

Prakash Vs. Pushpa Vani

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SooperKanoon Citation : sooperkanoon.com/444734

Court : Andhra Pradesh

Decided On : Dec-23-2003

Reported in : 2004(3)ALD858; 2004(4)ALT286

Judge : B.S.A. Swamy, J.

Acts : Hindu Seccession Act, 1956 - Sections 14 and 14(1)(2); Hindu Women's Right to Property Act; [Hindu Adoptions and Maintenance Act, 1956](#); Hindu Law

Appeal No. : SA No. 295 of 1996

Appellant : Prakash

Respondent : Pushpa Vani

Advocate for Def. : M. Raja Malla Reddy, Adv.

Advocate for Pet/Ap. : P.S. Murthy, Adv.

Disposition : Appeal dismissed

Judgement :

B.S.A. Swamy, J.

1. The first defendant in O.S. No. 25 of 1985 on the file of the Sub-Court, Nizamabad is the appellant before this Court, The Plaintiff- respondent herein filed the above suit against the first defendant, the adopted son of one Muthyala

Veerappa. Second and third defendants, who are the wife and concubine of late Veerappa respectively seeking partition of the family properties by metes and bounds into three equal shares and to allot 1/3rd share to her, she being the adoptive daughter of late Veerappa towards 1/3rd share which she is entitled to. The second defendant filed a written statement stating that the respondent herein was never taken in adoption by late Veerappa and she is the daughter of younger sister of third defendant, the concubine of late Veerappa during his lifetime. He made a provision for the stay of the third defendant-concubine by giving a house bearing Door Nos. 4-5-412 and 4-5-413 and after her death the property shall revert back to the appellant herein. As such the plaintiff cannot claim a share in the property. Likewise she cannot claim any share in the property under the alleged will said to have been executed by third defendant since she was allowed to stay in the house as a licensee during her life time. Third defendant in her written statement supported the case of the respondent herein apart from pleading that late Veerappa executed a registered will dated 22.1.1959 where under he gave one house each i.e., to the first wife and herself. She also contended that the appellant herein has nothing to do with Veerappa's family. Late Veerappa, herself, second defendant and the plaintiff were living together as joint family. Hence the plaintiff is entitled to get 1/3rd share in all the plaint schedule properties.

2. During the pendency of the suit, the concubine of late Veerappa died on 15.2.1990. At this stage, the respondent herein filed I.A. No. 178 of 1990 seeking amendment of the plaint by substituting new para in place of old Para 16 of the plaint. In that it was stated that third defendant executed a registered will dated 25.3.1989 bequeathing all her interest in the joint family property in her favour. Hence she is entitled to get not only 1/3rd share in the property on her own but she is also entitled to claim 1/6th share of the third defendant in the property on the basis of the registered will. That application was allowed on 6.8.1991 after contest. On 6.4.1991 the second defendant i.e., the wife of late Muthyala Veerappa also seemed to have died intestate. Hence the respondent filed another I.A. No. 375 of 1991 to add Para 16-A in the plaint and for amendment of Para 20 of the plaint. This application was also allowed by Trial Court on 6.8.1991. The substance of this amendment is that since second defendant i.e., the 1st wife of late Veerappa died on 6.4.1991 intestate leaving behind her the adopted son, the

appellant and the second respondent herein, the entire joint family has to be divided equally and one such share has to be allotted to her. Since third defendant has already bequeathed her share in the property she is entitled to another 1/3rd share in the property. Ultimately the relief sought for in the suit was that she is entitled to 2/3rd share in the property and as per paragraph 20 of the amended plaint the whole property held by late Veerappa was valued at Rs. 80,000/- and out of that she claimed Rs. 53,333-34 ps.

3. Basing on the above pleadings the Trial Court framed the following issues for trial:

1. Whether suit schedule properties are joint family properties of late Veerappa liable for partition ?
2. Whether the plaintiff is adopted by late Muthyala Veerappa during his lifetime when she was aged five years ?
3. Whether third defendant is legally wedded wife of late Muthyala Veerappa ?
4. Whether late Veerappa executed will deed on 22-1-1959 ?
5. Whether House Nos. 4-5-421, 4-5-422 and 4-5-424 were given to plaintiff and D2 and D3 respectively?
6. Whether D1 is adopted by late Muthyala Veerappa ?
7. Whether late Veerappa executed any will deed or letter of authorisation in favour of D 1 and D3 was permitted to live and enjoy rents of H.Nos. 4-5-412 and 4-5-413 during her lifetime ?
8. Whether the plaintiff is entitled to 1/3rd share in suit schedule properties ?
9. To what relief the parties are entitled ?

Addl. Issue framed on 19.4.1990

Whether third defendant executed gift deed in favour plaintiff What is the effect?

