

can be framed. I accordingly, find that the prohibitory order issued by the Competent Officer respondent No. 2 is without jurisdiction and quash the same. The petitioner shall have the costs of this petition, which are assessed at Rs 200 from respondents 7 to 10.

The Amritsar
Improvement
Trust
v.
The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, J.

SHARBATI DEVI,—Appellant.

versus

PT. HIRA LAL AND ANOTHER,—Respondents.

Regular Second Appeal No. 1611 of 1959

Hindu Succession Act (XXX of 1956)—S. 41—Scope and applicability of—Widow holding property in lieu of maintenance before the passing of the consent decree under which she was allowed to retain possession of that property during her life-time without any right of alienation—Whether becomes full owner thereof after the coming into force of the Act.

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Held, that the language of section 14 of the Hindu Succession Act, 1956, is quite clear and leaves no room for doubt that if any property is possessed by a female Hindu which will include immovable property acquired in lieu of maintenance, then she would become the full owner thereof by virtue of sub-section (1). Sub-section (2) in that event cannot come into operation. It will apply only if for the first time a female Hindu acquires it in any of the ways mentioned in that sub-section, i.e., by a gift or under a will * * or under a decree * * *. It will, therefore, depend on the facts of each case as to whether any property had already been acquired under sub-section (1). If the answer be in the affirmative, then sub-section (2) cannot apply. If it is in the negative, sub-section (2) will become applicable provided the property is acquired in any of the several ways mentioned therein.

A died leaving behind a minor son and the widow of a predeceased son. On his death land left by A was mutated half and half in their names. After attaining majority the son filed a suit against the widow of his brother for possession of the land in her possession on the ground that he was the only heir of his father at the time of his death. That suit was compromised and by the consent decree she was allowed to retain the land which was in her possession for her life without any right of alienation. This decree was passed in 1951. After coming into force of the Hindu Succession Act she sold a portion of that land which alienation was challenged by the son.

Held, that before the consent decree the widow's possession of the land was lawful and by means of the compromise on which the consent decree was passed in 1951 she did not get any larger interest or was not put in possession of more properties or share in the properties than what was in her possession already by virtue of the mutation dated 31st December, 1938. At any rate it is quite clear that so far as the suit land is concerned that was in possession of the appellant since 1938 until it was alienated any by virtue of the consent decree also she was allowed to remain in possession of that very property though restrictions were imposed on her rights of alienation etc. In this view of the matter it cannot be said that it was by virtue of the decree that the appellant came to be in possession of the suit property. Sub-section (2) of section 14, therefore, would have no application, with the result that she was the full owner of the aforesaid property at the time when she sold it.

Regular Second Appeal from the decree of the Court of Shri Ishar Singh Hora, Senior Sub-Judge, Gurgaon, invested with Enhanced appellate powers, dated the 25th day of July, 1959, affirming with cost that of Shri O. P. Singla, Sub-Judge IIInd Class, Gurgaon, dated the 9th December, 1958 granting the plaintiffs a decree for possession of the suit land measuring 16 Bighas and 1 biswas against the defendants with costs.

SHAMAIR CHAND AND PARKASH CHAND, ADVOCATES, for the Appellant.

G. P. JAIN, ADVOCATE, for the Respondents.

JUDGMENT

GROVER, J.—In order to appreciate the point which is to be decided in this appeal it is necessary to state the facts shortly. One Din Dayal, who was a lawyer, had two wives Smt. Mathri and Smt. Basanti. From Smt. Mathri he had a son, Bhikan Lal, who died in 1917 leaving a widow Mst. Sharbati Devi who is defendant No. 1 in the suit out of which this appeal has arisen, Smt. Basanti was the other wife of Din Dayal from whom he had a son, Hira Lal, who is the plaintiff. Din Dayal died in the year 1938 and on 31st December, 1938, his properties were mutated half and half in favour of Mst. Sharbati Devi and Hira Lal who was minor at that time. Mst. Sharbati Devi remained in possession of the properties which had been mutated in her favour. In the year 1950 a suit was filed by Hira Lal against Mst. Sharbati Devi in which a compromise took place on the basis of which a consent decree was passed on 9th May, 1951, declaring that Hira Lal was the sole heir and owner of the property left by Din Dayal but she was given possession of the suit land and certain other lands for life her rights being restricted with regard to alienation, etc. On 14th September, 1956, she sold 4 *kanals* and 3 *marlas* of land to Khem Ram defendant No. 2 for a sum of Rs. 200. This led to the institution of a suit by Hira Lal for possession of the land sold and in the alternative for a declaration that the sale by defendant No. 1 in favour of defendant No. 2 was void and ineffective as against the plaintiff's rights. The suit was contested by Mst. Sharbati Devi and on pleadings of the parties as many as six issues were raised. The only material issue, however, is No. 1 which is—

“Whether defendant No. 1 became full owner of the suit property by coming into force of Act No. 30 of 1956?”

