under entry 28. This contention of the learned counsel is only of academic importance as it has not been alleged in the petition nor proved that after the enhancement of the fee, any amount has been spent by the Committee or the Board on some purpose calculated to promote the national or public interest. In this situation, I do not propose to enter into any further discussion on this aspect of the matter as it is not necessary to do so for the determination of the controversy raised before us.

(25) Before parting with the judgment, it may be observed that Mr. R. L. Batta, Advocate, who was allowed to intervene, had adopted all the arguments of Mr. B. S. Malik, learned counsel for the petitioners, except that he did not urge that the Committee could incur expenditure only on the development of the principal market yard and not the notified market area.

(26) No other point was urged.

(27) For the reasons recorded above, this petition fails and is dismissed with costs.

S. S. Sidhu, J.—I agree.

A. S. Bains, J.—I also agree.

K.T.S.

FULL BENCH

APPELLATE CIVIL

Before S. S. Sandhawalia, Prem Chand Jain and S. C. Mital, JJ.

PARMESHWARI,—*Appellant.*

versus

MST. SANTOKHI,—Respondent.

Regular Second Appeal No. 418 *of* 1965

January 31, 1977.

Hindu Succession Act (XXX of 1956)—*Section* 14(1)—*Gift to a female by a limited owner prior to the enforcement of Hindu Succession Act—Such female in possession of the gifted property—Whether becomes full owner after the enforcement of the Act.*

Held, that section 14 of the Hindu Succession Act 1956 has to be construed against the background of the pre-existing law and in the light of the matrix of facts which necessitated its enactment. This provision was primarily intended to remedy the intricacies of the then existing Hindu Law on the point and to radically reform the same. Apart from the numerous concepts of property in Hindu Law, the property of a Hindu female in the earlier law did fall into two broad categories, namely, that of a Hindu Woman's Estate with its known limitations, and what was strictly called as Stridhana, governed by its own special rules. The larger intention of the Legislature under section 14 was to enlarge the property held as a Hindu Woman's Estate and also to remove and abrogate the intricate fetters placed on the Stridhana property of a female as well. The object is to recognise her status as an independent and absolute owner of property in both these cases. Section 14 was not intended to benefit a mere alienee of a female limited owner and such alienees or transferees are not within the ambit of this section, the object being to confine the benefit only to those female Hindus who were limited owners according to then existing Hindu Law. In view of the history and the background of the legislation ; the language of section 14(1) and in particular the explanation thereto, it must be held that a female in possession of the property under a gift made by a limited owner prior to the enforcement of the Hindu Succession Act does not become a full owner after its enforcement.

(Paras 5, 26, 27 and 47)

Smt. Chinti etc. *vs.* Smt. Daultu etc. A.I.R. 1968 Delhi 264 (F.B)

DISSENTED.

Smt. Chawli and another *vs.* Hans and others 1960 P.L.R. 87.

OVERRULED.

Case referred by Hon'ble Mr. Justice Prem Chand Jain, on 1st May, 1973 to a Division Bench for decision of the following question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice Man Mohan Singh Gujral further referred the case on 12th August, 1974 to a Full Bench. The Full Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice S. C. Mital returned the case on 31st January, 1977 after answering the question in the negative :—

> "Whether a female who is possessed of land under a gift made *by a limited owner prior to the enforcement of the Hindu Succession Act becomes full owner after the enforcement of the Act* ?"

Regular Second Appeal from the decree of the Court of Shri Raj Kumar Sharma, Senior Sub Judge, with Enhanced Appellate Powers, Sangrur, dated the 2nd day of January, 1965, affirming with costs that of Shri Gurpartap Singh Chahal, Sub Judge 1st Class, Jind, dated the 13th February, 1964, decreeing the suit of the plaintiff for possession of land measuring 7 Bighas 7 Biswas pukhta as described in the head note of the plaint and leaving the parties to bear their own costs.

R. S. Mittal, Advocate, *for the appellants.*

Ashok Bhan, Advocate, *for the Respondents.*

Judgment of the Court was delivered by :—

S. S. Sandhawalia, J.

(1) The significant question of law before this Full Bench on a reference has been succinctly formulated in the following terms :—

> "Whether a female who is possessed of land under a gift made by a limited owner prior to the enforcement of the Hindu Succession Act becomes full owner after the enforcement of the Act ?"

