

Revabai Vs. Sitaram

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Court : Madhya Pradesh

Decided On : Nov-24-1983

Reported in : AIR1984MP102

Judge : P.D. Muley, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 14, 14(1) and 14(2); Hindu Law

Appeal No. : Second Appeal No. 284 of 1971

Appellant : Revabai

Respondent : Sitaram

Advocate for Def. : B.L. Joshi, Adv.

Advocate for Pet/Ap. : G.M. Chaphekar, Adv.

Disposition : Appeal allowed

Judgement :

P.D. Muley, J.

1. This second appeal filed by the appellant Rewabai. who is now being represented by her legal representative Suresh. is directed against the judgment and decree dated 4th October. 1971 passed by the Addl. District Judge. Barwani. in Civil First AppealNo. 32-A of 66. whereby he set aside the judgment and decree

of the trial court which had dismissed the plaintiff respondent's suit for possession of the suit house, agricultural lands and cattle as per schedules A. B and C annexed to the plaint. which are in possession of the defendant and in the alternative for permanent injunction and declaration that the decree of partition in C.S. No. 1 of 38 is void and inoperative against the plaintiff.

2. Facts giving rise to this appeal, may be stated, in brief, as under: Chhitar had two sons Roopa and Gopal. These two sons Roopa and Gopal had orally partitioned their ancestral property near about 1928-29. Roopa had two wives, namely Jamna Bai and Rewa Bai, the defendant. Roopa died in October. 1933. Admittedly the property in Schedules A. B and C fell into the share of Roopa. All these facts are not disputed.

The defendant Rewa Bai filed C.S. No. 1 of 38-39 against the co-widow Jamna Bai for partition of the property in Barwani court, as the properties in dispute are situated within the jurisdiction of that court. As per the decree passed in that court on 5-9-39 as per Ex. P/5. properties in schedules A. B and C were given to Rewa Bai who came in exclusive possession thereof on the basis of that decree.

On 30-9-39 Hindu Women's Right to Property Act was applied, to Barwani State by Resolution No. 82/28-29. Subsequently on 1-5-41. by resolution No. 3014/40-41 it was extended to agricultural lands also. On 12-11-53 Jamna Bai adopted plaintiff Sitaram. who was her daughter's son of which the registered adoption deed Ex. P/4 was executed on 1-12-53. All these facts are also not in dispute.

3. On 30-11-1963. plaintiff Sitaram filed the present suit mainly on the ground that after his adoption as a son by Jamna Bai. he has divested defendant Roopa Bai of the properties in dispute and that the judgment and decree Ex. P/5 does not bind him.

4. The learned trial court, on evidence, found that the suit property did not vest in the plaintiff since the time of adoption i.e. 12-11-53 by the doctrine of relation back and that consequently the rights of the defendants are not divested. He also found that there had been a partition between the two co-widows, though since then defendant is in possession of the suit property as a limited owner subject to other

rights of inheritance: that the doctrine of devestation Hoes not apply to revenue paying agricultural lands during the lifetimeof the defendant: that the defendant had become full owner of the suit property by virtue of the provisions of the Hindu Succession Act and ultimately dismissed the suit

5. On an appeal being filed by the plaintiff the learned lower Appellate Court found that the co-widows Jamna Bai and Rewa Bai had limited interest known as a 'Hindu Woman' Estate inthe property that fell to their share on partition. Relvine on the decision reported in AIR 1960 SC 1172 (Income-tax Commr. v Smt. Indira) he found that even after the partition of the estate of their deceased husband, the co-widows succeeded as co-heirs to the estate of their deceased husband as joint tenants with rich of survivorship and equal beneficial enjoyment. that as between themselves they are entitled to an equal share of the income, that though they take as joint tenants, no one of them has a right to enforce an absolute partition of the estate against the others so that to destroy their right of survivorship, but they are entitled to the property so that each may enjoy her equal share of the income accruing therefrom.

