

**THE INTERPLAY BETWEEN SECTION 14(1) AND (2)
OF
THE HINDU SUCCESSION ACT, 1956**

Longstanding uncertainty and confusion:
Now, The Reference to the Largar Bench in
Tej-Bhan (D) through Legal Heirs V/s. Ramkishan (D)
through Legal Heirs (09th December, 2024)

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SECTION 14 HINDU SUCCESSION ACT, 1956

Effect of Section 14 of the Hindu Succession Act, 1956

The Act of 1956 provided for historic changes in the Hindu Law and especially as to position of a Hindu female. For the first time, absolute right of a Hindu female came to be recognized. Such a right came to be recognized by virtue of section 14 of the Hindu Succession Act, 1956.

Section 14: Property of a Female Hindu to be her absolute property –

- (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 sub-section, “property” includes both, movable and immovable property acquired by a female Hindu by inheritance or devised, 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 the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatever, and also any such property held by her as “*Stridhana*” immediately before the commencement of this Act.

- (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under 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, prescribed a restricted estate in such a property.

Thus, by virtue of section 14 of the Hindu Succession Act, a female Hindu is entitled to hold a property as an absolute owner thereof.

The term “property” as stated in sub-section (1) of Section 14 provides for movable as well as immovable property. Further, the Explanation to Section 14 explains the term “property” in a wider sense, thereby various methods of acquisition of immovable property have been stated. Property might have been acquired 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. It also includes property acquired in any other manner whatsoever. It further includes *Stridhana*. Thus, the term “property” and the methodology of acquiring and possessing the property has been defined and illustrated in the wider manner. This was to confer protection on Hindu female considering the then existing social and legal position. Sub-section (2) of Section 14 is an exception to sub-Section (1).

In *Jose v. Ramakrishnan Nair*,¹ an interesting issue arose before the Kerala High Court, whether the term, “female Hindu” will include a daughter? The Court held that the term “female Hindu” includes daughter also.

Retrospective Effect of Section 14 (1)

The provisions conferring protection on Hindu female are retrospective in nature. The very phraseology used in Section 14 (1) is explanatory of the nature thereof. Regarding method of acquiring property, the terms have been used as, acquired before or after commencement of this Act. Thus, such a property movable or immovable must have been acquired by her either before or after commencement of the Act. As such, this section is having retrospective effect. The earlier transactions are taken into consideration after coming into force of the Act. This issue came to be considered by Madhya Pradesh High Court in the case of *Jamunabai v. Bholaram*², the Court held that the provisions in Section 14 (1) are retrospective in nature.

Nature of Woman’s Estate existing prior to coming into force of the Act

The twin test

By virtue of the Hindu Women’s Right to Property Act, 1937, a widow was entitled to life or limited interest, being woman’s estate after death of her husband. Therefore, on the commencement of the Hindu Succession Act, 1956, such a widow being alive will be entitled to have benefit of the provisions in Section 14 of the Act. A widow so as

¹ AIR, 2004, Ker. 16

² AIR, 2003, MP, 40

to be entitled to the benefit of the provisions, it was necessary that (i) ownership of the property must be vested in her before 17th June, 1956 and so continued on 17th June, 1956 and thereafter; (ii) she must be in possession of the property when the Act came into force, i.e. on 17th June, 1956.

Meaning of Ownership Explained

The twin test provided by Section 14 requires ownership and possession. In Jurisprudence, possession is said to be incident of ownership. Nevertheless, it is further said that possession is **nine points** in law. Ownership and possession are two important aspects of property. It may happen that a person is owner, but not in possession or a person is in possession, but not the owner thereof. Hence, so as to get the benefit of Section 14, both of the requirements shall be satisfied. The terms “possessed & acquired” in Section 14 (1) are self-explanatory. Issue was before the Supreme Court of India in the case of *Eramma v. Verrupana*³ wherein, the court held that the term ‘possession’ as used in Section 14 (1) relates to legal possession. If a Hindu female is illegally in possession then she cannot take the benefit of the provisions of Section 14 (1). These provisions will not validate illegal possession of a Hindu female.

Effect of Limited Ownership / Interest along with possession of a widow under Section 3 of the Hindu Women’s Right to Property Act, 1937

By virtue of the provisions in Section 3 of the Act of 1937, a widow is entitled to the share of the deceased husband. She was entitled to hold the same as limited owner or limited interest and was treated as Woman’s Estate. In case of coparcenary, she was entitled to the share of her husband in the coparcenary property at the time of his death. She was entitled to claim partition. On her death, the limited interest reverted back to male heirs of the husband. However, if such widow was alive on the commencement of 1937 legislation, then she was entitled to the benefits of the Act. The issue was before the Supreme Court of India in the case of *Suharam v. Gourishankar*⁴, whether woman’s estate will become absolute interest after coming into force of the 1956 legislation? In the present case, husband died in the year 1952, i.e. after commencement of 1937 legislation and as such, his

³ AIR, 1966, SC, 1879

⁴ AIR, 1968, SC, 365

widow was entitled to his share. Thereafter, widow sold the share inherited by her in the month of December 1956. It has been held by the Supreme Court that the share held by her by virtue of death of her husband came to be transformed to be an absolute property of the widow by virtue of Section 14 and, as such, she is entitled to sell, transfer or convey the same.

In case of *Badri Prasad v. Kanso Devi*⁵, husband died after 1937 Act came into force, then there was partition amongst the members of the Hindu Joint Family. A share was allotted to the widow on partition through the court decree. After coming into force of 1956 Act, the nature of the estate held by the widow by virtue of decree of the court was challenged and it was alleged that by virtue of Section 14 (2), the estate held by the widow is not her absolute property. However, the court negated the contention and held that the widow has become an absolute owner of the property.

