

PETITIONER:
C. MASILAMANI MUDALIAR & ORS.

Vs.

RESPONDENT:
THE IDOL OF SRI SWAMINATHASWAMISWAMINATHASWAMI THIRUKOIL & O

DATE OF JUDGMENT: 30/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
AHMAD SAGHIR S. (J)
G.B. PATTANAIK (J)

CITATION:
1996 AIR 1697 JT 1996 (3) 98
1996 SCALE (2)664

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard the counsel on both sides.

The appeal by special leave arises from the judgment dated July 2, 1992 of the Division Bench of the Madras High Court rendered in LPA No.161 of 1988.

The appellants are the alienness from Sellathachi, widow of Somasundaram Pillai who had executed a will, Ex-A3 on 16.7.1950 bequeathing the suit properties to his wife and his cousin's widow Janakathache mentioning thereunder as follows:

"Whereas I have no male or female issues and my wife (1) Sellathachi and (2) Janaka Thathachi, wife of my senior paternal uncle's son Thabasuya Pillai are living with me and in my family and other than the other 2 persons, there is none else in my family. Amongst the aforesaid persons, the aforesaid Janaka Thachi have got only maintenance relationship and none else in my family have any right in the share or have maintenance relationship. I am duty bound to provide maintenance for the aforesaid two persons and I have no other duty to be performed. Therefore, after my lifetime, the under mentioned A Schedule property valued at Rs.2000/shall be got by the aforesaid two persons and shall be enjoyed in equal shares without any right to alienate the same and

perform the charities as per their wish and after the lifetime of both the aforesaid persons, Govindasrasan Pillai, s/o Peria Pillai, of the aforesaid Eduvankudi Village shall be the Trustee of A Schedule property and with the income derived from the under mentioned land shall perform the Pooja to the idol at Swamimalai Sri Swaminatha Swami Devasthanam, Kumbakonam Taluk, every month on the Krithigai Satar Day and also do the charity of power feeding on the aforesaid day, and also shall put up the lamps every day at the Subramania Swamiar Temple of the aforesaid Edavankudi village and perform the Pooja and the Charity of poor feeding every month on the Krithigai Star Day. Further in respect of the under mentioned B Schedule property valued at Rs.1000/-, after my lifetime, the aforesaid Govinda Rajan Pillai himself shall be the trustee and from the revenue derived from the aforesaid property shall perform the Pooja and the charity of poor feeding as detailed above to the aforesaid Swami Natha Swami and the aforesaid Subramania Swamy. Amongst the aforesaid Sellathachi and Janaka Thachi, if one of the persons were to die survived by another, the surviving Member shall have the right to enjoy the A Schedule property in its entirety. This Deed of will shall come into force only after my lifetime, and I shall have the right and authority to change or cancel this Deed of Will during my lifetime."

Somasundaram Pillai died in September 1950. The legatees Sellathachi and another had come into possession of the properties. Janaka Thathachi died in the year 1960. In 1970, Sellathachi had appointed a power of attorney-holder who had alienated the suit properties and the appellants had purchased them under registered sale deed. The suit was filed for declaration that the legatees having succeeded to limited estate under the will, the alienations made by Sellathachi were illegal. The trial Court decreed the suit. The learned single Judge allowed the appeal and dismissed the suit and in LPA No.161/88 dated July 2, 1992, the Division Bench of the High Court has set aside the decree of the single Judge holding that the legatees had succeeded to restricted estate under subsection (2) or Section 14 of the Hindu Succession Act, 1956 (for short, the "Act") and that, therefore, their rights have not blossomed into absolute estate. Thus this appeal by special leave.

The question, therefore, is: whether Sellathachi, the widow of Somasundaram Pillai, had become the absolute owner, by operation or Section 14(1) of the Act? Recital of the Will clearly indicates that the testator was conscious of the pre-existing legal position, namely, he was under an

obligation to maintain his wife and also moral obligation to maintain his cousin's wife. He stated that "I am duty bound to provide maintenance for the aforesaid two persons and I have no other duty to be performed". He had stated that after his lifetime the two legatees would be entitled to take possession of the properties and enjoy the same in equal share without any right to alienate and to perform the charities as per his last wish. He also mentioned that if one of the legatees pre-deceases, the other surviving member would have the right to enjoy the properties mentioned in the will. The right to maintenance and a charge on her husband's properties are pre-existing legal rights available to her

Section 14 of the Act reads thus:

"14(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.-In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or device, or at a partition, or in lieu of maintenance of 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 whatever, and also any such property held by her as stridharas 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."

