

**Ashok Kumar and anr. Vs. Kishan Kumar and ors.**

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**Court :** Delhi

**Decided On :** Aug-24-1982

**Reported in :** ILR1983Delhi250

**Judge :** H.L. Anand, J.

**Acts :** [Hindu Succession Act, 1956](#) - Sections 14

**Appeal No. :** Suit No. 221 of 1973

**Appellant :** Ashok Kumar and anr.

**Respondent :** Kishan Kumar and ors.

**Advocate for Pet/Ap. :** L.R. Gupta,; H.D. Triyogi,; R. Dayal,;

**Judgement :**

**H.L. Anand, J.**

(1) This suit by two brothers claiming a declaration in respect of immoveable properties and for possession of a part thereof and recovery of damages mesne profits in respect of the use and occupation of a part of it, inter alia, raises an interesting question as to the circumstances in which and the conditions on which a limited estate, held by a Hindu widow, may mature into an absolute estate by virtue of the provision of Section 14(1) of [Hindu Succession Act, 1956](#).

(2) The facts and circumstances leading to the suit are, by and large, beyond controversy. One Umrao Singh, who held joint Hindu family properties as the sole surviving coparcener, executed a Will on January 9, 1927, duly registered on January 27, 1927, in terms whereof he bequeathed one of the properties absolutely in favor of Kalawati, widow of his pre-deceased son, Onkar Prasad, and created two successive life estates in respect of other properties, one in favor of Kalawati aforesaid, and the other in favor of her daughter, Shanti Devi, then an infant, and purported to bequeath the absolute ownership of the properties, forming subject-matter of life estates, to the male issue of Shanti Devi. Onkar Prasad had died in 1922. Umrao Singh died in 1928. Kalawati died in 1967 and Shanti Devi died in 1969. Kalawati assumed control and possession of the properties, forming subject matter of the absolute estate, as well as the life estate, and during her life time, alienated the property, which formed subject matter of the absolute estate in her favor. When she died in 1967, she was survived not only by her daughter, Shanti Devi, but also a son, Krishan Kumar, defendant No. 1, who was admittedly born to Kalawati, but according to the plaintiffs, not during the lifetime of her husband or soon thereafter, but after a lapse of 10 years of the death of Onkar Prasad and was, therefore, an illegitimate child. When Shanti Devi died in 1969, the plaintiffs were admittedly her only male issues. During the lifetime of Kalawati. Krishan Kumar, defendant No. 1, was living with his mother in a part of one of the properties and continued to be in possession of that portion after her death. Defendants 2 to 5 are the tenants in the properties and were paying rent to Kalawati. Defendant No. 6 is another tenant, who had apparently been inducted in a portion of the property by defendant No. 1.

(3) Plaintiffs claim relief in the suit on the basis of and purely in terms of the will of Umrao Singh. They contend that in terms of the will the properties forming subject matter of the suit, became their exclusive and absolute estate on the death of Kalawati and Shanti Devi. The claim is sought to be defeated by defendant No. 1 on the ground that on a true construction of the will it must be held that the will conferred an absolute estate in favor of Kalawati and on her death the property devolved on Shanti Devi and defendant No. 1 in equal share as the only heirs of Kalawati. In the alternative, it is claimed that if Kalawati or the life estate under the will matured into an absolute estate by virtue of Section 14(1) of the Hindu

Succession had a life estate such a bequest was either bad in law and she became absolute owner by virtue of adverse possession Act. It is, therefore, urged that either way on her death the properties devolved on defendant No. 1 and Shanti Devi in equal shares. Various other pleas were raised with regard to the valuation of the suit for the purposes of jurisdiction and court fees and non-joinder of parties.

(4) On the pleadings of the parties, following issues were framed on May 14, 1980 after the statement of defendant No. 1 was recorded with regard to his date of birth and the date of death of his father. 1. Did Mr. Umrao Singh execute any will and bequeath his properties in favor of his wife Smt. Kalawati and Smt. Shanti Devi? 2. Had Mr. Umrao Singh 'created limited estate enurable during the life times of Smt. Kalawati and Smt. Shanti Devi under the will? If so to what effect? 3. Is defendant No. 1 the son of Onkar Prasad? (onus objected to ). 4. Was 'the limited estate of Smt. Kalawati not enlarged to full ownership on the coming into force the Hindu Succession Act? 5. If issues No. 1, 2 and 4 are proved, is defendant No. 1 the owner of the properties in dispute? 6. Has the suit been properly valued for purpose of court fee and jurisdiction? 7. Is Sh. Harnam Dass a necessary or proper party in the suit? If so, what is the effect of his being not imp leaded in the suit? 8. To what mesne profit, if any, are the plaintiffs entitled to? 9. Is the suit for mere declaration with respect to portions of the properties in dispute which are in possession of the tenants, maintainable? 10. Relief.

(5) On January 13, 1981 the following additional issue was framed by consent.

IA. Is the Will referred to in issue No. 1 not valid according to law

(6) By an order of February 23, 1981 in I.A. 57 of 1981 certain issues were deleted and rest were reframed in the following manner : 1. Whether Umrao Singh did not duly execute a will on 9th January 1927? OPD.. 2. If issue No. 1 is decided against the defendant whether the estates created by the will were permissible under the law. If so, what was the nature of the rights of Smt. Kalawati, Smt. Shanti Devi and the plaintiff, if any, created under the Will? 3. Whether Smt. Kalawati became an absolute owner of the property mentioned in the will either upon the death of the testator or at any time thereafter and remain as absolute owner till her death? 4. Is

the suit bad for non-joinder of necessary parties? 5. Whether the suit is properly valued for purposes of court fees and Jurisdiction? 6. Is the suit for mere declaration with respect to portions of the properties in dispute which are in possession of the tenants, maintainable? 7. To what mesne profit, if any, are the plaintiffs, entitled to? 8. Relief.

(7) In support of rival contentions parties produced both oral and documentary evidence. I heard counsel for the parties at considerable length on the various questions of fact and law in controversy between the parties. My conclusion on these issues are as follows :- Issue No 1.

(8) This issue is based on the plea of defendant No. 1 denying the factum of the execution of the will. The plea was, however, not seriously pressed on behalf of defendant No. 1. Even otherwise, the onus of the issue was on defendant No. 1 and defendant No. 1 failed to produce any evidence in support of it. Plaintiffs, on the other hand, produced five witnesses. None of these witnesses were either attesting witness or identified the signature of the testator on the will, Ex. Public Witness 512, which was proved by Public Witness 5, Harnam Dass Advocate, father of the plaintiffs who merely stated to the fact that the will was handed over by Kalawati, who was the mother-in-law of the witness, to his wife Shanti Devi. He also proved certified copy of the sale deed. Ex Public Witness 5U, by which one of the properties mentioned in the will was sold by Kalawati. The other four witnesses merely identified the signature of two attesting witnesses to the will, namely. Sham Sunder, pleader and Alopi Prasad. Pwi, however, stated that the signature of Sham Sunder used to be in 'bigger and bolder letters' and the signature purported to be of Sham Sunder on the document were not his signature. The will purports to have been executed in 1927 and no one, who could identify the signature of the tester, had apparently survived by the time the evidence was recorded in the year 1981. The will was registered with the Sub-Registrar and was apparently acted upon by Kalawati during her life time when she sold one of the three properties, forming subject matter of the will. The document is more than 30 years old and would attract the presumption under Section 90 of the Evidence Act. For all these reasons, I would answer the issue in favor of the plaintiffs and hold that Umrao Singh had executed the will, Ex. Public Witness 512, on January 9, 1927, which

was duly registered with the Sub-Registrar on January 27, 1927. Issue NO. 4.

