

BASANTI DEVI (DEAD) BY LRS & ORS

A

v.

RATI RAM & ORS.

(Civil Appeal No. 7919 of 2011)

MAY 08, 2018

B

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Hindu Succession Act, 1956 – ss.14(1) and (2) – Applicability of – Suit filed by predecessors-in-interest of respondents against ‘SL’, predecessor-in-interest of appellants – Compromise decree was passed wherein ‘SL’ was given limited right to use the suit land and on his death his wife, ‘C’ would also have limited right in the land and on her death the land would revert to the respondents-plaintiffs – ‘SL’ died whereafter mutation was entered in favour of ‘C’ – After ‘C’ died, respondents-plaintiffs filed suit for possession – Suit decreed by trial court – First Appellate Court reversed the decree – High Court restored the decree of trial court – Plea of appellants-defendants that ‘SL’ had subsisting interest in the land as he was the owner and possessor of the land even before the compromise decree and therefore, ‘C’ had right in his property and thus, she acquired absolute ownership right by virtue of s.14(1) and therefore, High Court was not right in holding that the case falls u/s.14(2) – Held: s.14(1) does not recognize the pre-existing right of a male Hindu – ‘SL’ was granted limited right not in recognition of his pre-existing right – In terms of the compromise decree ‘SL’ merely got restrictive possessory rights – Suit property never became the self acquired property of ‘SL’ – His widow ‘C’ did not hold the land in lieu of maintenance which can be enlarged into absolute ownership by virtue of s.14(1) – There were no pre-existing rights of either ‘SL’ or his widow ‘C’ – ‘C’ could not have acquired a better right than her husband had in the property in dispute – Therefore, her right would not mature into full-fledged ownership by virtue of s.14(1) – She acquired the right by virtue of compromise decree for the first time and, therefore, s.14(2) would apply to the instant case.

C

D

E

F

G

Dismissing the appeal, the Court

HELD: 1.1 ‘SL’ merely got restrictive possessory rights in terms of the compromise decree. The compromise decree

H

A categorically provided that the suit property was to revert to the predecessors of the respondents-plaintiffs in case 'C', the widow of 'SL' predeceased him and in case 'SL' predeceased 'C', the latter was entitled to use the same during her life time. Thereafter, the suit property would revert to the predecessors of the respondents-plaintiffs. It is thus clear that 'SL' was given a limited right in respect of the suit property. [Para 11][1034-C-D]

B
 1.2 After the death of 'C', the plaintiffs were entitled to the possession of the land. It is clear that 'SL' was granted limited right not in recognition of his pre-existing right. Section 14(1) of the Hindu Succession Act, 1956 does not recognize the pre-existing right of a male Hindu. The suit property never became the self acquired property of 'SL'. Even his widow 'C' did not hold the land in lieu of maintenance which can be enlarged into full ownership by virtue of Section 14(1) of the Act. The estate was conferred on 'C' by virtue of the decree which created a new right. There were no pre-existing rights of either 'SL' or his widow 'C'. The property in her hands came as a result of she being a successor of 'SL'. 'C' would not have acquired a better right than 'SL' in the suit property. The rights of 'SL' as well as 'C' flew from the consent decree. [Para 12][1034-E-G]

C
 D
 E
 F
 1.3 In the instant case, there is nothing on record to show that the property in the hands of 'C' came in lieu of maintenance or on account of arrears of maintenance. The property in her hands came as a result of she being a successor of 'SL'. 'SL' did not possess any property. He had only life interest in the property which did not enlarge into a full right because Section 14(1) does not recognize the pre-existing right of a Hindu male. 'C' could not have acquired a better right than her husband had in the property in dispute. She had acquired the right by virtue of the compromise decree for the first time. Therefore, Section 14(2) would apply to the instant case. [Paras 13, 14][1035-B-D]

G
V. Tulasamma & Ors. v. Sessa Reddy (dead) by Lrs.
 (1977) 3 SCC 99 : [1977] 3 SCR 261 – distinguished.

Case Law Reference

[1977] 3 SCR 261 distinguished Para 8

H

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7919 A
of 2011.

From the Judgment and Order dated 31.08.2007 of the High Court
of Punjab and Haryana at Chandigarh in RSA No. 1571 of 1985.

M. N. Rao, Sr. Adv., Ranbir Singh Yadav, Ms. Anzu K. Varkey, B
Syed Ahmad Naqvi, Ms. Ashima Pary, Ms. Richa Gandharva, Advs. for
the Appellants.

