evasively been put off by contending that there is no legal and justifiable ground to interfere with the process issued by the Presiding Officer and the Labour Conciliation Officer, and that the application for setting aside the award was made beyond the prescribed period. The respondent did not have the courage to equate the present petitioner with the firm which he had impleaded in his claim petition. Thus, though extremely hesitantly, I have come to the conclusion that the award passed by the Labour Court being a nullity, should have been set aside and requires now to be set aside, requiring fresh determination of the main dispute at the end of the Labour Court.

(8) Accordingly, for what has been said above, this petition succeeds, the impugned award Annexure P-1 and order refusing to set aside, Annexure P-5, both are quashed and the matter is remitted back to the Labour Court to decide afresh the claim of the respondent in accordance with law.

(9) Parties through their counsel are directed to put in appearance before the Labour Court on October 3, 1985. The Records of the Labour Court be remitted back.

H.S.B.

Before Pritpal Singh, J.

PADMA VATI AHUJA,—*Appellant.*

versus

DASAUNDHI RAM AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 1897 of 1976.

September 12, 1986.

Hindu Succession Act (XXX of 1956)—Section 14(1) & (2)—Husband conferring life estate of property on wife in lieu of maintenance by virtue of gift deed — Gift deed stipulating that the donee would be entitled to alienate the property for necessity—Said deed further stipulating that in case the property is not alienated it

would revert to the donor or his daughter in the case of the death of the donee — Donor subsequently making a Will bequeathing the property to the daughter — Donee also making Will bequeating the property to another person — Donee — Whether competent to bequeath the property — Section 14(1) — Whether has the effect of making the donee full owner of the property.

Held, that sub-section (1) of section 14 of the Hindu Succession Act, 1956 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed she would become the full owner of the property. Sub-section (2) is more in the nature of a proviso or exception to sub-section (1). It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of woman in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). Sub-section (2) cannot be interpreted in a manner which would rob sub-section (1) of the efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). It is further evident that sub-section (2) must be confined to cases where property is acquired by a female Hindu for the first time as a grant, without any pre-existing right, under a gift, Will, instrument, decree order or award, the terms which prescribe a restricted estate in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of a right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2) even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property. It is also true that Hindu female rights to maintenance is not an empty formality being conceded as a matter of grace and generosity but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and the claim for maintenance is doubtless a pre-existing right and the transfer declaring or recognising such a right does not confer any new title but merely endorses the pre-existing rights. As such the limited estate conferred by the gift deed would be enlarged to full ownership by virtue of section 14(1) of the Act and as such the donee would have the right to bequeath the property to any person.

(Paras 6 and 9)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Ludhiana, dated the 26th day of July, 1976, *affirming with costs that of the Sub-Judge 1st Class, Ludhiana,*

dated the 6th day of October, 1970, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

CLAIM: *Claim for possession of House No. S-9–1167/B. II (Old No. B-I/67(1) situated in Mohalla Bansi Dhar, Chhowni Mohalla, Ludhiana known as 'Kunj Bhawan' and bounded on the:—*

Ujagar Singh, Senior Advocate, with G. S. Punia, Advocate.

K. S. Sidhu, Advocate, for the Petitioner.

Gurbachan Singh, Advocate, for Respondent No. 1.

Ashwani Kumar Chopra, Advocate, for Respondent No. 2.

JUDGMENT

Pritpal Singh, J.—

(1) The house in dispute belonged to the deceased Shri Bhagat Ram, Advocate of Ludhiana who died on September 27, 1958. He had two wives. The plaintiff-appellant Smt. Padmavati Ahuja is his daughter from one of the wives. The name of the other wife was Permeshwari Devi who died childless on October 24, 1963. Shri Bhagat Ram made a gift of the house in dispute in favour of Parmeshwari Devi,—*vide* gift deed dated July 23, 1930 (Exhibit D. 2). This gift was in lieu of maintenance and it was mentioned in the gift deed that Parmeshwari Devi will be entitled to alienate the same for necessity, but if she does not alienate the house then on her death the house will revert to the donor and in case the donor dies before the donee, then the plaintiff-appellant will become the owner of the house. Subsequently on September 23, 1942. Shri Bhagat Ram executed a Will (Exhibit P. 1) by which he bequeathed his remaining property in favour of the plaintiff-appellant. In the Will it was mentioned that he had already gifted the house in dispute in lieu of maintenance in favour of his wife Parmeshwari Devi

and it was again clarified that after the death of Parmeshwari Devi Shri Bhagat Ram and on his death the plaintiff-appellant will become owner of the house. Parmeshwari Devi executed a Will dated April 11, 1963 (Exhibit D. 1) bequeathing the house in dispute to Dasaundhi Ram, respondent No. 1. On her death in October, 1963, Dasaundhi Ram took possession of this house in pursuance of the Will and then sold it away to Smt. Sawarna Rani, respondent No. 2.

2. Claiming that she had become owner of the house on the death of Smt. Parmeshwari Devi, the appellant- Smt. Padmavati Ahuja filed a suit for possession of the house against the respondents Dasaundhi Ram and Smt. Sawarna Rani. It was pleaded that in terms of the gift deed (Exhibit D. 2) Smt. Parmeshwari Devi had only life estate in the house and on her death the appellant had become owner thereof since her father had already died. The appellant also claimed mesne profits from the respondents.

3. The suit was contested by the respondents mainly on the plea that Parmeshwari Devi had become full owner of the house in dispute under section 14(1) of the Hindu Succession Act and she was fully competent to bequeath the house to Dassaundhi Ram respondent.