The salient facts from which the issue arises are hardly in dispute. The original male owner of the suit land was one Matu. On his death his wife Smt. Sunder succeeded to his estate as a limited owner. However, she absolutely gifted one-half share in Khewat No. 58 in favour of her husband's brother's daughter Smt. Parmeshwari defendant and the mutation in respect thereof was sanctioned on the 28th of August, 1953. The donee was apparently put in possession of the said property. The Hindu Succession Act came into force on the 17th of June, 1956 and about 5 years thereafter Smt. Sunder, the donor, died some time in 1961. A suit was then brought on the 2nd of March, 1963, by Smt. Santokhi, the real sister of Smt. Permeshwari donee, for a declaration that the gift in the latter's favour was invalid on the primary ground that Smt. Sunder, the original donor, held only a life estate in the land in dispute and was, therefore, not entitled to make an absolute gift thereof. The suit was contested by Smt. Permeshwari defendant but was decreed by the trial Court.

(2) On appeal, the judgment and decree above-mentioned was affirmed by the first appellate Court. The second appeal came up

before my learned brother Jain, J., who referred the question to a larger Bench in view of the conflict of authority on the point. The Division Bench before which the matter was placed, directed that the issue was of such significance that it should be finally settled by a Full Bench.

(3) It is evident from the two referring orders that there is a significant conflict of authority on the point. However, before inevitably adverting to the intricacies of precedent it would be refreshing to examine the matter in the light of the provisions of the statute itself.

(4) Section 14 of the Hindu Succession Act, around which necessarily the controversy revolves, is in the following terms :—

"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 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."

(5) Inevitably a provision of this nature has to be construed against the background of the pre-existing law and in the light of the matrix of facts which necessitated its enactment. Even generally, no enactment is to be construed in a vacuum and this is particularly so in the case of section 14 aforesaid which was primarily

intended to remedy the intricacies of the then existing Hindu law on the point and to radically reform the same. It is neither possible nor perhaps desirable to launch on a detailed dissertation of the nature and extent of the right to property of the Hindu females prior to the coming into force of the Hindu Succession Act. Nevertheless, it appears to me that without a brief passing reference to the pre-existing law thereto, the matter cannot be put into correct perspective.

(6) It suffices to notice that before the promulgation of the Hindu Succession Act on June 17, 1956, a Hindu female's ownership of property was hedged in by intricate limitations on her right of its disposal both by acts *Inter vivos* and also as regards her testamentary powers in respect of the same. What deserves particular notice is the fact that the then existing concepts of *stridhana* exhibited so great diversity of doctrine on the point that it was no easy task to predict the precise legal position under the various rules of Hindu Law. The ancient texts attempted to enumerate the different heads of *stridhana* without any comprehensive definition, and with respect it may be stated that the later commentators did not, in any way, add to either the clarity or the uniformity of the law on the point. Not only this but the restrictions imposed by Hindu Law on the proprietary rights of a woman both as regards *stridhana* and the other property were further complicated by her status, i.e., whether she came into such property as a maiden, a married woman, or as a widow. This apart, further intricacies did arise depending on the source and nature of such property. Again, the order of succession to *stridhana* was different from that in the case of the property of a male owner and it further varied under the different schools of Hindu Law. All these factors rendered this branch of the law as the most complicated and the least predictable of its kind.

(7) As is perhaps well known, Parliament in the early fifties embarked upon the grand design of simplifying the interminable intricacies of Hindu Law and codifying the same. This, however, did not fructify completely. The Hindu Code Bill, as originally envisaged, did not find its way to the statute book in its entirety, and instead separate enactments pertaining to the different fields of marriage, succession, minority and guardianship, and adoption and maintenance were enacted. Nevertheless, it is meaningful to notice that clause 91 of the Hindu Code Bill, 1948, which was the precursor of

the present section 14, was originally drafted in the following terms :—

"91. Nature of woman's property.—(1) Any property acquired by a woman after the commencement of this Code shall be her absolute property.

