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Falshaw, J.

In the circumstances I am of the opinion that in the case of a Hindu joint family consisting of a father and sons when a mortgage has been created by the father of joint property, and a decree has been obtained on the basis of the mortgage, the only ground on which the sons can challenge the mortgage and the decree is that the debt was incurred for illegal or immoral purposes and that for this purpose it is immaterial whether the mortgaged property has actually been brought to sale in execution of the decree or not.

CHOPRA, J.—I agree.

GROVER, J.—I agree.

B. R. T.

FULL BENCH

Before S. S. Dulat, Mehar Singh and K. L. Gosain, JJ.

AMAR SINGH AND OTHERS,—*Appellants.*

versus

SEWA RAM AND OTHERS,—*Respondents*

1960

May, 25th

Regular First Appeal No. 206 of 1951

Hindu Succession Act (XXX of 1956)—Section 14—Alienation effected prior to the enforcement of the Act, by an intervening female heir who, at the time of the alienation, held only a widow's estate—Whether can be challenged by a reversioner after the enforcement of the Act by filing a suit or continuing a suit already filed—Invalid adoption and invalid gift—Difference between.

Held, per Full Bench—that it is not correct to say that the Hindu Succession Act has done away with the rights of the reversioners as a class. The rights of the reversioners, both under the Hindu Law and the Custom, to impugn the alienations made by a person with controlled and restricted power of alienation remain the same as before the enforcement of the said Act. Where a limited owner alienated the

property by way of sale before the coming into force of the Hindu Succession Act, the reversioners have the right to impugn that sale according to Hindu Law or Custom whichever is applicable to them. The reason is that when she alienated that property, her alienation at the time was open to challenge by the reversioners of the last full owner and since she has not become full owner of that property on the coming into force of the Act, the right of the reversioners in regard to such property remains intact and as to such an alienation the law is as before the Act for the Act does not deal with such a situation, otherwise the result would be not to benefit her, as is the intention of section 14 of the Act for she cannot recover back what she has sold away, but to benefit alienees from her.

Held, by majority (Mehar Singh and Gosain, JJ., Dulat. J., Contra)—that a Hindu female holding a limited estate has no power to make a gift of the property so held but such a gift, is good against the Hindu female for her life and as against the reversioners until avoided and when avoided by the reversioner, the avoidance of it operates to his benefit on the death of such a female only and not before. It cannot be said in the case of such an invalid gift that the donee was in permissive possession of the gifted property on behalf of the donor and that the possession remained with the donor and she became the full owner of the property on the coming into force of the Hindu Succession Act. Such a gift will be open to challenge by the reversioners of the last full owner on the death of the donor.

Held, per Dulat, J.—that the main object of section 14 of the Hindu Succession Act is to enlarge the estate and the power of a female owner in respect of her estate for the benefit of the female owner and if a widow made an invalid gift of the property to her daughter before the enforcement of the Act, she will be deemed to be in constructive possession of the gifted property and will become full owner thereof on the commencement of the Act. In this respect there is no difference between an invalid adoption of a son to whom the possession of the property has been delivered and the invalid gift under which the possession of the property has been delivered to the donee.

Held, per Mehar Singh, J.—that the effect of an invalid gift by a Hindu female is not the same as the effect of an

invalid adoption of a son by her. Under invalid adoption, an adopted son acquires no rihgts in the adoptive family, but in the case of an invalid gift, the gift is good as against the Hindu female for her life and as against the reversioners until avoided. True enough, a Hindu female holding a limited estate cannot make a gift but if she does make a gift, it binds her and when avoided by the reversioner the avoidance of it operates to his benefit on the death of such a female only and not before. In the case of an invalid adoption, the adopted son remains the son of his natural father not forfeiting his rights in his natural family and not gaining any rights in the adoptive family. Obviously, if in such circumstances, the adopted son is in possession of the property of the adoptive mother, and because of the invalidity of the adoption he gets no rights in such property, his possession of the property is permissive on behalf of the adoptive mother, but this cannot be the case in regard to a gift of property for in the case of a gift the donee for the life time of a Hindu female is in possession under a good and valid title not impeachable by the Hindu female herself, for she has thereby transferred her own interest to him at least, and not impeachable by the reversioner so as to affect the title of the donee during the life time of the Hindu female. Any declration that the reversioner obtains in such a case is always effective only after the death of the Hindu female. In the case of invalid adoption no right in the property of the adoptive family passes to the adopted son, but in the case of an invalid gift by a Hindu female, the property passes to the donee to the extent of the life interest of such a female, though the gift can be avoided by the reversioner as not affecting his reversionary rights after the death of such a female.

