisition of property by a Hindu female are stated in the explanation. A female though, strictly speaking, might not have been an heir, when she entered into possession of a property 30 years before the Act came into force, but her possession was regarded as lawful and in her own right by force, but her possession was regarded in ousting her from the property and subsequent devolutions of property are also so made as to recognise her as the person entitled to hold the property both by the interested persons and the revenue authorities cannot after the lapse of such a long time become a trespasser so as to be disentitled to the benefit of section 14 of the Act. (Para 6)

Held, that a 'trespasser" is one who enters upon the property of another by disturbance or usurpation of the right of the latter to hold or possess the same. It may be that the right disturbed or usurped is existent is *presenti* or is in expectation, but the circumstances must go to show that the intention of the person entering into possession and styled as a trespasser was to disturb or usurp the right of someone else. (Para 6).

Regular Second Appeal from the decree of the Court of Shri O. P. Sharma, Additional District Judge, Gurgaon dated the 16th January, 1968 reversing that of Shri B. K. Agnihotri, Sub-Judge Ist Class, Gurgaon, dated the 30th April, 1966, and granting the plaintiffs a decree for possession of the land in suit against the defendants.

ROOP CHAND, ADVOCATE, for the appellants.

H. L. SARIN, AND A. L. BAHL, ADVOCATES, for the respondents.

JUDGMENT.

H. R. SODHI, J.—This is defendant's appeal against the judgment of the Additional District Judge, Gurgaon, who on 16th January, 1968, allowed the appeal of the plaintiffs respondents and decreed their suit for possession of agricultural land situate in village Tekli, tahsil and district Gurgaon.

(2) Bhoop Singh was the owner of the suit land and he died in the year 1927 leaving behind a son Siri Chand, two daughters Mst. Khillian and Mst. Basanti who are plaintiffs in this suit, and Mst. Ghogan widow of his pre-deceased son Hira. Defendants appellants claim to be collaterals of the deceased in fourth degree. On the death of Bhoop Singh, his estate was mutated by way of inheritance, one-half in favour of Siri Chand and the other half in favour of Mst. Ghogan. Siri Chand later died somewhere in the year 1927 and his share was mutated in the name of his mother Mst. Sukh Devi, widow of Bhoop Singh, deceased. Mst. Sukh Devi also died afterwards and on her death, the share of the estate of Bhoop Singh held by her was mutated in the name of Mst. Ghogan with the result that Mst. Ghogan held the entire estate of Bhoop Singh deceased in the year 1951. Mst. Ghogan died on 8th November, 1962, and the plaintiffs respondents claiming to be daughters of Bhoop Singh filed the present suit on 20th October, 1964, for possession of the land described in the plaint which at one time was held by Bhoop Singh. It was pleaded by them that Bhoop Singh, their father, was owner in possession of the suit-land and he was succeeded on his death by Mst. Ghogan, widow of Hira, his pre-deceased son, who took the life estate. It was alleged that on the death of Mst. Ghogan, the plaintiffs, being the daughters of Bhoop Singh, were lawful heirs and owners of the land in dispute and that mutation had also been sanctioned in their favour. It was denied that defendants were collaterals of Bhoop Singh deceased and the plea was that even if they were collaterals, they could not succeed in preference to the plaintiffs. The defendants appellants resisted the suit. It was denied by them that the plaintiffs were daughters of Bhoop Singh. Bhoop Singh, according to the defendants, was not succeeded by Mst. Ghogan as his heir. It was pleaded that Siri Chand alone being the son was an heir of Bhoop Singh and after his death the defendants were in possession of the land in their own right as reversioners. It was also denied that the plaintiffs were heirs. The plea that Mst. Ghogan, widow

of Hira pre-deceased son of Bhoop Singh took a life estate, as alleged in para 2 of the plaint was not specifically referred to in the written statement though the allegations were generally denied. The defendants also claimed title by way of adverse possession. Pleadings of the parties led to the following issues being struck by the trial Court :—

(1) Are the plaintiffs daughters of Bhoop Singh deceased ?

(2) Was Mst. Ghogan the widow of Hira ?

(3) Was Mst. Ghogan entitled to succeed to Bhoop Singh or Sukh Devi ? If not, what is its effect ?