4. While the respondent got herself examined as P.W.1 her natural mother was examined as P.W.3, the alleged Purohit who performed ceremonies at the time of her alleged adoption was examined as P.W.2 and marked documents as Exs.A1 to A-7. Third defendant (i.e.) adoptive mother of respondent got examined as D.W.1 and marked the alleged will dated 22.1.1959 of late Veerappa as Ex.B1. The appellant got himself examined as D.W.4 and second defendant as D.W.5 apart from examining others to prove their case. They marked documents, Exs.B.2 to B.76. On appreciation of the oral and documentary evidence the Trial Court held that (I) the plaintiff failed to establish that she is the adopted daughter of Muthyala Veerappa;

(2) the third defendant failed to establish that she is the legally wedded wife of Late Muthyala Veerappa;

(3) Third defendant failed to prove the execution of the alleged will Ex.B.1 dated 22.1.1959 by late Muthyala Veerappa beyond all reasonable doubt;

(4) First defendant (appellants) established that he is the adopted son of late Muthyala Veerappa and it is doubtful to believe that late Veerappa executed a will Ex.B-3 in favour of the first defendant. Due to over anxiety first and second defendants got Ex.B3 into existence. Then the Trial Court proceeded to consider the effect of Section 14(1) and 14(2) of the Hindu Succession Act to find out whether third defendant will become an absolute owner of the property and whether she can dispose of the property as she likes. Having considered the case law recorded a finding that since the possession of third defendant over the house is only a limited estate she cannot gift or bequeath the same in favour of the plaintiff as she is not the absolute owner of the said house by relying on Section 14(1) of the Hindu Succession Act. Under the alleged will executed by third defendant the plaintiff (respondent) will not get any right over the suit house. As a result of these findings the lower Court dismissed the suit.

5. Aggrieved by the said judgment and decree the respondent carried the matter in appeal to the Additional District Judge, Nizamabad in A.S. No. 5 of 1992. The appellate Court while confirming the findings of the Trial Court with regard to the contention of the plaintiff/respondent herein with regard to the marital status of D.3

held that Ex.B.1 dated 22.1.1959 alleged to have been executed by late Veerappa is pressed into service by third defendant. At the same time the appellate Court found fault with the Trial Court in placing reliance on Ex.B.72 the undertaking said to have been given by late Veerappa to third defendant stating that she will be entitled to enjoy the property during her life time and after her death the property has to revert back to adopted son, which was filed before the Commissioner of Nizamabad Municipality when third defendant raised an objection for mutation of the name of the first defendant against the house in question on the ground that third defendant died. The appellate Court further held that the third defendant never filed any such undertaking before the Municipal Commissioner and the Commissioner did not examine any witnesses. Hence it is difficult to believe that on 6.10.1961 third defendant would have filed an undertaking said to have been executed by late Veerappa and discarded the order of the Municipal Commissioner. At the same time on the basis of the written statement filed by first and second defendant the appellate Court held that third defendant is having life interest in the suit schedule house as the building was given to third defendant in lieu, of her maintenance a pre-existing right prior to Hindu Succession Act, which was enlarged into an absolute estate and she is at liberty to dispose of the property as per her wish. The appellate Court having taken the above view held that Ex.A.4 the registered will executed in favour of the plaintiff by third defendant was proved by examining P.W.5 the attestor and P.W.6 the scribe of Ex.A.4 and is a valid one. Ultimately the judgment of the Trial Court was reversed. The suit filed by plaintiff to the extent of her claim over the house bearing Nos. 4-5-412 and 4-5-413 under the registered will Ex. A.4 dated 25.3.1989 was decreed. Hence the second appeal. The other issues relate to the adoption of the plaintiff by late Veerappa, the execution of the will in favour third defendant as well as first defendant were negated while upholding the adoption of first defendant.

6. In this second appeal Sri P.S. Murthy, the learned Counsel for the appellant herein raised the following contentions (1) third defendant was allowed to stay in the house as licensee but she was not given any life interest in the property since no concubine is having any pre-existing right for maintenance after the Hindu Adoptions and Maintenance Act came into force since Veerappa died in the year 1959. (2) Both the Courts gravely erred in considering the effect of Section 14(1)

of the Hindu Succession Act though it was not pleaded by the parties. (3) At any rate the appellate Court gravely erred in decreeing the suit by holding that the house was given to third defendant in recognition of her preexisting right for maintenance and the life estate enlarged into an absolute right and she is entitled to dispose of the property as she likes. In other words, since the plaintiff failed to prove her case, the suit has to be dismissed.

7. In this second appeal Sri P.S. Murthy on behalf of the first defendant-appellant contended that the appellate Court having held that the respondent failed to prove that she is the adoptive daughter of late Veerappa gravely erred in decreeing the suit by holding that life estate given to 3rd defendant by late Veerappa enlarged into an absolute estate and the respondent is entitled to get the house under Ex.A4 by invoking Section 14(1) of Hindu Succession Act though such an issue was raised in the pleadings.

8. In support of his contention he relied on a Judgment rendered by a Division Bench of this Court in C. Adilakshmamma v. A. Ramarao, : AIR 1973 AP149 , in which their Lordships held that the plaintiff failed to prove his relationship to one late Venkata Subbayya as his sister's son the suit has to be dismissed. The relevant Para 6 is extracted below:

'So the only question that falls to be decided by us is whether the evidence on record is sufficient to hold that the plaintiff has proved his relationship to late Venkatasubbayya as his sister's son. If we are of the view that the plaintiff has not established that particular relationship which he claimed, it would follow that the suit has to be dismissed. It will then be unnecessary to go into the question whether Ramaswamy, the grandfather of Defendants 1 to 5 was adopted by Narayanappa, the father of Venkatasubbayya, before Venkatasubbayya was born. The nature of the present suit one in ejectment and it is well settled that he can succeed only on the strength of his own title. It is not obligatory on the defendants to plead and prove all the possible defects in the plaintiff's title. In Moran Mar Bassellios Chatholios v. Most Rev. Mar Poulese Athnasius, AIR 1954 SC 526, what has already been well settled has been reiterated by the Supreme Court wherein they had observed that the plaintiff in an ejectment suit must succeed on

the strength of his own title and that could be done by adducing sufficient evidence to discharge the onus which is on him, irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against in the absence of establishment of the plaintiffs own title, the plaintiff must be non-suited.'