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice Gosain and the Hon'ble Mr. Justice Harbans Singh, on the 5th August, 1959, to a Full Bench for decision of an important question of law involved in the case The full Bench cosisting of the Hon'ble Mr. Justice Dulat, the Hon'ble Mr. Justice Mehar Singh and the Hon'ble Mr. Justice Gosain, after deciding the question returned the case to the Division Bench on 25th May, 1960, for final disposal.

Regular first appeal from the decree of the Court of Shri Tirath Dass Sehgal, Senior Sub-Judge, Karnal, dated the 4th day of July, 1951, granting the plaintiff a decree for

declaration to the effect that the alienations in suit will not affect his reversionary rights and further ordering that the defendants Nos. 1 to 9 will pay costs of the plaintiff.

SHAMAIR CHAND, G. C. MITAL, P: C: JAIN, for the Appellants:

D. R. MANCHANDA, ROOP CHAND, for Respondents.

JUDGMENT

Mehar Singh, J

MEHAR SINGH, J.—The question, which largely brings in consideration the effect of section 14 of the Hindu Succession Act (No. 30) of 1956 (hereinafter referred to as the Act), in regard to the position of a reversioner under Hindu Law, is:—

> "Are the collaterals (reversioners) of the last Hindu male-holder, entitled to file, or, if filed already, to continue, a suit, after the enforcement of the Hindu Succession Act, challenging an alienation effected, prior to the enforcement of the Act by an intervening female heir, who at the time of the alienation held only a widow's estate ?"

It arises in two cases. The first case is *Amar Singh and others* v. *Sewa Ram and others* (1). In that case the last male-holder of the property was Rama Nand. He died leaving two widows named Jamni and Manglan. On the death of Jamni, the surviving widow Manglan, succeeded to the whole estate. On her death the estate passed on to Rama Nand's daughter Rajo. Between November 10, 1943, and September 6, 1946, she made three alienations of property, two sales and one gift. Sewa Ram plaintiff is the sister's son of Rama Nand. He brought a suit to

(1) R.F.A. 206 of 1951

impugn the three alienations on the ground that the same were not binding upon his reversionary rights in the property after the death of Rajo. In the case of the sales he pleaded that the same were without consideration and necessity. The challenge to the alienations was on the basis of Rajo holding a female's limited estate in the property. The suit was instituted on November 9, 1948.

The trial Judge found the gift invalid and the two sales for consideration but without necessity. On apeal the finding of the learned trial Judge in regard to the gift has not been a matter of controversy and in regard to the two sales the learned Judges in the Division Bench have endorsed the conclusion of the trial Judge that they are for consideration, but not for necessity. The trial Judge decreed the declaratory suit of the plaintiff and on the finding of the learned Judges in the Division Bench that decree would have been confirmed, but for the question raised that is now for consideration in regard to the effect of section 14 of the Act upon the rights of the reversioners of the type as Sewa Ram plaintiff.

The second case is *Kishen Singh* v. *Kishni and another* (1). The land in dispute was the property of Gurdit Singh upon whose death his widow Kishni defendant came to hold it as a widow's limited estate. On August 26, 1949, (11.5.2006 Bk.), Kishni defendant made a gift of the land in favour of her daughter Nihal Kaur defendant. Kishen Singh plaintiff is the fifth degree collateral of Gurdit Singh. He has impugned the gift and sought declaration that it would not bind his reversionary interests in the

(1) R.S.A. 214(P) of 1951

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ancestral land left by Gurdit Singh, the last male-holder, after the death of Kishni defendant. The suit is obviously under custom.

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Courts below have agreed in finding that the land left by Gurdit Singh deceased is non-ancestral *qua* the plaintiff and for this reason have non-suited him, the daughter of the last male-holder, Nihal Kaur defendant, being a better heir to such property as against collaterals of the deceased. The second appeal is by Kishen Singh plaintiff and before the appeal could be heard and the question of the character of the property decided, it has been ordered to be placed before the Full Bench along with the first mentioned case for answer of the question as stated above.

The accepted and settled position under Hindu Law as also under custom before the date of the enforcement of the Act, which is June 17, 1956, has been that in the case of a person, with restricted and controlled power of alienation over property, a reversioner after such person could impugn such person's alienation on certain grounds and obtain a declaration that the alienation would not be binding upon his reversionary interests after the death of the alienor. The position of the law both under Hindu Law and custom continues to be the same even after the enforcement of the Act in regard to a person who is still restricted and controlled in his rights of alienation of property with him. The Act does not deal with this aspect of the law, except in one case that of limited estate and that of a Hindu female who has been made full owner of the property in her possession on the date of the enforcement of the Act. It is clear that it is not anything in the Act that has directly taken away the rights of a reversioner as such, but what has happened is that one class of persons whose right to alienate property