(4) Are the plaintiffs heirs of Bhoop Singh and Ghogan ?

(5) Is the suit within time ?

(6) Relief.

(3) Issue No. 1 was decided in favour of the plaintiffs it being held that they were proved to be the daughters of Bhoop Singh, son of Indraj. Issue No. 2 was also decided in their favour. Under issue No. 3 it was held that Mst. Ghogan was in possession of the land either actually or constructively since the year 1930-31 though her possession was illegal because of not being entitled to succeed to Sukh Devi or Bhoop Singh. This issue was accordingly decided against the plaintiffs. Issue No. 4 also went against the plaintiffs. The plea of the defendants that they had acquired title to the suit land by way of adverse possession was not accepted. It was held under issue No. 5 that the suit of the plaintiffs was within limitation. In view of the findings of the trial Court on issues Nos. 3 and 4, the suit was dismissed on 30th April, 1966.

(4) An appeal was preferred by the plaintiffs and the same was allowed by the Additional District Judge, Gurgaon, who decreed the suit. It was held by him that Mst. Ghogan being in possession of the suit land when the Hindu Succession Act, 1956 (hereinafter called the Act), came into force, became an absolute owner thereof by virtue of section 14(1) of the Act and the plaintiffs being preferential heirs were entitled to a decree for possession against the defendants appellants. Hence the present appeal.

(5) Two questions only have been argued before me and they are as under :—

(1) Whether section 14 is applicable to the circumstances of the instant case; and

(2) Are the plaintiffs preferential heirs to the estate of Bhoop Singh ?

Section 14 is in the following terms :—

"14. (1) Any property possessed hy 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."

(6) In order to enable a female Hindu to become a full owner of the property, all that is required is that she must have been possessed of the said property whether the possession was acquired before or after the commencement of the Act. The possession must, however, be lawful as distinct from that of a trespasser. A plain reading of the above section shows that the property referred to is not necessary to be held by a female Hindu owner as a limited owner and all that is necessary is that the lawful possession must

exist on the date of commencement of the Act unless she became possessed of the property thereafter. Some of the modes of acquisition of property by a Hindu female are stated in the explanation. A female though, strictly speaking, might not have been an heir, when she entered into possession of a property about 30 years before the Hindu Succession Act came into force, but her possession was regarded as lawful and in her own right by those who could as heirs be interested in ousting her from the property and subsequent devolutions of property are also so made as to recognise her as the person entitled to hold the property both by the interested persons and the revenue authorities cannot after 40 years become a trespasser so as to be disentitled to the benefit of section 14. A trespasser is one who enters upon the property of another by disturbance or usurpation of the right of the latter to hold or possess the same. It may be that the right disturbed or usurped is existent *in presenti* or is in expectation, but the circumstances must go to show that the intention of the person entering into possession and styled as a trespasser was to disturb or usurp the right of someone else. It was no doubt conceded by the counsel for the respondents before the trial Court that Mst. Ghogan was not a legal heir of Bhoop Singh who died in the year 1927, but it is a common ground between the parties that on the death of Bhoop Singh, Mst. Ghogan entered into possession of one-half of the land left by the deceased being the widow of the latter's pre-deceased son Hira and the other half was mutated in the name of Siri Chand. Siri Chand the nearest heir of the deceased did not contest at that time that the widow of his pre-deceased brother had no right to inherit the property. Later, when Sukh Devi, mother of Siri Chand, died, land held by Siri Chand was again mutated in favour of Mst. Ghogan with the result that she was holding the entire estate of Bhoop Singh. In my opinion, in such circumstances it is not to be investigated with mathematical precision and nor is it possible to do so as to what was the source of her right, more so when the parties are governed by custom. The possession of a female Hindu, in such a situation, cannot by any standard, be styled as that of a trespasser. It may be, as held by the lower appellate Court, that she was given the land in lieu of maintenance as the widow of the pre-deceased son of Bhoop Singh.