In *Soltappa v. Meenakshi*⁶, husband died after commencement of 1937 legislation. The widow obtained woman's estate by virtue of Section 3 of the Act. There was no partition on or before commencement of 1956 legislation. After 17th June, 1956, i.e. commencement of the Act of 1956, the widow died and was survived by her heirs. It has been held by the Madras High Court that, 'the heirs of the widow have become absolute owners of the property'.

The term 'possession of the property' has been explained by the Supreme Court in the case of *Dwarkadas v. Sholapur Spinning & Weaving Company*⁷ as, expression 'property' must be construed in the widest sense and shall also include the incidental rights, vesting in the owner of the right. It also relates to corporeal and incorporeal rights. The court further explained that in the absence of any statutory provisions, the scope and comprehensiveness of the term shall not be restricted. Thus, wider meaning should be given to the term 'property', as has been held by the court in the case of *Munnalal v. Rajkumar*⁸.

Meaning of possession has been explained by the Supreme Court in the case of *Mangal v. Rattno*⁹. It is held that possession, whether it is actual or physical, has not been clearly stated in Section 14 (1). As

⁵ AIR, 1970, SC, 1963

⁶ (1970) 1, MLJ, 383

⁷ AIR, 1954, SC, 119

⁸ AIR, 1962, SC, 1493

⁹ AIR, 1967, SC, 1786

such, there has to be wider meaning given, it being beneficial legislation. It also includes constructive possession. In Jurisprudence, possession may be actual, i.e. factual or it may be constructive. Possession becomes constructive when a person is legally entitled to possession, but for some reasons, he is not in actual possession. As such, if a trespasser has committed a trespass on the land of person entitled to possession of the same, then such a dichotomy of possession arises. Actual possession vesting in the trespasser while right to possess vesting in the person entitled to possess.

Relationship between ownership and possession has been explained by the Supreme Court in the case of *Eramma v. Verupanna*¹⁰. The court held that the term 'possession' is co-extensive with ownership.

In the case of *Mangal v. Rattno*¹¹, issue of constructive possession came to be explained by the Supreme Court. Husband died in the year 1917. Thereafter, the Act of 1937 came into force. The widow acquired woman's estate, being her husband's share. Her husband's relatives forcibly dispossessed her after coming into force of the Act, but before 1956 Act. She instituted a suit for possession during her life time. The Act of 1956 came into force during the pendency of the suit. The widow died in the year 1958 and her legal representatives were brought on record. It has been held by the Supreme Court that, 'legal representatives are entitled and are deemed to be successors-in-title in respect of her rights in the property'. However, the converse is not true. She must be in lawful possession. If she is a trespasser, then she will not be entitled to the benefit of the provisions in Section 14, as has been held by the court in the case of *Dindayal v. Rajaram*¹².

In *Radha v. Hanuman*¹³, an issue arose before the Supreme Court that, 'whether alienee / transferee of the widow before the Act of 1956 is entitled to the benefit of the provisions of Section 14 (1) after coming into force of 1956 legislation'? It has been held that an alienee of a widow holding woman's estate is not protected under Section 14 (1). The intention of the legislation is evident from the terminology used in Section 14 (1) as, 'possessed' has been used. Hence, to get the benefit of this provision, the property must be possessed by the widow on commencement of the Act.

¹⁰ AIR, 1966, SC, 1879

¹¹ AIR, 1967, SC, 1786

¹² 1970, SC, 1019

¹³ AIR, 1966, SC, 216

Very interesting issue arose before Madras High Court. In *Chinna Kolandi v. Thanji*¹⁴, the widow alienated her woman's estate to the alienee, which came to be held as illegal and invalid. Thereafter, the alienee re-conveyed the property and possession to her before commencement of 1956 legislation. As such, irrespective of such transactions before 1956, she was in possession on commencement of the Act. As such, it has been held that she is entitled to benefit of Section 14 (1).

In *Daya Singh v. Dhan Kaur*¹⁵, an issue arose the Supreme Court, as to after death of the widow after the commencement of the Act, whether succession will be regulated by the 1956 legislation or the law as it stood before that? The Supreme Court held that, 'succession opened on death of the widow and further, the husband is deemed to have died on death of the widow. As such, succession to the estate of the widow shall be regulated by the law, as it stood at the time of her death.

Effect of Woman's Estate and Widow's Remarriage Act, 1856

By virtue of the provisions in Hindu Widow's Remarriage Act, 1856, certain widows could get certain properties from their husbands as limited estate. Remarriage caused divesting of the property. An issue arose, whether such estate held by a widow under this Act shall become her absolute property or not, after coming into force of 1956 legislation and especially, Section 14 (1) thereof? The Rajasthan High Court, in the case of *Bhuribai v. Champibai*¹⁶ held that, 'she will become full and absolute owner thereof by virtue of Section 14 (1)'.

The issue of remarriage of such a widow arose before the Supreme Court in the case of *Punithavalli v. Ramalingam*¹⁷. The court held that the right conferred on Hindu female under Section 14 (1) makes her absolute owner of the same and that cannot be defeated or taken away from her by subsequent events. Thus, she becomes absolute owner after coming into force of 1956 legislation and as such, thereafter she remarries and hence, this will not disentitle her from the claim of absolute ownership.

