

Firm Gauri Lal-
 Gurdev Das
 v.
 Jugal Kishore
 Sharma
 and another

 Gosain, J.

jurisdiction in Court and a decree passed by a Court cannot be assailed in executing Court on the ground that the Court passing the same had no territorial jurisdiction to pass it. The point of territorial jurisdiction can only be decided on evidence and the law provides that the objection must be taken in the Court itself which can decide it after recording evidence of the parties. The authorities of the various High Courts on this point are almost unanimous. (See in this connection *Zamindar of Ettiyapuram v. Chidambaram Chetty* (1), *Jagannath v. Shivnarayan* (2), *Nathan v. Samson* (3), *Sheo Behari Lal v. Makrand Singh* (4), and *Musa Ji Lukman Ji v. Durga Dass* (5).

As a result of the above I find that the two objections raised by the judgment-debtors are not open to them and that no enquiry at all is needed on the same. Both the appeals are liable to be dismissed with costs.

B.R.T.

APPELLATE CIVIL

Before G. D. Khosla, J.

Mst. DASSI,—Defendant-Appellant

versus

Mst. KAPURO,—Plaintiff-Respondent

Regular Second Appeal No. 495 of 1957.

1958
 Jan., 28th

Hindu Succession Act (XXX of 1956)—Section 14—Applicability and scope of—Hindu widow—Gift by, in favour of a Hindu female—Donor dying before the commencement of the Act—Whether the donee becomes the full owner after such commencement—Explanation to section 14—“Gift”—Meaning of—Whether includes any gift.

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- (1) I.L.R. 43 Mad. 675 (F.B.).
 (2) A.I.R. 1937 Bom. 19.
 (3) A.I.R. 1931 Rang. 252 (F.B.).
 (4) A.I.R. 1935 Oudh. 358 (F.B.).
 (5) A.I.R. 1946 Lah. 57 (F.B.).

Held, that an examination of section 14 of Hindu Succession Act shows that what the section does is to abrogate reversionary rights. Where a female is in possession of property and owns a limited estate, she becomes full owner by virtue of this section. This section, however, cannot be interpreted to validate the illegal possession of a female Hindu and it cannot confer any rights on a trespasser. Before the commencement of the Act, a Hindu widow had only a limited estate. She could not transfer the property in her possession by means of a gift as she was wholly incapable of making a valid gift of her property. The moment she dies, her husband's reversioners cease to be reversioners and become owners. They cannot be deprived of their right of any subsequent change in the law. If the widow was alive on the day the Act came into force, she would have acquired the right to make a gift in favour of any one she liked and her reversioners would lose their rights. The death of a widow before the coming into force of the Act deprives the donee from her of every thing she has and makes the reversioners full owners.

Held also, that the word "gift" used in the Explanation to section 14 of the Hindu Succession Act does not mean any kind of gift. Gift must of necessity mean a valid gift. If there is any defect in the title of the donor, that defect is not removed by the enactment of section 14. It is only the defect in the donee which is removed by this section.

Dhirajkunwar v. Lakhan Singh (1), *Mst. Janki Kuer and others v. Chhathu Prasad and others* (2), *Bhabani Prasad Saha v. Sm. Sarat Sunder Choudhurani* (3), *Sm. Lakmi Debi v. Surrender Kuma Panab and others* (4) and *Ram Ayodhya Misir and others v. Raghunath Misir and others* (5) distinguished; *Mst. Prito v. Gurdas, etc.*, (6) dissented from.

Second Appeal from the judgment and decree of *Shri Murari Lal Puri*, District Judge, Patiala (Camp Kandaghat), dated 23rd March, 1957, affirming that of *Shri F. S. Gill*, Sub-Judge, 1st Class, Kandaghat, dated 15th

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- (1) A.I.R. 1957 M.P. 38.
 - (2) A.I.R. 1957 Patna 674.
 - (3) A.I.R. 1957 Cal. 527.
 - (4) A.I.R. 1957 Orissa 1.
 - (5) A.I.R. 1957 Pat. 480.
 - (6) R.S.A. 566 of 1954.

June, 1956, passing a decree for possession of the property in dispute in favour of the plaintiff and against the defendant.

SHAMAIR CHAND and GOKAL CHAND for Appellant.

C. L. AGGARWAL for Respondent.

JUDGMENT

G. D. Khosla, J. G. D. KHOSLA, J.—This second appeal raises the question of the interpretation of section 14 of the Hindu Succession Act, 1956.