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The trial Court while decreeing the suit made an obvious mistake by passing a decree for possession of 16 *bighas* and 1 *biswa* whereas the claim was only in respect of 4 *kanals* and 3 *marlas* of land which had been alienated. The learned Senior Subordinate Judge affirmed the decree of the trial Court. It appears that before him the mistake with regard to the area of the land in dispute was not pointed out. The present appeal has been filed only by Mst. Sharbati Devi and the sole point on which learned counsel have addressed arguments relates to the applicability of section 14(1) of the Hindu Succession Act, 1956 (hereinafter to be referred to as the Act) by virtue of which the suit land would be held by Mst. Sharbati Devi as full owner which she would be fully entitled to alienate. The position taken up by the plaintiff, however, is that sub-section (2) of section 14 governs the present case as the property in dispute was acquired by Mst. Sharbati Devi under the consent decree dated 9th May, 1951, and, therefore, she was not entitled to alienate the property in any manner as provided in the compromise on which the decree was based.

Mr. Shamair Chand, who appears for the defendant-appellant, contends that the property in dispute had been acquired before the commencement of the Act after the death of Din Dayal by the appellant in lieu of maintenance and, therefore, it was held by her as full owner by virtue of section 14(1) at the time when she alienated it in favour of Khem Ram. It is pointed out that if the female Hindu has already acquired property in that manner, then sub-section (2) of section 14 will have no application because according to the express language employed therein it can govern only such cases where property has been acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court,

etc. According to Mr. Shamair Chand, this means that sub-section (2) can come into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property. My attention has been invited to a decision of Gurdev Singh, J., in *Dhanna Singh v. Shrimati Avtar Kaur* (Regular Second Appeal No. 292 of 1961) against which Letters Patent Appeal No. 310 of 1962 was dismissed in which after referring to section 14(2) it has been observed as follows:—

“It is clear that this provision would apply only to that property which is ‘acquired’ by way of gift, under a will or any other instrument or under a decree, etc., and not to the property to which a female Hindu may have succeeded on the death of the last male holder. In the case with which we are dealing Gurdas Singh died issueless on 22nd of January, 1956, and his property immediately vested in his widow Mst. Avtar Kaur, though as a limited owner. She also took possession of the same and the lands were mutated in her favour. The agreement (Exhibit P. 3) which was arrived at about six months later, merely recognised her right to hold the estate of her husband as limited owner as at that time under the law she was entitled only to a limited estate. No estate was conferred on her by virtue of this agreement nor did she thereby acquire any estate. All that this document stated was that Smt. Avtar Kaur was to hold her husband’s property, of which she was already in possession, as a limited owner and would also be responsible for the payment of her husband’s debts.”

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In *Sasadhar Chandra Day v. Smt. Tara Sundari Dasi* (1), P. C. Mallick, J., was of the view that "the language used in sub-section (2) of section 14 indicates that the word 'acquired' will have a restricted meaning. It was not intended to have a meaning wider than its ordinary meaning. A property is said to be acquired when prior to the acquisition the person acquiring it had no interest in the property.

To my mind, the language of section 14 is quite clear and leaves no room for doubt that if any property is possessed by a female Hindu which will include immovable property acquired in lieu of maintenance, then she would become the full owner thereof by virtue of sub-section (1). Sub-section (2) in that event cannot come into operation. It will apply only if for the first time a female Hindu acquires it in any of the ways mentioned in that sub-section i.e. by a gift or under a will * * * or under a decree ***. It will therefore depend on the facts of each case as to whether any property had already been acquired under sub-section (1). If the answer be in the affirmative then sub-section (2) cannot apply. If it is in the negative, sub-section (2) will become applicable provided the property is acquired in any of the several ways mentioned therein. Mr. Ganga Parshad, who appears for the respondents, has relied on *Jaria Devi v. Shyam Sunder Agarwala* (2) and *Mst. Sampato Kuer v. Dulhin Mukha Devi* (3) but these cases are wholly distinguishable on the facts. In the Calcutta case it has been laid down that where the widow has been allotted properties not strictly according to her share under a deed, which is described as a deed of partition, but which, in reality, is a deed of family