To the same effect is the judgment of this Court in K.V. Subba Reddy v. B. Ramaiah, : 1999(3)ALD317 , rendered by a Single Judge. At the same time in these two judgments the effect of Section 153 or Order 7, Rule 7 and the case law on the subject was not considered i.e., whether the Court is prohibited in granting the relief which was not asked for and held that the Court can grant the relief though not asked for and not affecting adversely the defendants. Under Section 153 of the CPC the Court is empowered to amend any defect or error in any suit or proceedings at any time and allow all necessary amendments for the purpose of determining the real question or issue raised or depending on such proceedings. Like wise under Order 7, Rule 7 even if the plaintiff fails to ask for necessary relief it may always be given which the Court thinks just to the same extent as if it had been asked for and the same rule shall equally apply to the defendant as claimed in the written statement. The earliest judgment on this issue seems in Firm Srinivas Ram v. Mahabir Prasad, : [1951]2SCR277 . In that case it was held that the plaintiff failed to prove the story of contract of sale. It was not in pursuance of such contract the plaintiff was put in possession of the house. Acting and believing upon the plea of the defendant that the plaintiff advanced a sum of Rs. 30,000/- to the defendant granted money decree to the plaintiff by the Trial Court at Patna directing the defendants to repay with interest at 6% p.a. from the date of suit till realisation. Against the said judgment and decree while the plaintiff filed an appeal, the defendant filed cross-objections challenging the propriety of the money decree that was passed against them before the High Court. The High Court dismissed the appeal filed by the plaintiff and allowed the cross-objections preferred by the defendant by holding that the money decree granted against the defendant is not warranted under law as there is no pleading in the plaint and no relief was claimed on that basis. Ultimately the entire suit was dismissed. Their Lordships of the Supreme Court while considering the order of the High Court with regard to allowing the cross-objections held as follows:

'As regards the other point, however, we are of the opinion that the decision of the Trial Court was right and that the High Court took an undoubtedly rigid and technical view in reversing this part of the decree of the Subordinate Judge. It is true that it was no part of the plaintiff's case as made in the plaint that the sum of Rs. 30,000/- was advanced by way of loan to the defendant's second party. But it was certainly open to the plaintiff to make an alternative case to that effect and make a prayer in the alternative for a decree for money even if the allegations of the money being paid in pursuance of a contract of sale could not be established by evidence. The fact that such a prayer would have been inconsistent with the other prayer is not really material. A plaintiff may rely upon different rights alternatively and there is nothing in the Civil Procedure Code to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether in the absence of any such alternative case in the plaint it is open to the Court to give him relief on that basis. The rule undoubtedly is that the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant it may not be proper to drive the plaintiff, to a separate suit. As an illustration of this principle reference may be made to the pronouncement of the Judicial Committee in *Mohan Manucha v. Manzoor Ahmad*, 701 A.I. (AIR (30) 1943 P.C.29). This appeal arose out of a suit commenced by the plaintiff appellant to enforce a mortgage security. The plea of the defendant was that the mortgage was void. This plea was given effect to by both the lower Court as well as by the P.C. But the P.C. held that it was open in such circumstances to the plaintiff to repudiate the transaction altogether and claim a relief outside it in the form of restitution under Section 65,

Contract Act. Although no such alternative claim was made in the plaint, the P.C. allowed it to be advanced and gave a decree on the ground that the respondent could not be prejudiced by such a claim at all and the matter ought not to be left to a separate suit. It may be noted that this relief was allowed to the appellant even though the appeal was heard ex parte in the absence of the respondent.'

9. In *Kaliprasad Agarwalla v. Bharat Coking Coal Limited*, AIR 1989 SC 1530, two questions were raised before the Supreme Court in this case are (1) whether the suit lands had vested, free from encumbrance in the State consequent upon the issuance of notification under Section 3, of the Bihar Land Reforms Act; and (2) Whether the suit land is 'mine' within the meaning of the Coal Mines (Nationalisation) Act, 1973? The appellant contended that there is no proper pleading for determination whether the suit land is a mine within the meaning of Coal Mines (Nationalisation) Act, 1973. It is appropriate to extract the Paragraphs 18 and 19 of the above judgment which runs as follows:

'18. It was however urged for the appellants that there is no proper pleading or issue for determination of the aforesaid question and the evidence let in should not be looked into. It is too late to raise this contention. The parties went to trial knowing fully well what they were required to prove. They have adduced evidence of their choice in support of the respective claims. That evidence has been considered by both Courts below. They cannot now turn round and say that the evidence should not be looked into. This is a well-accepted principle.

19. In *Kunju Kesavan v M.M. Philip*, : [1964]3SCR634 , this Court has stated (as summarised in the headnote at P. 637) (of SCR): (at p. 169 of AIR): 'The parties went to trial, fully understanding the central fact whether the succession as laid down in the Ezhava Act applied to Bhagavathi Valli or not. The absence of an issue, therefore, did not lead to a material sufficient to vitiate the decision. The plea was hardly needed in view of the fact that the plaintiff stated in his replication that the 'suit property was obtained as makkathayam property, by Bhagavathi Valli under the Ezhava Act.' The subject of exemption from Part IV of the Ezhava Act, was properly raised in the Trial Court and was rightly considered by the High Court.'