¹⁴ AIR, 1965, Mad. 497

¹⁵ AIR, 1974, SC, 665

¹⁶ AIR, 1968, Raj. 139

¹⁷ AIR, 1970, SC, 1730

The Limitation

The rule as stated in Section 14 (1) making property of Hindu female as her absolute property is subject to the limitation imposed by sub-Section (2).

Sub-Section (2) provides that, ‘nothing contained in sub-Section (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 Civil Court or under an Award, where the terms of the gift, Will or other instrument or the decree, order or Award prescribed a restricted estate in such property’.

These provisions as obtained in sub-Section (2) provide for various methods of transfer or of acquisition of interest in the property as, ‘gift’, ‘Will’, any other instrument, decree, order, Award. Such methods by themselves provide no limitation on sub-Section (1). Such a limitation is created by further part of Section 14 (2) as, ‘where the terms of the gift, Will, or other instrument or the decree, order, or Award prescribed a restricted estate in such property’. Thus, if by these various methods, transfer of an interest is effected and while so effecting, restricted estate is prescribed, then that will operate as limitation to sub-Section (1). In short, if limitation i.e. exception to the general rule as stated in sub-Section (1) prevents such estate in the hands of woman becoming her absolute property. If such transfer has been effected by such various modes and methods, woman will become absolute owner thereof. However, in the cases wherein while effecting transfer by these various means, restricted estate has been prescribed, then there will be no absolute property in the hands of the transferee woman.

The difference between sub-Section (1) and sub-Section (2) lies in the intention of the legislature that Section 14 (1) will make such property as her absolute property because in this process, as contemplated by sub-Section (1), there is no restricted estate prescribed. However, the nature of the estate acquired by woman by the provisions stated in sub-Section (2) is by restricted estate, being prescribed. While effecting such transfer by the modes stated therein, then it will not become absolute interest/ property of the woman.

In *Sellammal v. Nellammal*¹⁸, the Supreme Court explained the relationship between sub-Sections (1) & (2). If the woman had no right or interest in the property prior to the grant, she will take it in accordance with the grant, but if she had an interest or right in the property prior to the grant and the grant merely embodies that interest, Section 14 (1) will make that grant as an absolute estate.

Similar issue arose for consideration before the Madras High Court in the case of *Chinnammal v. Kannaji*¹⁹, it was a case wherein there was partition between the brothers and it was agreed as per the partition that mother shall be allowed to reside in the house of the joint family for her life. Issue arose after coming into force the provisions of the Hindu Succession Act, 1956, whether the mother is entitled to absolute interest in the house by virtue of the provisions in Section 14 (1). It has been held by the High Court that, ‘by the application of Section 14 (2), she is entitled to reside in the house for her life time’. As such, not Section 14 (1) will apply, but the limitation / exception as stated in Section 14 (2) will apply. Mother will not become the absolute owner of the house.

In *Seth Badri v. Kanso Devi*²⁰, as per the partition decree, shares were allotted to Hindu female as her share. It was held by the Supreme Court that, ‘Section 14 (1) applies and not Section 14 (2)’. It is further held by the court that, ‘the section as a whole shall be read’. The words – “acquired and possessed” in sub-Section (1) are to be understood and then the provisions in sub-Section (2) as to any restricted estate has been prescribed are to be understood. As such, the general rule is in favour of absolute property of Hindu female and if any restricted estate is prescribed, as stated in sub-Section (2), then only she will be deprived from becoming absolute owner of such property.

In *Mahadev v. Bansraj*²¹, the issue arose as to the nature of the property acquired under agreement or compromise. In this case, after death of husband, property was inherited by a widow. Thereafter, she entered into a compromise with some reversioners that she would hold the estate as limited owner and would not cut the trees on the land. After commencement of the Hindu Succession Act, 1956, the widow treated herself as absolute owner and started cutting the trees so as to construct a house. A suit was filed by reversioners. The contention of

¹⁸ AIR, 1977, SC, 1265

¹⁹ AIR, 1989, Mad. 185

²⁰ AIR, 1970, SC, 1963

²¹ AIR, 1971, All. 515

the reversioners was that she continues to be limited owner and not as absolute owner as a consequence of understanding in the compromise. As such, the court held that sub-Section (1) applies and not sub-Section (2). Hence, the widow is entitled to absolute interest in the property.

In *Smt.Himi v. Smt.Hira Devi*²², an issue arose as to the nature of Section 14 of the Act. In this case, after death of a Hindu, his step-mother and step-daughter entered into a compromise decree. Step-mother recognized ownership of step-daughter and the step-mother was allowed to retain the possession of the entire property during her life time. On dispute, it was held that step-mother will not become absolute owner of step-daughter's share, as it was not in lieu of any pre-existing right.

In *Karmi v. Amru*²³, in this case, a question arose as to property acquired under Will and application of sub-Section (2). Under a Will of a Hindu, which was registered, conferred a life interest on wife with the direction that after death of wife, property would devolve on two collaterals of the Hindu. After death of her husband, the widow took the estate and died in the year 1960. Now, there was a dispute between her heirs and husband's collaterals. The husband's collaterals claimed it under Section 14 (2) being the limitation imposed in the Will. However, the widow's heirs claimed it to be her absolute property. The court held that widow had only limited or life interest as the provisions in sub-Section (2) will apply. By the Will, estate was bequeathed to her, subject to limitation prescribed. Hence, her heirs are not entitled to inherit by way of succession, but husband's collaterals held to be entitled under Section 14 (2).