(1) A.I.R. 1962 Cal. 438.
(2) A.I.R. 1959 Cal. 338.
(3) A.I.R. 1960 Pat. 360.

arrangement, expressly stipulating that the widow will have no more than a life interest, the case would fall within the exception to section 14(2) and not within the general rule enacted in section 14(1) of the Act and her interest will not be transformed into an absolute interest. In that case the title of the widow to the acquired property was founded on the deed and not on any admitted share of inheritance. It was for that reason that the learned Judges ruled out the applicability of sub-section (1) and found that the case fell within the exception embodied in sub-section (2). In the Patna case a widow, on coming into possession of her husband's properties, gifted away in the year 1947 all of them to her daughters, who in return executed a deed of maintenance in favour of their mother to the effect that she would be in possession of those properties during her lifetime and have the right to enjoy their usufruct in lieu of maintenance without any right of alienation. It was held that the widow's interest was only a restricted estate and the case was governed by sub-section (2) and not by sub-section (1) of section 14 of the Hindu Marriage Act. The real reason why that conclusion was reached was that the widow had obtained possession of the properties on account of the deed executed by the daughters and the question, therefore, that will have to be resolved in cases of this kind is whether the possession of the female Hindu at the time the Act came into force was attributable or was pursuant to any instrument or decree etc. or whether she was already in possession by virtue of her right either as an heir or in lieu of maintenance which was later on recognised or given effect to in the decree etc. In the present case it is contended by Mr. Shamair Chand that right from 1938 onwards the appellant was in possession in lieu of maintenance as admittedly she being a widow of the pre-deceased son she was not entitled to anything beyond maintenance. But maintenance

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could be paid to her either from the estate or she could be put in possession of a part of the estate in lieu of maintenance and this is what was exactly done when the mutation was effected in her favour on 31st December, 1938. The lower appellate Court appears to have treated the appellant as if she was a trespasser and that whatever rights she obtained to get into possession of the suit property were conferred upon her by the consent decree in the year 1951. This apparently is an error and it cannot possibly be held that she was in possession before the consent decree of 1951 as a trespasser. Indeed, her possession was perfectly lawful and must be deemed to have been lawful in view of what has been laid down in *Hardit Singh v. Gurmukh Singh* (4) and *Mt. Channi Bibi v. Ahmad Khan* (5). It is admitted that by means of the compromise on which the consent decree was passed in 1951 she did not get any larger interest or was not put in possession of more properties or share in the properties than what was in her possession already by virtue of the mutation dated 31st December, 1938. At any rate, it is quite clear that so far as the suit land is concerned, that was in possession of the appellant since 1938 until it was alienated and by virtue of the consent decree also she was allowed to remain in possession of that very property though restrictions were imposed on her rights of alienation etc. In this view of the matter it cannot be said that it was by virtue of the decree that the appellant came to be in possession of the suit property. Sub-section (2) of section 14, therefore, would have no application with the result that she was the full owner of the aforesaid property at the time when she sold it to defendant No. 2.

(4) 64 P.R. 1918.

(5) A.I.R. 1924 Lah. 265.

For all the reasons given above this appeal is allowed and the decree of the Courts below is set aside and the suit dismissed, but in the circumstances the parties will be left to bear their own costs throughout.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and Prem Chand Pandit, JJ.

GURPAL SINGH AND OTHERS,—Appellants.

versus

BACHAN KAUR *alias* GURDIAL KAUR AND OTHERS,—
Respondents.

Regular Second Appeal No. 91 of 1961.

Custom—Rattigan's Digest of Customary Law—Paragraphs 64 and 66—Whether contain correct statement of the custom—Females inheriting from persons other than those mentioned in paragraph 64—Whether acquire absolute estate.

1963

Sept., 17th.

Held, that Rattigan's Digest of Customary Law has been accepted all along as a book of great authority for the purposes of discovering the rules of custom applicable in the Punjab and before any statement of custom contained therein is doubted, there must be cogent evidence to support such a doubt. Paragraphs 64 and 66 of the Digest contain the correct statement of the custom actually applicable to females and taken together and in the absence of anything else, the meaning is clear enough, and it is that if a female acquired property by inheritance from her husband, her father, grandfather, or son or grandson, she takes a limited estate, but if she acquires the property from any other relative of hers, then she takes an absolute estate.

Second Appeal from the decree of the Court of Shri A. D. Kaushal, Ist Additional District Judge, Ferozepore, dated the 1st day of December, 1960, modifying, on the cross-objections filed by the Mst. Bachan Kaur, plaintiff,