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> "The cultivation of the ground, for the purpose of producing vegetables and fruits; * * * * *. In a broad sense, the word includes gardening, or horticulture, and also the raising of livestock."

It cannot be said, therefore, that the garden cannot fall within the meaning of 'agricultural land' and consequently the competent officer and the appellate were well within their jurisdiction in taking action under sub-section (2) of section 9 of the Evacuee Interest (Seperation) Act, 1951. I therefore, direct the discharge of the rule issued. The respondents will have costs from the petitioners Counsel's fee Rs. 75.

B.R. T.

APPELLATE CIVIL

Before K. L. Gosain and A. N. Grover, JJ.

MST. BAKHTAWARI,—*Appellant.*

versus

SADHU SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 606 of 1951 with Cross-objections.

1958

Dec., 26th

Code of Civil Procedure (V of 1908)—Order 22 Rules 3 and 11—Appeal and cross-objections pending—Appellant dying—Legal representatives taking no steps to bring themselves on the record in appeal—Respondent making an application to bring them on record—Appeal—Whether abated—Corss-objections—Whether can be heard when the appeal has abated—Hindu Succession Act (XXX of 1956)—Section 14—"Any property possessed by a female Hindu"—Meaning of—Person dying before the coming into force of the Hindu Succession Act—Collaterals becoming owners of ancestral property left by him—Whether can be divested of that property after the coming into force of the Act.

Held, that the legal representatives of the appellant were impleaded by the respondents in this case only for

the purposes of having the cross-objections decided. It is certainly in the option of the legal representatives of the only appellant who has died, whether to apply for continuing the appeal as legal representatives or to keep out of the case. The respondents cannot force the appellant to prosecute the appeal and any application which the respondents make for bringing the legal representatives of the appellant on the record can at the most be treated as one for the purpose of cross-objections only. The cross-objections, of course, cannot be heard if the appeal has abated even though the respondents have made an application for bringing the legal representatives of the appellant on record.

Held, that section 14 of the Hindu Succession Act clearly aims at making a female Hindu a full owner of the property of which she would otherwise be a limited owner. If a Hindu female is in possession of the property already as a limited owner, she becomes an absolute owner of the same by virtue of this section and if a female Hindu, after the commencement of the Act, acquires any property, she will get the same as full owner instead of getting it as a limited owner. It is only the limited ownership of the Hindu female which has been changed into full ownership by virtue of the aforesaid section. If a female has no rights at all in the property, e.g., if she is a trespasser, she cannot obviously become the owner of the property. The word "possession" in the section cannot possibly be held to mean anything other than lawful possession or possession as an owner. On the other hand, the meaning of the word "possession" cannot be limited to actual possession. The possession of a licensee, lessee or mortgagee from a female owner or the possession of a guardian or trustee or an agent of the female owner would be her possession for purposes f section 14, and in every case of her lawful possession, whether actual or construction, a Hindu female will become absolute owner of the property, if in the absence of the provisions of section 14 she would have been a limited owner of the same. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-section (1) of section 14 clearly suggest that the Legislature only intended that the limited ownership of a female may be changed into full ownership. Explanation to sub-section (1) of section 14 defines the word 'property' as under:—

"In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise * * *."

Sub-section (2) of section 14 also mentions acquisition of property. It is true that the explanation does not give an exhaustive definition of the word 'property' but the word acquired' used in the Explanation as also in sub-section (2) of section 14 clearly indicates that the section aims at making a Hindu female as full owner of the property which she has already acquired or which she acquired after the enforcement of the Act. It does not in any way confer a title on the female where she did not in fact possess any.

Held, that Telu had died before the Hindu Succession Act came into force and on his death the ancestral property belonging to him had vested in his collaterals whose position changed from that of the reversioners to that of owners. Enforcement of section 14 of the Hindu Succession Act, after the said event, cannot possibly have the effect of divesting the collaterals of the ancestral property of which they had already become owners.

Regular Second appeal from the decree of Shri J. S. Bedi, District Judge, Ambala, dated 18th May, 1951 affirming that of Shri E. F. Barlow, Sub-Judge, 1st Class, Ambala, dated the 16th June, 1950 granting the plaintiffs a decree for a declaration regarding the numbers held to be ancestral except Nos. 465 and 467 as prayed for and dismissing their suit regarding non-ancestral property and leaving the parties to bear their own costs.