(9) This issue is based on the plea of defendant No. 1 that inasmuch as Shanti Devi, the mother of the plaintiffs, was survived besides the plaintiff, by her husband, Harnam Dass, Advocate, and a daughter of Harnam Dass, Advocate, from his previous marriage, the suit. was bad for nonjoinder of Harnam Dass and his daughter: who were said to be necessary parties. This issue was also not pressed apparently because the claim to the properties by the plaintiffs' is based on the will and not on the succession to the property of Shanti Devi in which case there would have been merit in the contention that Harnam Dass and her daughter were necessary parties to the suit. While on the pleas of the plaintiff these persons cannot be said to be necessary parties, it would be the other way round, if the plea of defendant No. 1, that Kalawati had held absolute estate and on her death the property devolved on Shanti Devi, and defendant No. 1 in equal share, prevails. Plaintiffs do not claim any right to the properties on the basis of succession in the alternative or otherwise. If they fail in the plea based on the will, nothing further survives in the suit. On the plea of the plaintiffs, therefore, it cannot be said that these two persons were necessary parties or that this suit is, therefore, bad because of failure to join them as defendants. The issue is answered accordingly. Issue NO. 5

(10) This issue is based on the plea of defendant No. 1 that the suit has been undervalued for the purpose of court fees with reference to the relief for possession of the portion in occupation of defendant No. 1 on the ground that market value of the portion, Which is claimed by plaintiffs to be Rs. 20,000, 'is at least Rs. 50,000.' Parties were fully aware of the state of the market value of immovable property in Delhi and the plaintiffs did not seriously dispute that the valuation of the property at Rs. 20,000 was on the lower side. Since defendant No. 1 could be hardly said to have put an exaggerated value of the portion, plaintiffs had no serious objection to the suit for the purpose of possession being valued at Rs. 50,000. I answer the issue accordingly and direct that the plaintiff would pay additional court fees on the basis of the valuation claimed by defendant No. 1. Additional court fees would be paid within three months. Issue NO. 6.

(11) This issue is based on the plea of defendant No. 1 that a mere declaration in respect of the portion of the property in occupation of tenants was insufficient and that the plaintiffs were apparently bound to seek the relief of recovery of possession. This is a plea which is only to be recounted to be rejected. If an authority in respect of the proposition was necessary, reference may be made to 1936 Lahore 929(1). Mere declaration in respect of the portion in occupation of the tenant was sufficient. No further relief was called for. Issue is decided accordingly.. Issue NO. 7.

(12) This issue is based on the plea of the plaintiffs that they were exclusive owners of the properties and that defendant No. 1 has no right, title or interest in the properties and, being in possession of a part of the properties was bound to pay damages |mesne profit for use and occupation to the plaintiffs until dispossessed. Defendant No. 1 denies the claim of mesne profit, inter alia, on the ground that defendant No. 1 and Shanti Devi the mother of the plaintiffs, became joint owners of the property on the death of their mother Kalawati and that the plaintiffs succeeded on the death of their mother, along with other heirs of the mother, to half share of the property which had devolved on their mother and that there was therefore, no liability to any damages |mesne profit. The answer to this issue would depend on how one looks at issue No. 2 and 3, which are based on the principal question in controversy between the parties. Issue No. 7 would not survive if the Court comes to the conclusion that Kalawati held the properties as an absolute owner and the same devolved in equal share on her daughter, Shanti Devi, and her son, defendant No. 1. If on the contrary, the plea of defendant No. 1 is overruled as to the nature of the estate of Kalawati and it is held that Kalawati held a life estate, and on the death of Shanti Devi property passed to the plaintiffs in terms of the will, defendant No. 1 would certainly be liable to pay damages) mesne profits. Once it is found that defendant No. 1 is liable to pay damages mesne profit, the question of computation would then arise. The decision of this issue is deferred until the decision of principal issues, to which I would presently devote attention. Issues NO. 2 and 3.

(13) These issues are based on the pleas of defendant No. 1 that, for diverse reasons, the properties in dispute were held in absolute estate by Kalawati or by

operation of law the limited estate in her favor galvanised into an absolute estate, and that the bequest in favor of the plaintiffs. failed, with the result that on the death of Kalawati, her estate devolved on Shanti Devi, her daughter, and defendant No. 1, her son, in equal shares and the plaintiffs having, therefore, merely succeeded, along with certain others, to the share of Shanti Devi, were not entitled to the declaration that the properties exclusively belonged to the plaintiffs.

(14) The first question that calls for decision is the nature of the bequest in favor of Kalawati in terms of the will and in particular whether the bequest in favor of Kalawati purported to be an absolute estate in her favor or created a mere life estate in her favor, followed by another life estate in favor of Shanti Devi and the bequest of the absolute estate in favor of the plaintiffs. Having regard to the clear language of the will, the intention of the testator incorporated in it, and the surrounding circumstances, the answer to the question must be in favor of the plaintiffs. It is not possible to construe the will as conferring any absolute estate of Kalawati and the document points only to one conclusion that the testator created a life estate in favor of Kalawati followed by another life estate in favor of Shanti Devi before the devolution of the absolute estate in favor of male heirs of Shanti Devi. The will, Ex Public Witness 5j2, which appears to be a handiwork of an experienced scribe, is in Urdu language and by it the testator clearly and unequivocally creates two life estates, first in favor of the widow of his pre-deceased adopted son, Kalawati and on her death in favor of the said widow's daughter Shanti Devi and provides that on the death of Shanti Devi the estate would absolutely pass to the male progeny of Shanti Devi, who would hold it absolutely. It is significant that while Kalawati has been given the right to alienate one of the three properties, that right has been denied to her in relation to the other properties, now forming subject matter of the suit, in clear and unequivocal terms. The third property Was alienated by Kalawati during her lifetime pursuant to the power reserved in the will by sale deed of which a photo copy was proved on record as Ex Public Witness 5/1. True, the will describes Kalawati as 'Malik Kamil' i.e. full owner, and purports to confer on her 'Kul Ekhtayarat Malkana' i.e. all rights of an owner, but it is not possible to ignore that the expression 'Kul Ekhtayarat Malkana' is clearly qualified by the expression that follow i.e. 'Ilava Muntquil Kame Ki' i.e. without the power of alienation. It is well settled that document has to be

read as a whole with a view to ascertain the true will and intent of the author. The language of the will leaves no manner of doubt that Kalawati had no power of disposal over the properties, except one property, and provision in respect of that property contains, a specific power to dispose it of during her lifetime. That the remaining properties are to come after her death in limited estate in favor of her daughter and after her to the daughters male progeny in absolute right eliminate altogether any doubt that one may have with regard to true intent to give to Kalawati a life estate and absolutely to the male progeny of Shanti Devi. The intention of the testator that, except one property of which the power of disposal was specifically conferred on Kalawati, the rest of the estate must be preserved for the male progeny of Shanti Devi is clearly manifest in the document. There is no inconsistency or contradiction in the provision to make Kalawati 'Malik Kamil', full or absolute owner, and with all the absolute powers of an owner except the right to alienate the property. The right to alienate immovable property is not the only attribute of absolute ownership, it is one of the attributes of it and where that attribute is specifically excluded in the will I see no reason why the true intent of the testator should be allowed to be dissolved and should not be given effect to it in the absence of any legitimate legal impediment The provision of life estate in favor of the widow of a predeceased son, who was entitled to maintenance and a similar restricted estate in favor of her female issue to ensure that the estate ultimately passed absolutely to the latter's male progeny were also consistent with contemporary Hindu law, convention and beliefs. It must, therefore, be held that Kalawati was the recipient of a life estate in the two properties, forming subject matter of the suit, and the will did not create any absolute estate in favor of Kalawati in respect of these two properties.