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was previously restricted and controlled has had its right enlarged and enhanced to full ownership, with the result that in that case, it follows without more, all restrictions and control over the power of alienation have been removed. There is not one single word in the Act, which makes reference to reversioners or the rights of reversioners or the status of reversioners. The Act in so many words does not abolish either reversioners or their rights or status. Where there is a restriction and control over the alienation of property, there the position of law before and after the Act continues to be the same and the next reversioner is entitled in law to the protection of his reversion, but obviously where there is no such restriction or control, the question of anybody wanting to protect anything does not arise for there are no rights, in such circumstances, to be protected. It is true that there are observations in *Dhirajkunwar* v. *Lakhansingh* (1), *Hanuman Prasad* v. *Indrawati* (2), and *Prito* v. *Gurdas* (3), that reversioners have been abolished as a class or the status or rights of the reversioners have been abolished by the Act, but with great respect to the learned Judges, there is not one word in support of the observations in the Act. In fact sub-section (2) of section 14 of the Act still envisages the creation of limited owner's estate under certain instruments. Undobutedly the limitations on the estate thus created will be governed by the terms and conditions of the instrument, but take the case of an instrument creating a limited owner's estate, as envisaged by sub-section (2) of section 14, without laying down any further terms and conditions, surely and

(1) A.I.R. 1957 Madhya Pradesh 38
(2) A.I.R. 1958 All. 304
(3) 1958 P.L.R. 194

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without question in the case of such a limited estate, the next reversioner will in law be entitled to the protection of his reversion and be entitled to obtain a declaration to that effect. I take it that sub-section (2) of section 14, of the Act, if anything, leaves a clear indication that where there are restrictions and control of alienation over property, there the reversioner's right remains intact as before and the reversioner can still obtain protection of the Court from injury to such right. It has been contended by the learned counsel for the defendants in these cases that in reaching this conclusion the repealing provisions of section 4 of the Act are not being kept in view. This argument was pressed in *Gostha Behari* v. *Haridas Samanta*, (1), and the learned Judges repelled it and I cannot do better than state the reasons given by them, with which I agree respectfully, in this behalf. This is what P. K. Sarkar, J., observes, and P. N. Mookerjee, J., took the same view, at page 559 of the report:—

> "There can be no doubt from the words of sub-section (1) that it refers to property held and possessed by a Hindu female at the date of the commencement of the Act and it enacts that such property shall be held by her as full owner thereof and not as limited owner under the Hindu Law. Section 4, sub-section (1), of the Act declares: 'Save as otherwise expressly provided in this Act— (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in

(1) A.I.R. 1957 Cal. 557

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> force immediately before the commencement of this Act, shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.' So the effect of sections 4(1) and 14(1) read together is that the Hindu Law regarding the Hindu widow's estate will not apply to property held and possessed by a Hindu female from the date of the commencement of the Act and that such Hindu female shall hold the property thereafter not as limited owner under the Hindu Law, but as full owner. These provisions affect property held and possessed by a Hindu female at the date of the commencement of the Act and cannot affect any property which was held and possessed in the past by such female, but which she had transferred and thereby ceased to hold and possess at the date of the commencement of the Act or to which succession had opened on her death before the commencement of the Act."

Same view has been expressed by a Full Bench of the Madhya Pradesh High Court in *Mt. Lukai* v. *Niranjan* (1), by a Division Bench of the Bombay High Court in *Ramchandra* v. *Sakharam* (2), and by a Full Bench of the Patna High Court in *Harak Singh* v. *Kailash Singh* (3). There are observations to the contrary in *Hanuman Prasad* v. *Indrawati,* (4), but when the judgment of the learned Judges is considered what is really dealt with is property of which a Hindu female has by virtue of the provisions of section 14 become the

(1) A.I.R. 1958 Madhya Pradesh 160 (F.B.)
(2) A.I.R. 1958 Bom. 244
(3) A.I.R. 1958 Pat. 581
(4) A.I.R. 1958 All. 304

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full owner. Apparently in such a case there is no question of anybody being a reversioner because the Hindu female having become full owner of the property all restrictions and control over her power of alienation is thereby completely lifted. There is, therefore, no force in this argument on behalf of the defendants. The learned counsel for the defendants has pressed that on matters in regard to which the Act makes provision the rules of *mitakshara* are no longer the law, but it is not clear, how this is helpful to the defendants for in a case in which a Hindu female has not become the full owner because section 14, of the Act does not help her, the position is not that there is no longer any law that applies to such a case, rather the true and the correct position is that the law as before the Act continues to apply to such a case even after the Act. In fact such a case is not really governed by the provisions of the Act.