"(2) Nothing in sub-section (1) shall apply to any property acquired by a woman by way of gift or under a will where the terms of the gift or the will, expressly or by necessary implication, prescribe a restricted estate in such property :

Provided that no such implication shall arise by reason only of her sex.

Explanation.—In this section 'property' includes both movable and immovable property acquired by a woman, whether such acquisition was made before, at or after marriage or during widowhood and whether by inheritance or devise or on partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever."

The aforesaid provision (along with others) passed through the crucible of numerous select committees and parliamentary debates to ultimately emerge in the shape of present section 14 of the Hindu Succession Act, 1956, which stands quoted above. The plain language thereof leaves no manner of doubt that the overall intent of the legislature in incorporating the rule in section 14 was to abrogate the stringent provisions of Hindu Law which militated against full proprietary rights of a female owner and to confer upon her the status of an independent and absolute owner of property. So much for the background and the broad intent of its framers in enacting section 14 of the Act.

(8) Before us the argument has inevitably centred around the language of sub-clause (1) of section 14. It is perhaps best to notice at the very outest the stand taken on behalf of the parties on the larger issue of its construction. Herein, the core of the argument advanced by Mr. R. S. Mittal on behalf of the appellant is that the words "limited owner" at the end of the clause are not to be equated

with, or analogous to, the well known concept of the Hindu Woman's estate in Hindu Law. The argument on the contrary is that the words "limited owner" should be understood in their ordinary and generic sense of a person whose right of alienation stands fettered either by express terms of a document or by the rules of law and custom. The contention of Mr. Mittal is that the words "limited owner" were advisedly used by the framers in order to effectuate their intent to enlarge the limited interest of every Hindu Female and not merely enlarge into absolute ownership what is well known as a Hindu Woman's estate.

(9) On the other hand, Mr. Ashok Bhan's forceful contention was that section 14(1) cannot and should not be divorced from its history and its background and the words "limited owner" here must take their hue from the well known concept of the nature of a Hindu female's property known to the pre-existing law. The learned counsel for the respondent, submitted that the words "limited owner" had necessarily to be used because the intent was to enlarge not only what is technically known as the Hindu woman's estate but also to remove all fetters on the transfer of *stridhana* which had been imposed by different schools of Hindu Law. It was pointed out that the variety and the complexity of the limitations placed on a Hindu woman's right to hold property by the existent law were so numberous and difficult of classification that the legislature was inevitably compelled to use wide ranging terminology. Nevertheless, the counsel for the respondent submitted that the intention was and could never be to confer the benefits of absolute ownership on each and every alienee of property derived from Hindu female but was confined to enlarge only the well understood concepts of such a limited ownership by Hindu females under the earlier law.

(10) Having noticed the basic stance of the parties I now proceed to examine in detail the variety of arguments advanced in support of either view. The mainstay of the arguments on behalf of the appellant was sought to be rested on the wide ranging language of the explanation to sub-clause (1) of section 14 of the Act. Mr. Mittal had contended that the wide amplitude of the terms of the explanation was a clear pointer to the intention of the legislature to enlarge every conceivable kind of limited ownership of a Hindu female wherever and howsoever existing. Reliance was placed on the individual clauses of the explanation in an attempt to show that these

did not necessarily refer to the known concepts of Hindu law but were intended to confer absolute ownership irrespective thereof.

(11) Herein reliance was first placed on the following words in the explanation to sub-section (1) of section 14 of the Hindu Succession Act—

> " * * *, or by gift from any person, whether a relative or not, before, at or after her marriage, . . ."

Counsel contended that this sentence was meant to cover all gifts received from whatever source at any and every stage of the life of a Hindu female. According to him, the words were of an inclusive nature and were intended to bring within their ambit gifts received at the time of the marriage or in close proximity thereto. It was conended that the framers did not thereby wish to exclude other gifts which may be totally unrelated to the marriage ceremony. Some emphasis was also placed on the fact that herein reference is made to gifts not merely from blood relations but also those from rank strangers because the language clearly refers to gifts from 'any person'.

