Before Rajiv Bhalla & Rekha Mittal, JJ.

SURJAN SINGH AND OTHERS—*Petitioners*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 3554 of 1985

December 21, 2012

Constitution of India, 1950 - Arts. 226, 227 - Hindu Succession Act, 1956 - S. 14 - Haryana Ceiling of Land Holdings Act, 1972 - Sangat Singh uncle of petitioners was owner of land in Pakistan and he died in the year 1947 while migrating to India - He had no male issue - Petitioners were allotted land and obtained possession in 1950 - Mutation sanctioned on 08.01.1953 - Sahib Kaur daughter of Sangat Singh filed civil suit in respect of entire land - Matter compromised - She was given limited estate for her life in 2/5 share and accordingly decree dated 22.10.1956 was drawn and mutation was sanctioned on 15.01.1962 - SDO (Civil) determined her surplus area measuring 331 Kanals 10 Marlas on 15.01.1979 - Sahib Kaur died on 25.04.1979 - Petitioners challenged the determination of surplus area on the ground that Sahib Kaur was given limited estate, therefore, Sahib Kaur never became absolute owner - Respondents contested that she was absolute owner - Writ petition dismissed as Sahib Kaur became absolute owner and authorities rightly held that petitioners not entitled to any notice.

Held, that as Smt. Sahib Kaur was given this land in lieu of her pre-existing right of maintenance, the immediate fallout is that her right matured into an absolute estate as contemplated under sub-section (1). In this context, reference can be made to a judgment of the Hon'ble Supreme Court rendered in the case of Laxmappa and others Vs. Balawa Kom Tirkappa Chavdi (Smt) (1996) 5 Supreme Court Cases 548. The ratio of this judgment squarely covers the case of Smt. Sahib Kaur to aid us in holding that she became absolute owner of the property given to her acknowledging that she had right to get maintenance from her father and after his death, from his property. As Smt. Sahib Kaur had become the absolute owner of this land, the authorities have rightly held that the petitioners were not entitled to any notice before passing of order by the prescribed authority, Sirsa, declaring the suit land to be surplus in the hands of Smt. Sahib Kaur. The plea of the petitioners that no path has been provided to the permissible area of Smt. Sahib Kaur, is irrelevant. The petitioners can well resort to appropriate proceedings under law to seek a passage to the said land, if not already available.

(Para 11)

None for the petitioners

D.Khanna, Addl. Advocate General, Haryana, for the respondents

REKHA MITTAL, J.

(1) The petitioners pray for quashing orders dated 15.1.1979 passed by Sub Divisional Officer (Civil), Prescribed Authority, Sirsa (Annexure P-1), dated 7.3.1983 passed by the Collector, Sirsa (Annexure P-3), dated 29.4.1983 passed by the Commissioner, Hissar Division, Hissar(Annexure P-5) and order dated 20.5.1985 passed by the Financial Commissioner, Haryana(Annexure P-7).

(2) Counsel for the petitioners submits that Sangat Singh, paternal uncle of the petitioners was owner of land in Pakistan and he died in the year 1947 while migrating to India. The petitioners filed a claim for allotment of land in the name of Sangat Singh being his collaterals as Sangat Singh had no male issue. The petitioners were allotted 47 standard acres and 10 units of land in the name of Sangat Singh. Mutation No. 2319 of inheritance of Sangat Singh deceased was sanctioned in favour of petitioners on

8.1.1953. The petitioners obtained possession of land allotted to Sangat Singh in the year 1950. It is further contended that Smt. Sahib Kaur, daughter of Sangat Singh filed a civil suit in respect of the entire land allotted to Sangat Singh. In the civil suit, ultimately a compromise was effected and she was given a limited estate for her life in 2/5th share of the land allotted to Sangat Singh and accordingly a decree dated 22.10.1956 was drawn and mutation No. 2541 was sanctioned in favour of Smt. Sahib Kaur on 15.1.1962. It is further argued that Smt. Sahib Kaur had no issue and on 15.1.1979, the Sub Divisional Officer (Civil), Sirsa, prescribed authority under the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as "the 1972 Act") determined her surplus area measuring 331 Kanals-10 Marlas. Smt. Sahib Kaur died on 25.4.1979, but Form-IV was prepared on 28.7.1979. The petitioners filed an appeal against order dated 15.1.1979 before the Collector, Sirsa which was dismissed on 7.3.1983. The revision petition filed by the petitioners against order of the Collector, Sirsa, was also dismissed by the Commissioner, Hissar Division, Hissar, on 29.4.1983. The petitioners filed a revision before the Financial Commissioner, Harayna, which was also dismissed vide order dated 20.5.1985. It is contended that the orders passed by the prescribed authority, Sirsa, the Appellate authority and the revisional authorities are illegal and liable to be set aside. It has further been submitted that Smt. Sahib Kaur did not have any right in the property of her father and she was only given a limited estate in view of the compromise effected before the Civil Court, therefore, she never became the absolute owner of the property and, therefore, no property, in her hands could be declared as surplus area. It has been further argued that the petitioners were the real owners of the land in respect of which mutation was sanctioned in favour of Smt. Sahib Kaur on 15.1.1962, therefore, the surplus area could not be determined without impleading them and affording an opportunity of hearing. It has been further argued that all the authorities have wrongly interpreted Section 14 of the Hindu Succession Act, 1956 (hereinafter referred to as "the 1956 Act") to hold that Sahib Kaur became absolute owner of the land under Section 14(1) of "the 1956 Act". It has also been submitted that no path has been provided to the land declared as permissible area of Smt. Sahib Kaur which has been inherited by the petitioners on her death.