Remarriage of a Widow

By virtue of Section 14, a Hindu female becomes absolute owner of the property acquired by her fulfilling the conditions of Section 14. By virtue of the Hindu Widows Remarriage Act, 1856, she was entitled to hold the property and thereafter came the Hindu Women's Rights to Property Act, 1937. As such, she became the limited owner of the limited estate held by her. Thereafter came the Hindu Succession Act, 1956 into force. Thus, the widow who held the property by virtue of earlier laws, on commencement of the 1956 enactment, becomes the absolute owner thereof. The earlier two enactments provided for disqualification of the widow to hold the property. However, after

²² AIR, 1997, SC, 83

²³ AIR, 1971, SC, 745

coming into force the 1956 enactment, widow contacting subsequent marriage will not be disqualified. Thus, remarriage by a widow will not result into divesting property held by her by virtue of 1856 or 1937 legislation. The issue has been explained by the Supreme Court in the case of *Velamuri Venkata Shivaprasad v. Kothuri Venkateshwaralu*²⁴.

In *Gummalapura Teeina Matada Kuttururawamy v. Setra Veeravva*²⁵, the Supreme Court explained the phrase, 'possessed of'. A broad interpretation has been adopted with widest connotation to mean, 'the state of owning or having in one's hand or power and which need not be actual or physical possession or personal occupation of the property'. Such a possession which may not be personal, i.e. physical or actual, but entitlement to possess is sufficient for the interpretation of Section 14.

Interplay between Section 14 (1) and (2)

Section 14 (2) – The Scope

In *V.Tulasamma & Ors. v. V.Sesha Reddy (Dead) by LRs*²⁶, the Supreme Court explained the inter-play between Section 14 (1) & (2). The court held that, 'whether it is Sub-Section (1) or Sub-Section (2) of Section 14 of the Hindu Succession Act, 1956, that applies where property is given to a Hindu female in lieu of maintenance under an instrument which in so many terms restricts the nature of interest given to her in the property. If Sub-Section (1) applies, then the limitations on the nature of her interest are wiped out and she becomes the full owner of the property, while on the other hand, if Sub-Section (2) governs such a case, her limited interest in the property is not enlarged and she continues to have the restricted estate prescribed by the instrument'. The court further held that, 'the question is of some complexity and it has evoked wide diversity of judicial opinion, not only amongst the different high courts, but also within some of the High Courts themselves. This is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and proved a paradise for the lawyers. It illustrates forcibly the need of an authority or body to be set by the government or the legislature which would constantly keep in touch with the adjudicatory authorities in the country as also with the legal profession and immediately respond by making recommendations for

²⁴ AIR, 2000, SC, 434

²⁵ (1959) Supp. 1, SCR, 968

²⁶ (1977) 3, SCC, 99

suitable amendments whenever it is found that a particular statutory provision is, by reason of inapt language or unhappy draftsmanship, creating difficulty of construction or is otherwise inadequate or defective or is not well conceived and is consequently counter-productive of result.

In *Nirmalchand v. Vidyawati (Dead) by her LRs*²⁷, the issue was before the Supreme Court as to construction of a partition deed and right of a widow. In this case, there was a partition between Amin Chand, a coparcener and Subhrai Bai, the widow of a deceased coparcener. As per the partition, certain property was allotted to Subhrai Bai and it was specifically provided in the partition deed that Subhrai Bai would be entitled to the user of the property and she would have no right to alienate it in any manner, but would only have a life interest. Subhrai Bai died in 1957 subsequent to the coming into force of the Act after making a Will, bequeathing her property in favour of her daughter Vidyawati. The right of Subhrai Bai to bequeath the property by a Will was challenged on the ground that she had only a limited interest in the property and her case was governed by Sub-Section (2) and not by Sub-Section (1). This contention was negative and it was held by this court that, 'though it was true that the instrument of partition prescribed only a limited interest for Subhrai Bai in the property, that was in recognition of the legal position, which then prevailed and hence, it did not bring her case within the exception contained in Sub-Section (2) of Section 14. The court observed that, 'if Subhra Bai was entitled to a share in her husband's property, then the suit properties must be held to have been allotted to her in accordance with law'. As the law then stood, she had only a life interest in the properties taken by her. Therefore, the recital in the deed in question that she would have only a life interest in the properties allotted to her share is merely recording the true legal position. Hence, it is not possible to conclude that the properties in question were given to her subject to the condition of her enjoying it for life time. Therefore, the Trial Court as well as the 1st Appellate Court were right in holding that the facts of the case do not fall within Section 14 (2) of the Hindu Succession Act, 1956. The court further observed that the reason for non-application of Section 14 (2) is pre-existing rights of the widow, it being life or limited interest.

²⁷ C.A.No.609 of 1965, decided on Jan.21, 1969

In *Rangaswami Naicker v. Chinnammal*²⁸, the Madras High Court held that, ‘the object of Sub-Section (2) is, ‘only to remove the disability of women imposed by law and not to interfere with contracts, grants or decree, etc. By virtue of which, a woman’s right was restricted and therefore, the properties acquired by a Hindu female under the instrument in virtue of a pre-existing right, such a right to obtain a property on partition or maintenance and under the law as it stood prior to the enactment of the Act, she would have no more than limited interest in the property, a provision in the instrument giving her limited interest in the property would be merely by way of record or recognition of the true legal position and the restriction on her interest being a disability imposed by law would be wiped out and her limited interest would be enlarged under Sub-Section (1).