(15) If the bequest in favor of Kalawati could not be construed as an absolute estate on the construction of the will, it is obvious that defendant No. 1 would have no defense to the suit unless the bequest of a life estate in favor of Kalawati was invalid for any reason or it galvanized into an absolute estate by virtue of the provisions of Section 14(1) of the Hindu Succession Act. Counsel for defendant No. 1 sought to invalidate the bequest of life estate for a variety of reasons.

(16) In the first instance, it was urged, on the authority of the Privy Council in the case of *Magalutchmee Ummal vs. Gopoo Madaraja Chetty and others* 6 Mia 309(2). that the testator was not competent to make the bequest in favor of Kalawati. The testator was admittedly the sole surviving coparcener and was competent to alienate the same during his life time or to make a bequest of it in favor of any person. In the case before the Privy Council, the testator, though a sole surviving coparcener, had authorised his widow to adopt a son in the event of the child, of which she was then pregnant, being a female and it was in this context that their Lordships observed that, 'As power had been given to the widow to adopt a son, Appacooty Jyen was, by the Hindoo Law, incompetent to make any testamentary disposition.' No such situation obtained in the present case. Counsel, however, alternatively sought to invalidate the testamentary disposition on the ground that there was no power to make a testamentary disposition in view of the testator's admitted obligation to maintain Kalawati, the beneficiary, being a predeceased son's widow. It is no doubt true that Kalawati in Hindu law, as it then stood, was not an heir of the testator but was certainly entitled to maintenance. Even if any testamentary disposition, which may deprive such a widow of her right of maintenance be invalid, it would be doubtful if it would have that effect where the beneficiary of the testamentary disposition was no other than the widow entitled to maintenance herself. Even otherwise, right to receive maintenance in relation to a property is not a right to property and unless the disposition was intended to defeat the right of maintenance, it would not be invalidated even though the disposition, testamentary or otherwise, may be subject to the right of maintenance. It is well-settled that the claim, even of a widow, for maintenance is not a charge upon the estate of the deceased husband until it was charged upon the estate either by a decree of a court or by an agreement or by the will by which the property was bequeathed. If that be so, the widow's right is liable to be defeated by the transfer of the husband's property to a bona fide purchaser for value, without notice of the widow's claim for maintenance. It is also liable to be defeated by a transfer to purchaser for value even with notice of claim unless the transfer was made with the intention of defeating the widow's right and the purchaser had notice of such intentions. It is recognised in Hindu Law that widow's right to receive maintenance, unless made a charge upon the property, is

enforceable only like any other liability in respect of which no charge exists but where maintenance has been made a charge upon the property and the property is subsequently sold, even there, the transfer is not invalidated but the purchaser must hold it subject to the charge. This would be true even of a disposition by a Will. That the claim for maintenance is not a charge on the estate, has since been recognised by the Hindu Adoptions and Maintenance Act, 1956. Section 39 of the Transfer of Property Act also recognises that a widow's right of maintenance, not being a charge, could not be enforced against transferee for value unless the transfer was made in fraud of the right of maintenance. It is no doubt recognised that if the person who is under an obligation to maintain widow has property the right of the widow to maintenance 'becomes an equitable charge on his property' but the effect is that any person who takes the property 'carries with it the legal obligation to maintain the widow' but even so the right does not invalidate the bequest or the transfer. Whatever, therefore may be the other effect of it, the testamentary disposition, without making a provision for the maintenance of a widow, entitled to such maintenance, would not invalidate the disposition. It is hardly possible for defendant No. 1 to urge that the testamentary disposition in the present case was made without making a provision for the maintenance of Kalawati since admittedly Kalawati was among the recipients of the bequest of life estate under the Will, besides an absolute estate in another property. There was really no conflict in the present case between the disposition and the right of Kalawati to maintenance. The provision for her maintenance is writ large in the form of the life estate itself, apart from, what is more the right to alienate one of the three properties, a right which admittedly was exercised by Kalawati during her lifetime. Having regard to all the circumstances the conclusion would be justified that bequest in favor of Kalawati was not only not in derogation of her right of maintenance but was in furtherance or recognition of that right and to effectuate it. I would have occasion to deal with this aspect in some detail elsewhere in this judgment in the right of the recent decision of the Supreme Court in the case of V. Tulsamma. It is, therefore, difficult to cast any cloud on the validity of the bequest on the ground that it was prejudicial to the interest of Kalawati herself.

(17) It was then urged, on the authority of the decision of the Privy Council, in the case of Tagore, (1872) 11 Ben LR 377, that the bequest of a life estate simplicities

in favor of a Hindu widow was invalid being inconsistent with the traditional widow's estate or limited estate of a Hindu widow, as known to Hindu Law. There is no force in this contention. The testator was a sole surviving co-parcener, and was under no obligation to make any bequest in favor of Kalawati, a widow of a pre-deceased son, apart from a provision for her maintenance or any bequest that may be in the nature of such a provision. If that be so, he was free, subject to the aforesaid provision, to give or withhold any benefit from the widow. True, there is a clear distinction between life estate simplicities and the limited estate of a widow or a widow's life estate, as known to Hindu Law. It is well known that a widow or other limited heir is not a tenant for life but is owner of the property inherited by her subject to certain restrictions on alienation and subject to its devolving on the next heir of the last full owner upon her death. The whole estate is for the time vested in her and she represents it completely. As observed by the Privy Council, in the case of *Janki Amal* 1916, 43 Indian Appeals 207 (4), 'her right is of the nature of right of property; her position is that of owner; her powers in that character are, however, limited and in the familiar language of Mayne's Hindu Law, 'so long as she is alive no one has any vested interest in the succession.' As observed by the Supreme Court in the case of *Jagat Singh vs. Teja Singh* 1962 (5) Sc 83:

WHEN a widow succeeds as heir to her husband. the ownership in the properties both legal and beneficial, vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successionis. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to any one. it is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not one imposed for the benefit of reversioners but is an incident of the estate as known to Hindu law. It is for this reason that it has been held that when Crown takes the property by escheat it takes it free from any alienation made by the widow of the last male holder which is not valid under the Hindu law, vide: *Collector of Masulipatam v. Cavalry Venkata*, 8 Moo Ind App 529. Where, however, there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume.

It is no doubt true that the share taken by a Hindu widow in property inherited by her from her husband is called 'widow's estate' or 'woman's estate' and the estate taken by every other limited heir is similar in its incidence to a widow's estate. But that is the position of succession by a widow in Hindu Law and it has no impact on the manner in which an absolute owner, like the sole surviving coparcener, may devise his property during his lifetime or to make a testamentary disposition of it. Such testamentary disposition need not conform to any pattern known to Hindu Law.

