

PETITIONER:
SMT. HIMI D/O SMT. LACHHMU & ANR.

Vs.

RESPONDENT:
SMT. HIRA DEVI WD/O BUDHU RAM & ORS.

DATE OF JUDGMENT: 25/09/1996

BENCH:
N.P. SINGH, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majumdar, J.

The appellants who are the heirs of one Bai Lachhmu, are the original plaintiffs whose suit for possession against the respondent-donees of suit agricultural lands claiming through the donor Bai Utti came to be decreed by the Trial Court and which decree was confirmed by the District Court but who lost before the High Court in Second Appeal and consequently their suit for possession came to be dismissed by the High Court.

A few relevant facts leading to the present proceeding by special leave to appeal under Article 136 of the Constitution of India may be noted at the outset. the suit lands originally belonged to one Bali Ram. Said Bali Ram made a will of his properties dividing equally the suit properties between his second wife Utti and his daughter from the first wife Bia Lachhmu through whom the appellants claim. The legatees under the said Will of Bali Ram were his second wife and his daughter from the first wife who inter se were step-mother and step-daughter respectively.

Said Bali Ram died on 25th July 1946. Thereafter Lachhmu claiming her half share in the properties on the basis of the Will of her father Bali Ram filed a Civil Suit on 5th May 1947 against her step-mother Utti challenging the mutation of properties in her name and for enforcing her rights under the Will and for possession of her half share in the properties as a legatee under her father's Will. In the said suit between step-daughter plaintiff Bai Lachhmu and step-mother Bai Utti a compromise was arrived on 6th November 1947. Under the said compromise the defendant step-mother acknowledged the ownership of the half share of plaintiff Bia Lachhmu in the suit properties pursuant to the Will of Bali Ram. The plaintiff Bai Lachhmu on the other hand agreed that her properties comprising of the half share under her fathers' will may remain in possession of Bia Utti during her lifetime but after the death of Bai Utti, plaintiff Bia Lachhmu or her heirs would be entitled to enter upon the possession of the suit properties. It was also agreed between the parties that both the parties will have equal rights in the suit properties during the lifetime

of Bai Utti, the step-mother of the plaintiff. Accordingly consent Decree was passed. We will refer to the relevant terms of the consent Decree a little later. To resume the narration of events Bai Utti who was permitted during her lifetime to remain in possession of the properties which were accepted to be belonging to Bai Lachhmu as per the aforesaid Compromise Decree, assuming that she had become full owner of these properties during her lifetime presumably by virtue of Section 14 sub-section (1) of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') donated the suit properties by two gift Deeds dated 17th April 1970 and 26th August 1970 in favour of one Bellu Ram and one Budhu respectively. Under these gift Deeds this apart from her half share in the properties for which there was no dispute she also gifted away the other half share of the properties which belonged to Bai Lachhmu and which half share was possessed by her during her lifetime pursuant to the Consent Decree. Accordingly the respective donees entered upon possession of these properties. Thereafter Bai Utti dies on 4th September 1971. The appellant as heirs of Bai Lachhmu filed a Civil Suit against both the donees Bellu Ram and Budhu on 28th January 1972 claiming possession of the properties which according to the appellants belonged to Lachhmu and which were illegally donated by Bai Utti to the concerned donees. The learned Trial Judge after hearing the parties passed a decree for possession on 6th September 1976 in favour of the appellants, holding that they are the heirs of Bai Lachhmu and that the defendants are stopped from challenging the Will as they had claimed their rights under Bai Utti and they were bound by the admission made by Bai Utti relating to the validity of the Will and the right, title and interest regarding the half share of Bai Lachhmu in the suit properties. The learned Trial Judge also held that Bai Utti who was possessed of these properties. When the Act came into force possessed them as limited owner but not on account of any pre-existing right in these properties and that her right flowed from the Compromise Decree passed in 1947 and consequently she had a restricted estate not capable of being enlarged into absolute ownership on account of the provisions of Section 14 sub-section (2) of the Act. Appeal preferred against the said decree by the aggrieved defendant came to be dismissed by the First Appellate Court on 19th November 1979. The aggrieved defendant thereafter carries the matter in second appeal before the High Court. A learned Single Judge of the High Court took the view that as defendant Budhu was a third party and a stranger and as he was claiming de hors the Will of Bai Ram and as the said Will was not proved in the litigation between the parties and as the admission of Bai Utti regarding the validity of the Will in the Consent Decree was not binding on Budhu the suit of the appellants was liable to be dismissed and accordingly the learned Single Judge of the High Court allowed the second appeal and dismissed the suit of the appellants, as noted above. The said judgment and decree of the High Court is brought in challenge by the dissatisfied plaintiffs in this appeal.