(12) The superficial plausibility of the aforementioned contention gets totally eroded when reference is made to the well-known concept of *Stridhana* in the particular context of gifts made to the bride at or about the time of a marriage and to other gifts unrelated thereto. That certain kinds of gifts made to a Hindu female from her *Stridhana* cannot be a matter of serious dispute. In this connection reference may first be made to para 113 of Mulla's authoritative work on the Principles of Hindu Law which enumerates that even according to the Smritis Manu had enumerated six kinds of *Stridhana*. This included gifts made before the nuptial fire (Adhyagni); at the bridal procession, that is, while the bride is being led to the house of her husband from the house of her parents (Adhyavahanika); gifts made in token of love by the bride's father-in-law and mother-in-law and also those made at the time of her making obeisance at the feet of her elders (Padavandanika). Apart from these three kinds of gifts which apparently were closely related to the marriage ceremony, reference has also been made by Manu specifically to gifts made by the father, the mother or the brother. However, these kinds of gifts

to the Hindu bride or a Hindu female which were from antiquity deemed to be her *Stridhana* were in no way exhaustive. Even a relatively ancient commentator, like Vishnu added thereto by mentioning gifts made by a husband to his wife (Adhivedanika) on supersession, that is, on the occasion of his taking another wife (Adhivedanika) gifts made after marriage by her husband's relations or her parents' relations (Anwadheyaka), gifts made as Sulka or marriage-fee (a term which is rather elastic and used in different senses in different Schools of Hindu Law) and lastly gifts from sons and relations.

(13) Now the nature and the extent of a Hindu female's right to hold and dispose of the aforementioned gifts which were undoubtedly Stridhana varied widely in the different Schools of Hindu Law. It is perhaps unnecessary for our purpose to notice in any detail the divergence of these rules and it would suffice to mention that in substantial respects the Mitakshra and Dayabhaga as also the Bombay, Benaras, Madras and the Mithila Schools of Hindu Law differed from each other. As has been already noticed, these variations pertained not only to the right of holding and disposal of such Stridhana but also as regards the mode and manner of succession thereto. Apart from the gifts at or about the time of marriage, the Rules of Hindu Law showed an equal diversity as regards the gifts and bequests made by relations to a Hindu female. It is adequate to quote para 126 of Mulla's Hindu Law in this context:—

"126. *Gifts and bequests from relations* :

"Property given or bequeathed to a Hindu female, whether during maidenhood, coverture, or widowhood, by her parents and their relations, or by her husband and his relations is *Stridhana* according to all the schools, except that the Dayabhaga does not recognise immovable property given or bequeathed by a husband to his wife as Stridhana."

Similarly detailed and intricate rules of law operated in the field of gifts and bequests made to a Hindu female by strangers. Mulla notices this in para 127 as follows :—

"127. *Gifts and bequests from strangers* :

A gift may be received by a Hindu female from a stranger, that is, from one who is not a relation (1) during

maidenhood or (2) at the time of marriage, or (3) during coverture or (4) during widowhood."

(14) It has also to be noticed that the power of a Hindu female to dispose of the Stridhana during coverture further depended on the character of the Stridhana. For this purpose, Stridhana was again divided into two classes, namely, *Saudayika* and *non-Saudayika*. As regards the rights over Stridhana during widowhood a Hindu female had during widowhood the absolute power of disposal over any kind of Stridhana whether acquired before or after her husband's death.

(15) It follows from the above that the afore-quoted sentence pertaining to gifts made to a Hindu female in the explanation to section 14(1) was clearly connected with and related to the well known concepts of Stridhana pertaining to such gifts in Hindu Law. The intent of the framers, therefore, appears to be to enlarge the right of property of a Hindu female in such gifts into absolute ownership and to expressly remove the fetters imposed thereon by different schools of Hindu Law on such gifts. The language used herein is not to be construed in mere isolation but with particular reference to the pre-existing Hindu Law at the time of the enactment of section 14. To read this clause otherwise as if in a vacuum would hardly be warranted in my view.