It has been urged on behalf of the defendants that the heirs of a female Hindu are to be found in section 15 of the Act and the plaintiffs in these two cases are not heirs of the Hindu females according to that section and, therefore, they cannot maintain the present suits. The argument to my mind is obviously misconceived for the question who are or are not heirs of a Hindu female under section 15 of the Act only arises in relation to a property of such a female and obviously a property of which she is the full owner. The reason is that where she is not the full owner of the property and holds a limited estate, as she might well for instance in a case coming under sub-section (2) of section 14 of the Act, the heirs are to be found not to her, but to the last holder of the estate previous to her on the termination of her limited estate. The learned counsel for the defendants has said that, as

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held in *Moniram Kolita* v. *Keri Kolitani* (1), by the Privy Council, a Hindu husband lives in the life of his widow and dies at the moment of her death, but that is only in regard to such property of which his widow does not become the full owner and which she has to pass upon her own death to the heirs of her husband. In such a case it is not her heirs who are to be looked for but those of the husband and section 15 of the Act has no bearing in so far as these cases are concerned. The argument is entirely without basis.

In the first of these two cases Rama Nand, the last male-holder, had left considerable property. A part of that property has been alienated by his daughter Rajo and that has been before the coming into force of the Act, and a part of it was in her possession on that date. It is obvious that under section 14 of the Act she has become full owner of such part of the property coming to her from Rama Nand deceased of which she was in possession on the date of the enforcement of the Act. In regard to that property inheritance will be governed having regard to the heirs of a female Hindu mentioned in section 15 of the Act. But in so far as the property, in dispute, that she sold long before the coming into force of the Act is concerned, she was not in possession of it on that date and could not have been in possession of it on that date having parted possession of it to the vendees. Of such property she has not become the full owner and to such property section 14 of the Act does not apply. When she alienated that property her alienation at the time was open to challenge by the reversioners of Rama Nand and since she has not become full owner of that property the right of the reversioners in regard to such property remains intact

(1) I.L.R. 5 Cal. 776 (P.C.)

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and as to such an alienation the law is as before the Act for the Act does not deal with such a situation, otherwise the result would be not to benefit her as is the intention of section 14 of the Act for she cannot recover back what she has sold away, but to benefit alienees from her. Their Lordships in the Supreme Court have in *Kotturuswami* v. *Veeravva* (1), at page 581, in unmistakable language held that the alienees from a female Hindu cannot be benefited in this manner by section 14 of the Act. The learned counsel for the defendants argues that Rajo has taken the whole of the inheritance of Rama Nand deceased and because of her own act in alienating a part of that inheritance and because of the coming into force of section 14 of the Act the result cannot be that the right of the reversionary heir is split up in that he has a right enforceable in regard to the second type of property and not in regard to the first type of property. It is difficult to see why that cannot be. In the case of first type of property she has become the full owner and there is no restriction or control over her power of alienation in regard to such property. The reversionary heir of Rama Nand has nothing to expect as reversion and nothing to protect as such. In the case of the second type of property Rajo has not become the full owner and the alienees from her are not benefited by section 14 of the Act, so the reversioner of Rama Nand deceased still has a right enforceable at Law that has not been taken away by any provision of the Act. The learned counsel presses that inheritance cannot be split up like this but then if a statute leads to this result, there can be no escape from it. This is the effect of section 14 of the Act for it makes Rajo full owner of the property from the inheritance of Rama Nand deceased of which she was in

(1) A.I.R. 1959 S.C. 577

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possession on the date of the Act and not full owner of property of which she has parted possession to third persons. In this connection the learned counsel has further said that on the death of Rajo the whole inheritance of Rama Nand deceased with her will pass to her heirs and not to the heirs of Rama Nand deceased, but that can only be in relation to property of which she has become the full owner. In regard to property of which she has not become the full owner, the question of this type will not arise. But in the case of property that has been alienated in any case no question of inheritance so far as she is concerned will arise upon her death because title in that property has already vested in a third person.

In the wake of the dictum of their Lordships in *Kotturuswami* v. *Veeravva* (1), it is not denied that in the case of sales by Rajo, she does not become owner of the property sold by her according to section 14 of the Act nor do the alienees from her have benefit of that section, but it is contended on behalf of the defendants in the second case that the position is different because that is a case of a gift and, so it is said, the case of a gift is different from the case of a sale and is more akin to the case of an adoption. In this behalf reliance is placed by the learned counsel for the defendants on the case of *Kotturuswami* v. *Veeravva* (1). In that case their Lordships held that the adoption was invalid and on the assumption that the possession was with the adopted son, their Lordships further held that the possession of the adopted son was, in the circumstances, a premissive possession on behalf of the adoptive mother. So that in law she was in constructive possession of the property on the date of the coming into