(18) TAGORE'S case is no doubt a landmark decision in which in the year 1872, the Judicial Committee, with respect, engrafted on Hindu Law the doctrine, which was never a part of it, that a Hindu could not make a gift or bequest for the benefit of an unborn person. As was pointed out by the Supreme Court in the case of Ramanathan Vishwanathan and ors, 1970 Sc 1759 (6), the aforesaid decision was the result of a misconception with regard to the true meaning of the Sanskrit script on which it was based. The doctrine in Tagore's case was eventually altered by the three Acts. namely, the Hindu Transfer and Bequests Act of 1914, the Hindu Disposition of Property Act of 1916 and the Hindu Transfers and Bequest (City of Madras) Act. 1921, as a result of which no bequest is invalid by reason only that any person, for whose benefit the bequest is made, was not born at the date of the testator's death. It was, however, pointed out by the Supreme Court that the decision of the judicial Committee has, nevertheless, stood a great length of time and on the basis of that decision, rights had been regulated, arrangements as to property had been made and titles to property had passed and it was, therefore held. that it was a proper case in which the maxim 'Communis error facit jus' may be applied. It is, however, true that the general observations of the Judicial Committee, nevertheless, still hold good. Thus a man cannot create a new form of estate or alter the line of succession allowed by law for the purpose of carrying out his own wishes or policy, and a private individual who attempts by gift or will to make property inheritable otherwise than the law directs, is assuming to legislate and that the gift must fail and the inheritance take place as the law directs. None of these general observations, however, appeared to be of any assistance in the present case. Tagor's case itself is an authority for the proposition that a Hindu may create a life estate or successive life estates provided the donee is a person

capable of taking under the deed or the will. These observations must also be seen in the context in which they were made. There is no question of altering the line of succession or creating a new form of estate in the present case. Kalawati was then not an heir and the testator as the sole surviving co-parcener was, therefore, entitled to create a life estate or successive life estate without in any manner inviting criticism that by that provision, testator was either creating a new form of estate or altering the line of succession allowed by law. A life estate implicate even in favor of a widow, who was not an heir, could not be said to amount to creating a new form of estate merely because it is distinguishable from the widows' estate or women's estate, known to Hindu law. The challenge to the validity of the bequest on this ground must, therefore, fail.

(19) If Kalawati was the recipient of a life estate under a valid will, executed by her father-in-law, and continued A to be possessed of the estate till after the enactment of the [Hindu Succession Act, 1956](#), did the nature of the estate continue to be the same as in the terms of the Will, as envisaged by sub-section (2) of Section 14 of the Act or did it get enlarged into an absolute estate on the requisite conditions being satisfied as contemplated by sub-section (1) of that Section, is the last question that the suit poses for decision. Counsel for the parties, who addressed elaborate arguments on the question, martialling large-number of decisions of the various High Courts and of the Supreme Court in support of the rival contentions, and within the parameters of the landmark judgment of the Supreme Court in the case of V. Tulasamma, 1977 S.C. 1944, sought to justify the rival contentions.

(20) This is how Section 14 runs:

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. Explanationn. In this sub-section, 'property' includes both moveable and immoveable 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 a 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 property.

(21) Counsel for the plaintiff claimed that, even though having regard to the very wide amplitude of sub-section ( 1 ) of the Section, the life estate could have been enlarged into an absolute estate under that sub-section, it, nevertheless, continued to be a life estate because, having regard to the facts and circumstances in which the estate was acquired, the case fell into the exception engrafted in sub-section (2) of that Section because of the admitted fact that Kalawati claimed under the Will of her father-in-law. Counsel for defendant No. 1, however, urged that sub-section (2) of that Section would be inapplicable and the acquisition would be outside the exception engrafted in that sub-section by virtue of the fact that the Will could not be said to be the foundation or the origin of the right and that the grant of the life estate under the Will was in recognition of or intended to effectuate a pre-existing right of 'Kalawati in or against the property arising out of her admitted right to maintenance out of the properties left by the testator.

(22) It is a debatable point if Freud was right when he threw up his hands after a life-long study of human psycho-logy and confessed that he had not been able to understand the nature of a female. It is, however, true that the place of a female in Hindu society and her position in Hindu Law has, for centuries, been mystifying. On the one hand, she was enthroned as the virtual incarnation of a Goddess and given a place of primacy in the family hierarchy but on the other, subjected to both social indignities and economic inequities and almost condemned to the position of serfdom. It is perhaps a measure of the same mystery that the same female, who was worshipped as a symbol of love and sacrifice, as a mother, was condemned as being worse than a d&mon.; as a mother-in-law. Amogn? the economic inequities to which a Hindu femile was subjected for centuries has been the concept of widow's estate or a woman's estate, known to Hindu Law, which recognised only a limited right of alienation. This inequity, which was defended for

centuries on the ground that it was either intended to protect the female against evil influences or to ensure that the property was) preserved for the reversioners or the remainders of the last male owner, was sought to be set at naught by the provision of Section 14. The Section was intended to wipe out the disparities from which a Hindu female suffered in regard to ownership of property and to abridge the stringent provision against proprietary rights which were often considered as evidence of her perpetual tutelage and to recognise her status as an independent and absolute owner of property. The Section, as indeed the Act, was intended to carry out a long overdue social purpose in the liberation of the Hindu female. The provisions, of the Section, however, threw up a number of controversies of construction and, in particular, as to the amplitude of sub-section ( 1 ) and the scope of the exception engrafted in sub-section (2) and as to the incidence and characteristics of a Hindu females' right to maintenance and, in particular, if the widow's right to maintenance, even though not right to property, can be considered, nevertheless, a pre-existing right in or against property which have bedevilled Courts for almost two decades, with an impressive array of High Courts taking contrary view. The controversy, has, by and large been resolved by the decision of the Supreme Court in the case of V. Tulasamma (supra) in which while answering most of the questions that arose, the Supreme Court lamented that while the controversy remained raging for almost two decades the legislature did not think it fit to intervene to clarify the position or, if 'necessary, to amend the law, leaving the battle to be judicially fought in restoring an equal status of Hindu women in the matter of disposition of property. The various questions raised in the present case appear to have been partly answered in the decision of the Supreme Court but it appears that, having regard to certain distinguishing features of the present case, some further questions are thrown up, which may justify one answer with reference to the facts and circumstances of cases, with which the Supreme Court in the above decision, as indeed, the various High Courts, were concerned, but the wider observations of the Supreme Court, as indeed, of some of the High Courts may justify a different answer. In a sense, the difficulty in the present case apparently starts where the decision in the case of Tulasamma ends. The husband of Tulasamma, who died in a state of jointness with his step brother, leaving joint property, made a specific claim to maintenance, the claim matured into an ex-

parte decree and at the execution stage, there was a compromise in terms of which cert in properties were allotted to Tulasamma, with no power of alienation. It was in this context that the question arose if the properties held by Tulasamma would attract sub-section (1), because she was possessed of the properties on the crucial date, or sub-section (2) would be attracted because she got a restricted state under the terms of the compromise and, therefore, her interest could not be enlarged into an absolute estate. By the time the matter came to the Supreme Court, more than half a dozen decisions of the various High Courts were arrayed on one side and there was an equally impressive array on the other. The conflict of Judicial opinion largely turned on the nature of the right of maintenance of a Hindu widow and the extent to which it could be said to be interest in property and, if property could be said to have been acquired by virtue of an instrument even if it was in recognition of a pre-existing right to or in relation to property. Bhagwati, J. who spoke for himself and Gupta, J, as he then was, held that sub-section (1) of Section 14 was wide in its scope and ambit and used language of great amplitude and that the sub-section which, by itself, was wide enough had been further amplified and its reach and ambit expanded by the Explanationn to it, which specifically included in the expression ' property', both movable and immovable property, ac-quired 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 the Act. Bhagwati, J. pointed out to the social objectives sought to be achieved by the provision and abserved that the Court had in a series of decisions given 'a most expansive interpretation to the language of sub-section (1) of S. 14 with a view to advancing the social purpose of the legislation' and called attention to the earlier decisions of the Supreme Court in the case of Gumalapura Taggina Matada Kotturuswami v. Setra Veerawa, : AIR 1959 SC577 , and Mangal Singh v. Battno, Air 1967 S. C. 1786. It was, thus held that sub-section (1) was large in its amplitude and 'covers every kind of acquisition of property by a female Hindu, 'including acquisition in lieu of maintenance'. It was further held that sub-section (2) of the Section was more in the nature of a proviso or exception to sub-

section (1) and this sub-section excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section ( 1 ) and being in the nature of an exception to the provision which was calculated to achieve a social purpose of bringing about change in the social and economic position of women in Hindu society,