He therefore, found that the doctrine of relation back applied to the present case, whatever right. title or interest Rewa Bai had acquired by virue of partition, in view of the provisions of Sub-section (3) of Section 3 of the Hindu Women's Right to Property Act, 1937 became vested in the plaintiff right from the day when Roopa breathed his last. Surprisingly by relving on the decision reported in AIR 1964 Mad 320 (Rama Linaam v. Punitha Valli Ammall which has been reversed by the Supreme Court in its decision repored in AIR 1970 SC 1730 (Punithavalli Ammal v. Minor Ramlingam) he also found that Rewa Bai's position was not better than that of the widow in the 1964 Madras case and even if she has been allotted property by the final decree in partition suit of 1938-39. that will not debar the application of the doctrine of relation back. Thus, he ultimately found that the moment plaintiff Sitaram was adopted by Jamna Bai. widow's estate of Rewa Bai had terminated and her possession over the suit agricultural land and thehouse was in the nature of a trustee, guardian or the caretaker. Also relyingon the Supreme Court decision reported in AIR 1970 SC 1019 (Dindaval v. Raja-ram) he also found that the widow Rew Bai had no right to the possession of the property

fallen to her share by virtue of the decree Ex. P/5 and ultimately allowed the appeal and decreed the plaintiff's claim as prayed for. Hence this appeal.

6. The learned counsel for the appellant did not dispute the proposition of law enunciated in the Supreme Court decision reported in AIR 1960 SC 1172 (supra). He also did not dispute the doctrine of relation back as has been held, in AIR 1974 SC 878 (Shripad Gaianan Suthankar v. Dattaram Kashinath Suthankar) which has considered the earlier decisions of the Supreme Court including the decision of the Supreme Court reported in AIR 1962 SC 59 (Kri-shhamurthi V. Deshpande v. Dhruwarail) the gist of which is that by a fiction of law well settled by decided cases--that an adopted son is deemed to have been adopted on the date of the death of his adoptive father. He is the continuator of his adoptive father's line exactly as an aurasa son and an adoption so far as the continuity of the line is concerned, has a retrospective effect. Therefore, the learned counsel for the appellant did not dispute the finding of the learned lower Appellate Court on the theory of divesting of title on the doctrine of relation back.

7. However, the learned counsel for the appellant contended that under the Hindu law a widow had a legal right of maintenance out of the coparcenary property and. therefore, even though in 1938-39 co-widows Jamna Bai as also Roopa Bai did not have an inherent right of partition as such, by mutual arrangement made between them in the form of decree Ex. P/5 they had divided all the properties amongst themselves for their maintenance, in pursuance of which Roopa Bai was put in exclusive possession of all the properties mentioned in Schedule A. B and C annexed to the plaint and that since then she had been enjoying the usufruct thereof in lieu of her right of maintenance and thus she continued to be in exclusive possession of all the suit properties when the Hindu Succession Act. 1956 came into force on 17th June. 1956. Section 14 of the said Act is as follows:--

'Property of a female Hindu to be her absolute property.'

14 (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 movables and immovable property acquired by a female Hindu 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 or in any other manner whatsoever 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 prescribe a restricted estate in such pro-perty.'

In support of this submission he placed reliance on the decisions reported in AIR 1979 SC 993 (Bai Vaia (dead) by LRs. v. Thakorbbhai Chelabhai). which has followed its earlier decision reported in AIR 1977 'SC 1944 (Vaddebovina Tulasaopa v. Vaddabovina Sessa Reddi). AIR 1972 Bom 16 (Baousaheb Bhausaheb Patil v. Smt. Ganaabai) and AIR 1981 Bom 115 (FBI (Kesharbai Jaoannath Guir v. State of Maharashtra).

8. In AIR 1979 SC 993 (supra) it has been held that:--

'The widow's right to maintenance, though not an indefeasible right to property is undoubtedly a pre-existing right. It is true that a widow's claim for maintenance does not rigen into a full-fledged right to property, but nevertheless it is undoubtedly a right which in certain cases can amount to a right to property where it is charged. It cannot be said that where a property is given to a widow in lieu of maintenance, it is given to her for the first time and not in lieu of a pre-existene right. The claim in order to maintain herself, is an inherent right conferred by the Hindu Law and. therefore, any property given to her in lieu of maintenance is merely in recognition of the claim or right which the widow possessed from before.

