

SUKHRAM & ANOTHER

A

v.

GAURI SHANKAR & ANR.

September 11, 1967.

[J. C. SHAH, S. M. SIKRI AND J. M. SHELAT, JJ.]

Hindu Succession Act 30 of 1956, s. 14(1)—Coparcenary governed by Benares School of Mitakshara rule that male coparcener cannot alienate his share of property without assent of other coparceners—Whether applicable to widow's interest under s. 14(1). B:

The first appellant, his brother H and his son the second appellant, constituted a Hindu Joint family and were governed by the Mitakshara law of the Benares School. H died in 1952 leaving him surviving his widow. On December 15, 1956, the widow sold a half share in a house and a shop belonging to the joint family to the first respondent. The appellants filed a suit for a decree declaring that the sale by the widow was without consideration and for an order cancelling the sale deed. The suit was dismissed by the Trial Court and, in appeal, by the High Court. C:

In appeal to this Court it was contended on behalf of the appellants that under the Benares School of the Mitakshara, a male coparcener is not entitled to alienate even for value, his undivided interest in coparcenary property without the consent of the other coparceners except in certain specified cases, and by s. 14(1) of the Hindu Succession Act 30 of 1956 it could not have been intended to confer a larger right on the widow of a coparcener. D:

Held: On the death of her husband, the widow became entitled to the same interest which H had in the joint family property under s. 3(2) of the Hindu Women's Right to Property Act, 18 of 1937, in the joint family property. Of that interest, by virtue of s.14(1) of the Hindu Succession Act 1956, she became full owner on June 17, 1956 and being full owner she was competent to sell it for her own purpose without the consent of the male coparceners of her husband. [477D-G] E:

A male member of a Hindu family governed by the Benares School of Hindu Law is undoubtedly subject to restrictions *qua* alienation of his interest in the joint family property, but a widow acquiring an interest in that property by virtue of the Hindu Succession Act is not subject to any such restrictions. That is however not a ground for importing limitations which the Parliament has not chosen to impose. [478F] F:

Madho Parshad v. Mehrban Singh, L.R. 17 I.A. 194; *Balgotind Das v. Narain Lal and Ors*, L.R. 20 I.A. 116 and *Chandradeo Singh & Ors. v. Mata Prasad & Anr.* I.L.R. 31 All. 176 (F.B.); referred to. G:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 21 of 1965.

Appeal by special leave from the judgment and decree dated March 15, 1961 of the Allahabad High Court in Second Appeal No. 2434 of 1960. H:

N.C. Chatterjee, E. C. Agarwala, Kartar Singh and P.C. Agarwala, for the appellants.

J. P. Goyal and B. P. Iha, for the respondents.

A The Judgment of the Court was delivered by

Shah, J. Hukam Singh and Sukhram—the first appellant in this appeal—were two brothers. Chidda—the second appellant, is the son of Sukhram, Hukam Singh, Sukhram and Chidda constituted a Hindu joint family and were governed by the Mitakshara Law of the Benares School. Hukam Singh died in 1952 leaving him surviving his wife Kishan Devi. On December 15, 1956, Kishan Devi sold a half share in a house and a shop belonging to the joint family, to Gauri Shankar. Sukhram and his son Chidda then commenced an action in the Court of the Munsif of Ghaziabad for a decree declaring that the sale by Kishan Devi to Gauri Shankar was without consideration, and for an order cancelling the sale deed. The suit was dismissed by the Court of First Instance, the District Court, Meerut, and the High Court of Allahabad.

In this appeal the only question which falls to be determined is whether the sale deed executed by Kishan Devi was binding upon the coparceners of her husband. On the death of Hukam Singh in 1952, it is common ground Kishan Devi acquired by virtue of s. 3(2) of the Hindu Women's Right to Property Act 18 of 1937, the same interest in the property of the joint family which Hukam Singh had. That interest was limited interest known as the 'Hindu Woman's estate': s. 3(3) of the Hindu Women's Right to Property Act, 1937. The Parliament enacted The Hindu Succession Act 30 of 1956, which by s. 14(1) provided that—

E "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."

The plea raised in the District Court that Kishan Devi was not "possessed" of the property which she sold to Gauri Shankar was rejected, and has not been set up before us. Clearly therefore, on the express words of s. 14(1) of the Hindu Succession Act, Kishan Devi acquired on June 17, 1956, rights of full ownership in the interest which Hukam Singh had in the property of the family during his life time, and she was competent without the consent of the male members of the family to sell the property for her own purposes.

But Mr. Chatterjee for the appellants submits that under the Benares School of the Mitakshara a male coparcener is not entitled to alienate even for value his undivided interest in coparcenary property without the consent of the other coparceners, unless the alienation be for legal necessity, or if the coparcener is the father, for payment by him of his antecedent debts which are not illegal or *avvavaharika*, and it could not have been intended by Parliament to confer upon a widow in a Hindu family a larger right than the right which the surviving coparceners could exercise at the date of the sale by the widow. Counsel says that the Parliament by Act 30

of 1956 merely intended to confer upon a Hindu widow rights of full ownership in the interest in property in which she had prior to that Act, only a limited interest, but did not intend to destroy the essential character of joint family property so as to invest the widow with power to alienate that interest without the assent of the coparceners of her husband. **A**

It is true that under the Benares school of the Mitakshara a coparcener may not, without the consent of the other coparceners, sell his undivided share in the family estate for his own benefit: *Madho Parshad v. Mehrban Singh*⁽¹⁾; *Balgobind Das v. Narain Lal and Ors.*⁽²⁾ and *Chandradeo Singh & Ors. v. Mata Prasad & Anr.*⁽³⁾ But the words of s. 14 of the Hindu Succession Act are express and explicit; thereby a female Hindu possessed of property whether acquired before or after the commencement of the Act holds it as full owner and not as a limited owner. The interest to which Kishan Devi became entitled on the death of her husband under s. 3(2) of the Hindu Women's Right to Property Act, 1937, in the property of the joint family is indisputably her "property" within the meaning of s. 14 of Act 30 of 1956, and when she became "full owner" of that property she acquired a right unlimited in point of user and duration and uninhibited in point of disposition. **B** **C** **D**

We are unable to agree with Mr. Chatterjee that restrictions on the right of the male members of a Hindu joint family form the bed-rock on which the law relating to joint family property under the Hindu Law is founded. Under the Law of the Mitakshara as administered in the territory governed by the Maharashtra and the Madras Schools and even in the State of Madhya Pradesh, a Hindu coparcener is competent to alienate for value his undivided interest in the entire joint family property or any specific property without the assent of his coparceners. A male member of a Hindu family governed by the Benaras School of Hindu Law is undoubtedly subject to restrictions *qua* alienation of his interest in the joint family property but a widow acquiring an interest in that property by virtue of the Hindu Succession Act is not subject to any such restrictions. That is however not a ground for importing limitations which the Parliament has not chosen to impose. **E** **F**

On the death of her husband, Kishan Devi became entitled to the same interest which Hukam Singh had in the joint family property. Of that interest, she became full owner on June 17, 1956, and being full owner she was competent to sell that interest for her own purposes, without the consent of the male coparceners of her husband. **G**

The appeal therefore fails and is dismissed with costs.

R.K.P.S.

Appeal dismissed. **H**

(1) L.R. 17 I.A. 194.

(2) L.R. 20 I.A. 116.

(3) I.L.R. 31 All. 176 (F.B.).