Life or Limited Interest : Section 14 (1) or (2)

From reading the judgment of the Supreme Court in the case of *Nirmalchand v. Vidyawati (Dead) by her LRs* and of Madras High Court, *Rangaswami Naicker v. Chinnammal*, the inter-play between Section 14 (1) & (2) can be explained on following lines:

- (a) If there is a pre-existing right prior to the commencement of the Act, then on commencement of the Act, right of a female will become “**absolute right**”, by virtue of Section 14 (1).
- (b) If a right is created, which is of a restrictive nature as contemplated under Section 14 (2), then she will not become absolute owner, but her right will be controlled by the document or deed, conferring such a right on her.
- (c) If restricted right is conferred on her and at the time of conferring such a right, she had only a life or limited interest in the property, then irrespective of the fact that a deed or document conferred on her only a life interest or limited interest, she will become absolute owner because she would have no more than limited interest in the property, a provision in the instrument giving her limited interest in the property would be merely by way of record or recognition of the true legal position and the restriction on her interest being a disability imposed by law would be wiped out and her limited interest would be enlarged under Sub-Section (1).

²⁸ AIR, 1964, Mad. 387

In *Rant Bai v. Shri Yadunanden Ram*²⁹, the Supreme Court held that a claim of a widow for maintenance is not a charge upon any joint family property until she has got her maintenance determined and made a specific charge, either by an agreement or a decree or order of a court, her right is not liable to be defeated except by transfer through a *bona fide* purchaser for value without notice of her claim or even with notice of the claim unless the transfer was made with the intention of defeating her right. The widow can for the purpose of her maintenance, follow the joint family property into the hands of any one who takes it as a volunteer or with notice of her having set-up a claim for maintenance.

In *Rachawa & Ors. v. Shivayanappa*³⁰, the court held that, 'where a widow is in possession of any specific property for the purpose of her maintenance, a purchaser buying with notice of her claim is not entitled to possession of that property without first securing proper maintenance for her'.

(This view of the court came to be approved by the Supreme Court in the case of *Rant Bai v. Shri Yadunanden Ram*).

In *B.B. Patil v. Gangabai*³¹; *Sumeshwar Misra v. Swaminath Tiwari*³²; *Reddayya v. Varapula Venkataraju*³³; *Lakshmi Devi v. Shankar Jha*³⁴; *N.Venkanegouda v. Hanemangouda*³⁵; *Smt. Sharbati Devi v. Pt. Hiralal*³⁶; *Sesadhar Chandra Deo v. Smt. Tara Sundari Dasi*³⁷ *Saraswathi Ammal v. Anantha Shenoi*³⁸ and *Kunji Thomman v. Meenakshi*³⁹, these issues came to be discussed by various high courts. Out of these decisions, the decision of Bombay High Court in *B.B. Patil v. Gangabai* being the judgment of Justice Palekar, came to be approved by the Supreme Court in the case of *V.Tulsamma & Ors. v. V. Seshareddi*. Thus, if the pre-existing rights were limited by the law itself, then mere mention or description thereof as life or limited

²⁹ (1969) 3, SCR, 789

³⁰ ILR, 18, Bom. 679

³¹ AIR, 1972, Bom. 16

³² AIR, 1970, Pat. 348

³³ AIR, 1965, AP, 66

³⁴ AIR, 1967, Mad. 429

³⁵ AIR, 1972, Mys. 286

³⁶ AIR, 1964, Pub. 114

³⁷ AIR, 1962, Cal. 438

³⁸ AIR, 1966, Ker. 56

³⁹ ILR, (1970) 2, Ker. 45

interest will not attract the application of Section 14 (2). Such a case will be regulated by the provisions in Section 14 (1) only. Such a life or limited interest granted by any deed or instrument would be construed only as recognition of the true legal position and not as a separate limitation. Hence, on commencement of the Act, the provisions of Section 14 (1) will be applicable.

In *Narayanrao Ramchandra Pant v. Ramabai*⁴⁰, a judicial committee pointed out that the widow's right to maintenance arises from the common law, which developed from time to time. Justice West of the Bombay High Court appears to have entered into a very elaborate discussion of the entire law on the subject in *Lakshman Ramchandra Joshi & Anr. v. Satyabhamabai*⁴¹ and observed as follows:

‘These several authorities, no doubt, afford, in combination, a strong support to the proposition that a widow's maintenance, especially as against the sons, there is charge on the estate, a right *in re* in the fullest sense adhering to the property, into whatever hands it may pass’.

Long back in *Sheo Dyal Tewaree v. Judoonath Tewaree*⁴², the Calcutta High Court observed that, ‘the widow may not be the owner of a share, but she had a pre-existing right of maintenance’. This issue has been further explained by Calcutta High Court in the case of *Srinath Das v. Probodh Chunder Das*⁴³ and held that, ‘right of a Hindu widow as to maintenance is really identified with the husband's property right though of a subordinate nature’.

In *K.V. Thangavelu v. the Court of Wards, Madras*⁴⁴, the Madras high Court made an exhaustive scrutiny of *Shastric Law* on the point and by relying and analyzing various original texts of Hindu Jurists, the court pointed out that a cogent ground for preferring a widow's claim is to be found in her qualified or subordinate co-ownership in the husband's property declared by the *Mitakshara*. The court referred to *Verse 52 of Vyavaharadhaya (Chapter II)*, where the *Mitakshara* refers to *Apastamba's Dharma-Sutra* as follows:

“From marriage arises also jointness (*Sahatwam*) in the holding of the property (*Dravya-paragrathestiu*)”.

