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> land, the mere fact that some temporary constructions have been raised by the tenant for his own use would not in any way convert the same into a building."

With this construction of the word 'premises' I am in respectful agreement and, in my opinion, the present case is on a much stronger footing for the respondents than the one with which Pandit, J., was dealing. Concededly, there is no kind of construction built on the small piece of land which has been leased with the defendant-appellant. The lessee of the vacant site only brings a *rehri* to this piece of land and sells his wares. There is a decision of Falshaw. J. (as the Chief Justice then was) in *Dr. Kanwal Nain.* v. *Sardari Lal* (4), where it was held that a vacant plot of land containing no building at all, but only a platform or *chabutra* and forming part of the compound of the landlord's house, did not constitute 'premises' within the definition of the word in the Delhi and Ajmer-Merwara Rent Control Act, 1947. The respondents appear to be still better placed according to the ruling of this decision as even a platform or *chabutra* has not been constructed on the site.

I am of the view that the learned Senior Subordinate Judge has taken the right view of the matter and I would accordingly dismiss this appeal, but would leave the parties to bear their own costs. The parties will appear before the trial Judge on 2nd of November, 1965, which date is already fixed for this purpose.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, Chief Justice and Mehar Singh, J.

HIRA LAL,—*Plaintiff-Appellant.*

versus

SHRIMATI SHARBATI DEVI AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 36 of 1964.

1965

September, 14th.

Hindu Succession Act (*XXX of* 1956)—*S.* 14—*Widow of a pre-deceased son getting half of the land mutated in her favour on the death of her father-in-law, other half being mutated in the name of his other son who was minor—After attaining majority the son suing for possession of the land with the widow—By compromise in* 1951 *she was allowed to retain land in lieu of maintenance—Widow—Whether becomes full owner of the land under sub-section* (1) *of section* 14.

(4) 1952 P.L.R. (Short Notes of cases), page 14.

Held, that under the Hindu Law the father-in-law was under an obligation to maintain his daughter-in-law, the widow of his pre-deceased son. On his death this obligation fell on his heirs and the widowed daughter-in-law had the right of getting maintenance from the estate left by her father-in-law although she had no right to any share in it. On her father-in-law's death she got half of the land left by him mutated in her name and the other half in the name of his son who was then a minor. On attaining majority the son filed a suit for recovering the land from the widow in which a consent decree was passed allowing the widow to retain the land in her possession by way of maintenance. She thus acquired the land in lieu of maintenance and under sub-section (1) of section 14 of the Hindu Succession Act, 1956, she became its full owner and had the right to alienate it.

Letters Patent Appeal under Clause 10 of the Letters Patent from the decree of the Hon'ble Mr. Justice A. N. Grover, dated the 16th day of September, 1963 reversing that of Shri Ishar Singh Hora, Senior Sub-Judge, Gurgaon, invested with enhanced appellate powers, dated the 25th July, 1959, who affirmed that of Shri O. P. Singla, Sub-Judge 2nd Class, Gurgaon, dated the 9th December, 1958, and dismissing the plaintiff's suit and leaving the parties to bear their own costs throughout.

G. P. JAIN AND BALWANT SINGH, ADVOCATES, for the Appellant.

PARKASH CHAND JAIN, AND M. L. SETHI, ADVOCATES, for the respondents.

JUDGMENT

Mehar Singh, J.

MEHAR SINGH, J.— On the death of Din Dayal, sometime in 1938, his land was mutated half in the name of his son Hira Lal plaintiff, who was then minor, from his wife named Basanti, and the other half in the name of his daughter-in-law Sharbati Devi defendant, being widow of a predeceased son, from another wife of his named Mathri. It has not been denied that since then Sharbati Devi defendant remained in joint possession of the land.

