

has either been caused on account of the attitude of the authorities not to fill up the seats lying vacant in the Agroha Medical Institute, Agroha in spite of the fact that C.B.S.E. was not laying any claim on those seats. No fault can be found with the petitioners on account of C.B.S.E. not sponsoring candidates within the reasonable time in the Rohtak Medical College, Rohtak. In view thereof, the judicial discretion would better be utilized by making clear cut observations that the petitioners should not suffer on account of late admission. The petitioners may be allowed condonation of shortage of lectures by the University or the College authorities or they may approach the Medical Council of India or any other higher authority for making any provision which is deemed fit for condoning the lectures if the university or the College authorities do not have any such power.

In the light of the observations made above, the writ petitions are allowed. The petitioners be admitted to the M.B.B.S./B.D.S. Course in the light of the observations made in para 10 and 11 of the judgment. No costs. Copy of the judgment to be given *Dasti* on payment of requisite copying charges.

P.C.G.

Before : A. L. Bahri, J.

GURBACHAN KAUR AND ANOTHER,—Appellants.

versus

PARAMJIT SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No. 2796 of 1983

25th March, 1991.

Hindu Adoption and Maintenance Act, 1956 (78 of 1956)—S. 19(1)—Hindu Succession Act, 1956 (30 of 1956)—Ss. 14(1) & 14(2)—Right of wife to maintenance—Wife—Whether entitled to maintenance during life time of her husband from her father-in-law—Property bequeathed under will by father-in-law in favour of daughter-in-law to enjoy usufruct—No power of alienation allowed—Case covered by S. 14(2) and not S. 14(1).

Held, that a perusal of Section 19 of the Hindu Adoption and Maintenance Act, 1956 would show that it is only after the death of her husband that his wife/widow is entitled to be maintained by

Gurbachan Kaur and another v. Paramjit Singh and another
(A. L. Bahri, J.)

her father-in-law. During the life time of the husband, his wife has no right to maintenance against her father-in-law. That being the position under the Will of Kartar Singh, Inder Kaur got a restricted right to have usufruct from the property and to reside therein during her life time. This grant was not for her maintenance legally due or in lieu of such maintenance to clothe her with absolute ownership of the property given to her. The case would be covered under Section 14(2) of the Hindu Succession Act and not Section 14(1). Inder Kaur was not absolute owner of the property in dispute under the Will of Kartar Singh. After her death the property was to revert to Iqbal Singh. Since Inder Kaur was not owner of the property, she had no right to sell the same to the present appellants.

(Para 4)

Regular Second Appeal from the order of the Court of Shri O. P. Dhariwal, Additional District Judge, dated the 3rd day of October, 1983, affirming that of Shri D. S. Chatha, PCS, Sub Judge, 1st Class, Ludhiana, dated the 6th June, 1980 decreeing the suit of the plaintiffs leaving the parties to bear their own costs.

Claim:—Suit for a declaration that the plaintiff is the owner of House No. B.XIX 431, shown in red in red in the plan attached with the plaint and bounded as follows:—

*East : Property of the plaintiff at present Bhag Singh 68'—6"
West : Basant Garden 68'—6"*

North : Plot of Mukhtiar Singh at present Lajyawanti wife of Ved Parkash.

South : College Road.

situated in Civil Lines, Ludhiana comprising of Khewat No. 132 Khatauni No. 161, Khasra No. 1446/496 of Land measuring 0—4—6 bighas Pukhta (740-Sq. Yards) as entered in the jamabandi for the year 1968-69 with all right appurtenant thereto including Hand Pump electric fittings tubewell, and the sale of house No. B. XIX 431 by defendant No. 1 in favour of defendant No. 2 is illegal, void, and ineffectual against the rights of the plaintiff and the plaintiff is not bound by it.

*Claim in Appeal : For reversal of the order of the courts below.
Sanjath Majithia, Advocate, for the Appellants.*

B. R. Mahajan, Advocate with Rajesh Girdar, Advocate for the Respondents.

JUDGMENT

A. L. Bahri, J.

(1) The question involved in this appeal is to the applicability of Section 14(1) or Section 14(2) of the Hindu Succession Act to the facts of the case and further whether a daughter-in-law under the Hindu Law is entitled to get maintenance during the life time of her husband from her father-in-law to make her an absolute owner in respect of the property bequeathed under a will by her father-in-law, but restricting her right only to have the usufruct and no powers of alienation.

(2) Sardar Bahadur Dr. Kartar Singh was owner of a big chunk of property including the property in dispute. He executed a Will in favour of his gradsons Daljit Singh and others sons of Ajaib Singh. In this Will, some property was also given to his son Iqbal Singh. However, the said property was to remain with Inder Kaur wife of Iqbal Singh for her residence uptil her death. The Will of Kartar Singh aforesaid is Ex. PX. Inder Kaur sold the property given to her by Kartar Singh as aforesaid to Gurbachan Kaur and others. This led to the present suit being filed by Paramjit Singh and Gurjit Singh minor sons of Iqbal Singh through their mother Baldev Kaur for declaration that they were owners of the house in dispute and the sale of the same in favour of Gurbachan Kaur was illegal, void and ineffectual against their rights. The alleged sale deed by Inder Kaur in favour of Gurbachan Kaur was executed on March 30, 1972. The suit was contested by Inder Kaur *inter alia* alleging that her husband Iqbal Singh was of un-sound mind. House in dispute was bequeathed to her in lieu of her maintenance. She was in possession of the same at the time of enforcement of Hindu Succession Act. Whatever restricted rights she had, became full and absolute under Section 14 of the Hindu Seccession Act. Similar defence was taken by Gurbachan Kaur, the transferee. Necessary issues were framed in the case. The trial Court,—*vide* its judgment and decree dated June 26, 1980 decreed the suit. Gurbachan Kaur filed an appeal which was disposed of by the Additional District Judge on October 3, 1983. The appeal was dismissed. The cross-objections filed by Baljinder Singh as legal representative of Inder Kaur who had died during the pendency of the suit were also dismissed. The present appeal has been filed by Gurbachan Kaur and others. On behalf of the plaintiff-respondents, an application has been filed for amendment of the plaint that during pendency of the suit Inder Kaur had died and the suit should be converted for

Gurbachan Kaur and another v. Paramjit Singh and another
(A. L. Bahri, J.)

possession as well. The appeal as well as the application are for disposal.