The facts are briefly as follows. On the death of Nikmo, the last male-holder and owner of the property in dispute, his widow Rukmani succeeded. Rukmani had a daughter Tulsi by her first husband Kahnu, and this Tulsi's daughter Dassi is the appellant before me. Rukmani made a gift of the property she had inherited from her husband Nikmo in favour of Dassi. This gift was made on 19th July, 1951. It had been preceded by a will executed by Rukmani also in favour of her grand-daughter, Dassi on 4th December, 1943. After the making of the gift, possession of the land passed to Dassi and a mutation was effected in the revenue papers. On 17th January, 1956, Kapuro, the widow of Tulsi Ram, a collateral of Nikmo, brought a suit for possession of this property on the ground that the gift by Rukmani in favour of Dassi was invalid. She claimed that upon Rukmani's death the property had devolved upon her through her deceased husband, Tulsi Ram. The suit was decreed by the trial Court and this decision was upheld on appeal by the District Judge of Patiala. Dassi came up in second appeal to this Court and Mr. Shamair Chand who appeared on her behalf relied upon section 14 of the Hindu Succession Act, 1956. This Act came into force on the 17th of June, 1956,

and made a change in the law relating to women's estate. Section 14 is in the following terms:—

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“14. *Property of a female Hindu to be her absolute property:—* G. D. Khosla, J.

- (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 subsection, ‘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 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 subsection (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.”

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The argument of Mr. Shamair Chand is that Dassi is a female Hindu who is possessed of property which she acquired by means of a gift. Her case, therefore, falls under section 14 of the Act and she must be deemed to be a full owner. Mr. Shamair Chand relied upon a number of reported decisions and also an unreported decision of this Court.

An examination of the section shows that what section 14 does is to abrogate reversionary rights. Where a female Hindu is in possession of property and owns a limited estate, she becomes full owner by virtue of this section. This section, however, cannot be interpreted to validate the illegal possession of a female Hindu and it cannot confer any rights on a trespasser. In the present case Rukmani, the widow of Nikmo, had only a limited estate. She could not transfer the property in her possession by means of a gift as she was, according to the law then in force, wholly incapable of making a valid gift of her property. Therefore, by the old law Rukmani's gift in favour of Dassi was wholly invalid and on her death her deceased husband's reversioners became owners of the property. The moment she died, the reversioners ceased to be reversioners and became owners. They could not be deprived of this right by any subsequent change in the law. Had Rukmani been alive on the day the Act came into force, she would have acquired the right to make a gift in favour of any one she liked, and her reversioners would have lost their rights. The death of Rukmani before the Act came into force deprived Dassi of everything she had and made Nikmo's reversioners full owners.

Mr. Shamair Chand tried to argue that the word "gift" used in the Explanation to section 14

quoted above means any kind of gift. I cannot, however, take this view, as gift must of necessity mean a valid gift. If there is any defect in the title of the donor, that defect is not removed by the enactment of section 14. It is only the defect in the donee which is removed by this section. If the original donor had had the right to make a valid gift, then Dassi's possession would have invested her with full proprietary rights. In the present case, however, Dassi's possession became the possession of a trespasser on Rukmani's death and Nikmo's reversioners were entitled to be put in possession of the land at once. Section 14, therefore, does not improve Dassi's position in any way.

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In all the reported decisions relied upon by Mr. Shamair Chand it was an alienation by a living widow which was challenged. In *Dhiraj-kunwar v. Lakhan Singh* (1), a widow made a gift and this gift was challenged by her deceased husband's reversioners. The widow was alive when the Hindu Succession Act came into force and, therefore, it was held that she had become a full owner and was therefore competent to make a gift. Similarly, in *Mt. Janki Kuer and others v. Chhathu Prasad and others* (2), it was an alienation by a living widow which was being challenged, *Bhabani Prasad Saha v. Smt Sarat Sunder Choudhurani* (3), was a similar case. In *Sm. Laxmi Debi v. Surrender Kumar Pande and others* (4), also it was a reversioner who was seeking to establish her reversionary rights. Here it is not a reversioner seeking possession but a reversioner whose rights had matured into the rights of full proprietors before the Act came into force. The

(1) A.I.R. 1957 M.P. 38.

(2) A.I.R. 1957 Patna 674.

(3) A.I.R. 1957 Cal. 527.

(4) A.I.R. 1957 Orissa 1.

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decisions relied upon, therefore, do not help the appellant. *Ram Ayodhya Misir and others v. Raghunath Misir and others* (1), is also the case of a sale deed executed by a female Hindu who was alive when the Act came into force.

The unreported decision of this Court relied upon is the judgment of Tek Chand, J., in *Mst. Prito v. Gurdas, etc.* (2). In the case a gift was being challenged and one of the donors was a widow who died before the Act came into force. The case was, therefore, somewhat similar to the case before me. With great respect to Tek Chand, J., I am unable to subscribe to the view taken by him. It seems to me that the aspect of the case which I have discussed above was not presented before him and while he relied on the decisions to which I have referred above, he did not distinguish them on the ground that in all those cases the female widow whose rights were being challenged was alive. In the present case it is the competence of Rukmani to make a valid gift in favour of Dassi which is being disputed, and since Rukmani died before the Act came into force, the Act did not improve her status. Rukmani had no right to make a valid gift in favour of Dassi and Dassi acquired no title. On the death of Rukmani, Dassi's rights came to an end and Nikmo's collaterals became owners.

For these reasons this appeal must fail and I dismiss it with costs.

K.S.K.

(1) A.I.R. 1957 Pat. 480.
(2) R.S.A. 566 of 1954.