10. From the statutory provisions as well as from these decisions it is clear that even if the party fails to seek relief, which may be given by the Court, had it been asked, the Court is always empowered to grant such a relief and the only prohibition against granting such a relief would be the relief granted should not be against the interests of the defendant. If the parties had been to the trial knowing fully well what was required to prove and they have adduced evidence of their choice in support of the respective claims and if that evidence was considered by both the Courts they could not be allowed to go round and say that the evidence cannot be looked into. In this case though the plaintiff filed suit seeking partition claiming that she is the adopted daughter of late Veerappa after the death of third defendant she claimed that she is entitled to get that house under the registered will Ex.A.4 dated 25.3.1989 since the lady bequeathed her interest in the property in favour of the respondent. Countering this argument the defendant set up the plea that third defendant was not given life interest and she was only allowed to stay in the house during her life time as she happened to be the concubine of late Veerappa as licensee. Hence the property given to the third defendant cannot be enlarged into an absolute estate since it was not given to third defendant in recognition of her pre-existing right to claim maintenance from her paramour. Hence though plaintiff failed to prove that she is the adoptive daughter of late Veerappa, her claim to get the property under the possession of third defendant by virtue of the registered will was specifically raised and the parties went to trial on that issue in both the Courts. Considering the plea of the parties with reference to Section 14(1) of the Hindu Succession Act, while the Trial Court on an erroneous view of the matter held that the issue in controversy falls under Section 14(2) and not under Section 14(1) of the Hindu succession Act. The appellate Court, I feel, gave a finding rightly that Section 14(1) will apply and not 14(1) of the Hindu Succession Act. Hence both the parties went to the trial fully aware of their rights and obligations in the suit as well. I do not find much substance in the argument of Sri P.S. Murthy that since the plaintiff failed to prove that she is the adoptive daughter of late Veeraiah on the basis of which she filed the suit, the suit has to be dismissed and this contention is accordingly rejected.

11. Nextly Sri P.S. Murthy contended that after Hindu Adoptions and Maintenance Act came into force a concubine is not entitled for maintenance while her children

are entitled for maintenance as seen from Section 20 of the Act. Since this Act has been given overriding effect under Section 4 of the Act, a concubine is not entitled to claim maintenance. It is also his case that the limited interest given to a Hindu widow under Hindu, Women's Right to Property Act gets enlarged after Hindu Succession Act came into force but not the property held by all the Hindu females (i.e.) concubine.

12. Before considering the Statute Law, it is useful to refer to Sastric Law prevailing prior to Hindu Women's Right to Property Act.

13. The first case in which concubine's rights were considered was *Nagubai v. Monghiba*, AIR 1926 PC 73. In this case the plaintiff was held to be in the sole keeping of the deceased before his death. Then their Lordships proceeded to consider whether a concubine is entitled for maintenance or not.

'The question now to be decided upon this evidence is whether the appellant is entitled to maintenance out of the estate of the deceased and this, as appears from the judgments delivered in the Court of Appeal, depends upon whether, upon the facts proved, she was in strict sense, according to the Hindu law, as prevailing in Bombay the 'permanent concubine' of deceased. This word concubine has long had a definite meaning, whether expressed in the language of India or of Europe. The persons denoted by it had, and have still where it remains applicable, a recognised status below that of wife and above that of harlot. In the Glossary of Ducange, under the title *Concubina*, we read that *Pettex honestior est quam Arnica, ut quae accidat proprius and uxoris naturam*: and this, it would seem, is because *uxor nomen est dignitatis non votuptatis*. Almost a wife, according to ancient authorities, the distinction of the concubine from harlots was due to a modified chastity, in that she was affected to one man only, although in an irregular union merely. So Bracton is quoted by Ducange as writing, *Eadem etiam concubina legitima dicitur ad discrimen ejus quae quaestum facit*. Harlots solicited to immorality; concubines were reserved by one man.

The law, which must decide this case, originated in the sayings of almost immemorial sages, but has long been condensed into such treatises as the *Mitakshara* and the *Mayuka*. The relevant passages from the *Mitakshara* are, in

the judgment of the Court of Appeal, thus quoted from Stokes' Hindu Law:-

'Heirless property goes to the kind, deducting however, a subsistence for the females as well as the funeral charges the expression 'deducting, however, a subsistence for the females as well as the funeral charges' is explained as excluding or setting apart a sufficiency for the food and raiment of the woman, and as much as may be requisite for the funeral repasts and other obsequies in honour of the late owner, the residue goes to the kind 'This relates to women kept in concubinage; for the term employed is 'females' (yeshid). The text of 'Narada' likewise relates to concubines; since the word there used is 'woman' (stri)..... But a king who is attentie

to obligations of duty should give a maintenance to the women of such persons.' The words used for women kept in persons.' The words used for women kept in concubinage' and 'concubines' in the original are 'avaruddha stri.' 'Vijuanoswara' there clearly explains the meaning for the word 'stri' in 'Narada's' text, and the word 'yeshid' used in Katyayana's text as including 'avaruddha stri' The text of 'Narada' in Para, 7 of the same section of the 'Mitakshara' runs as follows' - 'Thus Narada has stated the succession of brothers, though a wife be living: and has directed the assignment of a maintenance only to widows. Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord.

The women or female slaves, being unequal (in number, to the shares), must not be divided by the value, but should be employed in labour (for the co-heirs) alternately. But women (adulteresses or others) kept in concubinage by the father must not be shared by the sons, though equal in number for the text of Gautama forbids it.