(16) More or less of identical import was the counsel's reliance on the other words and sentences in the explanation. These may now be considered and dealt with in relative brevity. Mr. Mittal referred to the words "or by her own skill or exertion" used in the explanation for contending that such property was obviously the absolute property of a Hindu female and, therefore, these words could not have any relevance to the earlier Hindu Law on the point.

(17) The fallacy of this contention would become evident when reference is made to para 131 of Mulla's Hindu Law. This delineates the rules applicable to property acquired by a Hindu female by mechanical arts or otherwise by her own exertions during maidenhood, coverture or during widowhood. Such property obviously was deemed to be Stridhana by most of the schools of Hindu Law but herein also there was no absolute unanimity. The nature of the right of ownership as regards this property acquired by a woman by her own skill or exertion again differed according to various schools. Whilst

such property acquired during coverture was Stridhana according to Bombay, Benaras and Madras schools, it was not so according to the Mithila and Dayabagha schools. Speaking generally, property acquired by her own exertion by a Hindu female was her Stridhana if so acquired during maidenhood or widowhood. It is unnecessary to make detailed reference to the divergence of rules of law applicable to such property. It suffices to say that the reference in the explanation in terms to a property acquired by a female Hindu by her own skill or exertion was also rooted in and had relevance to the earlier rules of Hindu Law pertaining to such property in the hands of a Hindu female. The intention here again seems to be to confer absolute ownership as against limitations imposed by the pre-existing law on such property.

(18) It would be perhaps wasteful to advert individually to each sentence or clause of the explanation to which some reference was made by the learned counsel for the appellant. It indeed suffices to refer to his ultimate reliance on the words "or in any other manner whatsoever" used in the penultimate part thereof. On the strength of this terminology it was contended by the counsel that these wide ranging words had little or no relevance to the earlier Hindu Law and would cover the enlargement of any and every kind of property in the hands of a Hindu female.

(19) The aforesaid contention is again negatived when reference is made to para 135 of Mulla's Hindu Law. This pertains to such property of a Hindu female which may not be categorised in the principal sources of Stridhana but may be acquired from any other source. Mulla authoritatively mentions that whether such a property acquired by her from any other source constitutes her Stridhana or not is to be determined by applying the detailed rules of the different schools of Hindu Law enumerated in para 123 earlier. It is thus evident that when the framers of the explanation referred to property acquired in any other manner by a Hindu female, they had in mind the known concept of Stridhana from other sources apart from the principal and the expressly enumerated ones. Here again the end result in view was to confer absolute ownership as against the limited ownership under the pre-existing Hindu Law.

(20) Indeed it appears to me that the reliance on the language of the different clauses of the explanation ultimately boomerangs on the

construction canvassed for on behalf of the appellant. Mr. Ashok Bhan, the learned counsel for the respondent in his reply indeed counter-attacked and himself relied on the language of this very explanation for contending that the different enumerations of property mentioned therein were deeply rooted in and connected with the concept of Stridhana in the pre-existing Hindu Law. He submitted forcefully that this language should not and ought not to be read in isolation and he divorced from its basic background. It was pointed out that by and large the language used herein consisted primarily of terms of art having particular reference to the peculiar incidence of limited ownership of a Hindu female as regards her Stridhana property.

(21) In support of the aforesaid contention and as examples thereof, he first pointed out the words 'inheritance or devise' which, according to him, would be clearly related to the Stridhana property of a Hindu female acquired by inheritance as specified in para 130 of Mulla's Hindu Law. This distinguishes the two cases where a woman inherits the ordinary property of a male such as her husband, father or son as against the inheritance of Stridhana of a female such as her mother, daughter and the rest. According to Dayabhaga School as also the Benaras, Mithila and Madras School, property inherited by a woman whether from a male or a female does not become her Stridhana and she takes only a limited interest in the property. She does not become a fresh stock of descent and on her death the aforesaid property would pass not to her own heirs but to the next heirs of the persons from whom she had inherited the same. However, as against this, divergent rules were applicable in the Mitakshra and the Bombay Schools. There appears thus to be force in the contention of Mr. Ashok Bhan that it was primarily to the aforementioned kind of property that reference was made in the explanation by the use of words 'inheritance or devise'.