(7) The contention of Mr. Roop Chand, learned counsel for the appellants, is that the finding of the lower appellate Court that Mst. Ghogan got the land in lieu of maintenance is not supported

by any evidence. As already observed, she was holding the property in her own right and her right was recognised by Siri Chand, the nearest heir, who was most interested in disputing her claim if it could be controverted. The appellants who were the fourth degree collaterals of Bhoop Singh also never protested. It cannot be denied that she was entitled to maintenance both under Hindu Law and custom even if she is treated not to be an heir of Bhoop Singh. There is, therefore, nothing wrong in the lower appellate Court holding that Mst. Ghogan must be considered to have held the property in lieu of maintenance and not as a trespasser. A Hindu female whether governed by Hindu law or custom before the coming into force of the Act generally held the property as a limited owner. In this view of the matter, sub-section (1) of section 14 comes into operation and Mst. Ghogan must be deemed to have become an absolute owner on the date the Act came into force.

(8) Mr. H. L. Sarin, learned counsel for the respondent, has invited my attention to a judgment of Sarkaria, J., in *Mst. Harmal Kaur and another* v. *Smt. Kartar Kaur and another* (1). In that case, one Bishna, governed by agricultural custom, died more than 41 years before the suit in 1929 or 1930 A.D., leaving behind Kartar Kaur, widow of his pre-deceased son. On the death of Bishna, the mutation of his landed estate was attested in favour of Kartar Kaur somewhere in May, 1929, and Kartar Kaur continued to be in possession and enjoyment of the estate of the deceased. She then gifted the property in the year 1961 to one Surjan Singh and in the year 1962 daughters of the last male holder Bishna instituted the suit for a declaration that the gift was void and ineffective with regard to their reversionary rights after the death of Kartar Kaur. It was alleged by them that they were governed by agricultural custom according to which Kartar Kaur was a limited owner. The donee resisted the suit pleading *inter alia* that Kartar Kaur donor had become absolute owner of the land. The plaintiffs contended that Kartar Kaur being the widow of his pre-deceased son was not entitled to succeed to the estate of Bishna and her possession of the disputed land was, therefore, not lawful. In rejecting this contention, the learned Judge observed that even if it be assumed for the sake of argument that Kartar Kaur had no right to succeed under custom, her alleged wrongful possession started 41 years

(1) 1967 P.L.R. 971.

before the suit and she continued to be in established possession of the suit land without interruption, and as of right, on the date of commencement of the Act. The crucial point of time at which the status of the female Hindu is to be looked at is the date of the commencement of the Act, that is, June 17, 1956, on which date she was admittedly not a trespasser holding the property without any vestige of title. I am in respectful agreement with the view taken by the learned Judge and must hold that Mst. Ghogan became a full owner of the property on June 17, 1956, which was the date of commencement of the Act. The possession of Mst. Ghogan which was continuous whether physical or constructive, for over 40 years could not be described as that of a trespasser. The requirements of section 14(1) are fully satisfied because she was a Hindu female possessed of property on the date of commencement of the Act and must, therefore, hold the same as full owner and not as limited owner.

(9) Mr. Roop Chand relied on a Division Bench judgment of this Court reported as *Mst. Bakhtawari* v. *Sadhu Singh and others* (2), *Gurdas* v. *Mst. Prito and another*, (3), *Hira Lal* v. *Smt. Sharabati Devi and another* (4), and *Eramma* v. *Veerupana and others* (5). It was held in *Mst. Bakhtawari's case* (2) that section 14 of the Act cannot be interpretted to validate the illegal possession of a female Hindu and it cannot confer any rights on a trespasser. In that case, one Telu died some time before the Act came into force but he had by that time gifted his estate in favour of his daughter Mst. Bakhtawari under the custom. The plaintiffs who were collaterals in the fourth degree were admittedly better heirs than Mst. Bakhtawari. It was in these circumstances that it was held that Mst. Bakhtawari could not be said to have become owner of the suit property when there was no valid gift in her favour and her possession must be deemed to be that of trespasser. *Gurdas's case* (3) also does not help the learned counsel for the appellants and all that is held in that case is that the provisions of the Act are not retrospective and, therefore, succession would be governed by the law prevailing at the time when it opened. There is no quarrel with this proposition of law. *Hira Lal's case* (4) can be of no assistance either. All that is held in this case is that even