(1) A.I.R. 1959 S.C. 577

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force of the Act and thus became its full owner under section 14 of the Act. The learned counsel for the defendants says that in the second case, if the gift is invalid, the possession being with the donee, the donor, in view of the dictum of their Lordships, must be treated to be in constructive possession of the property because the possession of the donee has to be taken to be permissive. This is urged on the ground that a female Hindu had no power to gift away the property held by her as a limited owner. Reference is made, to support this proposition, to *Raghu Nandan Lal* v. *Sanatan Dharam Sabha, Ambala* (1), decided on October 1, 1959, by a Division Bench of this Court, and the observation of G. D. Khosla, J., in *Dassi* v. *Kapuro* (2), to the same effect. No doubt a Hindu female holding a limited owner's property has not the power to make a gift of the property, but the effect of an invalid gift by her is not the same as the effect of an invalid adoption. It is not necessary to burden the judgment with authorities on this question for on the difference in the effect of an invalid gift and an invalid adoption the law has been stated with clarity in paragraphs 181 and 185 in regard to an invalid alienation, including invalid gift, and in paragraph 510 of Mulla's Hindu Law, 12th edition, in regard to invalid adoption. These paragraphs read:—

"181. *Alienations by widow.*—A widow or other limited heir has no power to alienate the estate inherited by her from the deceased owner except for the following purposes, namely:—

(1) Religious or charitable purposes.

(II) Other purposes amounting to legal necessity.

(1) R.F.A. 111 of 1955
(2) A.I.R. 1958 Punj. 208

For purposes of the first class she has a larger power of disposition than for purposes of the second class.

"185. *Effect of alienation made without legal necessity and without consent of next reversioner.*—(1) An alienation made by a widow or other limited heir of property inherited by her. without legal necessity and without the consent of the next reversioners is not binding on the reversioners, but it is nevertheless binding on her so as to pass her own interest that is life-interest to the alienee.

(2) Even as regards reversioners it is not absolutely void, but voidable at their option. They may affirm it, or treat it as a nullity without the intervention of a Court, and they show their election to do the latter by commencing an action to recover possession of the property. In such a case they are not entitled to mesne profits for a period before the exercise of the election.

510. *Effect of invalid adoption.*—As a general rule it may be laid down that where there has been an adoption in form, but such adoption is invalid, the adopted son does not acquire any rights in the adoptive family, nor does he forfeit his rights in his natural family."

It now becomes crystal clear that under an invalid adoption, an adopted son acquires no rights in the adoptive family, but in the case of an invalid gift, the gift is good as against the Hindu female for her life and as against the reversioners

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until avoided. True enough, a Hindu female holding a limited estate cannot make a gift, but if she does make a gift, it binds her and when avoided by the reversioner the avoidance of it operates to his benefit on the death of such a female only and not before. In the case of an invalid adoption, the adopted son remains the son of his natural father not forfeiting his rights in his natural family and not gaining any rights in the adoptive family. Obviously, if in such circumstances, the adopted son is in possession of the property of the adoptive mother, and because of the invalidity of the adoption he gets no rights in such property, his possession of the property is permissive on behalf of the adotive mother, but this cannot be the case in regard to a gift of property for in the case of a gift the donee for the lifetime of a Hindu female is in possession under a good and valid title not impeachable by the Hindu female herself, for she has thereby transferred her own interest to him at least, and not impeachable by the reversioner so as to affect the title of the donee during the lifetime of the Hindu female. Any declaration that the reversioner obtains in such a case is always effective only after the death of the Hindu female. In the case of invalid adoption no right in the property of the adoptive family passes to the adopted son, but in the case of an invalid gift by a Hindu female, the property passes to the donee to the extent of the life interest of such a female, though the gift can be avoided by the reversioner as not affecting his reversionary rights after the death of such a female. I do not understand that the learned Judges in the cases upon which reliance is placed on behalf of the defendants laid down or intended to lay down that a gift by a Hindu female, with a limited ownership estate, is invalid so as not to be binding even upon such a female

and thus entitling her to recover possession of the property from the donee. It is a settled proposition that in the case of such a gift, so far as the gift is made of the limited life interest of a Hindu female it is a good and a binding gift on such a female and when it is said that a Hindu female cannot make a gift or gift made by her is totally invalid what is meant by such statements is that she cannot make a gift to the injury of the reversionary interest of a reversioner operating after her death and the invalidity of the gift, when it is avoided by a reversioner, is, operative, not during the lifetime of a Hindu female, but upon her death. This difference between the effect of an invalid adoption and an invalid alienation, including gift, is well settled and as stated, I do not understand that the learned Judges intended to lay down a proposition contrary to such an accepted proposition. It has been stressed by the learned counsel for the defendants that in *Kotturuswami* v. *Veeravva* (1), even on facts, the position was parallel to the present case because on the date the adoption was found or assumed as invalid, the possession of the property was with the adopted son, and it was held to be permissive possession for the adoptive mother. Similarly in the present case when the gift is held invalid, the possession is with the donee under an invalid gift, and thus from that date it is permissive possession with the donee for the donor. This is merely another attempt to repeat the same argument in a slightly modified form and the answer to the argument has already been given. This argument is, therefore, not of substance. The answer, therefore, to the question referred to the Full Bench is in the affirmative.