⁴⁰ LR 6, IA, 114

⁴¹ ILR, 2, Bom. 494

⁴² 1968 (9) WR, 6

⁴³ 11, C.L.J. 580

⁴⁴ (1946) 2, M.L.J. 143

In *Sarojinidevi v. Subrahmanyam*⁴⁵, the Madras High Court held that even after coming into force of the Hindu Women's Right to Property Act, 1937, which did not apply to agricultural lands, the right of the Hindu widow to maintenance stood in-tact and the widow was entitled to maintenance notwithstanding her right under the Act to a share in agricultural part of the family estate.

In *Sukhram & Anr. v. Gourishankar & Anr.*⁴⁶, the Supreme Court observed that, 'the words of Section 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 *Krishna Devi* became entitled on the death of her husband under Section 3 (2) of the Hindu Women's Right to Property Act, 1937, in the property of joint family is indisputably her property within the meaning of Section 14 of the Act of 1956, and when she became "full owner" of the property she acquired right unlimited in point of user and duration and uninhibited in point of disposition.

In *Mst. Karmi v. Amru & Ors.*⁴⁷, a 3-Judges bench of the Supreme Court held that, 'life estate given to a widow under the Will cannot become an absolute estate under the provisions of the Hindu Succession Act'.

In *Sadhu Singh v. Gurudwara Sahil Narike & Ors.*⁴⁸, a case before the Supreme Court – one *Ralla Singh* held some property. It was self-acquired. *Isher Kaur* was his wife. They had no children. On 07.10.1968, Ralla Singh executed a Will and he died on 19.03.1977. Thereafter, Isher Kaur on 21.01.1980 purported to gift the property in favour of a *Gurudwara*. A suit was filed, challenging the Deed of Gift and for recovery of possession. The issue arose, whether Section 14 (1) or (2) applies to the facts of the case? It has been held by the Supreme Court that, 'Section 14 (2) is applicable as Isher Kaur got the property under the Will and hence, restrictive rights under the Will shall not become absolute right. It will continue to be limited right as expressly provided in the Will'.

⁴⁵ ILR, 1945, Mad. 61

⁴⁶ (1968) 1, SCR, 476

⁴⁷ (1972) 4, SCC, 86

⁴⁸ (2006) 8, SCC, 75

In *Sharad Subramanyan v. Soumi Mazumdar*⁴⁹, the Supreme Court held that, ‘a legatee under the Will did not have a pre-existing right in the property and as such, would not be entitled to rely on Section 14 (1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the Will and Section 14 (2) of the Act’.

In *Ramchandra Shenoy v. Hilda Brite*⁵⁰, the Supreme Court held that, ‘it is one of the cardinal principles of construction of Wills that to the extent that it is legally possible effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid, the subsequent interest cannot take place, but a court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the Will’.

In *C.Masilamani Mudaliar & Ors. v. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil & Ors.*⁵¹, the Supreme Court held that, ‘women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicate all social injustice. Hence, the limited estate which had been conferred on the legatee in lieu of the right of maintenance under the Hindu Adoptions & Maintenance Act, 1956, was in recognition of the pre-existing right to maintenance known under the *Shastric Law* and it became an absolute right under Section 14 (1) and the legatee became the absolute owner of the property’.

In *Balwant Kaur & Anr. v. Chanan Singh & Ors.*⁵², the Supreme Court upheld the right of maintenance of widowed daughter. Such a right under the Will as to demise of a property and limited interest/ life interest therein. The court held that Section 14 (1) applies and the provisions in Section 14 (2) are not applicable.

In *Bhura & Ors. v. Kashiram*⁵³, the Supreme Court held that a life or limited interest bequeathed on a female Hindu by a Will will become

⁴⁹ (2006) 8, SCC, 91

⁵⁰ AIR, 1964, SC, 1323

⁵¹ [REDACTED]

⁵² [REDACTED]

⁵³ [REDACTED]

her absolute property. It relates to the intention of a testator as was the legal position then. Hence, the words in the Will are to be understood as recognition of the legal position then in existence.

The 2-Streams of Opinion

The judgments of the Supreme Court in the cases of *Gulwant Kaur v. Mohinder Singh*⁵⁴, *Thota Sesharathamma v. Thota Manikyamma*⁵⁵, *Balwant Kaur v. Charan Singh & Ors.*⁵⁶, *Shakuntala Devi v. Kamla*⁵⁷, *Jupudy Pardha Sarathy v. Pentapati Rama Krishna*⁵⁸ and *V.Kalyanaswamy v. L. Bhaktavatsalam*⁵⁹ lay down and support the view of laid down by the Supreme Court in the case of *V. Tulsamma & Ors. v. V. Sesha Reddi (D) by LRs*⁶⁰. Thus, the principles laid down as to the inter-play between Section 14 (1) & (2) in Tulsamma's case in the year 1977 have been further followed and explained by the Supreme Court itself in above mentioned cases till 2021.

The other stream of opinions is ear-marked in the case of *Karmi v. Amru*⁶¹, which was decided by 3-Judges bench of the Supreme Court. The said judgment came to be followed by the Supreme Court in the case of *Bhura & Ors. v. Kashiram*⁶². The principle laid down in above referred two cases came to be further followed by the Supreme Court in the case of *Sadhu Singh v. Gurudwara Sahib Narike & Ors.*⁶³. In *Gaddam Ramakrishna Reddy & Ors. v. Gaddam Rami Reddy & Anr.*⁶⁴ *Jagan Singh (D) thro. LRs. v. Dhanwanti & Anr.*⁶⁵; *Shivdev Kaur (D) by LRs & Ors. v. R.S.Grewal*⁶⁶; *Ranvir Dewan v. Rashmi Khanna & Anr.*⁶⁷ and *Jogi Ram v. Sureshkumar & Ors.*⁶⁸, the Supreme Court followed the above referred principle.