It must be considered strictly so as to impinge as little as possible on the broad sweep of ameliorative provision contained in sub-section ( 1 ). It cannot be interpreted in a manner which would rob subsection (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1).

It was conceded that the language of sub-section

(2) was apparently wide to include acquisition of property by a Hindu female under any instrument and this would apparently cover a case where property was given to a Hindu female at a partition or in lieu of maintenance and the instrument etc. prescribed limited interest. It was, however, pointed out that such an interpretation 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 the maintenance under an instrument, order or award would be excluded from the operation of the beneficent provision enacted in sub-section (1)'. It was, therefore, held that sub-section

(2) must, therefore, be read in the context of sub-section

(1) 'so as to leave as large a scope 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 grant, without any pre-existing right, under a gift. Will, instrument, decree, order or award, the term of which prescribe a restricted estate in the property'. It was further held that 'where, however, property is required by a Hindu female at a partition or in lieu of right of maintenance it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section

(2) even if the instrument, decree, order or award allotting the property prescribed a restricted estate in the property'. Support for this line of approach was sought from an earlier decision of the Court in *Badri Parshad v. Smt. Kanso Devi*, : [1970]2SCR95. In that case, the award gave a restricted estate to the widow in the properties allotted to her but sub-section

(1) was held applicable because, inter alia the properties given to her under the award were on the basis of a pre-existing right which she had as an heir of her husband and not as a new grant made for the first time. A question was, therefore, posed if in the case of *Tulasamma*, properties were acquired by her under the compromise in virtue of a pre-existing right or they were acquired for the first time as a grant owing its origin to the compromise alone and to nothing else. The Court then examined the nature of the right of maintenance and the extent to which it conferred a right in relation to property and observed that the right of the widow to be maintained is, of course, not *jus in rem* since it does not give her any interest in the joint family property but is certainly *jus ad rem* i.e. right against the joint family property and that when specific property was, therefore, allotted to the widow in lieu of her claim for maintenance, the allotment would be in satisfaction of the right to be maintained out of the joint family property. That is how the question posed was answered in favor of *Tulasamma* and it was held that the properties were acquired by her under the compromise in virtue of a pre-existing right and not for the first time as a grant owing its origin to the compromise. The decisions of the various High Courts, which had taken the contrary view were over-ruled and the cases which had taken a view consistent with the view of the Supreme Court were approved. The theme, as indeed, the reasoning found further elaboration at the hands of *Fazal Ali, J.* was delivered the main- judgment. *Fazal Ali, J.* analysed some of the earlier decisions of the Supreme Court and the decisions of the various High Courts in which contrary view had been taken by the High Courts. One of the earlier decisions of the Supreme Court, to which *Fazal Ali, J.* was himself a party, i.e. *Smt. Naraini Devi vs. Smt. Ramo Devi*. : [1976]3SCR55 , which was directly in point and in which a contrary view had been taken, was overruled and it was pointed out that the various aspects, namely, the nature and extent of the Hindu women's right to maintenance the limited scope of sub-section

(2) and the effect of the Explanation to sub-section (1), which influenced the decision in Tulasamma, were neither brought to the notice of the Court nor were argued, and it was ignored that by the Explanation to sub-section (1), 'property given to a widow at a partition or in lieu of maintenance had been placed in the same category' as a share in the property.

(23) It follows, therefore, that sub-section (2) would operate to exclude the property out of the wide spectrum of sub-section (1) on the conditions of sub-section (2) being satisfied, if and only if the instrument is the source or the foundation for the grant and the beneficiary was either a stranger to the property or to the family or had no preexisting right to or in relation to or against that property, whether as an heir or as a widow entitled to maintenance. The essential condition to attract the provision of sub-section (2) of the Section is not satisfied in the present case in that, Kalawati was no stranger to the family of the testator, and the last sole surviving co-parcener. She was the widow of a pre-deceased son and was entitled to be maintained out of the property sought to be bequeathed. The limited estate conferred on her by the testator was a clear recognition of the obligation of the testator to provide maintenance for her out of the property and in clear recognition of her right to be maintained out of the property. She certainly had no right in the property or even to the property as an heir but by virtue of her undisputed right of maintenance, she could look to that property and could have perfected her title to it if a charge had been created. That the grant was in recognition of a pre-existing right is writ large in the terms of the will itself because in the Will, the testator describes Kalawati as indeed her daughter, Shanti Devi, as his 'Waris' i.e. heirs. True, in the law of succession, as it stood then, neither Kalawati nor Shanti Devi were the heirs of the testator and the only right that Kalawati had in relation to the property was the right of maintenance as the widow of a pre-deceased son. But this reference to her right in relation to property underscores, if such an emphasis was necessary, the claim that the grant was in recognition of a pre-existing right of maintenance. True, there are no express words in the Will which could be construed as property being allotted to Kalawati in lieu of maintenance or in lieu of arrears of maintenance but this is so implicit that nothing would turn on the absence of express words of allotment. The basic question's of any existing relationship between the female and the property

possessed by her, which is antecedent to the instrument and that test, to my mind, is fully satisfied.

(24) Learned counsel, for the plaintiffs, who had initially almost laughed away the claim of the defendant No. 1 based on the provisions of sub-section (1) of Section 14 of the Hindu Succession Act, had apparently realised that the contention of the defendant could prove fatal to the case of the plaintiffs and that the contention could not be easily brushed aside in view of the way the Supreme Court had construed the two sub-sections. Learned counsel therefore, made a valiant effort to bypass the provisions of sub-section (1) of Section 14 and to bring the case within the restricted parameters of sub-section (2) of the Section and sought to distinguish the decision in the case of Tulasamma on the ground that, that case did not involve the grant under a Will as also to read down the decision of the Supreme Court in the context of the facts of that case and sought, to justify the conclusion in favor of plaintiffs with reference to some of the earlier decisions of the Supreme Court and some of the decisions of the various High Courts. touching the question as to the nature and characteristics of the right of maintenance and the circumstances in which a widow may be deprived of the right. Learned counsel also sought to take advantage of the unfortunate circumstance of the unchastity of Kalawati to support his contention