P. N. Sharma, Dev Vrat (For Mrs. V. D. Khanna), Roopansh
Purohit, R. K. Shokeen, Advs. for the Respondents.

The Judgment of the Court was delivered by C

S. ABDUL NAZEER, J. 1. This appeal by the appellants-
defendants is directed against the judgment and decree in RSA No.
1571 of 1985 dated 31.08.2007 passed by the High Court of Punjab and
Haryana, whereby the judgment and decree of the First Appellate Court
has been set aside and the judgment and decree of the trial Court has D
been restored.

2. The plaintiffs filed the civil suit No. 34 of 1977 for possession
of 1/6th share of agricultural land measuring 348 kanals 14 marlas along
with rights in well etc. situated in village Berli Khurd, Tehsil Rewari. It
was alleged in the plaint that one Har Narain was the ancestor of the E
plaintiffs. He had three brothers, namely, Jag Ram, Jas Ram and Mukh
Ram. All the three brothers died issueless and Har Narian became the
owner of the suit property. Har Narian had four sons, namely, Udmi,
Bhoru, Shadi and Murli. Murli died during the life time of Har Narain.
Murli had two sons, namely, Chhaju and Chiranji, who were minors at F
the time of the death of Murli. One Sheo Lal son of Anta, and Makhan
son of Chunna got their names entered in the revenue record showing
themselves to be sons and the heirs of Har Narian. Sheo Lal and
Makhan applied for partition which was stayed by the Assistant Collector
First Grade, Gurgaon as in the meanwhile their title was challenged.
The Assistant Collector First Grade, Gurgaon allowed the parties to get G
the question of title decided in the Civil Court. Therefore, the plaintiffs
filed the suit for declaration to the effect that Sheo Lal and Makhan
were not the sons of Har Narian and were not the co-sharers in the suit
land.

H

A 3. This suit was dismissed by the Trial Court on 23.12.1929. The
appeal filed by the plaintiffs challenging the said decree was allowed by
the District Judge, Gurgaon and the decree of the Trial Court was set
aside vide judgment and decree dated 21.07.1930. Sheo Lal and Makhan
challenged the said decree by filing a second appeal which was allowed
B by the High Court in part and the case was remanded to the District
Judge for fresh disposal. On remand, the parties entered into a
compromise and a compromise decree came to be passed.

C 4. It was further contended by the plaintiffs that in terms of this
compromise, Sheo Lal was given a limited right to use the land in question
without any right to alienate or mortgage the property. It was agreed
that on the death of Sheo Lal, in absence of any male lineal, his surviving
wife would also have the limited right in the land which comprised of 1/
6th share of the total estate of Har Narain. Under the compromise, it
was stipulated that after the death of the widow, in the absence of any
male lineal, the land will revert to the plaintiffs i.e. the heirs of Har
D Narain, who will be entitled to take possession and Makhan will have no
right over the land. Sheo Lal died somewhere in the year 1961-1962.
On his death, mutation was entered in favour of Smt. Chhimli, who was
the wife of Sheo Lal and the daughters of Sheo Lal. On the death of
Chhimli in the year 1976, plaintiffs filed the suit for possession of the 1/
6th share which was earlier held by Sheo Lal and upon his death by Smt.
E Chhimli.

F 5. The defendants filed the written statement opposing the suit by
contending, *inter alia*, that after the death of Sheo Lal, his widow Smt.
Chhimli acquired absolute ownership right by virtue of Section 14(1) of
the Hindu Succession Act, 1956 (for short 'the Act'). The Trial Court
vide judgment and decree dated 12.06.1979 held that Sheo Lal came
into possession of the suit property by virtue of the compromise decree.
It was further held that Smt. Chhimli is not entitled to the benefit of
Section 14(1) of the Act as Sheo Lal had limited right under the decree
of the court and in this way Section 14(1) will not apply and her estate is
G not enlarged into full ownership. It was held that the limited right granted
to Smt. Chhimli cannot be inherited by her heirs and the same will revert
to the plaintiffs in terms of the compromise decree dated 23.12.1932. It
was also held that by virtue of Section 14(2) of the Act Chhimli's right of
limited estate cannot be converted into an absolute ownership right.

H

6. The First Appellate Court reversed this judgment and decree by holding that Sheo Lal and Makhan had pre-existing right and the compromise decree cannot restrict their rights. It was also held that the limited estate of Sheo Lal is enlarged into an absolute ownership right by operation of the law and thus, the plaintiffs could not enforce the compromise decree against Smt. Chhimli and her heirs were entitled to inherit the suit property.

A
B

7. As noticed above, the High Court has set aside the judgment and decree of the First Appellate Court and has restored the judgment and decree of the trial court.