It appears that by about 1950, Hira Lal plaintiff became major, for in that year he instituted a suit against Sharbati Devi defendant to recover the land. In that suit, there was a compromise between them resulting in consent decree of May 9, 1951, whereby Hira Lal plaintiff was declared as the sole heir and owner of the land left by Din Dayal, and Sharbati Devi defendant was given possession of the land in dispute in the present litigation and certain other land for life, her rights being restricted

with regard to alienation. On September 14, 1956, she sold 4 Kanals and 3 Marlas of land to Khem Ram defendant for Rs. 200.

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On that Hira Lal plaintiff instituted the suit, giving rise to this appeal, for possession of that land sold to Khem Ram defendant or in the alternative for a declaration that the sale by Sharbati Devi defendant in favour of Khem Ram defendant was void and ineffective as against his rights. The defendants claimed that Sharbati Devi defendant, in consequence of section 14 of the Hindu Succession Act, 1956 (Act 30 of 1956), has become full owner of the property in suit and the plaintiff's claim must fail. The Courts below concurred in decreeing the suit of Hira Lal plaintiff, obviously on a conclusion that it was not a case of applicability of sub-section (1) of section 14 of Act 30 of 1956. In second appeal the question that was canvassed before the learned Single judge was whether, on the facts given, Sharbati Devi defendant has become full owner of the land because of sub-section (1) of section 14 or not so because of sub-section (2) of that section in Act 30 of 1956 ? The learned Judge was of the opinion that if any property is possessed by a female Hindu, which will include immovable property acquired in lieu of maintenance, then she would become the full owner thereof by virtue of sub-section (1), and sub-section (2) in that event cannot come into operation. Sub-section (2), according to the learned Judge, will apply only if for the first time a female acquires property in any of the ways mentioned in that sub-section. The learned Judge was of the opinion that this is what has not happened in the present case. The learned Judge accepted the contention of the learned counsel for Hira Lal plaintiff that from 1938 onwards Sharbati Devi defendant was in possession of land in lieu of maintenance, she being the widow of a predeceased son and not being entitled to anything beyond that. Her right is one for maintenance which could be paid to her either from the income of the estate or by putting her in possession of any part of the estate in lieu of maintenance. In consequence of the mutation of the land in her favour from December 31, 1938, she was in possession of the land in lieu of maintenance. The learned judge did not accept the approach of the appellate Court that Sharbati Devi defendant was initially a trespasser on the land when she went in possession of it after

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the death of her father-in-law and he did not further accept that the rights that she obtained were those conferred on her by the consent decree in 1951. The learned judge observed that it could not possibly be held that she was in possession before the consent decree of 1951 as a trespasser. He was of the opinion that her possession was lawful and must be deemed to be so. In consequence of the consent decree her estate was not enlarged. So in substance the learned Judge came to the conclusion that the consent decree was no more than recognition of the subsisting right of Sharbati Devi defendant. When there is such recognition of subsisting right subsequently by an instrument or decree, the case has been held not to fall under sub-section (2) of section 14: *Gadam Reddayya* v. *Varapula Venkataraju* (1). The learned Judge by his judgment of September 16, 1963, accepted the appeal of Sharbati Devi defendant and dismissed the suit, leaving the parties to bear their own costs throughout. This is an appeal under clause 10 of the Letters Patent against that judgment of Hira Lal plaintiff.

It has been urged on behalf of the plaintiff, that when on the death of her father-in-law in 1938, half of the land left by him was mutated in the name of Sharbati Devi defendant and she went in joint possession of it, it cannot be said that she had that land in lieu of her maintenance. The reason given is quite simple, it is this, that Hira Lal plaintiff was at the time a minor, that there is no evidence that any guardian of his acted on his behalf in giving possession of the land to Sharbati Devi defendant in lieu of maintenance, and that there is no evidence whatsoever that anybody else did so or could do so on behalf of the plaintiff. This is factually true. Under the Hindu Law a pre-deceased son's widow has no right to any property from the estate of her deceased father-in-law, but paragraph 564 in Mulla's Hindu Law, 12th Edition, says that "On the death, however, of the father-in-law, his son, widow, or other heir inheriting his property, comes under a legal obligation to carry out this moral obligation, and to maintain her out of such property. In other words, on the death of the father-in-law, the moral obligation on him to maintain his daughter-in-law ripens into a legal obligation on his heirs inheriting his estate in accordance with the principle stated in article 544"—and that article

(1) A.I.R. 1965 Andh. Prad. 66.