In Tulasamma vs. V.Sesha Reddi [(1977) 3 SCR 261], a Bench of three Judges of this Court had considered the right acquired under the will and held at page 268 thus:

"Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Sastric law, to abridge the stringent provisions against propriety rights which were often regarded as evidence of her perpetual tutelage and to recognize her status as an independent and absolute owner of property."

At page 269, it was further held that:

"Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property."

Thota Sesharathamma vs. Thota Manikyamma [(1991) 3 SCR 717 = (1991) 4 SCC 312] is also a case under which the legatee had obtained under a will a limited estate known as widow's estate, prior to the Act came into force. When the suit was laid for declaration that she became only a limited owner, this Court had considered the controversy and held thus:

"Devolution of the property under the will would take effect after the demise of the testator and the legatee would be bound by the terms of gift over etc. The stranger legatee cannot take shelter under subsequent change of law to enlarge the operation of restrictive covenant to claim absolute ownership in the property bequeathed to her. But socio-economic amelioration under the Act engulfs an instrument under the sweep of Section 14(1) thereof; it extinguishes the pre-existing limited estate or restrictive condition and confers absolute and full ownership of the property possessed by a Hindu female as on the date when the Act had come into force, namely, June 17, 1956. The courts are not giving retrospective operation to Section 14(1) or to the instrument. The courts only would be applying the law to the facts found as on the date when the question arose to find whether legatee has pre-existing vestige of title under law; and the nature of possession of the property held by her and whether the legatee would get the benefit of Section 149(1) of the Act."

In Mangat Mal vs. Punni Devi [(1995) 6 SCC 88], another Bench of two Judges considered the right acquired by the female under an award and held that :

"Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of

maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a preexisting right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1).

Under the award provision was made, in lieu of Sukh Devi's pre-existing right to maintenance, of money and interest of life in the Bidasar property. Sukh Devi, therefore, acquired limited ownership rights in the Bidasar property in recognition of her pre-existing right to maintenance. Upon the coming into force of the Act, the limited rights acquired by Sukh Devi in 1934 blossomed into full ownership of the Sidasar property, and she became entitled to sell its 'nohra'. In our view, therefore, the High Court was in error in the view that it took.

This Court thus held that the view taken by the High Court was wrong in holding that she acquired a limited estate and sub-section (2) of Section 14 became applicable to the right acquired by her under the award. Accordingly, this Court had held that her right acquired under the award was in recognition of her pre existing right to maintenance and that, therefore, it had blossomed into an absolute right under Section 14(1) of the Act.

It is true, as rightly contended by Shri Rangam, the learned counsel for the respondent, that a Bench of two Judges of this Court in *Gumpha vs. Jaibai* [(1994) 2 SCC 511] considered the effect of the will and had held that property acquired under will does not fall under Section 14(1). In that case, the will was executed in the year 1941 and the testator died in 1958 after the Act had come into force. Therefore, this Court had held that she acquired right to maintenance under the will as a restricted estate and by operation of Section 30 of the Act read with Section 14(2), she acquired a limited estate. The learned Judges appear to have construed the operation of sub-section (2) of Section 14 in the light of the language mentioned in the Will. It would be seen that the Will was executed in the year 1941. As per pre-existing law in 1941, she had only a right to maintenance. The learned Judges proceeded on the premise that a Hindu male's power to dispose of his property being absolute, it includes right to create limited or restricted estate in favour of a female. By operation of Section 30 of

the Act the restricted estate under the Will comes under sub-section [2] of Section 14 as it is not a device under which she acquired the property under sub-section [1] thereof. However, the learned judges noted that if the maintenance was given in recognition of a preexisting right, such an acquisition of property was taken out of sub-section [2] to promote the object of Section 14. The manner of acquisition under sub-section [1] includes inheritance etc. specifically mentioned in subsection [1] before the commencement of the Act. Therefore, it was held that it does not include acquisition by will. The construction of sub-sections [2] and [1] being consistent with Section 30 of the Act led to that conclusion. in the view of the learned Judges, that the words "in lieu of" or "arrears of" for maintenance appeared to be significant.

In Seth Badri Prasad v. Srimati Kanso Devi [(1969) 2 SCC 586] the question of the construction of sub-section [2] and sub-section [1] of Section 14 had come up before a three-Judge Bench of this Court. The facts therein were that the respondent got certain properties under an award as a widow's estate. Suit was filed by the appellant to restrain respondent from committing acts of waste or alienating the properties on the ground that she was only limited owner of the property. The respondent contended that under Section 14 [1] she became full owner of the property which was found favour with the courts below. In interpreting Section 14 [1] and [2], this Court held that the words "acquired" and "possessed" have been used in their widest connotation. Possession must be constructive or actual or in any form recognized by law. In the language of Explanation the word "acquired" must also be given the widest possible meaning. Sub-section [2] of Section 14 would come into operation only if acquisition in any of the matters indicated therein does not come under Section 14 [1] and was made for the first time, without there being any pre-existing right in the Hindu female who is in possession of the property. It was held that since she was in possession of the property as a widow's estate, her limited right was enlarged into an absolute right under Section 14 [1].