(3) There is no dispute regarding the broad facts as briefly noticed above. The contention of learned counsel for the appellant is that Inder Kaur became full owner of the property given to her by her father-in-law Karter Singh and she was competent to alienate the same in favour of Gurbachan Kaur. The interpretation and applicability of Sections 14(1) and 14(2) of the Hindu Succession Act was under consideration of the Supreme Court in *Gulwant Kaur v. Mohinder Singh* (1), which decision was subsequently followed in *Jaswant Kaur v. Major Harpal Singh* (2). In *Gulwant Kaur's* case, the Supreme Court in para 4 of the judgment held as under:—

“It is obvious that Section 14 is aimed at removing restrictions or limitations on the right of a female Hindu to enjoy, as a full owner, property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a vestige of a title. It makes no difference whether the property is acquired by inheritance or devise or at a partition or in lieu of maintenance or arrears or maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The explanation expressly refers to property acquired in lieu of maintenance and we do not see what further title the widow is required to establish before she can claim full ownership under Section 14(1) in respect of property given to her and possessed by her in lieu of maintenance. The very right to receive maintenance is sufficient title to enable the ripening of possession into further ownership if she is in possession of the property in lieu of maintenance. Sub-section (2) of Section 14 is in the nature of an exception to Section 14(1) and provides for a situation where property is acquired by a female Hindu under a written instrument or a decree of court and not where such acquisition is traceable to any antecedent right.”

Kartar Singh died in the year 1960. At that time Iqbal Singh, husband of Inder Kaur, was alive. Since Iqbal Singh had re-married

(1) (1987)3 S.C. cases 674.

(2) (1989)3 S.C. cases 572.

Baldev Kaur, the present appellants are children of Baldev Kaur. It was in 1972 that Inder Kaur sold the property and during the pendency of the suit, Inder Kaur died. The plaintiffs filed an application for amendment of the plaint as during the life time of Inder Kaur, they could not make a claim for possession of the property. The question for consideration is as to whether Inder Kaur during the life time of her husband Iqbal Singh could make a claim for maintenance against her father-in-law Kartar Singh. If she had any legal right then *qua* the property given to her for maintenance by Kartar Singh, she could claim to be absolute owner under Section 14(1) of the Hindu Succession Act. Learned counsel for the appellants has referred to certain paragraphs of the Hindu Law by Mulla 1966 edition to support his case that a Hindu female has a right of maintenance. Paras 553-A, 554, 555 were referred. On going through the same, I find that these paragraphs relate to separate residence and maintenance of a Hindu wife and obligation to maintain the wife is of the husband. Paras 558-A and 559 relate to rights of a Hindu widow for maintenance *qua* the husband's property. The rights of the female for maintenance are governed by the provisions of Hindu Adoption and Maintenance Act. Before I refer to the same, it may be stated that para 559 of the Hindu Law refers to the right of a widow who is not to succeed to her husband's property to maintenance out of her husband's separate property and out of the property in which he was a co-partner at the time of his death. Section 19 of the Hindu Adoption and Maintenance Act reads as under :—

“19(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law :

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property, or where she has no property of her own, is unable to obtain maintenance :—

(a) from the estate of her husband or her father or mother,
or;

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from

Gurbachan Kaur and another v. Paramjit Singh and another
(A. L. Bahri, J.)

any coparcenary property in his possession out of which the daughter-in-law has not obtained any share and any such obligation shall cease on the re-marriage of the daughter-in-law."

(4) The perusal of the aforesaid provision would show that it is only after the death of her husband that his wife/widow is entitled to be maintained by her father-in-law. During the life time of the husband, his wife has no right to maintenance against her father-in-law. That being the position under the Will Exhibit PX of Kartar Singh, Inder Kaur got a restricted right to have usufruct from the property and to reside therein during her life time. This grant was not for her maintenance legally due or in lieu of such maintenance to clothe her with absolute ownership of the property given to her. The case would be covered under section 14(2) of the Hindu Succession Act and not section 14(1). Inder Kaur was not absolute owner of the property in dispute under the Will Exhibit PX of Kartar Singh. After her death the property was to revert to Iqbal Singh. Since Inder Kaur was not owner of the property, she had no right to sell the same to the present appellants. The courts below rightly dismissed the suit.

(5) Since Inder Kaur had died during pendency of the suit, this has given cause for the plaintiffs to claim possession of the property in dispute. In order to avoid future litigation, the plaint is ordered to be amended to allow the plaintiffs to make a claim for possession of the suit property. The miscellaneous application is allowed. Plaintiffs are allowed one month's time to file amended plaint duly stamped with requisite court-fee for possession of the property in dispute in the trial Court. If that is done, their suit shall stand decreed for declaration as well as for possession. Otherwise, their suit shall stand decreed for declaration as originally prayed. This appeal shall stand dismissed with costs.

P.C.G.