Learned counsel for the appellants vehemently contended that the compromise Decree dated 6th November 1947 between the step-daughter Bai Lachhmu, predecessor-in-interest of the appellants on the one hand and her step-mother Bai Utti, predecessor-in-interest of the contesting respondents conferred for the first time a right on Bai Utti to remain in possession of the suit lands which belongs to Bai Lachhmu. That the said Consent Decree which gave life interest to Bai Utti does not acknowledge any pre-existing

right of Bai Utti in the properties for maintenance as the step-daughter was not bound to maintain the step-mother. Therefore, the arrangement between the parties recognised by the Consent Decree created a new right in favour of Bai Utti to remain in possession of the decree and consequently Section 14 sub-section (2) of the Act applied and not Section 14 sub-section (1). It was next contended that the High Court had totally gone wrong in holding that the admissions contained in the Consent Decree on the part of Bai Utti were not binding on the respondents who were strangers to the said Decree. It was, therefore, contended that the High Court had patently erred in law in interfering with the Decree of the Trial Court as rightly confirmed by the First Appellate Court.

Learned counsel for the respondents on the other hand submitted that admittedly the contesting respondent-donees were not admittedly the contesting respondent-donees were not parties to the Compromise Decree. That even though the Compromise Decree acknowledged the rights of Bai Lachhmu under the Will of her father as the Will was not legally proved on record no right in the suit properties endured in favour of Bai Lachhmu and consequently the appellants as her heirs also cannot claim any interest in the suit properties. That the suit properties were possessed by Bai Utti when Section 14(1) of the Act came into operation and, therefore, her possession as limited owner matured into full ownership pursuant to Section 14(1) and consequently the suit was rightly dismissed by the High Court.

Having given our anxious consideration to these rival contentions we find that the High Court was not justified in upsetting the decree for possession as passed by the Trial Court and as confirmed by the First Appellate Court. The reason for reaching this conclusion is obvious. It may be that in the suit filed by Bai Lachhmu the step-daughter against Bai Utti her stepmother the Will of Bali Ram bequeathing one half share in the properties of the of the testator in favour of his daughter Bai Lachhmu was seriously disputed. But that dispute was settled and Bai Utti accepted by way of compromise the right, title and interest of Bai Lachhmu in the suit properties as flowing from the Will of her father. When we turn to the consent terms dated 6th November 1947 we find the following clear recitals on the part of Bai Utti acknowledging the right, title and interest of Bai Lachhmu in the suit properties :

"Defendant no.1 Bai Utti had accepted with regard to the half share in right, title and interest in favour of the plaintiff in the remaining lands, the will dated 20th March 1946 made by Bali, the father of the plaintiff. As regards in the remaining half lands, right, title and interest thereto vests in the defendant no.1. Both the plaintiff and defendant no.1 have equal right, title and interest in these lands. However, the possession would remain with the defendant no.1 and that after her death the plaintiff shall be entitled to take the possession thereof, provided she is alive and if she is not alive, her heirs would be entitled to take the possession. decree

may be passed in terms of the conditions of this compromise arrived at between the plaintiff and the defendant no.1, and the case file be consigned to the Record room.

N.B.: During the lifetime of the defendant no. 1, the plaintiff shall not be entitled to take possession."