(3) Counsel for the State of Haryana, on the other hand, contends that as Smt. Sahib Kaur was allotted this land in lieu of her right of maintenance from the estate left behind by her father, the authorities under "the 1972 Act" have rightly held that the limited estate given to Smt. Sahib Kaur in view of the compromise effected between the parties before the civil Court, became her absolute ownership under Section 14(1) of "the 1956 Act". It is further argued that as Smt. Sahib Kaur was the absolute owner of this property, petitioners have no right to be heard in respect of declaration of surplus area in the hands of Smt. Sahib Kaur, decided by the competent authority. It is further argued that Smt. Sahib Kaur was given a notice providing her an opportunity of being heard before deciding her case of permissible and surplus area, but for the reasons known to Smt. Sahib Kaur, she did not contest the proceedings. The last submission made by learned counsel is that if no path is available to have an access to the permissible area allotted to Smt. Sahib Kaur, the petitioners can resort to appropriate remedy under law to seek the path.

(4) We have heard counsel for the parties and perused the records.

(5) The parties admit that land in dispute was allotted in the name of Sangat Singh in lieu of the property left by him in Pakistan. Smt. Sahib Kaur is the daughter of late Sangat Singh. She filed a civil suit claiming entitlement to the entire estate of Sangat Singh. As per the plea of the petitioners, the dispute was settled by way of compromise and Smt. Sahib Kaur was given 2/5th share out of the land allotted to Sangat Singh, as a limited estate. A perusal of order passed by the Collector, Sirsa, dated 7.3.1983 (Annexure P-3) in the appeal preferred by the petitioners reveals that counsel for the petitioners has raised a plea that as per civil Court decree dated 22.10.1956, Sahib Kaur was entitled to enjoy this land for her maintenance, during her lifetime and she had no right to transfer the property and after her death, the same was to revert to the petitioners (appellants) and Pritam Singh, respondent before the Collector. From a perusal of the orders, passed by the authorities, it is apparent that interpretation of Section 14 of "the 1956 Act" was the main controversy raised before the authorities. It has been consistently decided by all the authorities that Smt. Sahib Kaur became absolute owner of this land in view of Section 14(1) of "the 1956 Act" and, therefore, the order in respect of surplus area in the hands of Smt. Sahib Kaur has been rightly passed.

(6) The only question which arises for our consideration is whether Smt. Sahib Kaur became absolute owner of the property given to her pursuant to the compromise that led to passing of the decree dated 22.10.1956 in the civil proceedings. The compromise deed or the settlement has not been produced before this Court for perusal and appreciation. However, the petitioners have admitted that Smt. Sahib Kaur was given this land in lieu of her right of maintenance. Now, the question arises as to whether the land given to Smt. Sahib Kaur would fall within the purview of Section 14(1) or 14(2) of "the 1956 Act"? Section 14 of the 1956 Act is quoted hereinunder:-

> "**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, 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."

The ingredients of sub section (2) of Section 14 of the 1956 Act are as follows:-

> (a) the property must have been acquired by way of gift, will or an insturment, decree or order of a civil court or any award;
>
> (b) that such document, order or decree must prescribe a restrictive right in such property; and

(c) such instrument, document or other must confer a new right or interest in such Hindu female not by way of recognition of or by way of giving effect to any pre-existing right which she already possessed.

(7) In ***V. Tulsamma*** versus ***V. Sesha Reddi (1),*** Hon'ble the Supreme Court has interpreted these two sub-sections of Section 14 of the 1956 Act as well as the legal position in regard to the right of a female Hindu wherein the legal consequences are summarized as under:-

"(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) of in a way so as to become totally inconsistent with the main provision,

(1) (1977)3 SCC 99

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre- existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus, where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance' 'or arrears of maintenance' etc. In the Explanation Section 14(1) clearly makes Sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of subsection (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the proper-ty would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

(8) In ***Thota Sesharathamma and another*** versus ***Thota Manikyamma (Dead) by Lrs. and others (2),*** the Hon'ble Supreme Court while following decision in **Tulasamma's case (supra)** inter alia held that sub section 2 of Section 14 of the 1956 Act would operate where there was no pre existing right and a restricted estate in the property is conferred for the first time under any instrument. Later on, in ***C. Masilamani Mudaliar & Ors.*** versus ***Idol of Sri Swaminathaswami Swaminathaswami Thirukoil and Ors. (3),*** the earlier view expressed in **Tulasamma's case (supra)** and **Thota Sesharathamma's case(supra)** were re-emphasized and it was further added that Section 14 should be construed harmoniously considering the Constitutional goal of removing gender-based discriminations and effectuating economic empowerment of Hindu females viz-a-viz their rights as embodied in the Vienna Declaration on the Elimination of all Forms of Distrimination against Women as ratified by the United Nations on 18.12.1979 and by the Government of India on 19.6.1993.

