

APPELLATE CIVIL

Before Tek Chand, J.

Mst. PRITO,—Defendant-Appellant

versus

GURDAS AND OTHERS,—Respondents

Regular Second Appeal No. 566 of 1954.

Hindu Succession Act (XXX of 1956)—Sections 14 and 15—Effect of—Reversionary rights—Nature of—How arise—Whether stand abrogated by sections 14 and 15—Provisions, whether retrospective—Explanation to section 14—“Whatsoever”—Meaning of—Customary law—Whether ceases to apply to Hindus—Practice—Change in law during the pendency of appeal—Appellate Court, whether can take into consideration.

1957

Oct. 28th

Held, that section 14 of the Hindu Succession Act provides that any property possessed by a female, who is a Hindu, shall be held by her as full owner and not as a limited owner. This provision has extinguished the distinction between a restricted and an absolute estate with respect to the property of which she was in possession, whether the acquisition was before or after the commencement of the Act. Sections 14 and 15 of the Act have brought about drastic changes in the Hindu Law of succession, affecting the rights of Hindu women in property and putting an end to the reversionary rights. Right of reversion being relative, and not absolute, can exist only so long as law recognizes a limited estate, on the expiration of which, the inchoate rights of the reversioner mature and become effective. A reversionary interest arises by operation of law when a particular estate is carved out of a larger estate. The reversionary rights, being of a residuary nature, spring on the extinction of the smaller estate, but when, by operation of law, the particular rights are enlarged into absolute rights, there are left no deferred rights which can revert. The logical effect of these provisions of the Hindu Succession Act is, that with the conversion of a limited estate into an absolute estate, reversionary rights stand abrogated.

Held, also that the words in section 14(1) "whether acquired before or after the commencement of this Act" leave no room for doubt, that the provisions of this section were intended to be retrospective in effect. So long as a Hindu female is possessed of any property whether the possession dates from a time prior to, or after the commencement of this Act, the law treats her as a full owner. Section 14, however, will have no applicability to a case, where a Hindu female was not in fact possessed of any property. This Act does not help her in acquiring possession, but in stamping her possession, as that of a full owner in contradistinction to her possession as a limited owner.

Held, that the word "whatsoever" occurring in the Explanation to section 14 has a very wide and comprehensive meaning. It means "no matter what"; "notwithstanding anything"; "anything that may be".

Held, that Hindu Succession Act, 1956, applies to persons who are governed by the Customary Law of Punjab. Section 4, subsection (1) leaves no room for doubt, that any custom or usage, as a part of Hindu Law in force immediately before the commencement of this Act, ceases to have effect with respect to any matter for which provision is made in this Act.

Held, that the appellate Court has to take into consideration legislative changes, which come into existence during the pendency of the appeal, as appeal is in the nature of a rehearing.

Ram Ayodhya Missir and others v. Raghunath Missir and others (1), *Bhabani Prosad Saha v. Sm. Sarat Sundari Choudhurani* (2), *Dhirajkunwar v. Lakhansingh* (3), *Smt. Laxmi Debi v. Surendra Kumar Panda and others* (4), *Smt. Kamla Devi and another v. Bachulal Gupta and others* (5), *Hari Kishan and others v. Hira and others* (6), *Lachmeshwar Prasad Shukul and others v. Keshwar Lal Chaudhri and others* (7), *Messrs British Medical Stores and others v. L. Bhagirath Mal and others* (8), referred to.

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- (1) A.I.R. 1957 Pat. 480
 - (2) A.I.R. 1957 Cal. 527
 - (3) A.I.R. 1957 Madh. Pra. 38
 - (4) A.I.R. 1957 Orissa 1
 - (5) A.I.R. 1957 S.C. 434
 - (6) (1957) 59 P.L.R. 56
 - (7) A.I.R. 1941 F.C. 5
 - (8) (1954) 56 P.L.R. 449

Second Appeal from the decree of the Court of Shri Mehar Singh Chadha, Additional District Judge, Hoshiarpur, dated the 24th day of December, 1953, affirming that of Shri Hira Lal Jain, Sub-Judge, 1st Class, Hoshiarpur, dated the 21st day of October, 1953, decreeing the plaintiff's suit for possession of the land in suit against the defendants Nos. 1 and 2, it was further ordered that the decree against the defendant No. 2 was ex parte. The parties were left to bear their own costs. The parties were left to bear their own costs in 1st appeal also.