(22) Similarly the words 'or at partition' have been co-related to para 128 of Mulla's Hindu Law which specifies the valid rules applicable when a share is allotted to a mother or a father's mother on partition of joint family property or it is given to her by way of provision for her maintenance for which the family property is bound. Again the phrase 'in lieu of maintenance or arrears of maintenance, is contended to be connected with the statement of the law in para 129 of Mulla's Hindu Law. Reference to 'by purchase

or by prescription' has been similarly allied to the incidents of Hindu Law regarding the property purchased with Stridhana, and the property obtained by a Hindu female by adverse possession or prescription which are dealt with in paras 134 and 133 respectively, of Mulla's work.

(23) Lastly, in this context, learned counsel for the respondent referred to the concluding sentence of the explanation—"and also any such property held by her as Stridhana immediately before the commencement of this Act." It was submitted that this had an integral connection with the preceding language and was used as a residuary clause to include within its ambit all kinds of Stridhana which may have either missed enumeration earlier or may not strictly fall within the ambit of clauses in the earlier part of the explanation.

(24) I am of the view that in construing the Explanation here one must follow the hallowed rule laid down *in Heydon's case*. Therefore, it is indeed necessary to keep in mind as to what was the State of law before enacting the Hindu Succession Act, what was the mischief or the defect in the law for which a remedy was being provided by Parliament and the reasons for that remedy. Recent affirmation of this principle of construction has been made by the House of Lords in *Black-Clawson International Ltd.* v. *Papierwerke Waldhof-Aschaffenburg AG*, (1).

(25) Viewed thus it appears that though at first flush the argument of the learned counsel for the appellant on the language of the explanation appeared to be ingenious yet an analysis in depth against the proper background of the pre-existing Hindu Law at the time of enacting section 14(1) tends ultimately to seriously detract from the stand taken on behalf of the appellant.

(26) In passing one might as well advert to the contention of the learned counsed for the appellant that if the intention of the legislature was confined to the enlargement of only the known concepts of a Hindu Woman's Estate then the draftsmen would have used those very words in the concluding part of section 14(1) instead of the words 'limited owner' which have a more comprehensive connotation. This contention, however, seems to forget the fact that

(1) (1975) 1 All England Law Reports 810.

apart from the numerous concepts of property in the Hindu Law, the property of a Hindu female in the earlier law did fall into two broad categories, namely, that of a Hindu Woman's Estate with its known limitations, and what was strictly called as Stridhana, governed by its own special rules. The larger intention of the Legislature under section 14 was to enlarge the property held as a Hindu Woman's Estate and also to remove and abrogate the intricate fetters placed on the Stridhana property of a female as well. The object seems to be to recognise her status as an independent and absolute owner of property in both these cases. Therefore, it is plain that the draftsmen could not possibly have used the phrase 'Hindu Women's Estate' only in Section 14(1) because the intent was to enlarge not only one but also the other kinds of limited ownership into absolute ownership. Learned counsel for the appellant's finical contention as to what language should or should not have been used by the Legislature, therefore, does not appear to have much substance.

(27) Now the appellant herein is a mere alienee from a limited female owner from whom she purported to acquire an absolute gift (though admittedly the donor would have no right to make one) and obtained possession thereof prior to the commencement of the Hindu Succession Act. The core of the matter, therefore, is whether section 14 was intended to benefit a mere alienee of a female limited owner. On behalf of the appellant it was strenuously contended that such alienees or transferees were also within the ambit of section 14 whilst the forceful contention on behalf of the respondent was that the object was confined to benefit only those female Hindus who were limited owners according to then existing Hindu Law.

(28) Even assuming for a moment (without holding so) that two constructions are possible on the language of section 14, it appears that the interpretation sought to be placed on the statute on behalf of the appellant would lead to three patent anomalis.

(29) Firstly, one may take the case of an absolute gift purported to be made by a female limited owner in favour of a male donee prior to the commencement of the Act. It is plain on the language of the statute itself that such a gift cannot possibly be enlarged into an absolute one in the hands of a male donee by virtue of section 14(1). This was fairly conceded by Mr. Mittal on behalf of the appellant.