The lower appellate Court allowed costs to the plaintiffs respondents.

GANGA PARSHAD JAIN and GOMTI PARSHAD, for Appellant.

H. R. SODHI and M. M. PUNCHI, for Respondents.

JUDGMENT

L. Gosain, J.

GOSAIN, J.—The facts giving rise to this second appeal are as under: The property in suit belonged to Telu son of Ruldu, Jat of Tharwa, Tehsil

Naraingarh, District Ambala. On 17th June, 1949, he made a gift of the same in favour of his daughter Mst. Bakhtawari. The plaintiffs who claim to be the collaterals of Telu in the fourth degree brought the present suit for the usual declaration that the gift will not affect their reversionary interests. They alleged that the property in question was ancestral *qua* them and that Telu had no right under the custom to make a gift of the same in favour of his daughter. The suit was contested by the donee who denied that the property was ancestral and who alleged that the gift had been made in her favour on account of the services which she rendered to defendant No. 1. On the pleadings of the parties the trial Court framed the following issues:—

(1) Is the property ancestral?

(2) Are the plaintiffs collaterals of defendant No. 1?

(3) Whether defendant No. 2 or her sons have rendered any services to defendant No. 1, and is the gift valid on that ground

(4) Whether the suit is speculative?

(5) Relief.

After recording evidence of the parties the trial Court came to the conclusion that a part of the landed property was ancestral and that the rest of the landed property and the house were not proved to be so. He also found that the plaintiffs were collaterals and were entitled to challenge the gift. In the result, he granted a decree in favour of the plaintiffs regarding the landed

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property held to be ancestral and dismissed the suit *qua* the property held by him to be non-ancertral. In appeal the decree of the trial Court was confirmed by the learned District Judge. Aggrieved against the decree of the lower appellate Court the donee Mst. Bakhtawari has come up to this Court in second appeal. Plaintiffs have filed cross-objections *qua* the property not decreed in their favour.

A preliminary objection is taken by the learned counsel for the respondents that Mst. Bakhtawari died on 25th February, 1958 and her legal representatives have made no application to this Court for being impleaded as such and that the appeal must, therefore, be taken to have abated. Mr. Ganga Parshad, who appears for the legal representatives of Mst. Bakhtawari, brings to our notice that Sadhu Singh, etc., respondents made an application in this Court on 24th May, 1958, wherein they prayed that the legal representatives of Mst. Bukhtawari be impleaded as parties in their cross-objections. He contends that the legal representatives of the deceased having been brought on the record the appeal could not abate. According to him, it made no difference at all that the legal representatives had been impleaded by the respondents or they had themselves applied to be impleaded. He draws our attention to *Hukam Chand and others* v. *Laxami Narain and others* (1), *Baggiammal* v. *G. Rajagopala Chetty* (2); *Kanthimathi Ammal* v. *R. Perumal Kona and others* (3) and *Labhu Ram and others* v. *Ram Partap and others* (4). The facts of all these cases are, however, distinguishable from those in

(1) A.I.R. 1958 Rajasthan 247
(2) A.I.R. 1948 Mad. 82
(3) A.I.R. 1925 Mad. 777
(4) A.I.R. 1944 Lah. 76 (F.B.)

the present case. In *Hukam Chand and others* v. *Laxami Narain and others* (1), the respondent who had filed cross-objections, died and his legal representatives made an application for being impleaded as such. The appellant did not make an application for impleading the legal representatives of the said respondent on record. The said representatives having come on record at their own instance, it was held by the High Court that the appellant was under no further duty to make any application. This ruling can have no bearing on the present case because the legal representatives of the appellants have not themselves made any application and had no occasion to elect whether they would like to prosecute the appeal.

In the case reported in *Baggiammal* v. *Rajagopala Chetty* (2), a suit had been filed against two defendants and had been decreed only against one of them. The said defendant filed an appeal in the High Court impleading the plaintiff as respondent No. 1, and the other defendant as respondent No. 2. Respondent No. 2, filed cross-objections in the appeal seeking to obtain relief against respondent No. 1. The appellant died during the pendency of the appeal and respondent No. 2 made an application for impleading the legal representatives of the appellant because he felt the said course necessary for the purpose of adjudication of his cross-objections. The only point before the High Court was whether or not the said application was maintainable and it was found in favour of respondent No. 2. The question which is now before us did not fall for decision in that case, and no decision was, therefore, given on the same.