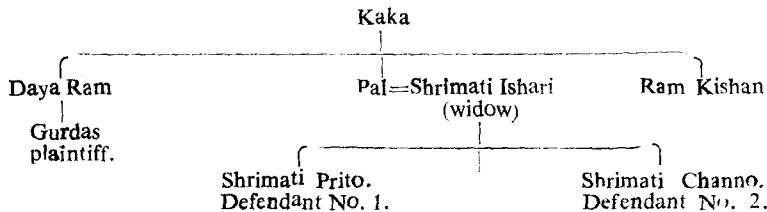
SHAMAIR CHAND, for Appellant.

D. N. AGGARWAL, for Respondents.

JUDGMENT

TEK CHAND, J.—This is a regular second appeal by defendant No. 1 from the judgment and decree passed by the Additional District Judge, Hoshiarpur, decreeing the plaintiff's suit for possession of the land in question. A short pedigree-table is given below giving the relationship of the parties :—

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Kaka and Dhanna were two brothers who owned between themselves 124 *kanals* and 9 *marlas*. On the 27th of March, 1935, Ram Kishan and Shrimati Ishri, widow of Pal, made a gift of their respective shares of land in favour of defendants 1 and 2, Prito and Channo, daughters of Pal. A brief history of the previous litigation between the parties may be given. The validity of the above gift was challenged by Daya Ram, father of the present plaintiff, who filed a declaratory suit on

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25th January, 1936, seeking to avoid the gift on the ground that it was prejudicial to his reversionary rights accruing on the death of the donors. This suit was decreed on the 28th of February, 1936,—*vide* Exhibit P. 3. On the death of Ram Kishan, Gurdas, plaintiff, instituted a suit for possession of one-half of the share of Ram Kishan on the 6th of December, 1937. The parties having compromised this suit was decreed in terms thereof, on the 23rd of March, 1938. The effect of this compromise was, that one-half share of Ram Kishan was given to plaintiff Gurdas, and the other half remained with Shrimati Ishri, widow of Pal and mother of defendants 1 and 2. On the death of Shrimati Ishri, her daughters were in possession of the entire share of the land of Pal and of one-half share of Ram Kishan.

This was followed by a third litigation the details of which need not be given as they do not bear on the subject-matter of controversy in this case.

The present suit was instituted by Gurdas for possession of the land against the defendants Prito and Channo, alleging, that their mother Shrimati Ishri had died a month ago and on the strength of a declaratory decree obtained by his father Daya Ram on the 28th of February, 1936, declaring the gift made by Ram Kishan and Shrimati Ishri in favour of the defendants as invalid, he, as the reversioner, was entitled to possession. On the strength of the previous declaratory decree, the trial Court decreed the plaintiff's suit on the 21st of October, 1953. Defendant No. 1, Shrimati Prito, was unsuccessful before the lower appellate Court, which, dismissing her appeal, affirmed the decree of the trial Court.

Shrimati Prito has filed second appeal in this Court. Mr. Shamair Chand has rested his entire

arguments on the provisions of section 14 of the Hindu Succession Act, 1956, which came into force on the 17th of June, 1956. He has argued that on the date of the enforcement of this Act, admittedly, the two defendants were in possession of the land in dispute, and their possession, ever since the date of the gift, had never been disturbed. It is not disputed before me that the defendants are and have all along been in possession of the land. Section 14 of the Act reads :—

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- “(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, 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 *stridhan* 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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According to the above provision, any property possessed by a female, who is a Hindu, shall be held by her as full owner and not as a limited owner. This provision has extinguished the distinction between a restricted and an absolute estate with respect to the property of which she was in possession, whether the acquisition was before or after the commencement of the Act. Sections 14 and 15 have brought about drastic changes in the Hindu Law of Succession, affecting the rights of Hindu women in property, putting an end to reversionary rights. Right of reversion being relative, and not absolute, can exist only so long as law recognizes a limited estate, on the expiration of which, the inchoate rights of the reversionary nature become effective. A reversionary interest arises by operation of law when a particular estate is caved out of a larger estate. The reversionary rights, being of a residuary nature, spring on the extinction of the smaller estate, but when, by operation of law, the particular rights are enlarged into absolute rights, there are left no deferred rights which can revert. The logical effect of these provisions of the Hindu Succession Act is, that with the conversion of a limited estate into an absolute estate, reversionary rights stand abrogated. The plaintiff in this case has now completely lost his rights of reversion. Support for this view will be found in the recent decisions reported in *Ram Ayodhya Missir and others v. Raghunath Missir and others* (1), *Bhabani Prosad Saha v. Sm. Sarat Sundari Choudhurani* (2), *Dhirajkumar v. Lakhansingh* (3), and *Smt. Laxmi Debi v. Surendra Kumar Panda and others* (4).