⁵⁴ (1987) 3, SCC, 674

⁵⁵ (1991) 4, SCC, 312

⁵⁶ (2000) 6, SCC, 310

⁵⁷ (2005) 5, SCC, 390

⁵⁸ (2016) 2, SCC, 56

⁵⁹ (2021) 16, SCC, 543

⁶⁰ (1977) 3, SCC, 99

⁶¹ (1972) 4, SCC, 86

⁶² (1994) 2, SCC, 111

⁶³ (2006) 8, SCC, 75

⁶⁴ (2010) 9, SCC, 602

⁶⁵ (2012) 2, SCC, 628

⁶⁶ (2013) 4, SCC, 636

⁶⁷ (2018) 12, SCC, 1

⁶⁸ (2022) 4, SCC, 274

The Development of Law

The law as to inter-play between Section 14 (1) & (2) and its effect came to be explained by the Supreme Court through its various decisions. The noticeable process started from the judgment delivered by the Supreme Court in the year 1967 in case of ***Mangal Singh & Ors. v. Rattno (D) by LRs.***⁶⁹. In this case, the Supreme Court explained the scope and ambit of the expression of ‘any property possessed by a Hindu female’ in Section 14 (1) of the Act.

In ***Seth Badri Prasad v. Smt. Kansodevi***⁷⁰, a 3-Judge bench observed that, ‘sub-Section (2) of Section 14 is more in the nature of a proviso or an exception to sub-Section (1) and it comes into operation if acquisition of the property by a female Hindu is made through any of the methods mentioned therein for the first time and without there being any pre-existing right’.

In ***V.Tulsamma & Ors. v. Sesha Reddy (D) by LRs.***⁷¹, the Supreme Court considered a plethora of judgments so far decided by the Supreme Court as well as various high courts. Some of the judgments were referred to, some were followed, some were approved and some were over-ruled. The case of *Gummalapura* was referred to. The case of *Seth Badri Prasad v. Smt.Kansodevi* came to be followed. The case of ***B.B. Patil v. Gangabai***⁷² came to be approved and the case of ***Naraini Devi v. Ramo Devi***⁷³ came to be over-ruled.

In ***Tulsamma’s case***, the principles came to be formulated as –

- (1) The Hindu Female’s Right to Maintenance is not an empty formality or an illusory claim, being a conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognized and enjoined by pure *Shastric Hindu Law* and has been strongly stressed even by the earlier Hindu Jurists, starting from *Yajnavalkya to Manu*. Such a right may not be a right to property, but it is right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom.

⁶⁹ AIR, 1967, SC, 1786

⁷⁰ (1969) 2, SCC, 586

⁷¹ (1977) 3, SCC, 99

⁷² AIR, 1972, Bom. 16

⁷³ (1976) 1, SCC, 574

If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge, the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognizing such a right does not confer any new title, but merely endorses or confirms the pre-existing rights.

- (2) Section 14 (1) and the Explanation thereto have been coached in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and to promote the socio-economic ends, sought to be achieved by this long-needed legislation.
- (3) Sub-section (2) of Section 14 is in the nature of a Proviso and has a field of its own without interfering with the operation of Section 14 (1) materially. The Proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14 (1) or in a way, so as to become totally inconsistent with the main provision.
- (4) Sub-Section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time. And has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognize pre-existing right. In such cases, a restricted estate in favour of a female is legally permissible and Section 14 (1) will not operate in this sphere. Where however an instrument merely declares or recognizes a pre-existing right, such as a claim for maintenance or partition or share to which, the female is entitled, the Sub-Section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14 (1) and the restrictions placed, if any, under the document would have to be ignored. Thus, where property is allotted or transferred to a female in lieu of maintenance or a share in partition, the instrument is taken out of the ambit of Sub-Section (2) and would be governed by Section 14 (1) despite any restrictions placed on the powers of the transferee.
- (5) The use of express terms like, 'property acquired by a female Hindu at partition', or 'in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14 (1) clearly makes sub-Section (2) inapplicable to these categories which have been expressly accepted from the operation of Sub-Section (2).
- (6) The words, 'possessed by' used by the legislature in Section 14 (1) or of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same: thus, where a widow gets a share in the

property under a preliminary decree before or at the time when the 1956 Act had been passed, but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14 (1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any trespasser without any right or title.

- (7) That the words, ‘restricted estate’ used in Section 14 (2) are wider than limited interest as indicated in Section 14 (1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee.

The decision in *Tulsamma* came to be followed in the case of *Gulwant Kaur v. Mohinder Singh*⁷⁴ and was further affirmed by 3-Judge bench in *Jeswant Kaur v. Maj. Harpal Singh*⁷⁵.

In 1991, a 2-Judge bench of the Supreme Court while deciding the case of *Thota Sesharathamma* followed the 3-Judge bench decision of *Tulsamma*. However, the bench noticed another 3-Judge bench decision in *Karmi v. Amru*, which was not noticed or considered in *Tulsamma*. While examining the judgment of 3-judge in *Karmi*’s case, it has been observed by the bench that, ‘the decision in *Karmi* is a short judgment, without adverting to any provisions of Section 14 (1) or 14 (2) of the Act. The judgment neither makes any mention of any argument raised in this regard, nor there is any mention of the earlier decision in *Badri Prasad v. Kanso Devi*. The decision in *Karmi* cannot be considered as an authority on the ambit and scope of Section 14 (1) and (2) of the Act. It is further observed that in *Karmi*, the attention of this court to Section 14 (1) was not drawn, nor had an occasion to angulate in this perspective. Therefore, the ratio therein is of little assistance to the appellant.