(25) In the first instance, it was urged that the case of Tulasamma involved a family settlement, following disputes between different members of the family, and the settlement in terms, allotted the property to Tulasamma in recognition of a pre-existing right of maintenance and that that decision would have no application to the present case, where the grant was made by a Will and the grant made no express reference to the right of maintenance and no specific property was allotted to or referable to any right of maintenance of Kalawati. True, in the case of Tulasamma, the proceedings were initiated by Tulasamma by a petition for maintenance, which ultimately culminated in a compromise and in the settlement, Tulasamma was allotted the scheduled properties but was to enjoy only a limited interest therein with no power of alienation and the properties were to revert to the plaintiff in that case after her death and she continued to remain in possession after the coming into force of the [Hindu Succession Act, 1956](#). This contention,

however, overlooks the important circumstance that the propositions of law laid down in that case are not confined to cases where specific property is allotted to a female on a settlement or otherwise. The decision is based on a wider principle and the test laid down in both the Judgments clearly is, if the instrument by which the female comes by the property, is the foundation of the right to the property or the instrument is a mere recognition or materialisation of a pre-existing right i.e. a right which existed prior to the instrument. It is no doubt true that the principle enunciated is certainly wider than the strict facts and circumstances that called for a decision in that case; but I think, the wider observations of the Supreme Court, as indeed, the wider construction placed by the Court on the provisions of sub-section (1) of the Section and restricted construction of sub-section (2) of that Section, had a clear object, namely, to act in aid of the social purpose underlying the enactment. It would, therefore, be of no consequence as to what the nature of the instrument was or if there is an express reference to the pre-existing right and whether or not a specific property was allotted in lieu of maintenance. What is important is if the relationship of the female with the family or the property or the right in relation to the property, was antecedent to the instrument. That test, as I have said above, it clearly satisfied in the present case. Some of the earlier decisions of the Supreme Court which were, unfortunately, not commented upon in the case of Tulasamma, either because they were not referred to or were otherwise not considered relevant, do not appear to provide any basis for the contention.

(26) One of these cases is : [1978]3SCR520. This was the case of a life estate granted by a Will to a daughter and, with respect, it was rightly held in that case that Section 14(1) would not be applicable and the life estate would not be enlarged into an absolute estate because there was no antecedent right to the property. A daughter, in the law that stood then, had neither the right to the property nor any right in relation to the property by virtue of any possible claim of maintenance. It was the case of a married daughter.

(27) The decision of the Supreme Court in the case of Mst. Karmi, : AIR 1971 SC745 , no doubt supports the plaintiffs because there, a Hindu widow, who was certainly entitled to maintenance, got a life estate under the Will of her husband,

but the contention that the life estate under the Will became absolute estate under sub-section ( 1 ) of Section 14 of the Hindu Succession Act, was repelled. This judgment was never considered by the Court in the case of Tulasamma. It is a short judgment running into barely one page. The Bench included Justice Shah and Grover, JJ., who were party to the earlier judgment in the case of Badri Prasad, : [1970]2SCR95 , which is one of the earliest judgments of the Supreme Court in which, on the basis of the Explanationn to the Section. it was brought out that sub-section (2) 'can come into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right in the famale Hindu who is in possession of the property.' The larger questions canvassed before the Court in the case of Tulasamma, as also in the case of Badri Prasad, as to the nature and characteristics of the right of maintenance and as to how the right of maintenance conferred a right in relation to the property, even though not constituting a right in the property, were neither posed nor answered in the case of Mst. Karmi. There is no discussion as to why the right of the wife to maintenance was not an antecedent right in relation to the property and the reasons why it could not be said that the bequest in the Will was in recognition of the pre-existing right to maintenance. In view of the other decisions of the Supreme Court, including the decision in the case of Tulasamma, the decision of the Supreme Court in the case of Mst. Karmi was impliedly overruled, even though not expressly referred to. If the question before the Supreme Court in the case of Karmi was considered in the context of the principles enunciated in the case of Tulasamma as indeed, some of the earlier cases referred to in that Judgment, the decision in the case of Karmi would have been different and I say so with utmost respect.

(28) In the case of Kunji Thommen, 1970 Ker 284, the Kerala High Court reiterated the principle laid down earlier by that High Court in the case of Saraswati Amal, 1966 Ker 66 but applied sub-section (2) on: the peculiar facts of that case and held that the allotment of properties in the partition was not on the basis of any preexisting right. The decision in that case really turned on the conclusion that there was no moral obligation on the father-in-law to maintain a widowed daughter-in-law, who was not dependant on the father-in-law, and had independent means of her own. The Court, however, considered the contention

alternatively 'on the assumption, that there was a legal obligation.' It was, however, found that the partition was effected to benefit other members of the family, who had no right to the property, and that the widow in that case could not have claimed any interest in the properties during the life time of the last holder. It is interesting to notice that because of the decision of the legal propositions, this case was approved in the Judgment of Bhagwati, J. for himself and Gupta, J. as he then was, but this case finds no mention in the list of cases approved by Fazal Ali, J. in his judgment even though in para 51 of the Judgment,, it is noticed that this case reiterates the principle laid down by the Kerala High Court earlier but "on the facts of that particular case, the High Court held that under the family settlement the widow did not get any right to maintenance but was conferred a new right which was not based on her preexisting right and on this ground the High Court felt that the widow would not get an absolute interest in view of the Explanationn of Section 14(1).' The decision of the Kerala High Court would not be a authority for the facts and circumstances in this case where there was an admitted right to maintenance before the Will and the Will records the fact that the testator regarded Kalawati as his 'waris'. This expression clearly implies the recognition of an existing status and right in relation to the property of the testator.

(29) The decision of a learned single Judge of the Allahabad High Court in the case of Smt. Ram Devi, 1978 All Law Rep 715, on which reliance was placed is of little assistance to the plaintiffs for a variety of reasons. In the first instance, the peculiar facts of that case are clearly distinguishable. The widow never came to possess the property in that case. She claimed the benefit of Section 14(1) of the Hindu Succession Act, merely on the basis that she had the right of being maintained out of the joint family estate and of residence in the joint family house and that these rights constituted property which she possessed and by virtue of that possession, she became full owner of the property by operation of sub-section (1) of Section 14. It was in this context that it was held that 'bare right of being maintained out of the joint family estate and of residence in the joint family house could not be said to be such a property as may have been possessed by the widow within the meaning of S. 14 of the [Hindu Succession Act, 1956](#) so as to make her a full owner of any property, unless some property had been specifically earmarked and settled on her in lieu of that right of maintenance.' No property had,

therefore, been given to her in lieu or in recognition of any such right of maintenance. Secondly, the learned Judge did not purport to express any considered opinion in the view that he took that the suit must be tried afresh. That is why the learned Judge added that 'I need not express any concluded opinion in the matter.' Moreover, the decision of the Supreme Court in the case of Tulasamma is an authoritative enunciation of the law as to the nature and characteristic of the right of a widow of being maintained out of the joint family estate and as to the circumstances in which there is a preexisting right to the property as distinguished from the instrument which may be the only foundation of the right.

(30) It is no doubt true that when the Bill which ultimately became the Act, was referred to a Joint Committee, Clause 18(2) of the Bill corresponding to the present sub-section (2) of Section 14, referred only to acquisition of property by a Hindu female under 'gift or Will' and it was only subsequently that the other modes of acquisition were added so as to include property under an instrument, decree, order or Award; and while dealing with this circumstance, Bhagwati, J. in his Judgment pointed out that this seemed to indicate that the

LEGISLATIVE intention was that subsection (2) should be applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right a kind of acquisition akin to one under gift or will.