It cannot be said that such a right has been conferred on her for the first time by virtue of the document concerned and before the existence of the document the widow had no vestige of a claim or right at all.' It has further been held that- 'A

plain reading of Sub-section (1) makes it clear that the concerned Hindu female must have limited ownership in property, which limited ownership would act enlarged by the operation of that sub-section. Limited ownership in the concerned Hindu female is thus a sine Qua non for the applicability of Sub-section (1) of Section 14 of the Act.'

Further it has also been held that-

'Ownership in the fullest sense is a sum total of all the rights which may possibly flow from title to property, while limited ownership in its very nature must be a bundle of rights constituting in their totality not full ownership but something less. When a widow holds the property for her enjoyment as long as she lives nobody is entitled to deprive her of it or to deal with the property in any manner to her detriment. The property is for the time being beneficially vested in her and she has the occupation, control and usufruct of it to the exclusion of all others. Such a relationship to property falls squarely within the meaning of the expression 'limited owner' as used in Sub-section (I) of Section 14 of the Act.'

It has also been held further-

'A combined reading of the two subsections and the Explanation leaves no doubt that Sub-section (2) does not operate to take property acquired by a Hindu female in lieu of maintenance or arrears of maintenance out of the purview of Sub-section (1)'.

9. In AIR 1972 Bom 16 (supra) it has been held that where a coparcener died before the coming into force of the Hindu Women's Right to Property Act, 1937 and the right of his widow was recognised in an award or decree by allotting property to her, the widow in possession of such property on the date of commencement of the Hindu Succession Act, 1956 would act full ownership of those properties under Section 14(1). Her case would not be governed by Section 14(2) which covers only those cases of Brants where the interest in the grantee is created by the grant itself or in other words where the gift, will, instrument, decree, order or award is the source of origin of the interest created in the grantee. Where, however the instruments referred to above are not the source of interest created but are merely

declaratory or definitive of right to property antecedently enjoyed by the Hindu female Sub-section (2) has no application: and it matters not if in such instruments it is specifically provided in express terms that the Hindu female had a limited estate or she shall not alienate the property or that the property would revert on her death to the next reversionary such term are merely the reiteration of the incidents of the Hindu law applicable to the limited estate.

10. In a subsequent Full Bench decision reported in AIR 1981 Bom 115 (Kesharbai JaKannath Gujar v. State of Maharashtra) it has been held that-

'From a readings of Section 4. it is clear that wherever there are provisions made by the Act in relation to the law of succession the customary Hindu law along with its texts, rules and interpretations of various courts as also the custom and usage now ceased to be operative. The only law to which reference must be made in the matter of Hindu succession is the law laid down by this Act wherever it makes provisions in that behalf.'

It has further been held that:--

'By reason of Section 14 which converts the limited estate of the widow into full ownership in the case of joint family property, the son adopted subsequent to the commencement of the Act by the widow would not take interest in her property and would not have any right of partition in respect of the property in the widow's hand, irrespective of the fact that it was joint family property before the commencement of the Act.'

The legislature has brought about a categorical change by introducing the provisions of Section 14(1). Succession Act. The female holder is now made full owner and has the effect of changing the nature of the property. This will always be the effect irrespective of the nature of the property which the woman possessed as a limited owner till June 1956. The earlier nature of that property thus becomes irrelevant.

The full ownership conferred upon a Hindu female by Section 14 would have all the attributes of full ownership as is understood normally in law. The

first consequence is that there is no question of reversion after the death of the Hindu female and she would constitute a fresh stock. Succession to her property will be governed by the provisions of the Hindu Succession Act and not by the Shastric Hindu Law. Being full owner she is entitled to dispose of the property by transfer inter vivos or by Will. In other words, this property of the Hindu family can well be compared with the self-acquired property of a Hindu male. If a son adopted by a Hindu male person could not claim any right in the self-acquired property a son adopted by the Hindu female cannot now claim a right by birth in the independent property of the female which is akin to the self-acquired property. The adoption after the Succession Act operates prospectively and not retrospectively. There is no relation back. On the date of the adoption there is no joint family property in existence in which he could claim any interest by birth. In doing so, the adopted son is not deprived of the status given to him of a natural born son as Section 12 of the Hindu Adoptions and Maintenance Act, 1956 provides. Where the natural born son could get a right by birth, the adopted son would. If the natural son has no right by birth, the adopted son cannot also claim any such right.'