The appeal Court decided, and their Lordships agree with them, that the right to maintenance, such as is here claimed, is limited to those women who amongst Hindus are properly called avaruddha; a word ordinarily and accurately rendered by 'concubine' in English. Avaruddha has been defined by various writers, and the appeal Court approved of this definition, taken from Page 406 of Gharpure's

Translation of the Vyavahara Adhyaya of the Mitakshara:

'Avaruddha' stri means women who are the protected slaves of another, and Shah, Ag. CJ., quotes with approval these words from the commentary on the word 'avaruddha.' These very women are prohibited by the master from intercourse with other men, with an injunction to stay at home, with the object of avoiding any lapse of service. These are known as avaruddha or protected slaves.

On the facts of the case their Lordships held that in this case the man and the woman being Hindus they are governed by the law of the Mayukha, and in their Lordships' opinion the decision above mentioned is sufficient authority for holding that providing the concubinage be permanent, until the death of the paramour, and sexual fidelity to him be preserved, the right to maintenance is established; although the concubine be not kept in the family house of the deceased. This incident of residence in the family house was not the essential reason for the right to have maintenance from the goods of the deceased paramour, but rather a means of ensuring the qualified chastity of the mistress.

14. Relying on the above judgment Justice Wadsworth in a decision reported in *Prerepa Bhagavat v. Saridey Lakshmikantam*, AIR 1940 Mad. 511, held that '... .. I therefore come to the conclusion that a permanently kept concubine of a Hindu may be entitled to maintenance even though she is childless. This disposes of the main question in the present appeal'.

15. A Constitution Bench of the Supreme Court in *Amireddi Raja Gopala Rao v. Amireddi Sitharamamma*, : [1965]3SCR122, held that the claim of an Avaruddha Stree or woman kept in concubinage for maintenance for her lifetime against the estate of her paramour rested on the express text of Mitakshara, Ch.2; S.I, v. 27 and 28 read with V.7 and approved the Full Bench decision of Bombay High Court in *Akku Prahlad v. Ganesh Prahlad*, ILR 1945 Bom. 216 = AIR 1945 Bom. 217 (FB), wherein it was held 'that a married woman who left her husband and lived with paramour as his permanently kept mistress could claim the status of an Avaruddha Stree by remaining faithful to her paramour, though the connection was adulterous, and was entitled to maintenance from the estate of the paramour so long as she preserved her sexual fidelity to him.'

16. Their Lordships further considered the right of the illegitimate children born to such a concubine in the light of Hindu Adoptions and Maintenance Act. The question is whether this right is taken away by the [Hindu Adoptions and Maintenance Act, 1956](#), which came into force during the pendency of the appeal in the High Court. The Act is intended to amend and codify the law relating to adoptions and maintenance among Hindus. While considering the effect of Sections 21 and 22 with regard to maintenance and dependants in the light of the overriding effect given to the provisions of the Act in Section 4 of the Act held as follows:

'Now, before the Act came into force, rights of maintenance out of the estate of a Hindu dying before the commencement of the Act were acquired, and the corresponding liability to pay the maintenance was incurred under the Hindu law in force at the time of his death. It is a well-recognised rule that a statute should be interpreted, if possible, so as to respect vested rights, and such a construction should never be adopted if the words are open to another construction. See Craies on Statute Law, 6th Edn. (1963), p.397. We think that Sections 21 and 22 read with Section 4 do not destroy or affect any right of maintenance out of the estate of a deceased Hindu vested on his death before the commencement of the Act under the Hindu law in force at the time of his death.'

17. In fact a Full Bench of the Supreme Court in *Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi*, AIR 1977 SC 1944, reviewed the entire case law under sastric and statute law relating to right of a woman to hold the property while interpreting the language of Section 14(1) of Hindu Succession Act and summarised the pre-existing right which existed in the Hindu Law in Para 27 of the judgment.

'27. Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidence and characteristics of a Hindu woman's right to maintenance.

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no

property. If the husband has 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;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e., it is a *jus in rem* not *jus in personam* and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the Civil Court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law long before the passing of the Act of 1937 or the Act of, 1946, and is, therefore, a pre-existing right;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to property or purchases the same is in a position to make due arrangements for her maintenance.'

18. While considering Section 14(1) of Hindu Succession Act in *Smt. Mangamma v. M.B. Subbaramapa Nayanimvaru*, : AIR 1994 AP147 , a Division Bench of this Court held that the right given to a Hindu female as permanent mistress in a compromise decree a portion of the house that was given to her as life estate falls under Section 14(1) of the Act and gets enlarged into absolute estate. In that suit the plaintiffs contended that Mangamma, the kept mistress of their grandfather

Ramadasappa Nayanimvar has no right to the property covered by the compromise deed; her stay in the portion covered by 'A' schedule was only to provide her with temporary accommodation. Late Ramadasappa Nayanimvaru executed an unregistered gift deed dated 29.2.1932 in favour of his permanent kept mistress Mangamma, whereunder Swarna Mahal was gifted to her with absolute right. Subsequently, after the death of her paramour, Mangamma filed a suit in O.S.No. 62 of 1937 on the file of the Court of the Subordinate Judge, Chittoor against his son Seshachalapathi Rajulumgaru, the father of the plaintiffs, seeking maintenance. That suit ended in a compromise Ex.A4.

19. The question that fell for consideration in this appeal was whether the compromise decree in O.S. No. 62 of 1937 under which Mangamma held the house falls under Section 14(1) or 14(2) of the Hindu Succession Act.