In 1996, a 3-Judge bench of the Supreme Court decided the case of *C.Masilamani Mudaliar & Ors. v. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil & Ors.*

The Supreme Court followed its decision in *Mudaliar’s case* in *Bhoomi Reddy, V. Kalyana Swamy, Nazar Singh, Balwant Kaur,*

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⁷⁵ (1989) 3, SCC, 572

Shakuntala Devi, Santosh & Ors., Jupudi Pardha, Munni Devi and Kallakuri.

The controversy has been created by the judgment of 2-judge bench in ***Gumpha v. Jaibai***⁷⁶. The bench distinguished the decision in *Thota Sesharathamma* on the ground that the testator died before the commencement of the Hindu Succession Act.

In the case of *Sadhu Singh v. Gurudwara Sahib Narike & Ors.*, the Supreme Court has formulated the principles as to interpretation of rights under Section 14 (1) and (2) as,

- (i) A Hindu wife is entitled to be maintained by her husband under Section 18 of HAMA and a Hindu widow being a dependent under Section 21, HAMA is entitled to claim maintenance from heirs of husband under Section 22 HAMA to the extent of the estate inherited by them. Further, Section 28 HAMA entitles her to claim maintenance against a transferee even. However, this aforesaid entitlement nowhere allows her to create a charge on her husband's property. In fact, Section 27 HAMA expressly states to the contrary.
- (ii) The test, therefore, is to look at the nature of right acquired by a Hindu female – if she takes as an heir, she does it absolutely. But if it is under a devise, then any restriction placed will apply in view of Section 14 (2).
- (iii) Section 13 is an affirmation as to owner's right to deal with his property. Thus, when an owner executes a Will, laying down the bequest with respect to his estate, the legatee takes subject to terms therein. Section 14 (2) reaffirms the affirmation in Section 13. Any interpretation of Section 14 (1) which renders Section 14 (2) and Section 13 *otios* cannot be allowed.
- (iv) Ratio in *Tulsamma* has application only when a female Hindu is possessed of the property on the date of the Act under semblance of right (limited or pre-existing). The decision in *Karmi* cannot only be justified on the premise that the widow had no pre-existing right in the self-acquired property of her husband. Decision in *Bhura & Sharad Subramanyan* is along the same lines.

⁷⁶ (1994) 2, SCC, 511

- (v) Thus, the essential ingredients for determining application of Section 14 (1) are as follows: antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be.
- (vi) Any acquisition of possession of property (not right) by a female Hindu after coming into force of the Act cannot normally attract Section 14 (1) of the Act.

The decisions in *Karmi* was by 3-judge bench, while the decisions in *Bhura*, *Gumpha* and *Sadhu Singh* are all by 2-judge benches.

While deciding the cases in *Thota*, *Mudaliar* and *Shakuntala Devi*, the benches have made passing observations about the discordant note in case of *Karmi*, *Bhura* and *Gumpha*. However, these cases have not been clearly and categorically over-ruled. According to the Supreme Court in *Tej Bhan's* case, this is the reason why the subsequent decisions consistently followed the idea in *Karmi* and enunciated different principles in subsequent decisions of *Gumpha* and *Sadhu Singh* and that perspective continued on its own strength.

Thus, there had been two streams of opinions about the inter-play between Section 14 (1) and (2). There had been a confusing situation and hence, a reference was needed. Now, it will be settled by a larger bench of the Supreme Court and the controversy will be set rest.

The Reference

In *Tej Bhan (D) thro. LR & Ors. v. Ramkishan (D) thro. LRs & Ors.*⁷⁷, the two judges bench of the Supreme Court made an extensive survey of the cases decided by various high courts and by itself with reference to the inter-play between Section 14 (1) and (2). The court noticed that, 'however, of date, there are at least 18 judgments from this court comprising decisions from 2 and 3 judges benches that are varying and sometimes inconsistent with the view taken in *Tulsamma's Case*. While arriving at their respective decisions, these judgments sought to explain, distinguish, negotiate or ignore the principles in *Tulsamma* and in the process; they have either contradicted *Tulsamma* or implicitly departed from its principles *sub silentio*. Almost four

⁷⁷ Civil Appeal No.6557 of 2022, SC, decided on 09th December, 2024

decades after, the judgment in *Tulsamma's* , we have two streams of thoughts, while the first applies the principle in *Tulsamma* as an inviolable principle steadfastly holding that property possessed by a Hindu female before or after the commencement of the Act shall be held by her as a full owner. The other seems to be evolving from case to case, influenced by, (i) the method and manner by which the Hindu female is possessed of the property, (ii) the instrument through which the right is acquired, and (iii) the time at which such possession takes place, to mention a few'.

The Division Bench of the Supreme Court after compiling, analyzing, scrutinizing and summarizing such various judgments of the court made a reference to the Chief Justice of the Supreme Court for reference to larger bench as, 'in view of the above, we direct the Registry to place our order along with the appeal paper book before the Hon'ble Chief Justice of India for constituting an appropriate larger bench for reconciling the principles laid down in various judgments of this court and for restating the law on the inter-play between Sub-Section (1) and (2) of Section 14 of the Hindu Succession Act'.

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