

be the limited owner of the properties thereafter until 1956 when by virtue of s. 14 of the Act her limited estate became absolute estate. She was, therefore, competent to dispose it of when she made the will. [381G-H; 382E]

2.2 It cannot be said that the father of the respondents did not challenge the gift till the life time of the widow, and that he filed the said suit only for the purpose of avoiding operation of the gift after her lifetime. The compromise decree should be construed as that the parties agreed that the properties would be enjoyed by the widow till her lifetime and the gift made by her in favour of the appellant's father would remain operative till the lifetime of the widow but not beyond that. [381E-F]

2.3 The lower courts on facts have held that the will was genuine and properly executed. If that is so, then the claim of the appellants, who are the legatees under the will, cannot be disputed. [382B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1686 of 1978.

From the Judgment and Order dated 27.4.1978 of the Himachal Pradesh High Court in Regular Second Appeal No. 59 of 1969.

Tapas Ray and S.K. Jain for the Appellants.

S.K. Bagga for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This appeal by special leave is from the judgment and order of the High Court of Himachal Pradesh dated 27th April, 1978.

In order to appreciate the controversy it is relevant to refer the few facts. Prior to 1943 Mst. Sheru @ Bhushehri was having life interest in the properties mentioned in Paragraph 1 of the Plaint in Civil Case No. 159 dated 19.7.63. She executed a deed of Gift in favour of Shri Dhari, predecessor-in-interest of the appellant in respect of 43-14 bighas of land and a building mentioned in clause 1(f) of the Plaint. On 26.11.48 Shri Hari Ram filed a Civil Suit No. 63 of 1948 in the Court of Senior Subordinate Judge, Mandi for possession of the property in terms of the alleged compromise pursuant to which the gift was made to Shri Dhari or in the alternative to get a declaration that the deed of

A gift should be cancelled on the ground of non-fulfilment of the condition of the compromise deed. Shri Hari Ram, since deceased, the father of the respondents herein and Shri Dhari, since deceased, father of the appellants herein were cousin brothers. Late Rattan and late Keshav had another brother, Shri Thalia, since deceased. Mst. Sheru @ Bhushehari, since deceased, was the widow of Shri Thalia who had no issue. On 31.5.50 the Senior Subordinate Judge, Mandi, decreed the suit in favour of the respondents herein, and ordered that the gift is not binding on the respondents-plaintiff and made a declaration that the gift of the land in suit in favour of Shri Dhari made by Mst. Sheru @ Bhushehari shall be ineffective against the reversionary rights of the plaintiffs (respondents herein) after the life time Mst. Sheru @ Bhushehari. On 9.6.1950 Shri Hari Ram and Mst. Sheru @ Bhushehari, both since deceased, filed Civil Appeal No. 26 of 1950 against the judgment and decree of the Senior Subordinate Judge, Mandi in Civil Suit No. 63 of 1974.

On 27.7.1950 the appeal was compromised in terms of a Compromise Deed, a compromise decree was passed allowing the appeal of the appellants (Shri Dhari and Mst. Sheru @ Bhushehari, both since deceased) and modified the judgment of the trial court to the extent that the gift deed made in respect of the land measuring 21-15-17 bighas comprising Khata Khatani No. 3/16-27 and Rauda Kheratar Khata Khatani 13/46-17 measuring 21-15-17 bighas situated in village Barsu Ballah was rejected and declared ineffective. It was declared that the aforesaid land would be divided in equal shares after the death of Mst. Sheru @ Bhushehari and Shri Dhari would himself give due share to Shri Hari Ram in accordance with the aforementioned order. The one storeyed slate roof house was to remain with Shri Dhari.

In 1956, the Hindu Succession Act, 1956 came into force w.e.f. 17.6.56. With the coming into force of the said Act Mst. Sheru @ Bhushehari became absolute owner in respect of all her properties including those which were the subject matter of the said Civil Suit No. 63 of 1948.