20. Relying on the Judgment of the Supreme Court in Vaddeboyina Tulasamma's case (supra), their Lordships held that 'It is needless to emphasize that on the date when the Act came into force, the plaint A and B schedule properties were in possession of Mangamma, The plaint A schedule properly stood as a charge for the maintenance Mangamma was entitled to, under paragraph 1 of the compromise decree, Ex.A-4. Merely because Ex.A-4 is a compromise decree prescribing restricted estate there is no warrant to conclude that the plaint A schedule property falls within the ambit of Sub-section (2). An interpretation of this nature was not accepted by the Supreme Court in Vaddeboyina Tulasamma's case (supra). Explaining the scope and ambit and also the rationale behind Section 14, it was held by P.N. Bhagwati, J. (as he then was) speaking for himself and A.C. Gupta, J., that any interpretation of Sub-section (2) to the effect that it includes acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate 'would virtually emasculate Sub-section (1), for in that event, a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under an instrument, order or award would be excluded from the operation of the beneficent provision enacted in Sub-section (1), since in most of such cases, where property is allotted to the Hindu female prior to the enactment of the Act, there would be a provision, in consonance with the old

Sastric law then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of Sub-section (1).' Explaining further, the learned Judge said 'Sub-section (2) must therefore, be read in the context of Sub-section (1) so as to leave as large a scope for operation as possible to Sub-section (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any preexisting right, under a gift will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property'.

21. Their Lordships also held that 'Mangamma was not conferred for the first time the 'A' schedule property under the compromise decree nor was it without any pre-existing right. Mangamma did not get for the first time the restricted estate under Ex.A-4. That document Ex.A-4 incorporates the pre-existing right of Mangamma, for maintenance as the permanent kept mistress of late Ramadasappa Nayanimvaru. Sub-section (2) of Section 14 of the Act is therefore not attracted. As she acquired the right to be in possession of plaint A and B schedule properties before the commencement of the Act, her right as a limited owner has enlarged into an absolute one under Sub-section (1) of Section 14 of the Act.'

22. In *Jupudi Venkata Vijaya Bhaskar v. Jupudi Kesava Rao*, : AIR 1994 AP134 , a Division Bench of this Court while considering the point that the ante-adoption agreement executed by a major adoptee in favour of his adoptive father wherein he agreed that in respect of the property shown in the schedule to the agreement not to advance any claim or raise any dispute and that the adoptive father would have absolute right to those properties without any enjoyment was hit by Section 17 of the Hindu Adoptions and Maintenance Act, whereunder any payment or reward in consideration of the adoption of any person is prohibited.

23. Having held that the execution of ante-adoption agreement is not only supported by custom but it has ripening into a principle of law and proceeded to consider whether the position has changed in any manner after enactment of the Adoptions Act.

24. It was argued by the Counsel for the appellant that in view of overriding effect given to the provisions of the Act under Section 4 of the Act, there is no justification warranting an inference about the existence of any such custom. Answering the said objection their Lordships held as follows:

'there is no provision in the Act, barring Section 17, about which we have already discussed, dealing with ante-adoption agreements. Clause(a), therefore, has no application. The law in force before the Act came into force permitting ante-adoption agreements concluded by a major at the time of his adoption cannot be said to be inconsistent with any of the provisions of the Act and, therefore, Clause (b), in our view, is not attracted. No general proposition can be stated that after the codification of the law relating to adoptions and maintenance, the earlier customary law has ceased to be in operation. The overriding effect of the Act is confined to what is indicated in Section 4. In other respects, customary law still holds the field. As instance of legislative recognition of custom and usage, we may cite Section 10, under which certain categories of persons are ineligible for adoption unless custom or usage allows such adoption.'

25. The judgment of this Court received approval of the Supreme Court in *Jupudi Venkata Vijaya Bhaskar v. Jupudi Kesava Rao*, : AIR 2003 SC3314 , by observing that:

'Section 17 of the Act is not intended to cover cases of the present nature where a major person agrees not to set up any claim with regard to certain items belonging to the adoptive family. Section 17 cannot be held to have an overriding effect so as to change the legal proposition prevalent prior to the commencement of the Act. Section 17, under the circumstances of the present case, has no applicability.'

26. In *Mst Samu Bai v. Shahji Magan Lal*, , the mother claimed 1/3rd share in the family property along with her sons and the sons resisted her claim by contending that their mother was not entitled to any share whatever in the joint family property, since the mother was unable to prove that she is not able to maintain herself out of her own earnings or other party as required under Section 20(3) of the Adoptions Act, their Lordships in a crucial point held as follows:

'The crucial point to our mind, however, upon which the determination of the question before us depends is whether the law of maintenance for a mother as contained in the Act of 1956 debars her from claiming any right to her usual share at an intended partition between the sons by an express provision or by necessary intendment arising out of the provisions contained in the Act, Now it was nobody's case even before the trial Judge that the Act of 1956 makes, any express provision in this regard.

We further think that there is nothing in the provisions of this Act which can or must by necessary implication justify us in holding that a mother in the situation we are called upon to consider does stand deprived of her right to claim her share of the joint family property of which she was in unquestionable enjoyment before the Act of 1956 was passed. We are, therefore, definitely disposed to hold that in respect of matters, for which no express provision is to be found, or which cannot be read into the Act of 1956 by irresistible implication, the old law must remain and continue to be applicable as before.

If our analysis of the provisions relating to the maintenance of a mother as contained in Section 20(3) or other provisions of the Act of 1956, is correct, as we think it is, then we have no hesitation in saying that there is nothing therein which would militate against the right of a mother to claim a share at a partition between the sons. And if this is so, Section 4 of this Act of 1956 cannot possibly stand in the way of such a right being given effect to, if it is available to her under the ordinary Hindu Law.