(2) A.I.R. 1959 Pb. 558.
(3) 1960 P.L.R. 844.
(4) 1966 P.L.R. 51.
(5) A.I.R. 1966 S.C. 1879.

where a widow acquires land in lieu of maintenance under a compromise, section 14(1) of the Act will apply and she would become full owner of the property so as to be able to transfer the same. Facts in Eramma's case, (5), decided by the Supreme Court, were quite different. Eran Gowda died leaving three widows, Eramma, Siddamma and Sharnamma. He also left a son called Basanna, who died somewhere in the year 1936-37 at a time when he was the sole male-holder of the property in dispute. After his death, his stepmothers Eramma and Siddamma got into possession of the properties. The plaintiffs in that suit claiming to be the nearest heirs of Basanna sought to recover possession of the suit properties from the two widows Eramma and Siddamma. They resisted the suit on various grounds. The suit was ultimately decreed by the High Court. The matter was taken to the Supreme Court and during the pendency of the proceedings the Act came into force with effect from June 17, 1956. The plaintiffs decree-holders took out execution of the decree granted by the High Court in their favour. The judgment-debtor Eramma preferred an objection in the execution Court that since she had been in possession of one-half of the property after the death of her husband, she had become full owner thereof in view of the provisions of the Act. The executing Court accepted the objections and dismissed the execution application. The High Court reversed the order of the executing Court holding that the Act was not applicable to the case and restored the execution case to file. The matter again went up to the Supreme Court on an appeal by Eramma and it was contended on her behalf that she being admittedly in possession of one-half of the property of her husband Eran Gowda after he died somewhere in the year 1930-31, she became the full owner of those properties. This contention was repelled by their Lordships of the Supreme Court it being held that at the time of the death of Eran Gowda, Eramma had not even a vestige of the title to the property. It has been observed by their Lordships that it is not enough to attract the operation of section 14 that a Hindu female was in possession of the property on the date of commencement of the Act, but she must have some sort of title to the same. It was held that the object of section 14(1) is to make a Hindu female a full owner of the property which she had acquired or which she acquires after the enforcement of the Act and that it is not intended to confer title on a Hindu female where she did not in fact possess any vestige of title. In other words, this section cannot be interpretted so as to validate the illegal possession of a female Hindu so as to confer title on a

mere trespasser. The sole question is whether in the instant case Mst. Ghogan can be said to be a mere trespasser whose illegal title is being converted into lawful ownership. As I have already said above, Mst. Ghogan cannot be considered to be a mere trespasser who does not have any vestige of title. She has been in possession of the property either actually or constructively for a period of 40 years without any challenge to her right. The parties are governed by the custom and it cannot possibly be urged that she was allowed to usurp anybody's right to the possession of the property. If nothing else, she was certainly entitled to maintenance and the Court of first appeal has come to that conclusion. I cannot, therefore, hold her to be a mere trespasser and she must be held to have become full owner of the property on the commencement of the Act which she could earlier hold only as a limited heir.

(10) A feeble attempt was made to support the contention that the plaintiffs are not heirs to the estate of Ghogan in preference to defendants appellants who are collaterals of Bhoop Singh in the fourth degree. In view of my finding that Mst. Ghogan became a full owner of the property, there can be no doubt that the plaintiffs are the preferential heirs. According to section 15, property of a female Hindu dying intestate devolves, in the absence of the sons and daughters (including the children of any pre-deceased son or daughter) and the husband, upon the heirs of the husband. The plaintiffs are the sisters of Hira, deceased husband of Ghogan and they fall in category II of Class II given in the schedule of heirs.

(11) For the foregoing reasons, there is no merit in the appeal which stands dismissed. The parties are left to bear their own costs.

K. S. K.

APPELLATE CIVIL

Before H. R. Sodhi, J.

CHAMAN LAL,—*Appellant*

versus

MOHAN LAL,—*Respondent*

Execution Second Appeal No. 1567 of 1968.

October 21, 1969.

Code of Civil Procedure (*V of* 1908)—*Sections* 11, 47 *and Order* 21—Rule 90—*Punjab Debtors' Protection Act* (II *of* 1936)—*Section* 10(3)—*Judgment-debtor's entire land attached in execution of decree—No objection under*