4. The trial Court as well as the lower appellate Court accepted the contention of the respondents and held that the limited ownership of Parmeshwari Devi in the house in dispute by virtue of the gift deed (Exhibit D. 2), had been enlarged to full ownership on coming into force of the Hindu Succession Act on June 19, 1956 in view of its section 14(1). It was further held that since the house had been gifted for life by Shri Bhagat Ram to Smt. Parmeshwari Devi in lieu of maintenance the provisions of sub-section (8) of section 14 of the Hindu Succession Act (hereinafter called 'the Act') were not applicable. The appellant's suit was, therefore, dismissed.

5. The short question that arises for determination in the second appeal, filed by the plaintiff, is whether it is sub-section (1) or sub-section (2) of Section 14 of the Act which is applicable to the rights of Parmeshwari Devi in the house in dispute. If sub-section (1) applies then the limitations on the nature of her interest are wiped out and she became full owner of the property.

On the contrary, if sub-section (2) applies then her limited interest in the property is not enlarged and she continued to have

the restricted estate prescribed by the gift deed (Exhibit D. 2). In order to determine this question it is necessary to notice the provisions of section 14 of the Act which are reproduced below:—

"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 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 *tridhana* 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. Interpreting the provisions of this section it was held in *Vaddebovina Tulasamma and others* v. *Vaddebovina Sesha Raddi* (1), that sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed she would become the full owner of the property. It was observed that sub-section (2) is more in the nature of a proviso or exception to sub-section (1). It excepts certain kinds of acquisition of property by a Hindu female

(1) A.I.R. 1977 S.C. 1944.

from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of woman in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It was clarified that subsection (2) cannot be interpreted in a manner which would be rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). It was made clear in the judgment that sub-section (2) must be confined to cases where property is acquired by a female Hindu for the first time as a grant, without any pre-existing right under a gift. Will, instrument, decree order or award, the terms of which prescribe a restricted estate in the property. Whether, however, property is acquired by a Hindu female at a partition or in lieu of a right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2) even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

7. Thus, the crucial point for consideration in this case is whether Smt. Parmeshwari Devi had pre-existing right of maintenance when her husband executed the gift deed (Exhibit D. 2) making a gift of the house in dispute to her in lieu of maintenance. If she had pre-existing right then sub-section (1) would apply and the limitations on the nature of her interest in the house prescribed in the gift dated (Exhibit D. 2) would be wiped out and she would be considered to have become full owner of the property on the enforcement of the Hindu Succession Act, 1956. If she had no such pre-existing right then sub-section (2) will apply and her limited interest in the property would continue to have restricted estate prescribed in the gift deed.

8. The Supreme Court in its aforesaid judgment after considering the two sub-sections of Section 14, arrived at the following propositions:—

(1) A Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property.

(2) The right to maintenance flows from the social and temporal relationship between the husband and the wife by

virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of subordinate nature.

(3) Section 14(1) and the explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long-needed legislation.

(4) Sub-section (2) is in the nature of a proviso and has a field of its own without interfering with the operation of sub-section (1). The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(5) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc., which create independent and new titles in favour of females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights.

These principles were affirmed by the later judgment of the Supreme Court in *Bai Vajia* v. *Thakorbhai Chelabhai and others* (2).

9. In this backdrop it was unambiguously held by the Supreme Court that the Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastri Hindu Lal and has been strongly stressed even by the earlier Hindu Juristis starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without

(2) A.I.R. 1979 S.C. 993.

a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

10. In view of the above referred Supreme Court judgments, it cannot be said that a right of maintenance had been conferred on Smt. Parmeshwari Devi for the first time by virtue of the gift deed (Exhibit D. 2) and before the existing of this document Parmeshwari Devi had no vestige of a claim or right at all. It is manifest that,—*vide* Exhibit D. 2 the husband had given the house to the wife in lieu of maintenance. This right of maintenance was without a doubt pre-existing and, so the gift deed declaring or recognising such a right cannot be considered to have conferred any new title. This transfer of property merely endorsed or confirmed the pre-existing rights of Smt. Parmeshwari Devi. There is, therefore, no infirmity in the view taken by the Courts below that by a virtue of section 14(1) of the Act the limited estate which had been conferred on Smt. Parmeshwari Devi in lieu of maintenance by the gift deed (Exhibit D. 2) was enlarged to full ownership on the enforcement of Hindu Succession Act. She had, therefore, every right to bequeath this property to the respondent Dasaundhi Ram.

11. The learned appellant's counsel contended that in the gift deed (Exhibit D. 2) there is a defeasance clause conferring the right of ownership upon the appellant on the death of Smt. Parmeshwari Devi and so this defeasance clause being lawful must be considered operative in view of which the appellant had become owner of the house in dispute on the death of Parmeshwari Devi. I am not convinced by this contention. No doubt, such a defeasance clause is not illegal and is not repugnant to any provision of law, but such a clause could be acted upon only if the limited estate of Smt. Parmeshwari Devi had continued to exist even on the enforcement of the Hindu Succession Act. Once it is held that she had become full owner of the house in dispute in view of Section 14(1) of the Act the defeasance clause becomes redundant. This clause was only relevant till Smt. Parmeshwari Devi had not become full owner of the house. It loses its significance the moment her limited rights were enlarged into complete ownership.

For aforesaid reasons, there is no merit in this appeal and the same is dismissed with costs.

H.S.B.