We also wish to point out that the recent trend in our country, with respect to the rights of women, has undoubtedly been to enlarge them, so far as their economic or proprietary status in a Hindu family goes, and under the Hindu Succession Act 30 of 1956, a mother has been classified as an heir of Class I, vide Sections 8, 9 and 10, read with the relevant schedule, and under Section 14(1) of the same Act, it has been provided that 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 Hindu Succession Act came into force on the 17th June, 1956, while the Act of 1956 came into force later on the 21st December in the same year, and we find it impossible to accept that the right, which a Hindu mother enjoyed under the old Hindu Law, and which generally speaking, has been greatly bettered under the Hindu Succession Act of 1956, was adversely affected in the matter of her right to claim a partition by anything contained in the Act of 1956, which, as we have already-discussed above, contains no provision whatever affecting that right of her.'

27. On the other hand the contention of Sri P.S. Murthy is that after Hindu Women's Rights to Property Act, 1937 came into force in 1937 an interest devolving on a Hindu widow under the provisions of Section 3 of that Act shall be the limited interest known as a Hindu woman's estate, provided however, that she shall have the same right of claiming partition as a male owner. Hence, only the legally wedded wife is entitled to claim partition of the family property as a matter of right in lieu of her maintenance and she alone will have to be considered as a person with limited interest, since concubine is not the legally wedded wife she cannot be considered as a limited estate holder. I am afraid, I cannot accept this contention also. Firstly, under Section 3 of the Hindu Women's Rights to Property Act, when a Hindu dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of Sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son and under Sub-section (3) any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided, however, that she shall have the same right of claiming partition as a male owner. Here the word used is 'widow' or widows'. In Sastric law a concubine is given the status of Avaruddha stri from that of Harlots (i.e.,) a prostitute. As per the dictionary meaning concubine means a woman reserved by one man. Avaruddha stri means women who are the protected slaves of another. These very women are prohibited by the master from intercourse with other men, with an injunction to stay at home, with the object of avoiding any lapse of service. These are known as avaruddha or protected slaves. For all purposes they are almost treated as wives. At any rate, in Sastric law as held in Vaddeboyina Tulasamma's case (supra) as well as other

cases referred supra, a concubine is entitled to be maintained by her paramour till her death. That right was not taken away by the Hindu Women's Rights Property Act.

28. Sri Murthy placing reliance on decision of the Supreme Court in *Kalawatibai v. Soiryabai*, : [1991]2SCR599 , contended that Section 14(1) of the Hindu Succession Act limits its operation to such female Hindus who are limited owners. Since the concubine was not treated as a limited owner under Hindu Women's Rights to Property Act, she cannot be treated as a limited owner. But under Section 3 of the Hindu Women's Rights to Property Act, nowhere it is stated that the right of concubine to claim maintenance from paramour is taken away. If we read the provisions of the Act there is nothing in the Act to come to the conclusion either directly or by necessary implication that the right of the concubine to claim maintenance is taken away. On the other hand, all the decisions referred supra, prove beyond doubt that a concubine can claim maintenance from her paramour.

29. Sri Murthy cited another decision reported in *Paturi Veeranna v. Pathuri Seethamma*, : AIR 1969 AP15 , in support of his contention that after codification of the maintenance laws the Courts cannot go outside the four corners of law, simply because, before the existence of the enactment, another law prevailed. But this being the judgment of the learned Single Judge of this Court, it cannot be said that the proposition laid down by the learned Judge is sound in law in the light of the other judgments referred supra, wherein it was categorically held that inspite of the overriding effect given to the provisions of the Act under Section 4 of the Act, customary laws still holds the filed.

30. Sri Murthy sternously conended that Late Veerappa made arrangement in the year 1959 (i.e.,) after the Hindu Succession Act, 1956 came into operation. Hence, it is only Section 14(2) of the Hindu Succession Act that applies but not Section 14(1) of the Act. I have already referred to the decisions of the Supreme Court on this aspect.

31. While interpreting Section 14(2) of Hindu Succession Act (for short 'the Act') the Supreme Court in *Vaddeboyina Tulasamma 's case* (supra) having considered the view taken by various Courts, the Supreme Court summarised the legal

position in para 63 as follows:

'Thus on a careful scrutiny and analysis of the authorities discussed above, the position seems to be that the view taken by the High Courts of Bombay, Andhra Pradesh, Patna, Mysore, Punjab, Calcutta and Kerala to the effect that the widow's claim to maintenance, even though granted to her subject to certain restrictions, is covered by Section 14(1) and not by Sub-section (2) is based on the following premises:

(1) That the right of a Hindu widow to claim maintenance is undoubtedly a right against property though not a right to property. Such a right can mature into a full-fledged one if it is charged on the property either by an agreement or by a decree. Even otherwise, where a family possesses property, the husband, or in case of his death, his heirs are burdened with the obligation to maintain the widow and therefore, the widow's claim for maintenance is not an empty formality but a pre-existing right.

(2) Section 14(2) which is in the nature of a proviso to Section 14(1) cannot be interpreted in a way so as to destroy the concept and defeat the purpose which is sought to be effectuated by Section 14(1) in conferring an absolute interest on the Hindu women and in doing away with what was heretofore known as the Hindu women's estate. The proviso will apply only to such cases which flow beyond the purview of the Explanation to Section 14(1).

(3) That the proviso would not apply to any grant or transfer in favour of the widow hedged in by limitation or restrictions, where the grant is merely in recognition or declaration of a pre-existing right, it will apply only to such a case where a new right which the female did not possess at all is sought to be conferred on her under certain limitations or exceptions. In fact, in such a case even if a conditional grant is made to a female, he would be bound by the condition imposed. The proviso wipes out the distinction between a male and a female in this respect.'