It is, however, difficult to read into these observations that an acquisition under a gift or a Will must always connote acquisition for the first time or necessarily exclude a pre-existing right to or in relation to such property. If this were so, subsection (1) could not have been so widely construed in spite of the Explanation to it but it has been so construed. The use of the expression 'devise' in the Explanation would appear to be significant when considering the case of a Will. It is also good to remember in this context that a Will may be made, and Wills are invariably made, in favor of legatees, who may be heirs even without the Will or may have rights in relation to the property after the death of the testator and such Wills are intended to merely give effect to that right or to put the right beyond any possible controversy. Section 14(1) is wide enough to cover the case of any

acquisition, irrespective of the mode by which it is acquired, including a Will or a gift, and the acquisition under a Will or a gift, as indeed, any other instrument would fall outside the purview of subsection (1) and be covered by sub-section (2) only if the condition that the instrument was the foundation for the acquisition was satisfied and not otherwise. On a reference to the judgment of Fazal Ali, J., it would be found that of the three conditions for the application of sub-section (2), enumerated in para 40 of the Judgment, condition No. 3 is

THAT the instrument must create or confer a new right, title or interest on the Hindu female and not merely recognise or give effect to a pre-existing right which the female Hindu already possessed.

This is sufficient authority for the proposition that acquisition, even under a Will, would be outside the purview of the exception if it merely recognised or gave effect to a pre-existing right of a female Hindu in relation to the property.

(31) Based on some of the statutory provisions of the law relating to a Hindu female, as indeed, the law relating to maintenance and transfer of property, and a large number of cases which took the traditional view of nature and characteristics of Hindu widow's right to maintenance and the effect of deprivation of the right on the validity of the transfer of property, counsel for the plaintiff sought to emphasise the 'inchoate' nature of the right, its illusory character and the imponderables involved in perfecting the right of maintenance to a right to in or against property. A distinction was also sought to be drawn between the right of an heir to property and the mere right of a maintenance holder in or against the property. It, however, appears to me that with the decision in the case of Tulasamma, these contentions have ceased to have any relevance. The decision in the case of Tulasamma is based on a welcome recognition of the true nature and scope of right of maintenance, the relationship between the right of maintenance and right to property, even though no specific charge is created and there is neither allotment of any property nor a decree in relation thereto and, what is more, the right of maintenance in relation to property has been virtually put at par with the right to property on inheritance. This has been possible on an analysis of the authorities on the subject of right of maintenance of a Hindu female and the Shastric Hindu

Law on the subject as also because of the legislative device introduced in the Explanation to sub-section (1) of Section 14. It is useful to notice in this context that one of the questions posed before the Court in the case of Tulasamma as : 'whether a Hindu widow has a right to property in lieu of her maintenance and if such a right is conferred on her subsequently by way of maintenance, it would amount to mere recognition of a pre-existing right or a conferment of a new title so as to fall squarely within Section 14(2) of the 1956 Act.' This is how Fazal Ali, J. summarised the position of the Hindu women's right to maintenance:

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* 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 preexisting 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.

(32) It is interesting to notice In this context that the claim or the right to maintenance possessed by a Hindu female has been held to be and is considered really,

A substitute for a share which she would have got in the property of her husband'. If that be so, the Supreme Court, with respect,. rightly posed the question that if that was the position, 'where a Hindu female who gets a share in her husband's property, acquires an absolute interest by virtue of Section 14(1) of the Act, could it be intended by the Legislature that in the same circumstances, a Hindu female who could not get a share but has a right of maintenance, would not get an absolute interest

(33) It may be useful to remember 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 subject to certain restrictions, would be covered by Section 14(1) and not by sub-section (2) approved by the Supreme Court in the case of Tulasamma, is based on the premises that the right of Hindu widow to claim maintenance is undoubtedly ' a right against property though not a right to property', and the provision of sub-section (2) could not be interpreted in a way so as to destroy the concept and defend the purpose which is sought to be effectuated by subsection (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 and that the proviso would not apply to any grant or transfer where it is 'merely in recognition or declaration of a pre-existing right', and would apply only to 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.'

(34) It was also pointed out by the Supreme Court that the contrary view expressed by the Madras, Orissa, Andhra Pradesh, Allahabad and Jammu & Kashmir High Courts proceeded on the ground that a widow's claim to maintenance was merely 'an inchoate or incomplete right having no legal status, unless the widow gets a property in lieu of maintenance or unless the charge is created in a particular property, the claim for maintenance cannot be legally enforced; and that where under a grant a property is allotted to a widow in lieu of the maintenance, it is not the recognition of any pre-existing right but amounts to conferment of a new right for the first time.' While rejecting the contrary view, it was observed by Fazal Ali, J. that 'the nature and extent of the right of the widow to claim maintenance is undoubtedly a pre-existing right and it is wrong to say that such a right comes into existence only if the property is allotted to the widow in lieu of maintenance and not otherwise.' These observations, to my mind, provide a complete answer to the contentions raised on behalf of the plaintiffs. It has been repeatedly pointed out that the provision of Section 14 was intended to remove the disability attaching to the Hindu female's right to property and the legislation has a commendable social object. The provision must, therefore, not only be construed in the light of that objective but must also be applied so as to further the social object sought to be achieved. To accept the contention of the plaintiffs would be to frustrate the objective of the legislation.

(35) It was then urged that in any event, provision for the maintenance of Kalawati could have been adequately made by one of the properties and the Will having left one property in her favor as an absolute estate, with the right of alienation and Kalawati having, during her lifetime, alienated that property pursuant to the legacy, the right to maintenance could not be extended against the other properties, forming subject-matter of the Will and now forming subject-matter of the present suit. This argument or facts appears to be quite attractive but is unable to stand closer scrutiny.' It is the plaintiffs case that Section 14(1) would not be attracted and the operation of sub-section (2) of Section 14 could not be excluded because no property was specifically allotted to Kalawati by way of or in lieu or expressly in

recognition of the right of maintenance and I have held that there was no express or specific allotment of a particular property for that purpose. If that be so, the right of maintenance would be a charge against all the properties and could not therefore, be satisfied because of a specific property allotted for the purpose of maintenance. It is true that one of the properties was subject-matter of an absolute estate and it is a common case that Kalawati sold that property during her lifetime and may have utilised the proceeds for her maintenance and that of her daughter but there is nothing to indicate that the need of the maintenance of Kalawati and her infant child had thereby been exhausted or that on the disposal of that property, the right of maintenance against the rest of the property ceased to exist. The bequest in the Will has to be seen in its totality and manifests a clear intention that the properties were being given to Kalawati partly as absolute estate and partly as a life estate because she was a 'Waris' of the testator and she being a ^-deceased son's widow, the testator felt an obligation to maintain her and her daughter. It is, therefore, not possible to apportion the right of maintenance against any particular part of the property or to hold that part of the property would be covered by sub-section (2) of Section 14 and the rest would be outside its provision.