11. It is no doubt true that in all these cases the adoption has taken place subsequent to the enforcement of the Hindu Succession Act. However in my opinion, considering the facts and circumstances of the case they would also apply to the present case because after the co-widows had mutually agreed to divide the property, though it may be for their maintenance, admittedly they have been in exclusive possession of the properties thus divided since the passing of the decree Ex. P/5 under which properties mentioned in Schedules A, B and C annexed to the plaint were given to Roopa Bai who continued to be in exclusive possession thereof even when the Hindu Succession Act came into force. Therefore, even though Roopa Bai had a right of maintenance against the property she had a limited interest in the suit properties prior to the coming into force of the Hindu Succession Act, which ripened into her right as an owner thereof.

12. So far as agricultural lands are concerned, the learned counsel for the appellant submitted that it is not in dispute that Roopa Bai was in exclusive possession of the disputed agricultural lands since 1939 and according to Section 54 (vii) which defines 'pucca tenant', he contended, that after the coming into force

of the M.B. Land Revenue and Tenancy Act on 15-8-50 she became a pucca tenant and after the M.P. Land Revenue Code came into existence on 2-10-59 she acquired the rights of a bhumiswami. He. therefore submitted that in view of the decision reported in 1963 MP LJ 684 (Chanaram Chadmi Ahir v. Pvari Bahool she acquired full rights in that agricultural property and the provisions of the M.B. Land Revenue and Tenancy Act regarding succession as provided under Sections 83 and 84 pf that Act was governed not by the personal law of the individual but it applied uniformly to all irrespective of their Personal law. He. therefore, submitted that Roopa Bai could not be divested of that agricultural property on the theory of doterine of relation back.

13. On the other hand the learned counsel for the respondent contended that as the co-widows had no right of partition of the disputed properties at best it could only be said that by decree Ex. P/5 they made arrangements of distribution of the properties amongst themselves and thus the co-widow had imperfect title in the properties which was her disability. He. therefore, contended that the appellant having not come with a case that as per Ex. P/5 the properties in dispute were allotted to Roopa Bai in lieu of her right of maintenance, this plea taken for the first time cannot be taken into consideration. Relving on the provisions of Section 27 of the Hindu Adoptions and Maintenance Act. 1956 which provides that a defendant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof. unless one has been created by the will of the deceased by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise, contended that the claim of the widow for maintenance is not a charge upon the estate of her deceased husband whether joint or separate until it is fixed and charged upon the estate. But this section has to be read with Section 28 which deals with the effect of transfer of property on right to maintenance, which provides that where a dependant has a right to receive maintenance out of anestate, and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right. or if the transfer is gratuitous: but not against the transferee for consideration and without notice of the right.

14. The learned counsel for the respondent also relied on the unreported Division Bench decision of this court in Civil First Appeal No. 51 of 71 (Nara-vanpuri v. Satvanaravan) decided on 13-10-82 and contended that widow has a right against property though such a right may not be a right to property. He, therefore, submitted that the widow Roopa Bai cannot be said to have acquired any limited interest in the said property. But the facts of that case are distinguishable as in the present case it is not in dispute that the co-widows had limited ownership in the disputed property.