In view of these clear recitals in the Compromise Decree it becomes clear that Bai Utti who was defendant no.1 in that suit acknowledged the right, title and interest of plaintiff Bai Lachhmu, her step-daughter to the extent of one half share in the suit properties and share agreed to remain in possession of the properties during her lifetime only and it was clearly provided that on her death plaintiff Bai Lachhmu or her heirs would be entitled to take possession of these properties obviously as full owners thereof. Thus only a restricted right to occupy the suit properties was created in the properties belonging to the plaintiff Bai Lachhmu in favour of her step-mother Bai Utti during the latter's lifetime. It is obvious that this life interest was created not in lieu of any pre-existing or antecedent right of Bai Utti for being maintained by the plaintiff Bai Lachhmu, her step-mother. The step-daughter was not bound to maintain her step-mother under any provisions of law. Nor was there any pre-existing legal right of the step-mother Bai Utti qua these properties. Despite that Bai Utti was permitted to remain in possession of plaintiff Bai Lachhmu's property which was purely by way of a concession to resolve the dispute between the parties. Thus the right to remain in possession of the first rime on Bai Utti, the step-mother by her step-daughter Bai Lachhmu, the plaintiff in that suit. By these consent terms Bai Utti also acknowledged the right of the plaintiff Bai Lachhmu flowing from her father's Will. This life interest flowing from the consent terms in favour of Bai Utti, therefore, cannot be said to have been created in acknowledgement of any pre-existing right of maintenance. Consequently Section 14 sub-section (1) could not be attracted on the facts of the present case and it is only Section 14 sub-section (2) which applied. Section 14 with its sub-sections reads as under :

"14. Property of a female Hindu to be her absolute property. - (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, of in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or by 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."

It is no doubt true as decided by this Court in the case of Vaddeboyina Tulasamma and others v. Vaddeboyina Sesha Reddi (dead) by L.Rs. AIR 1977 SC 1944 that sub-section (2) of Section 14 of the Hindu Succession Act is a proviso to sub-section(1) of Section 14. But Section 14 sub-section (1) would apply only if property is acquired by female Hindu in lieu of maintenance or by virtue of any pre-existing right. Bhagwati, J., (as he then was) speaking for himself and A.C. Gupta, J., in the aforesaid decision has made the following pertinent observations in this connection in paras 3 and 4 of the Report :

"Sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property. Sub-section (2) is more in the nature of a proviso or exception to sub-section (1) . It 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 a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of woman in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). it cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1).

Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, to must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right,

under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. Where, however, property is acquired 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 prescribes a restricted estate in the property."

Applying the aforesaid settled legal position to the facts of the present case it must be held that the Compromise Decree for the first time created a right in favour of Bai Utti to remain in possession of the property belonging to Bai Lachhmu only during her lifetime and as that right was conferred for the first time under the Consent Decree and was not in lieu of any pre-existing right of Bai Utti in Bai Lachhmu's property Section 14 sub-section (2) applied to the facts of the case and not Section 14 sub-section (1). It is difficult to appreciate how the High Court persuaded itself to hold that as the Will was not proved on record and as the donees by claiming the suit properties from the donor Bai Utti were strangers to the Consent Decree they were not bound by the admission of Bai Utti in the Consent Decree. It is obvious that the contesting respondents herein who were donees of the properties could not claim a better title to the suit properties than what was available to the donor Bai Utti. If Bai Utti was not the full owner of the properties she had no right to gift away these properties in favour of the respondent-donees. They could not be said to be strangers to the Consent Decree, on the contrary, they were claiming through one of the parties to the Consent Decree, namely, Bai Utti. The obligations flowing from the Consent Decree and which were binding to the donor Bai Utti would necessarily bind the donees, namely, the respondents who stepped in the shoes of Bai Utti. They cannot claim any better right than what the donor had only a personal right to occupy the properties during her lifetime, she could not have conveyed any title of the properties to the donees. It is equally difficult to appreciate how the learned Single Judge of the High Court could hold that admissions of the predessor-in-title of the respondent-donees were not binding on the respondents. For all these reasons, therefore, it must be held that the High Court was in error in interfering with the Decree for possession as passed by the Trial Court and as confirmed by the First Appellate Court by holding that Section 14 sub-section (2) of the Act was not applicable to the facts of the present case and Bai Utti had become the full owner of the sit properties pursuant to the said provision.

In the result this appeal succeeds and is allowed. The judgment and decree of the High Court in R.S.A. No.18 of 1978 dated 5th August 1988 is set aside, instead the decree padded in favour of the plaintiffs by the learned Senior Sub-Judge, Kulu in 6th September 1976 and as confirmed by the learned Additional District Judge, Mandi, Himachal Pradesh, on 9th November 1977 in Civil Appeal No.50 of 1976 is restored. In the facts and circumstances of the case there will be no order as to costs.

JUDIS