(36) Lastly, it was urged that Kalawati forfeited her right of maintenance in relation to the property because of unchastity and that if the bequest in her favor was in lieu of maintenance or in recognition of the right or for its implementation, then, consequent on the forfeiture of the right of maintenance, there was a divesting of property and on such forfeiture, she could not be said to be holding or possessed of the property in recognition of the right of maintenance. Plaintiffs had not raised this contention in the pleadings apparently because in the written statement the claim of the defendant that by virtue of sub-section (1) of Section 14, the life estate flowered into an absolute estate, had not been raised, and a grievance was made that if such a plea had been specifically raised, it would have been open to the plaintiffs to set up a defense of unchastity. However, plaintiffs had laid a basis in the plaint itself for a possible plea that Kalawati was unchaste and that defendant No. 1 was an illegitimate son in that it was specifically stated in the plaint that defendant No. 1 was born to Kalawati after more than 10 years of the death of her husband. The averment was, however, not elaborated further. In his written,

statement, defendant No. 1 was evasive with regard to the claim of legitimacy and that is why before the issues were framed on May 14, 1980, defendant No. 1 was examined by the Court, apparently at the instance of the plaintiffs, with regard to the date of his birth and the date of death of Onkar Prasad. Defendant No. 1 was again evasive because he neither disclosed his date of birth nor the date of the death of Onkar Prasad. The issues framed on May 14, 1980 included the issue, if defendant No. 1 was the son of Onkar Prasad. Subsequently, when plaintiffs by I.A 57181 sought the deletion of certain issues and refraining of others, defendant No. 1 in his reply raised a specific plea calling in aid the provision of Section 14(1) of the Hindu Succession Act and maintained that Kalawati was entitled to maintenance as the widow of a pre-deceased son and, therefore, had a pre-existing right in relation to the property. Plaintiffs thus had the necessary opportunity to raise the plea of chastity at that stage as disentitling Kalawati to any maintenance but failed to do so. However, during the trial of the suit, both the parties were not unaware of the allegation of unchastity, the material in relation to it and its lively impact on Kalawati's right to maintenance and its possible implication on the nature of the estate bequeathed to and possessed by her when the Act came into force. Counsel for the parties were therefore, allowed to agitate this question.

(37) Whether Kalawati remained chaste or not is a question that would present little difficulty even though there are on record, plaintiff's admissions, as also that of the plaintiff's father, an eminent Advocate himself, that defendant No. 1 was the son of Onkar Prasad. Umrao Singh executed the will in 1927. He died in 1928. His adopted son. Onkar Prasad had admittedly died by then, leaving Kalawati as a widow and an infant child Shanti Devi, a daughter. It is obvious from the will that when Umrao Singh executed his will in 1927, Kalawati had no son. It is nobody's case that Kalawati was pregnant of defendant No. 1, during the lifetime of Umrao Singh, and the factum of pregnancy was concealed from him. This is patent - because otherwise the existence of a son of a pre-deceased son or the possibility of the birth of one would have not only been mentioned in the will but would have made all the difference. In the Will, the testator exhibited an anxiety that Kalawati, a widow holds a life estate, except in relation to one house, followed by a life estate for her daughter and the property ultimately going to the male progeny of

the daughter, the anxiety being that the property ultimately is in the hands of a male heir from Kalawati's daughter. If Kalawati had a son or was expecting a child, the whole context would have changed. The defendant No. 1 was admittedly born to Kalawati and from what has been said above, it inevitably follows that he could not have been born from Onkar Prasad, otherwise his mention could not possibly have been omitted in the Will. If Onkar Prasad died in 1922, as alleged by plaintiffs, the position is worse but even if he died sometime thereafter, but admittedly before the death of his father, it hardly improves the position for defendant No. 1 it is no doubt true that a number of documents have been placed on record in which defendant No. 1 has been described as the son of Onkar Prasad and the plaintiff's father was the author of those documents. But it is difficult to ignore that until the Differences arose between the parties, they had friendly relations obviously because, in any event, Shanti Devi, the mother of the plaintiffs and defendant No. 1 had a common mother, even though not a common father. Legitimacy is basically a matter of acceptance by the family. So long as defendant No. 1 had been accepted as the son of Onkar Prasad, there was hardly any problem. The fact that he was describing himself as son of Onkar Prasad and was being described as such by his sister and the other relations, is, therefore, quite understandable. Illegitimacy does not merely stigmatise defendant No. 1, it really stigmatise his mother, who was also Shanti Devi's mother. Moreover, whether legitimate or not, there was no other respectable way in which defendant No. 1 could describe himself. The reference in the written statement to the fact that property was purchased at an auction by the plaintiffs in the name of defendant No. 1 as a benamdar, as contended by the plaintiffs, but built upon and in the occupation of the plaintiff, clearly shows that in spite of the conflicting claims to property, no love was lost between them until later for more embittered their relations. Defendant No. 1 has not clearly disclosed the date of his birth but from the affidavits in which he has given his ages, it is clear that he could not have been born either during the lifetime of Onkar Prasad or within less than one year of his death. Learned counsel for defendant No. 1 did not seriously contest the obvious conclusion that defendant was an illegitimate child of Kalawati, born in 1930 or thereabout, long after the death of Onkar Prasad. This circumstance, unfortunately, leads to an irresistible conclusion that around that time, Kalawati

became unchaste.

(38) What then is the effect of this unchastity on the bequest made in her favor and, in particular, on the claim that on the passing of the 1956 Act. the life estate flowered into an absolute estate. The unfortunate circumstance of the 'unchastity of Kalawati, to my mind, had no impact either on the validity of the bequest or on the operation of Section 14. True a Hindu female entitled to maintenance would forfeit the right to maintenance in the event of unshastity almost as if continued chaste life was a condition of the grant of maintenance. Such was the adherence to the matrimonial ethics as also the subjugation of the Hindu female. A Hindu male could perhaps have his dissipations, both in sex and otherwise, with impunity without attracting any evil consequences in his material life but not so a Hindu widow. The forfeiture of the right to maintenance, however, could not have any retrospective effect on the vesting of the property by virtue of the Will in recognition of the right of maintenance. There was an admitted right to maintenance when Umrao Singh died in 1928. On the death of Umrao Singh, the vesting of the estate in Kalawati became complete. Maintenance of Kalawati was no doubt the motivation for the grant as also its object but the vesting having taken place, there was no question of any divesting of Kalawati because of unchastity. A provision to that effect in the Will would perhaps have made qualitative difference but there is no such provision. In any event, even if there, was divesting on forfeiture of right of maintenance, it would, in no way, improve the case of the plaintiffs.. The grant was still in recognition of a right that existed when the grant was made and the condition of sub-section 2 of Section 14 would still not be satisfied. If the forfeiture of the right of maintenance invalidated the grant by any process of reasoning the plaintiffs would be in no better position because on such invalidity and divesting, Kalawati remained possessed of the property without the colour of a title, and perfected that title by continued adverse possession over the years. This would have also flowered into absolute estate either with or without the aid of sub-section (1) of Section 14 of the Act. Unchastity of Kalawati, therefore, had no impact on the nature of the estate held by her and as to its transformation on the coming into force of the Act of 1956.

(39) If Kalawati held the property as an absolute estate by virtue of sub-section (1 ) of Section 14 of the Hindu Succession Act, either because the devise of a life estate in her favor in the will of the testator was a grant in recognition of of an existing right arising out of the right of being maintained out of the property or she held the property over the years by way of adverse possession, it follows that on her death, the second bequest in favor of Shanti Devi, as in. deed, the further bequest in favor of the plaintiffs stood frustrated, and the property passed by succession to two heirs of Kalawati i.e. defendant No. 1 and her sister, Shanti Devi. This would disentitle the plaintiffs to the declaration sought by them. Whether the plaintiffs succeeded to the half share that fall to the share of Shanti Devi as her sons or there were other heirs of Shanti Devi entitled to take the property along with the plaintiffs, is a further question with which I am not concerned in the present suit, the claim of the plaintiffs in the suit being solely based on the right flowing from the Will.

(40) For all these reasons, the suit fails and is hereby dismissed but, in the peculiar circumstances, leaving the parties to bear their respective costs.

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