In *Kanthimathi Ammal* v. *R. Perumal Kona and others* (3), the first respondent in an appeal

(1) A.I.R. 1958 Rajasthan 247
(2) A.I.R. 1958 Mad. 82
(3) A.I.R. 1925 Mad. 777

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before the High Court died and his legal representatives applied for being impleaded as such and were allowed to be brought on record. The remarks in respect of *Hukam Chand and others* v. *Laxami Narain and others* (1), apply to this case also and the facts of that case have therefore no bearing on the farts of the present case.

In *Labhu Ram and others* v. *Ram Partap and others* (2), there were two cross-appeals—one filed by the plaintiffs and other by the defendants. In the defendant's appeal two of the plaintiffs had not been impleaded as parties and it was held that the said appeal could, at any rate, be treated as cross-objections, The question now before us was not before the Bench in that case and the said ruling therefore, has no bearing on the present case.

The legal representatives of the appellant were impleaded by the respondents in this case only for the purposes of having the cross-objections decided. It is certainly in the option of the legal representatives of the only appellant who has died, whether to apply for continuing the appeal as legal representatives or to keep out of the case. The respondents cannot force the appellant to prosecute the appeal and any application which the respondents make for bringing the legal representatives of the appellant on the record can at the most be treated as one for the purpose of cross-objections only. The cross-objections, of course, cannot be heard if the appeal has abated even though the respondent have made an application for bringing the legal representatives of the appellant on record. I am fortified in this view by a ruling of the Bombay High Court in *Abdullamiya Hamdumiya* v. *Mahomedmiya Gulamhusin and others* (3).

(1) A.I.R. 1958 Rajasthan 247
(2) A:I.R, 1944 Lah, 76 (F.B.)
(3) A:I,R, 1949 Bom, 276

I, therefore, uphold the preliminary objection and find that the appeal has abated.

Even on merits the appeal has no force. It is conceded that according to custom by which the parties are governed, a daughter is a better heir than the collaterals in respect of non-ancestral property but the collaterals have a preferential right of succession *qua* the ancestral property. A declaratory decree was made by the trial Court in this case on 16th of June, 1959, to the effect that the gift made by Telu in favour of Mst. Bakhtawari, will not affect the reversionary interests of the plaintiffs *qua* the property held to be ancestral. This decree was upheld by the learned District Judge. It is conceded that Telu diėd sometime in 1955 before the Hindu Succession Act came into force. On his death the succession opened out and the plaintiffs who were better heirs *qua* the ancestral property became heirs of Telu *qua* that property. The said property must, therefore, be deemed to have vested in the plaintiffs immediately on the death of Telu. The learned counsel for the appellant urges that by virtue of the Hindu Succession Act Mst. Bakhtawari was the preferential heir to the property and that the reversioners had ceased to have any rights in the same. This position would have certainly arisen if Telu had died after the Hindu Succession Act had come into force. The death of Telu having occurred before the enforcement of the said Act and the plaintiffs having already inherited the ancestral property left by Telu, they cannot now be divested of the same on the ground that a new rule of succession has come into force which, if it had existed at the time of Telu's death, would not have enabled the plaintiffs to get the property. Mr. Ganga Parshad next refers to section 14 of the Hindu Succession

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Act and urges that Mst. Bakhtawari being in possession of the property on the date of the enforcement of the Alt must be deemed to have become absolute owner of the same. He relies particularly on the words "any property possessed by a female Hindu" as given in this section and urges that a female Hindu, who is in possession of the property in whatever capacity, has been granted by the Legislature the right of full ownership by virtue of the aforesaid section. According to him the word "possessed" in this section means "physically possessed in any capacity whatever". We are afraid we cannot accept the above interpretation of this section. A female Hindu may be in possession only as a tenant or she may be in possession in various other capacities, e.g., that of a mortgagee or that of a trespasser, etc. The legislature could never have intended to make such a female Hindu as full owner of the property irrespective of the fact whether she had any rights of ownership in the same or not. The section clearly aims at making a female Hindu as full owner of the property of which she would otherwise be a limited owner. If a Hindu female is in possession of the property already as a limited owner, she becomes an absolute owner of the same by virtue of this section and if a female Hindu, after the commencement of the Act, acquires any property, she will get the same as full owner instead of getting it as a limited owner. It is only the limited ownership of the Hindu female which has been changed into full ownership by virtue of the aforesaid section. If a female has no rights at all in the property, e.g., if she is a trespasser, she cannot obviously become the owner of the property. In support of his contention Mr. Ganga Parshad relies on a ruling of Tek Chand, J., in *Mst. Prito* v. *Gurdas and another* (1), Head-note (iii) of this ruling reads as under—