On 9.3.59 Mst. Sheru @ Bhushehari executed a will in respect of all her properties in favour of Shri Gopal Singh, Shri Jagdish, Shri Bhup Singh and Shri Kirat Ram all sons of Shri Dhari. Shri Hari Ram died during the life time of Mst. Sheru @ Bhushehari. Mst. Sheru died on 20.3.60. Shri Dhari died on 26.6.63. The plaintiffs filed the present suit on 8.7.63 (respondents herein). On 21.7.67 the suit was dismissed by the Additional Subordinate Judge, Mandi. On 3.5.69 the District

Judge, Mandi, dismissed the first appeal against the judgment and decree in the suit. On 27.4.78 the High Court allowed the appeal and altered the decree passed by the learned District Judge holding that the plaintiffs (respondents herein) were found entitled to claim the possession of half of the share in 43.14 bighas of land situated at village Barsu Ballah and gifted away by Mst. Sheru @ Bhushehari to Shri Dhari in the year 1943.

It is pertinent to note that the compromise decree reads as follows:

“I allow the appeal of the appellants and modify the judgment of the Trial Court to the extent that Gift Deed in respect of the land measuring 21-15-17 bighas comprising Khata Khatauni No. 3/16 to 27 bighas situated in village Barsu Ballah is hereby rejected and declared ineffective. The aforesaid land alongwith the other land shall be divided in equal shares after the death of Sheru @ Bhushehari and Dhari shall himself give due share to Hari Ram in accordance with the aforementioned order.”

The effect of the aforesaid was that the gift was ineffective and Smt. Bhushehari continued to enjoy the right and benefit she had during her limited ownership until 1956. In the premises and in the facts and circumstances of the case, the High Court was not justified in construing or interpreting the compromise decree in Suit No. 63 of 1948 in the manner it did and in holding that the suit was one in which Hariram did not challenge the gift till the lifetime of Bushehari and that he filed the said suit only for the purpose of avoiding operation of the gift after the lifetime of Bushehari. The compromise decree should be construed as that the parties agreed that the properties would be enjoyed by Bushehari till her lifetime and the gift made by her in favour of Dhari would remain operative till the lifetime of Bushehari but not beyond that. When Bushehari inherited the properties from her husband in 1942 she had only life interest in the said properties. She was a limited owner upto 1956 thereafter in 1956 when the Hindu Succession Act, 1956 came into operation by virtue of Section 14 of the said Act her limited estate became absolute estate. The position therefore was that if she had gifted away her properties when she was limited owner Smt. Bushehari would not have become absolute owner after coming into operation of the 1956 Act and would not have been competent to bequeath the properties by Will. In the instant case, however, by the Compromise Decree it was declared that the gift was

A ineffective. The effect of that declaration was that she continued to be the limited owner of the properties there-after until 1956. The effect of the Hindu Succession Act, 1956, was that a female Hindu can transfer her property by Will. Since the Will was subsequent to this period she had absolute estate and full capacity to make the Will.

B It has been held by the Courts of facts that the Will was genuine and properly executed. If that is so, then the claim of the appellants who are the legatees under the Will cannot be disputed. We are, therefore, unable to sustain the views of the High Court. Our attention was drawn to a decision of the Himachal Pradesh High Court in the case of *Lachhman v. Thunia*, A.I.R. 1972 H.P. 69 where it was held
C that where a Hindu widow makes a gift of the property belonging to her deceased husband before the passing of the Hindu Succession Act and the reversioners obtain a declaratory decree that their rights are intact despite the alienation by the widow, the declaratory decree does recognise the rights of the reversioners to the property after the death
D of the limited owner though the right to enjoy for a limited period remains in the donee. Section 14(1) of the Hindu Succession Act, 1956, had no application to the property. It was held that it was not in the possession of the widow at the time of the death. We are of the opinion that the ratio of the said decision cannot be made applicable to the facts of this case. Since in this case after the purported gift, it was held that the gift was legally valid, Mst. Bushehari remained the owner
E of the property in question, therefore, was competent to dispose it of when she made the Will.

F In that view of the matter and in the facts and circumstances of this case the appeal must be allowed. The judgment and order of the High Court are set aside. In the facts and circumstances of the case the parties will pay their own costs.

P.S.S

Appeal allowed,