In Mangal Singh & Ors. v. Shrimati Rattno & Anr. [(1967) 3 SCR 454], another three-Judge Bench was to consider the question whether a Hindu female who was dispossessed from the property in her possession before the Act had come into force became an absolute owner under Section 14 [1]. This Court held that the words "possessed by" instead of the expression "in possession of" in Section 14 [1] was intended to enlarge the meaning of the expression possession by" to cover cases of "possession in law". Even though the Hindu female was not in actual, physical or constructive possession of the property Section 14 [1] stands attracted.

It is seen that if after the Constitution came into force the right to equality and dignity of person enshrined in the Preamble of the Constitution, Fundamental Rights and Directive Principles which are a Trinity intended to remove discrimination or disability on grounds only of social status or gender, removed the pre-existing impediments that stood in the way of female or weaker segments or the society. In S.R. Bommai v. Union of India [(1995) 1 SCC] this Court held that the Preamble is part of the basic structure of the Constitution. Handicaps should be removed only under rule of law to enliven the Trinity of justices equality and liberty with dignity of person. The basic structure permeates equality to status and opportunity. The

personal laws conferring inferior status on women is anathema to equality. Personal laws are derived not from the Constitution but from the religious scriptures. The laws thus derived must be consistent with the Constitution lest they became void under Article 13 if they violated fundamental rights. Right to equality is a fundamental right. Parliament, therefore, has enacted Section 14 to remove pre-existing disabilities fastened on the Hindu female limiting her right to property without full ownership thereof. The discrimination is sought to be remedied by Section 14 [1] enlarging the scope of acquisition of the property by a Hindu female appending an explanation with it.

The General Assembly of the United Nations adopted a declaration on December 4, 1986 on "The Development of the Right to Development" to which India played a crusading role for its adoption and ratified the same. Its preamble cognises that all human rights and fundamental freedoms are indivisible and interdependent. All Nation States are concerned at the existence of serious obstacles to development and complete fulfillment of human beings, denial of civil, political, economic, social and cultural rights. In order to promote development, equal attention should be given to the implementation, promotion and protection of civil, political, economic, social and political rights.

Article 1(1) assures right to development an inalienable human right, by virtue of which every person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. Article 6(1) obligates the state to observance of all human rights and fundamental freedoms for all without any discrimination as to race, sex, language or religion. Sub-Article (2) enjoins thatequal attention and urgent consideration should be given to implement, promotion and protection of civil, political, economic, social and political rights. Sub-article (3) thereof enjoins that estate should take steps to eliminate obstacle to development, resulting from failure to observe civil and political rights as well as economic, social and economic rights. Article 8 casts duty on the State to undertake,..... necessary measures for the realization of right to development and ensure, inter alia, equality of opportunity for all in their access to basic resources..... and distribution of income". Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicate all social injustice.

Human Rights are derived from the dignity and worth inherent in the human person. Human Rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for woman, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights.

Vienna declaration on the elimination of all forms of discrimination against women for short "CEDAW" was ratified

by the U.N.O. on December 18, 1979. The Government of India who was an active participant to CEDAW ratified it on June 19, 1993 and acceded to CEDAW on August 8, 1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 of CEDAW. The Preamble of CEDAW reiterates that discrimination against women, violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes more difficult for the full development of potentialities of women in the service of their countries and of humanity Poverty of women is a handicap. Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article 1 defines discrimination against women to mean many distinctions exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Article 2(b) enjoins the State parties while condemning discrimination against women in all its forms to pursue by appropriate means without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women." To take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause C enjoins to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins state parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that "the state parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women", in particular..... Article 14 laid emphasis to eliminate discrimination on the problems faced by rural women so as to enable them to play "in the economic survival of their families including their work in the non-monetized sectors of the economy and shall take.... all appropriate measures....". Participation in and benefit from rural development and, in particular, shall ensure to such women the right to participate in the development programme to organize self groups and cooperatives to obtain equal access to economic opportunities through employment or self-employment etc. Article 15(2) enjoins to accord to women in equality with men before the law, in particular, to administer property.....

The Parliament made the Protection of Human Rights Act, 1993. Section 2(b) defines human rights means "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international conventions and enforceable by courts in

India. Thereby the principles embodied in CEDAW and the concomitant right to development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.