15. After hearing the learned counsel and after going through the provisions of law as also the case law cited I find that there is considerable force in the submission made on behalf of the appellant. On the basis of the theory of relation back an adopted father as on the date of his death. This principle of relation back is based on a legal fiction that there should be no Bap or break in the continuance of the line of the adoptive father. This theory of relation back is, however, subject to certain exceptions. One of the limitations is that if the property by inheritance passed to a collateral and the adopted son is adopted after the death of the collateral the adoption cannot divest the estate of the collateral which had gone to his heir by inheritance. Another exception to which the principle of relation back is subject to is that the adopted son would be bound by any lawful alienation effected by a male or female heir on the death of the adoptive father and before the date of adoption and how the third exception is on account of the provisions of Section 14 of the Hindu Succession Act. It is true that the appellant in her pleadings has not specifically stated that in lieu of her right of maintenance she is in possession of the disputed property. However, this being a question of law can be considered as it has also been found by both the lower courts that the appellant was a limited owner and she had a right of maintenance.

16. The learned counsel for the appellant no doubt contended that after the death of her husband there could not in law be a final and absolute partition between the two widows, that then they had only a widow's estate in all the properties left by their late husband, that they could divide only the usufructs from the properties and for the purposes of convenience, they were in separate possession of the properties, that the right of survivorship between the two widows continued, but on

the coming into force of the Hindu Succession Act. 1956 both the widows became absolute owners of the entire estate of which they remained in separate and exclusive possession in their own rights. That apart Hindu Women's Right to Property Act which was applied to Barwani State was also subsequently extended to agricultural lands also situated in that State.

17. In AIR 1965 SC 1752 (Karpaga-thachi v. Nagarthinathachi) it is pointed out that when two widows inherit their husband's properties, they take together one estate as joint tenants with rights of survivorship and equal beneficial enjoyment and that an absolute partition of the estate so as to destroy the right of survivorship. However it was recognised that there can be an absolute and final partition of the estate destroying the right of survivorship by mutual consent of the widows. In the present case it is not in dispute that by consent of the two widows there had been a final and absolute partition by metes and bounds of the properties left by their deceased husband, which culminated into a final decree as per Ex. P/5. In this situation it is idle to contend that the right of survivorship continued even after the said partition in 1939. It may be that even under the Hindu law it is open to the co-widows to Put an end to the right of survivorship and if there had really been a final and absolute partition by metes and bounds, there could be no further right of survivorship between the two.

18. In the present case it is not the contention of the respondent that the partition decree Ex, P/5 was not a final one: on the contrary it is proved that it was acted upon and since then Roopa Bai continued to be in exclusive possession or enjoyment of the properties allotted to her in her own rights as mentioned in Annexures A. B and C, That apart the theory that one of the co-widows is not entitled to demand a final and absolute Partition so as to put an end to the right of survivorship had been given the go-by under the Hindu .Women's Right to Property Act. 1937. Under that Act on the death of her husband the widow gets the same share as the son. That means that she would be entitled to enforce a final and absolute partition even though the co-widows or any other sharer may not consent for such a partition. In AIR 1962 SC 1493 (Munnalal v. Rajkumar) it is pointed out that the Legislature by enacting the Hindu Women's Right to Property Act. 1937 made a significant departure from the textual. It was no doubt pointed out on

behalf of the respondent that Roopa died in 1936. the co-widows effected the partition in 1939 when the Hindu Women's Right to Property Act had no application. Per contra it was contended on behalf of the appellant that after the 1937 Act was made applicable to Barwani State on 30-9-39 and to agricultural lands on 1-5-41 one widow could have demanded a final and absolute partition so as to put an end to the right of survivorship and that the mere fact that there had already been a partition between the two could not make any difference.