DULAT, J.—The question referred to us by a Division Bench of his Court has arisen in two

(1) A.I.R. 1959 S.C. 577

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cases and in two different ways. In one case a daughter, succeeding to her father's property, sold away a part of it before the Hindu Succession Act, 1956, was enacted. A suit was brought by the sister's son of her father, challenging the sale on the ground that the sale was wihout necessity and, therefore, invalid against the reversioners' rights. The suit was decreed by the trial Court. On appeal to this Court, it was urged on behalf of the vendees that because of the Hindu Succession Act, which had in the meantime come into force, the suit had become pointless.

In the second case, a widow, inheriting her husband's landed property, gifted the land to her daughter, again before the Hindu Succession Act. Kishan Singh, a fifth-degree collateral of the deceased husband of the widow, brought a suit to challenge the gift. It was found by the Courts below that the land was non-ancestral *qua* the plaintiff, and the gift being to the daughter who was a better heir than the plaintiff, it was not invalid. A second appeal was brought to this Court by Kishan Singh, and in opposition to it it was contended that because of the Hindu Succession Act the plaintiff's suit had been rendered pointless.

In both these cases it was apparently urged before the Division Bench that the Hindu Succession Act had the effect of abolishing the reversioners as a class, and reliance was placed on a decision of the Allahabad High Court in *B. Hanuman Prasad and others* v. *Mst. Indrawati and others* (1). The Division Bench, therefore, framed the question of law arising in these cases as follows:—

"Are the collaterals (reversioners) of the last Hindu male holder entitled to file

(1) A.I.R. 1958 All. 304

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or, if filed already, to continue a suit, after the enforcement of the Hindu Succession Act, challenging an alienation effected prior to the enforcement of the Act by an intervening female heir who at the time of the alienation held only a widow's estate?"

As far as the first case is concerned, I have no difficulty in agreeing with what Mehar Singh, J., has said, and, in view of the observations of the Supreme Court in *Kotturuswami* v. *Veeravva* (1), there can, in my opinion, be no doubt that section 14 of the Hindu Succession Act was never intended to benefit transferees from a female owner purchasing property from her at a time when her estate was limited. It is obvious that in the first case the female owner sold away the property and parted with possession, and when the Hindu Succession Act came into force she was neither the owner of the property nor in possession of it. Section 14 of the Hindu Succession Act only affects such property as was possessed by the female owner at the time the Hindu Succession Act came into force, and, although the expression "possessed by a female Hindu" has not been given a restricted meaning by the Supreme Court, it does not cover the case of property actually sold away before the Act. I would, therefore, agree that in such a case a suit to challenge the sale would be competent even after the enactment of the Hindu Succession Act. and I feel that the Allahabad High Court went a little too far in laying down that reversioners as such have altogether ceased to exist because of the Hindu Succession Act and no reversioner's suit is at all maintainable.

Regarding the second case, however, which concerns a gift by a widow to the daughter of the

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last male holder, I have difficulty in agreeing that it stands at par with the case of a sale such as is involved in the first case. The authoritative pronouncement of the Supreme Court concerning the meaning of section 14 of the Hindu Succession Act is to be found in the decision already mentioned—*Kotturuswami* v. *Veeravva*. (1). In that case the last male holder died in 1920. His widow adopted a son in accordance with a will made by her husband. A reversioner of the husband filed a suit, challenging the adoption. The suit was dismissed by the trial Court and the decision affirmed by the High Court of Madras. The plaintiff then appealed to the Supreme Court. It was urged on behalf of the respondents in the Supreme Court that the appellant's claim was bound to fail in view of section 14 of the Act, irrespective of whether the adoption made by the widow was valid or invalid. One suggestion in support of this contention was that the widow was actually in possession of her husband's property when the Hindu Succession Act came in force. This allegation of fact was, however, denied on behalf of the appellant and it was stated that following the adoption the widow had handed over her property to the unlawfully adopted son. The Supreme Court assumed as a fact that such was the case and that possession had been transferred by the widow to the adopted son. The Court, however, held that in spite of it the possession must in law be deemed to be still the possession of the widow. The argument, which the Supreme Court accepted, ran thus. The adoption was either valid or invalid. If there was a valid adoption, then obviously the suit of the appellant must be dismissed. If, on the other hand, the adoption was either invalid or had in fact not taken place, then the widow became the full

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owner of her husband's estate and the appellant's suit was not maintainable. Imam J., dealing with this matter, observed:—

> "In the present case if the adoption was invalid, the full owner of Veerappa's estate was his widow Veeravva, and even if it be assumed that the second defendant was in actual possession of the estate his possession was merely permissive and Veeravva must be regarded as being in constructive possession of it through the second defendant."