It is contended by Mr. D. N. Aggarwal, learned counsel for the respondent, that the words "any

(1) A.I.R. 1957 Pat. 480

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

(3) A.I.R. 1957 Madh. Pra. 38

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

property possessed by a female Hindu" occurring in subsection (1) of section 14, should be given restricted meaning confining them to lawful possession of the property. He urged that if the possession of the property was not in accordance with law, as where the gift in favour of the female donees was held to be invalid, then section 14 did not make them full owners. I cannot read the subsection in a manner which is possible only if the word "lawfully" was inserted before "possessed". The language of subsection (1) is of wide amplitude, and the Explanation leaves no doubt as to its broad scope. The Explanation, after illustrating the different modes of acquisition of possession of the property, lastly, refers to obtaining of possession of property "in any other manner whatsoever."

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The word "whatsoever" has a very wide and comprehensive meaning. It means "no matter what"; "notwithstanding anything"; "anything that may be". That being so, I do not find any warrant for the contention advanced by the respondent's learned counsel.

The words in section 14(1) "whether acquired before or after the commencement of this Act" leave no room for doubt, that the provisions of this section were intended to be retrospective in effect. So long as a Hindu female is possessed of any property, whether the possession dates from a time prior to, or after the commencement of this Act, the law treats her as a full owner,—*vide Smt. Kamla Devi and another v. Bachulal Gupta and others* (1). Section 14, however, will have no applicability to a case, where a Hindu female was not in fact possessed of any property. This Act does not help her in acquiring possession, but in

(1) A.I.R. 1957 S.C. 434

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stamping her possession, as that of a full owner, in contradistinction to her possession as a limited owner,—*vide Hari Kishan and others v. Hira and others* (1).

Under the provisions of subsection (2) of section 14, where a property has been acquired by a female by way of gift, or under any instrument or a decree, if the terms prescribe a restricted estate in such property, then she cannot be held to be more than a limited owner. So far as the facts of this case are concerned, there is no suggestion that, according to the terms of the gift, Prito and Channo were to get a restricted estate.

It is true that the Hindu Succession Act, 1956, had not come into force when the parties were litigating in the lower Courts, but the appellate Court has to take into consideration legislative changes, which come into existence during the pendency of the appeal, as appeal is in the nature of a rehearing,—*vide Lachmeshwar Prasad Shukul and others v. Keshwar Lal Chaudhuri and others* (2); and *Messrs British Medical Stores and others v. L. Bhagirath Mal and others* (3). In *Ram Ayodhya Missir and others v. Raghunath Missir and others* (4), which was a case under the Hindu Succession Act, 1956, the Act had come into force during the pendency of a Letters Patent Appeal, and when argument was put forward on the strength of its provisions, the Letters Patent Bench of that High Court based its decision after taking into account the recent legislative changes. I may at this stage also examine the applicability of the rule of *res judicata* in the light of legislative

(1) 59 P.L.R. 56

(2) A.I.R. 1941 Federal Court 5

(3) (1954) 56 P.L.R. 449

(4) A.I.R. 1957 Pat. 480

changes. I do not think that the provisions of section 11 of Civil Procedure Code are attracted. Parties are no longer litigating under the same title as in the previous suits. It is not now open to the plaintiff, in view of the provisions of the Hindu Succession Act, 1956, to base his claim as a reversioner, as his reversionary rights have become extinct by operation of this statute. The defendants Prito and Channo are contesting the plaintiff's suit on the ground, that by operation of section 14 they are no longer holders of a life estate but have now become full owners. The parties, in all these litigations, are no doubt the same, but their characters have become different and therefore, the basis of their titles is changed.

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It was contended on behalf of the respondents, that the Hindu Succession Act does not apply to persons who are governed by the Customary Law of Punjab. There is no merit in this contention. Section 4, subsection (1) leaves no room for doubt, that any custom or usage, as a part of Hindu Law in force immediately before the commencement of this Act, ceases to have effect with respect to any matter for which provision is made in this Act. It has, however, not been shown, that the Customary Law of Punjab, recognising only a limited estate in the females, is not a modification of Hindu Law. Even if it be assumed that the rule of Customary Law was totally independent of Hindu Law, then, in view of section 4(1)(b), such a custom ceases to apply to Hindus.

In view of what has been stated above, this appeal deserves to succeed. I reverse the judgment and decree of the Lower Courts and allow this appeal. In the circumstances of the case, I leave the parties to bear their own costs throughout.

B.R.T.