19. The learned counsel for the respondent had also contended that as the co-widows inherited a widow's estate on the death of her husband the plaintiff cannot base her claim by virtue of Section 14(1) of the Hindu Succession Act on the ground that she had become the absolute owner of the suit properties. It is settled law that if a partition deed or any other instrument only recognised a pre-existing right of the widow it is not a case of the widow acquiring the property as contemplated under Sub-section (2) of Section 14 and that under such circumstances that sub-section would have no application. But when Section 14(1) speaks of a female Hindu acquiring property before or after the commencement of the Act, the question is whether the acquisition contemplated should necessarily be without any pre-existing right whatsoever. The Explanation to Section 14(1) defines the word 'property' occurring in that sub-section as including both movable and immovable property acquired by female Hindu by inheritance or device or at a partition or in lieu of maintenance or arrears of maintenance. The contention on behalf of the appellant is that in this case in any event there having been a partition whether the widows were entitled to enter into a final and absolute partition or not in the year 1939. it must be held that the appellant acquired the suit properties under the said partition as contemplated under Section 14(1) and as she is in possession her widow's estate became an absolute estate. However, the contention on behalf of the respondent is that the appellant did not acquire the suit properties inasmuch as she along with the co-widow Jamna Bai had inherited a widow's estate in the properties on the death of their husband. But it should be remembered that the explanation to Section 14(1) specifically refers to acquisition of properties under a partition. One can get a share under a partition only after he or she had some pre-existing right in the same. It is true that in a partition in a family a woman may be allotted certain properties even though she had no pre-

existing right to a share because of her right to maintenance or arrears of maintenance. But as already seen the Explanation to Section 14(1) specifically refers to property acquired in lieu of maintenance or arrears of maintenance apart from property acquired at a partition, I am, therefore, of the view that the words 'acquired by female Hindu at a partition' do not mean that she should not have had any pre-existing right in the property. Un-doubtedly the appellant was in possession of the suit properties when the Hindu Succession Act came into force. It is therefore, difficult to hold that, even assuming that the widows had no right to effect such an absolute partition putting an end to the right of survivorship the two widows can be said to have been in joint possession of the suit properties left by their husband. The two co-widows having effected by mutual consent a final partition, it was not open' to any one of them to claim a re-allotment of possession of the properties allotted to the other widow, (Please see AIR 1977 SC 394) (Bindumati Bai v. Narbada Prasad).

20. Therefore, on a plain reading of Sub-section (1) and Sub-section (2) of Section 14 of the Hindu Succession Act. it is clear that rights contemplated by both the sub-sections may be acquired in any possible manner and independently of each other. Therefore, in cases where the right contemplated by Sub-section (2) has come into existence with regard to any property, after it is found that in that property the female Hindu has already acquired and possessed a similar right, then Sub-section (2) cannot be allowed to impinge upon the efficacy of Sub-section (1). If the subsequently acquired right under Sub-section (2) is a plain and avowed recognition of the previously existing right. as was the case in the Supreme Court decision re-reported in AIR 1977 SC 1944 the matter is simple, because it at once shows, on the face of it. that the subsequent acquisition is not the first of its type. But even in cases where there is no nexus between previously existing right and the right coming into existence subsequently under Sub-section (2) of Section 14 the operation of Sub-section (1) of that section cannot be jeopardized for . this simple reason that on account of the existence of the previous right it cannot be said that the right under Sub-section (2) came into existence for the first time. Suppose for instance a female Hindu acquired some limited interest in the property by a testamentary deposition, suppose also that none of these acquisitions has any nexus with each other and has nothing to do

with her right of maintenance. It is difficult to see in such a case the operation of Sub-section (1) of Section 14 in favour of such a female can be stopped. That operation can be stopped only if it is found that the subsequent acquisition created a right in the property for the first time and the prior acquisition was no acquisition at all in the eye of law, being void ab initio. Establishment of nexus between prior and subsequent acquisition contemplated by Sub-section (2) of Section 14 is helpful in revealing that the right in question existed even before the subsequent acquisition and in most of such cases, such a nexus can be noticed, but that does not mean that the establishment of such a nexus is a condition precedent for saving the operation of Sub-section (2) of Section 14 and Sub-section (2) must be confined to cases where property is acquired by female Hindu for the first time as a grant without pre-existing right under a gift, will instrument, decree, order or award, the terms of which prescribe a restricted estate in the Property (Please also see AIR 1979 SC 1944. *Vaddebovina Tulasamma v. Vaddebovina Sesha Reddy*).

21. In the result this appeal succeeds and is allowed. The judgment and decree passed by the lower appellate court are set aside and the plaintiffs suit stands dismissed. However considering the facts and circumstances of the case the parties are directed to bear their respective costs throughout.