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says "an heir is legally bound to provide, out of the estate which descends to him, maintenance for those persons whom the late proprietor was legally or morally bound to maintain. The reason is that the estate is inherited subject to the obligation to provide for such maintenance." A widowed daughter-in-law is, therefore, entitled to maintenance from the estate of her deceased father-in-law, but she cannot claim a right in that estate, in other words, she cannot claim to share that estate. No doubt the right to maintenance is a legal right, but it still does not extend to giving her a share in the estate. So it is obvious that Sharbati Devi defendant was only entitled to maintenance from the estate of her deceased father-in-law Din Dayal. She could not claim a right to any share of property left by him, including the land in dispute. Undoubtedly she came in possession of the land in 1938 in consequence of a mutation attested in her favour after the death of her father-in-law, and half of the land from the inheritance of her deceased father-in-law was mutated in her name. It is not denied that she took joint possession of that land. But it has been pointed out that Hira Lal plaintiff was at the time a minor and could not and in fact did not enter into any contract with her to give that land to her in lieu of maintenance. No guardian of his did so. No other person, who could bind him, did so. In what circumstances the revenue authorities attested the mutation of the land in her favour is not clear. But if they did so on their own account, it would not mean that the land was given to her in lieu of maintenance by or on behalf of Hira Lal plaintiff. She herself could not, whether by force or for inaction of somebody, enter into possession of the land and declare herself to have obtained the land in lieu of maintenance. It is thus obvious that when she first came in possession of the land in 1938, whether her possession was in the strict sense unlawful or not, by no stretch of imagination can it be said to have been given to her by or on behalf of Hira Lal plaintiff in lieu of maintenance. At that time she acquired no estate or property in land by merely going in possession of it. The argument on the side of the defendants in this respect cannot possibly prevail.

On Hira Lal plaintiff becoming major, as stated, there was litigation between the parties. Hira Lal plaintiff

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wanted possession of the land from Sharbati Devi defendant. She obviously resisted. There was the question of a legal liability of Hira Lal plaintiff to pay maintenance to her. The parties then entered into a compromise. In consequence of that compromise a consent decree was passed. It was for the first time then that Sharbati Devi defendant acquired property in the land in lieu of maintenance. Explanation to sub-section (1) of section 14 of Act 30 of 1956 says that in that sub-section 'property' includes both movable and immovable property acquired by a female Hindu in lieu of maintenance or arrears of maintenance. It was in 1951 in consequence of the settlement between the parties, arising out of a litigation started by Hira Lal plaintiff, that Sharbati Devi, for the first time acquired land, of which the land in dispute is a part, in lieu of her maintenance. It was then that she acquired this property within the meaning and scope of sub-section (1) of section 14. If her case did not come under that sub-section, in view of what is stated in the explanation to that sub-section, it would have come under sub-section (2) on the ground that she had acquired the property under a decree of the Court. The decree of the Court merely gave effect to the compromise between the parties, and under the compromise between the parties for the first time Sharbati Devi defendant acquired the land, part of which is the land in dispute, in lieu of maintenance. As to the facts of this case, sub-section (1), read with the explanation, applies, so sub-section (2) of section 14 of Act 30 of 1956 is not attracted. There is thus no substantial argument urged which justifies interference with the judgment of the learned Single Judge.

This appeal is dismissed, leaving the parties to bear their own costs.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, Chief Justice, and Mehar Singh, J.

PURAN SINGH AND OTHERS,—APPELLANTS

versus

RESHAM SINGH,—*Respondent*

Execution Second Appeal No. 109 of 1964.

1965

September 14th.

Hindu Succession Act (XXX of 1956)—S. 14—Widow forfeiting her right to her husband's estate by becoming unchaste but allowed possession of half of the land of her husband by way of maintenance