Article 5(a) of CEDAW to which the Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoin to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-a-vis Articles 1, 3, 6 and 8 of the Convention of Right to Development. The directive principles and fundamental rights, though provided the matrix for development of human personality and elimination of discrimination, these conventions add urgently and teeth for immediate implementation. It is, therefore, imperative of the State to eliminate obstacles, prohibit all gender based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should take all appropriate measures including legislation to modify or abolish gender based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.

Article 15(3) of the Constitution of India positively protects such Acts or actions. Article 21 of the Constitution of India reinforces "right to life". Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfillment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development, women are entitled to enjoy economic, social, cultural and political rights without discrimination and on footing of equality. Equally in order to effectuate fundamental duty to develop scientific temper, humanism and the spirit of enquiry and to strive towards excellence in all spheres of individual and collective activities as enjoined in Article 51A(h) and (j) of the Constitution of India, facilities and opportunities not only are to be provided for, but also all forms of gender based discrimination should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realize the right to economic development including social and cultural rights.

Bharat Ratna Dr. B.R. Ambedkar stated, on the floor of the Constituent Assembly that in future both the legislature and the executive should not pay mere lip service to the directive principles but they should be made the bastion of all executive and legislative action. Legislative and executive actions must be conformable to and effectuation of the fundamental rights guaranteed in Part III and the directive principles enshrined in part IV and the Preamble of the Constitution who constitutes conscience of the Constitution. Covenants of the United Nation add impetus and urgency to eliminate gender based obstacles and discrimination. Legislative action should be devised suitably to constellate economic empowerment of women in

socio-economic restructure for establishing egalitarian social order. Law is an instrument of social change as well as the defender for social change. Article 2(e) of CEDAW enjoins that this Court to breath life into the dry bones of the Constitution, international convictions and the Protection of Human Rights Act and the Act to prevent gender based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights to women.

As per the U.N. Report 1980 "woman constitute half the world population, perform nearly two thirds of work hours, receive one tenth of the world's income and own less than one hundred per cent of world's property". Half of the Indian population too are women. Women have always been discriminated and have suffered and are suffering discriminated in silence. Self sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities inequality and discrimination. Articles 13, 14, 15 and 16 of the Constitution of India and other related articles prohibit discrimination on the ground of sex. Social and economic democracy is the cornerstone for success of political democracy.

In Mrs. Valsamma Paul v. Cochin University & Ors. [JT 1996 (1) SC 57] this Court has held thus:

"Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth-cultural, social and economical. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Convention for Elimination of all forms of Discrimination Against Women (for short, "CEDAW") was ratified by the U.N.O. on December 18, 1979 and the Government of India had ratified as an active participant on June 19, 1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social,

economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.

Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article 1 defines "discrimination against women" to mean "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Article 2(b) enjoins upon the State parties, while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women; to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause C enjoins upon the State to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins upon the State parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that "the State parties shall take all appropriate measures

to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women".

The Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(b) defines "human rights" to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international conventions and enforceable by courts in India". Thereby, the principles embodied in CEDAW and the concomitant right to development became integral part of the Constitution of India and the Human Rights Act and became enforceable. Section 12 of the Protection of Human Rights Act charges the commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.

Though the Government of India kept its reservations on Articles 5 [e], 16 [1], 16 [2] and 29 of CIDAW, they bear little consequence in view of the fundamental rights in Article 15 (1) and (3) and Article 21 and the directive principles of the Constitution.

It is true that Section 30 of the Act and the relevant provisions of the Act relating to the execution of the wills need to be given full effect and the right to disposition of a Hindu male derives full measure thereunder. But the right to equality removing handicaps and discrimination against a Hindu female by reason of operation of existing law should be in conformity with the right to equality enshrined in the Constitution and the personal law also needs to be in conformity with the Constitutional goal. Harmonious interpretation, therefore, is required to be adopted in giving effect to the relevant provisions consistent with the constitutional animation to remove gender-based discrimination in matters of marriage, succession etc. Cognizant to these constitutional goals, Hindu Marriage Act, Hindu Adoption and Maintenance Act, Hindu Succession Act etc. have been brought on statute removing the impediments which stood in the way under the Sastric law. Explanation I to Section 14 [1] gives wide amplitude to the acquisition of property in the widest terms. It is merely illustrative and not exhaustive. The only condition precedent is whether Hindu female has a pre-existing right under the personal law or any other law to hold the property or the right to property. Any instrument, document, device etc. under which Hindu female came to possess the property - movable or immovable - in recognition of her pre-existing right, though such instrument, document or device is worded with a restrictive estate, which received the colour of pre-existing restrictive estate possession by a Hindu female. the operation of sub-section [1] of Section 14 read with Explanation I, remove the fetters and the limited right

blossoms into an absolute right.