The question is whether this line of reasoning applies to the case of a gift like that in the case before us. It is contended that an invalid adoption and an invalid gift do not stand on the same footing, for an invalid adoption just does not exist in law, while an invalid gift made by a limited owner remains in force during her lifetime. I do not, however, see how that really makes any difference to the argument accepted by the Supreme Court, for, if a widow making an invalid adoption and handing over the property to the adopted son is to be deemed in constructive possession of the property herself, then a widow making an invalid gift to her daughter and handing over possession of the property to her would also be in constructive possession of it, and, if the main object of the Hindu Succession Act, section 14, is to enlarge the estate and the power of a female owner in respect of her estate for the benefit of the female owner, as the Supreme Court has said, then there appears to me no justification for restricting the female owner's act in a case where such act is calculated to benefit her and not benefit any purchaser who may have bought the property with open eyes. This was the view

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which a Division Bench of this Court, of which I was a member, took in a recent decision, *Raghu Nandan Lal* v. *Sanatan Dharam Sabha, Ambala* (1).

There is another way of looking at the facts of this case. The gift is made to the daughter of the last male owner, and irrespective of whether the property is ancestral or not *qua* the plaintiff, the daughter is under the Hindu Succession Act, a much better heir to her father's property than any collateral of the father, so that, if ultimately the daughter is to succeed to the propetry in preference to any collateral, there would be no point in the collateral's claim for a declaration that the gift is invalid. We are, of course, not required to decide at present whether on the death of the widow, if the gift is declared invalid, the property would be inherited by the last male holder's daughter who is the donee, or someone like the plaintiff in this case, but, quite obviously, unless the plaintiff has a chance of succession when succession opens, his suit can have no particular meaning and the plaintiff can have a right of succession only if it be held that succession to this property opened when the last male owner died, that is, before the Hindu Succession Act, and not when the widow happens to die which seems to me at this stage somewhat far-fetched. I am, therefore, of opinion that in the context of the facts involved in the second case the collateral's suit for a declaration, that the gift to the daughter is invalid, would be wholly incompetent.

With these answers I would return the cases to the Division Bench for the disposal of the appeals pending before it.

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Gosain J.—I agree with my learned brother Mehar Singh, J., that the answer to the question referred to the Full Bench in both the cases should be in the affirmative.

In the first case, i.e., *Amar Singh and others* v. *Sewa Ram and others* (1), Smt. Rajo succeeded to her father's property and made three alienations of three different parts of it. One of the alienations was a gift and the other two were sales. The suit giving rise to this appeal was brought by Sewa Ram, plaintiff, who is the sister's son of the father of Smt. Rajo. He alleged that the alienations were not binding on his reversionary interests and that the sales were without consideration and necessity. The trial Judge found the sales to be without consideration and necessity and also found that the gift was invalid, and on these findings the decreed the plaintiff's suit in its entirety. In appeal filed in this Court against the said decree no exception was taken to the part of the decree relating to the gift, but it was urged that the sales should have been found to be for necesseity and should have been upheld. The Division Bench which heard the appeal agreed with the findings of the trial Court that necessity *qua* the sales was not proved. Another argument was raised before the said Bench that the Hindu Succession Act had come into force in the meantime and that succession to the property in question had now to be governed by sections 15 and 16 of the said Act, and as the plaintiff was not an heir under the said sections, his suit had become infructuous. It is evident, however, that sections 15 and 16 apply to the property belonging to a female and that the said sections can, therefore, apply only if and when the female owner in question has

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become absolute owner by virtue of the provisions of section 14 of the Act. The present is a case where Smt. Rajo had parted with possession of the property before the enforcement of the Act and could not obviously be deemed to be in possession of the property as on the said date and could not, therefore, become an absolute owner of the property in question. Sections 15 and 16 of the Act cannot, therefore, have any bearing on the property in question and succession to the same must, therefore, be governed by the law which, but for the enactment of section 14 of the Hindu Succession Act, would have governed the same, and it is not denied that the said law would be the Hindu Law as prevalent before the enactment of the Hindu Succession Act. Once this is taken to be correct, there can be no doubt that the plaintiff as sister's son of the father of Smt. Rajo would be an heir *qua* the property in dispute and would, therefore, have a *locus standi* to maintain the suit. The appeal has, therefore, no merit at all and must be dismissed.