(9) As the petitioners assert their right of ownership in respect of land admittedly given to Smt. Sahib Kaur in lieu of her right of maintenance, on the premise that she did not become its absolute owner by virtue of Section 14(2) of the 1956 Act, it was incumbent upon them to substantiate their plea by adducing evidence. The petitioners are silent about the age of Sahib Kaur in 1947, her status (married or unmarried or widow) at that time, availability of resources for her maintenance. If she was a minor in 1947, her father had an obligation to maintain her. However, in case, at that time, she was married but a widow having no source of maintenance, she had the right to get maintenance from her father in discharge of his obligation to maintain his widowed daughter. The petitioners have failed to produce any material which enables to discern that Smt. Sahib Kaur had no pre existing right of maintenance out of the estate left behind by her father

(2) (1991)4 SCC 312
(3) (1996) 8 SCC 525

Sangat Singh, who lost his life during his migration from Pakistan in 1947. Moreover, there is nothing on record to show that Sahib Kaur had any source of maintenance except the property of her father.

(10) Be that as it may, the fact that the petitioners agreed to give this land to Smt. Sahib Kaur in lieu of her right of maintenance, it can be construed that the petitioners recognized as well acknowledged her right of maintenance from her father. In other words, an inference can necessarily be drawn that as Smt. Sahib Kaur had no source of maintenance, the petitioners acknowledged that late Sangat Singh, her father had an obligation to maintain her and as a consequence entitled to be maintained out of the estate left behind by Sangat Singh. As Smt. Sahib Kaur was given this land in lieu of her pre-existing right of maintenance, the immediate fallout is that her right matured into an absolute estate as contemplated under sub-section (1). In this context, reference can be made to a judgment of the Hon'ble Supreme Court rendered in the case of ***Laxmappa and others*** versus ***Balawa Kom Tirkappa Chavdi (Smt.) (4).*** In this case, the natural father and adopted son of Smt. Balawa made a gift of land in her favour in 1950 acknowledging that she being destitute and unable to maintain herself, provision for her maintenance had to be made for her lifetime. In para 3 of this judgment, it has been observed as under:-

> "The law on the subject was taken stock of by the High Court by quoting para 546 or Mulla's book on Hindu Law, 15th Edn., which provides that a Hindu father is bound to maintain his unmarried daughters, and on the death of the father, they are entitled to be maintained out of his estate. The position of the married daughter is somewhat different. It is acknowledged that if the daughter is unable to obtain maintenance from her husband, or, after his death, from his family, her father, if he has got separate property of his own, is under a moral, though not a legal, obligation to maintain her. The High Court has concluded that it was clear that the father was under an obligation to maintain the plaintiff-respondent. Seemingly, the High Court in doing so was conscious of the declaration made in the gift deed in which she was described as a

(4) (1996) 5 SCC 548

destitute and unable to maintain herself. In that way, the father may not have had a legal obligation to maintain her but all the same there existed a moral obligation. And if in acknowledgment of that moral obligation the father had transferred property to his daughter then it is an obligation well-fructified. In other words, a moral obligation even though not enforceable under the law, would by acknowledgment, bring it to the level of a legal obligation, for it would be perfectly legitimate for the father to treat himself obliged out of love and affection to maintain his destitute daughter, even impinging to a reasonable extent on his ancestral property. It is duly acknowledged in Hindu law that the Karta of the family has in some circumstances, power to alienate ancestral property to meet an obligation of the kind. We would rather construe the said paragraph more liberally in the modern context having regard to the state of law which has been brought about in the succeeding years. Therefore, in our view, the High Court was within its right to come to the conclusion that there was an obligation on the part of the father to maintain his destitute widowed daughter."

(11) The ratio of this judgment squarely covers the case of Smt. Sahib Kaur to aid us in holding that she became absolute owner of the property given to her acknowledging that she had right to get maintenance from her father and after his death, from his property. As Smt. Sahib Kaur had become the absolute owner of this land, the authorities have rightly held that the petitioners were not entitled to any notice before passing of order by the prescribed authority, Sirsa, declaring the suit land to be surplus in the hands of Smt. Sahib Kaur. The plea of the petitioners that no path has been provided to the permissible area of Smt. Sahib Kaur, is irrelevant. The petitioners can well resort to appropriate proceedings under law to seek a passage to the said land, if not already available.

(12) In view of what has been discussed hereinabove, there is no merit in this petition and accordingly the same is hereby dismissed leaving the parties to bear their own costs.

A. Jain