8. Appearing for the appellants, Sh. M.N. Rao, learned senior counsel, submits that Section 14(1) of the Act enlarges the scope of the estate into absolute estate if the widow is in the possession of the land. Sheo Lal died in 1961 and his wife Chhimli died in 1976 and during that period she was in possession of the land. Chhimli's right was not a grant for the first time. Her pre-existing right as wife of Sheo Lal to claim the property was not in dispute. This position is clear from the terms of compromise. In other words, the pre-existing right of Sheo Lal's widow was recognized even in the compromise. The learned counsel has taken us to the terms of compromise and submits that Sheo Lal had subsisting interest in the land. Therefore, his widow has the right in the property of her husband. It was argued that even before the compromise, Sheo Lal was the owner and possessor of the land. Therefore, the High Court is not right in holding that the case falls under Section 14(2) of the Act. In support of his submissions learned senior counsel has placed reliance on the decision of this Court in **V.Tulasamma & Ors. v. Sessa Reddy (dead) by Lrs.** reported in 1977 (3) SCC 99.

C
D
E
F

9. On the other hand, Sh. P.N. Sharma, learned advocate appearing for the respondents, submits that Chhimli, widow of Sheo Lal, had no pre-existing right in the suit property and that she had acquired the right under the compromise decree. Therefore, the case is covered under Section 14(2) of the Act.

G

10. Having regard to the contentions urged, the question for consideration is whether Smt. Chhimli, the widow of Sheo Lal had any pre-existing right in the suit property or she acquired the right under the compromise decree alone. Consequently, whether the case would be covered under Section 14(1) or 14(2) of the Act?

H

A 11. It is an admitted position that on 23.12.1932 a compromise
decreed was passed in a suit filed by predecessors of the defendants
against the predecessors of the plaintiffs. In terms of the compromise
decreed, the sons of Har Narain who were predecessors-in-interest of
the plaintiffs agreed to give limited possessory rights to the predecessor
of the defendant, namely, Sheo Lal. In terms of the compromise, the
B consent decree was passed holding that “*during the lifetime of Sheo
Lal, he will not be entitled to sell or mortgage his property in any
case*”, thereby meaning that Sheo Lal merely got restrictive possessory
rights in terms of the decree dated 23.12.1932 passed by the District &
Sessions Judge, Hissar. Further, it categorically provided that the suit
C property was to revert to the predecessors of the plaintiffs in case the
widow predeceased Sheo Lal and in case Sheo Lal predeceases the
widow, the widow shall be entitled to use the same during her life time.
Thereafter, the suit property will revert to the predecessors of the plaintiff.
It is thus clear that Sheo Lal was given a limited right in respect of the
suit property. Sheo Lal died in the year 1961. Chimkli, wife of Sheo Lal
D died in 1976.

12. The suit was filed primarily on the ground that neither Sheo
Lal nor his widow had any pre-existing right in the suit land since their
rights flow from the compromise decree. After the death of Smt.
Chimkli, the plaintiffs were entitled to the possession of the land. It is
E clear that Sheo Lal was granted limited right not in recognition of his
pre-existing right. Section 14(1) of the Act does not recognize the pre-
existing right of a male Hindu. The suit property never became the self
acquired property of Sheo Lal. Even his widow Chimkli did not hold the
land in lieu of maintenance which can be enlarged into full ownership by
F virtue of Section 14(1) of the Act. The estate was conferred on Chimkli
by virtue of the decree which created a new right. There were no pre-
existing rights of either Sheo Lal or his widow Chimkli. The property in
her hands came as a result of she being a successor of Sheo Lal. Smt.
Chimkli would not have acquired a better right than Sheo Lal in the suit
property. The rights of Sheo Lal as well as Smt. Chimkli flow from the
G consent decree.

13. In **Tulasamma** (supra), this Court has held that Hindu women’s
right to maintenance is the personal obligation so far as the husband is
concerned and it is the duty to maintain her even if he has no property.
The right to maintenance is a pre-existing right. If the husband has
H

property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow. It was further held that the claim for the right to maintenance possessed by a Hindu family is legally a substitute of a share which she would have got in the property of her husband. A

14. In the instant case, there is nothing on record to show that the property in the hands of Chimkli came in lieu of maintenance or on account of arrears of maintenance. The property in her hands came as a result of she being a successor of Sheo Lal. Sheo Lal did not possess any property. He had only life interest in the property which did not enlarge into a full right because Section 14(1) does not recognize the pre-existing right of a Hindu male. Smt. Chimkli could not have acquired a better right than her husband had in the property in dispute. Right of Sheo Lal, as also Smt. Chimkli, flows from the decree. Therefore, her right would not mature into full-fledged ownership by virtue of Section 14(1). She has acquired the right by virtue of the compromise decree for the first time. Therefore, Section 14(2) would apply to the instant case. B C D

15. Resultantly, the appeal fails and it is accordingly dismissed. There will be no order as to costs. E