In the second case, i.e., Regular Second Appeal No. 214(P) of 1951 Smt. Kishni inherited her husband's landed property and gifted the same in favour of her daughter before the enforcement of the Hindu Succession Act. Kishan Singh, a fifth-degree collateral of the deceased husband of the widow, brought the usual suit for declaration that the gift was not binding on his reversionary interests. It was found by the Courts below that the land was not proved to be ancestral *qua* the plaintiff and the gift being in favour of the daughter, who was a better heir than the plaintiff amounted to an acceleration of succession and was not assailable at the instance of the plaintiff. In the second appeal filed in this Court it was argued before the Division Bench that the property should have been found to be ancestral

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and a decree should have been passed in favour of the plaintiff. On behalf of the respondents, however, it was urged that it was wholly unnecessary to decide the nature of the property because the Hindu Succession Act had in the meantime come into force and the reversionary body as such had ceased to exist and the plaintiff's suit had, therefore, become wholly infructuous. The alienation in this case having been made before the enforcement of the Hindu Succession Act, the widow had ceased to possess the property and could not possibly be deemed to be in possession of the same on the date of the enforcement of the said Act. This being so, she did not obviously become the absolute owner of the property, and sections 15 and 16 of the Act, could possibly have no bearing in locating the heirs *qua* the same. The parties were governed by custom and unless the provisions of the Hindu Succession Act applied to the case, the heirs *qua* the property in dispute had to be located according to the custom applicable to the parties. *Prima facie* the daughter would be entitled to succession *qua* the self-acquired property, and if the findings of the two courts below are correct, the gift in question may be unassailable, because it may amount to acceleration of succession. If, however, the property was found to be ancestral, as contended for by the appellant, the daughter may not have a right of succession. The nature of the property and the right of succession have yet to be determined, and the only point referred to the Full Bench for the present is whether the plaintiff was entitled to maintain the suit in spite of the fact that the Hindu Succession Act had come into force. Obviously, the succession to the property in question was governed by the rules of custom according to which the plaintiff on his allegations had a right of suit.

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The ruling of their Lordships of the Supreme Court reported as *Gumalapura Taggina Matada Kotturuswami* v. *Setra Veeravva and others* (1), has no bearing at all to the facts of the present case. There the widow had purported to adopt a son to her husband. It was found by the trial Court that the husband had never given any authority to the widow which could enable her to adopt a son to him (her husband), and the trial Court decreed the reversioners' suit on the basis that there had been no adoption at all. When the case came before the High Court, it was argued that the Hindu Succession Act had come into force and that the widow had become absolute owner of the property and the suit had, therefore, become pointless. The same argument was raised before their Lordships of the Supreme Court. It was contended there that there could be only two ways of looking at the thing. One of them was that the husband had given authority to the widow to adopt a son to him and that the widow had adopted the son in pursuance of the said authority. If this were the case, the reversioners had absolutely no chance of succession because the adoption would then be a valid one and would bind the widow as also the reversioners. The other way in which the matter could be looked at was that the husband had never given any authority to the widow for the purpose of adopting a son to him and, therefore, the widow was not at all entitled to adopt a son to her husband. If this fact was established, evidently the widow who purported to adopt a son to her husband must be deemed to have failed in her attempt to do so and the son so adopted could never be deemed to have been really adopted to her husband. The matter of adoption had, therefore, remained inchoate and an adoption of a son

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to her husband had never in fact come into existence. Obviously, then the possession of property by the so-called adoptee must be deemed to be nothing more than a permissive one and even the widow herself could have sued for restoration of possession to her. This possession was for all intents and purposes the possession of the widow herself and by the enforcement of the Hindu Succession Act the widow had become absolute owner of the property and succession *qua* the same was, therefore, governed by section 15 and 16 of the Act. Their Lordships of the Supreme Court accepted these arguments and found that the plaintiff in either case had really no chance of succession to the property and his suit had, therefore, become infructuous and pointless.

In the present case, however, the widow had made a gift and the donee had come into possession of the property in her own right in her capacity as a donee. The alienation was binding on the widow and she could, not in any case, oust the donee from possession even though the gift may not be binding on the reversioners of her husband. The analogy of adoption cannot possibly apply to the case, where an alienation had been made. This case is at par with the case where a sale has been made by a widow and the vendee has come into possession of the property in his own rights. The gift in one case and the sale in the other may be open to attack at the instance of reversioners, but they are not open to attack at the instance of the widow. The donee or the vendee, whatever the case may be, must be deemed to be in possession of the property in his own rights and the widow therefore, must be deemed to have parted with the possession. By no stretch of imagination it could be said in these circumstances that the widow was in possession of the property as on the date of the enforcement of the Hindu Succession Act. This being

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so, she never became the absolute owner of the property and the succession *qua* the same could not, therefore, be governed by the provisions of sections 15 and 16 of the Act. Subject to the property being found to be ancestral and the plaintiff being found entitled to preferential succession *qua* the same, he had a right of suit. These facts have yet to be decided by the Division Bench and the plaintiff cannot be non-suited on the ground that even on his own allegations he had no *locus standi* to bring the suit.

Order of the Court.

The answer to the question referred to the Full Bench is in the affirmative in both the cases which will now go back to the Bench concerned for disposal.

B. R. T.

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