As held by this Court, if the acquisition of the property attracts sub-section [1] of Section 14, sub-section [2] does not come into play. If the acquisition is for the first time, without any vestige of pre-existing right under the instrument, document or device etc. then sub-section [2] of Section 14 gets attracted. Sub-section [2] being in the nature of an exception, it does not engulf and wipe out the operation of sub-section [1]. Sub-section [2] of Section 14 independently operates in its own sphere. The right to disposition of property by a Hindu under Section 30 is required to be understood in this perspective and if any attempt is made to put restriction upon the property possessed by a Hindu female under an instrument, document or device, though executed after the Act had come into force, it must be interpreted in the light of the facts and circumstances in each case and to construe whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she gets the rights for the first time under the instrument without any vestige of pre-existing right. If the answer is in the positive, sub-section [1] of Section 14 gets attracted. Thus construed, both subsections [1] and [2] of Section 14 will be given their full play without rendering either as otios or aids as means of avoidance.

In Gumpha's case [supra] though the will was executed in 1941 and the executor died in 1958 after the Act had come into force, the concept of limited right in lieu of maintenance was very much in the mind of the executor when will was executed in 1941 but after the Act came into force, the will became operative. The restrictive covenant would have enlarged it into an absolute estate; but unfortunately the Bench had put a restrictive interpretation which in our considered view does not appear to be sound in law.

The legatee Sellathachi had right to maintenance under the Hindu Adoption and Maintenance Act when the property was given to her for maintenance. It must be in lieu of her pre-existing right to maintenance and the property given under the will, therefore, must be construed to have been acquired by the legatee under the will in lieu of her right to maintenance. That right to maintenance to a Hindu female received statutory recognition under the Hindu Adoption and Maintenance Act, 1956. She is entitled to realise maintenance from property of her husband and even in the hands of strangers except the bona purchasers for value whether notice of her right. She is equally entitled under Section 37 of the Transfer of Property Act to have charge created over the property for realization of her maintenance. On the demise of the testator, she being the class-I heir but for the bequeath, is entitled to succeed as an absolute owner. In either of those circumstances, the question emerges whether she acquires a limited right under Section 14(2) for the first time under the Will. In the light of the facts and circumstances of the case and the legal setting, we are of the considered view that she having had under Sastric law, as envisaged in the Will, the properties in recognition of her pre-existing right to maintenance, it is not a right acquired for the first time under the instrument will, but it is a reflection of the pre-existing right under the Sastric law, which was blossomed into an absolute ownership after 1956 under Section 14 [1] of the Act. Under these circumstances, it cannot be held that Sellathachi acquired the right to maintenance for the first time under the instrument will. The Division Bench, therefore, does not appear to have

approached the problem in the correct perspective. In view of the settled legal position right from Tulasamma's case [supra] the right acquired under the Will is in recognition of the pre-existing right to maintenance known under the Sastric law and was transformed into an absolute right under Section 14(1) wiped out the restrictive estate given under the Sastric law and Sellathachi as absolute owner of the property. The Division bench of the High Court, therefore, was not correct in holding that Sellathachi has acquired only a limited estate under the Will and Section 14(2) attracts to the restrictive covenants contained in the will limiting her right to maintenance for life time and, thereafter, the right to enjoy the income from the lands and on her demise, the income should go to the temples as mentioned in the will is not correct in law.

Shri Rangam then contended that when the testator has thought of providing only maintenance, to the two widows, the properties being more than 10 acres, the maintenance must be only proportionate to the needs of the widow and to that extent the widow acquires an absolute right but not the entire property. We find no force in that contention. It is to be seen that under the pre-existing law, she is entitled to remain in possession of the whole estate known as widow's estate and after the Act has come into force that widow's estate was blossomed into an absolute estate by operation of Section 14(1). Even in the Will Ex-A1, no such restrictive covenant was engrafted giving reasonable proportion of income consistent with her needs for maintenance. On the other hand, the express covenant is that, he recognized her right to maintenance and in lieu of the maintenance property was given to her for her maintenance during her lifetime. That is the pre-existing right as per then existing law. After the Act has come into force, the limited estate has blossomed into an absolute estate. Therefore, the doctrine of proportionality of maintenance is not applicable and cannot be extended.

The appeal is accordingly allowed. The judgment of the Division Bench stands set aside and that of the single Judge stands upheld. Resultantly, the suit stands dismissed. In the circumstances, there shall be no order as to costs.