(1) 60 P.L.R. 194

> "The words 'any property possessed by a female Hindu' cannot be given restricted meaning confining them to lawful possession of the property. The language of sub-section (1) of section 14 is of wide amplitude and the Explanation leaves no doubt as to its broad scope."

This head-note is based on the observations of the learned Judge at page 197 of the report of this case. The observations in this case, however, run counter to those in *Mst. Dassi* v. *Mst. Kapuro* (1), where Khosla, J., observed as under in paragraph 3 of the judgment:—

> "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."

The case decided by Tek Chand, J., and referred to above was quoted before Khosla, J., in *Mst. Dassi* v. *Mst Kapuro* (1), but was dissented from. Some of the observations made by a Division Bench of this Court in *Hari Kishan and others* v. *Hira and others* (2), also support the interpretation of this section adopted by Khosla, J., and run counter to the one adopted by Tek Chand, J.

A Full Bench of the Patna High Court in *Harak Singh* v. *Kailash Singh and another* (3),

(1) A.I.R. 1958 Punj. 208
(2) 1957 P.L.R. 56
(3) A.I.R. 1958 Pat. 581

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took the view that "any property possessed by a female Hindu" occurring in section 14 must be interpreted in the context of the language of the sub-section and must be taken simply to mean "any property owned by a female Hindu" at the date of the commencement of the Act.

We are in respectful agreement with the view taken by Khosla, J., and also by the Full Bench of Patna High Court mentioned above and hold that section 14 of the Hindu Succession Act can only be interpreted to mean that a Hindu female, who in the absence of this provision would have been a limited owner of the property, will now become full owner of the same by virtue of the provisions of this section. The word "possession" in the section cannot possibly be held to mean anything other than lawful possession or possession as an owner. On the other hand, the meaning of the word "possession" cannot be limited to actual possession. The "possession of a licensee, lessee, or mortgagee from a female owner or the possession of a guardian or trustee or an agent of the female owner would be her possession for purposes of section 14, and in every case of her lawful possession, whether actual or constructive, a Hindu female will become absolute owner of the property, if in the absence of the provisions of section 14 she would have been a limited owner of the same. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-section (1) of section 14 clearly suggest that the Legislature only intended that the limited ownership of a female may be changed into full ownership. Explanation to sub-section (1) of section 14 defines the word 'property' as under:—

> "In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise * * * * *"

Sub-section (2) of section 14 also mentions acquisition of property. It is true that the explanation does not give an exhaustive definition of the word 'property' but the word 'acquired' used in the explanation as also used in sub-section (2) of section 14 clearly indicates that the section aims at making a Hindu female as full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female where she did not in fact possess any.

In the present case it is not denied that Telu had died before the Hindu Succession Act came into force and on his death the ancestral property belonging to him had vested in his collaterals whose position changed from that of the reversioners to that of owners. Enforcement of section 14 of the Hindu Succession Act, after the said event, cannot possibly have the effect of divesting the collaterals of the ancestral property of which they had already become owners. The case decided by Khosla, J., and reported as *Mst. Dassi* v: *Mst. Kapuro* (1), applies to the facts of the present case on all fours, and we have no hesitation in agreeing with the said view.

The plaintiff-respondents have filed cross-objections claiming a decree regarding the non-ancestral property also. It was, however, conceded at the Bar that a daughter was a better heir than the collaterals in respect of the non-ancestral property and the cross-objections have, therefore, no force whatever.

For the reasons given above, we dismiss the appeal as well as the cross-objections but in the peculiar circumstances of the case we leave the parties to bear their own costs.

GROVER, J.—I agree.

B. R. T.

(1) A.I.R. 1958 Punj. 208