From the above discussion, it is clear that in case the husband died, his legal heirs are burdened to maintain the widow, since the widow's right for maintenance is a preexisting right. As far as the position of concubine is concerned, under the

preexisting Sastric Law, a concubine is entitled to be maintained by her paramour and on his death, his legal heirs are bound to maintain during her life time and the same remained intact even after codification of the law relating to Property Rights of a Hindu. It cannot be said that under the provisions either the Hindu Women's Right to Property Act or the [Hindu Adoptions and Maintenance Act, 1956](#), that right was taken away, in the absence of any specific provision, to the effect that the concubine is not entitled for any maintenance. Since the Parliament has taken the initiative to codify the Hindu Law to remedy to some extent the plight of a Hindu woman who could not claim, absolute interest in the properties inherited by her from her husband but who could only enjoy them with all the restrictions attached to a widow's estate under the Hindu law. A liberal interpretation of the provisions of this Act is needed than a narrow and pedantic view, which is likely to destroy the very object, intent of the legislature in codifying the law relating to Property Rights of Hindu Woman.

32. As held in Vaddeboyina Tulasamma's case (supra), Section 14(2) is only an exception to Section 14(1) and the same applies only to a case where a new right which the female Hindu do not possess at all prior to commencement of the Act is sought to be conferred on her but not otherwise. Admittedly, in this case, the house in possession was provided to D-3, in view of her pre-existing right of maintenance over the property of her paramour.

33. Under Section 14(1) of the Act, the word used is 'Hindu Female' but not 'Hindu Widow' as used in Hindu Women Rights to Property Act. Under the explanation to this section, any female Hindu, who acquired or possessed any property either before or after the commencement of the Act is entitled to exercise the full ownership rights over the property and not as a limited owner. From the above explanation, it is made clear that any property acquired by a female Hindu in lieu of maintenance, apart from other forms of acquisition of property gets enlarged as an absolute estate.

34. In fact, in case of Smt. Vidya v. Nand Ram Alias Asoop Ram, 2001 (1) ALD 66 (SC) = (2001) 10 SCC 747 their Lordships of the Supreme Court interpreted the word 'Female Hindu' as only wife is totally misconceived. But both, Section (1) and

the explanation refer significantly to the words 'female Hindu' and not 'wife'. It would; not only be too limited an interpretation but an interpretation against the plain language of this Sub-section (1). The interpretation is totally misconceived.

35. In *Nazar Singh v. Jagjit Kaur*, : AIR 1996 SC855 , the Supreme Court held that '.....if the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limits and restrictions contained in the instrument, grant or award whereunder the property is given to her.'

36. From this, it is evident that even if the property is given to a Hindu Female, in view of her pre-existing right even after the Act came into force, it becomes absolute property not withstanding the limits or restrictions contained in the instrument.

37. In the case on hand, the claim of Defendant No. 3 was that she married late Veerappa in 1940's and since then she is living along with late Veerappa and D.2 as joint family members. Though she failed to prove that the marriage has taken place as per Hindu Rights, the fact remains that for considerable time, she lived as concubine of Veerappa, She belongs to Boya Community while late Veerappa belongs to Lingayath Community. It is also in her evidence that this house was purchased for her stay by late Veerappa. Perhaps, since late Veerappa did not have children through this lady, he might have thought that the property might revert back to his adopted son after her death. To put it aptly, that the alleged will Ex.B1, pressed by D-3 into service as well as the undertaking alleged to have been given by late Veerappa in favour of D-3, which was produced at the time of mutation proceedings of the Municipal Commissioner, have been disbelieved. There is no other document creating any interest in the property in her favour. But in the light of the evidence available on record that she is living in that house as a mistress of late Veerappa and she was allowed to continue to be in possession of the house till her death for a considerable length of time after the death of late Veerappa in 1959, coupled with the undertaking given by the Defendant No. 1 before the Municipal Commissioner and the averments made in the written

statement that she is allowed to be in possession of the property for her life time coupled with the legal position now evolved that even a concubine is entitled for maintenance proves that the house was given to D-3 in lieu of maintenance and a life interest was created in favour of D-3 in the house in which she stayed all through. When once it is established that the house was in possession of D-3, at the commencement of the Hindu Succession Act, 1956, even if the limited interest created in her favour after the Act came into force in view of her preexisting right of maintenance it enlarges into full estate.

38. In the case on hand, firstly the law is not well settled by the time the arrangement was made by late Veerappa. Secondly, no instrument was in existence and it is only under oral arrangement a life interest was created in favour of D-3 by late Veerappa himself during his life time and the said arrangement was continued by the appellant herein (D1), the adopted son after the death of his adoptive father from 1959 onwards.

39. Hence, the finding given by the Appellate Court that the limited estate in favour of D-3 enlarged into an estate cannot be found fault with.

40. As far as the execution of A-4, the registered will in favour of the respondent executed by D-3 was proved as required under law by examining the attester as well as the scribe. In fact, the defendant did not question the validity of this will. Hence, under Ex.A4, the registered will executed by D-3 in favour of the respondent, she gets all ownership rights over the house as life estate created in favour of D-3 enlarged into an absolute estate and she is entitled to dispose of the property in the manner she likes.

41. Viewed from any angle, I do not find any merit in this appeal and it has to fail. Accordingly, the judgment of the Appellate Court is confirmed and the appeal is dismissed. No costs.