The plain result of this situation would be that if the same limited female owner were to make two gifts at the same time of identical property, one to a female and the other to a male, prior to the enforcement of the Act, the gift in favour of the female donee would become enlarged into absolute ownership according to the learned counsel for the appellant whilst that in favour of the male donee can never be so enlarged. Even when pressed; the learned counsel was unable to give any rationale for such divergent and contradictory results arising in law on an identical set of facts.

(30) Secondly, in the reverse one may take into consideration the example of a gift by a male limited owner in favour of a female Hindu who is put in possession thereof prior to the coming into force of the Act. On the construction canvassed on behalf of the appellant, even more startling results would ensue. Such a gift, according to him, would fall again within the ambit of section 14(1) and the property would get enlarged into absolute ownership in the hands of the female donee. Now it is evident that if the self same property had continued with the original donor who himself was a limited owner, no such beneficial results could possibly accrue to him by any provision of the Hindu Succession Act. Would it be possible to envisage that the right to property which was essentially of a limited nature in the hands of the original male Hindu owner would become of an absolute nature by the mere incident of transfer to a female donee ? It seems inconceivable that the Legislature intended that the knwon incidents of a limited ownership in the hands of a Hindu male should get enlarged into absolute ownership by an alienation in favour of a female who is put into possession. Further, the contradiction noticed in the preceding example would also repeat itself in this context as well i.e. where a gift is made to a female donee as against the one made to a male donee.

(31) Thirdly, one may instructively examine the illustration (with suitable modification) given by the Division Bench in *Marudakkal and another* v. *Arumugha Goundar*, (2): A Hindu woman, before the coming into force of the Act, inherits from her husband immovable property worth a lakh of rupees. She considers it difficult to manage the same and converts the property into cash

(2) AIR 1958 Madras 255.

by selling it without any legal necessity to a female alienee who knowingly buys it at a grossly under-rated value of rupees thirty-thousand only and takes over possession of the same. To say that the effect of section 14(1) would be to make such an alienee a full owner of the property would be tantamount to holding that Parliament intended to make even a dishonest alienee as the subject of its bounty. Can it be said that the intention of the Legislature would be to make a gift of the difference between the actual and the under-rated value of the property to a collusive alienee who with her eyes open had purchased the property of a limited female owner with the known limitations on her power of transfer in the absence of legal necessity ?

(32) It is evident from the above that the construction canvassed on behalf of the appellant leads not to one but to numerous anomalous results. It is a settled canon of construction that an interpretation should be avoided which on the face of it leads to irrational consequences. The language of section 14(1) is not of a nature which is possible of a single construction only. Therefore, where plainly two constructions are possible, then one must obviously tilt to the one which reasonably avoids illogical and untenable results.

(33) Reverting back to the language of section 14(1) it is worthy of prominent notice that it places pre-eminent importance on the possession of property, whether actual or constructive, by a female Hindu in order to secure the benefit of the enlargement of the limited interest into an absolute one. Possession is thus a *sine qua non* before Full ownership of the property under the statute can be claimed. Thus, both the limited interest and the possession of the property have to concur in order to attract the provisions of section 14(1). This position is not in serious doubt and a reference to numerous authorities on the point is unnecessary because Mr. Mittal for the appellant fairly conceded this fact. It, therefore, seems plain that if a limited female Hindu owner has lost or abandoned possession of the property she herself cannot avail of the benefit of the provision aforesaid. This being so, would it stand to reason that a mere transferee or alienee who happens to be a woman and who herself never held the property with the necessary incidence of limited ownership under the Hindu Law should be entitled to secure such a benefit ? The construction canvassed on behalf of the appellant, therefore, appears to involve the fallacy that

even though the orginal female limited owner once she is out of possession would not be able to secure any enlargement of her interest yet a mere purchaser, a mortgagee or any other female alienee from her would, nevertheless, be entitled to such a benefit This to my mind does not appear to satisfy the plain dictates of logic. One can easily visualize a situation which is not of uncommon occurrence where there may be a direct conflict of interest to secure enlargement of the estate betwixt the original female limited owner and one or the other of her alienees in possession. It would indeed be a strange result that though such a benefit plainly would not accrue to the original limited owner it should, nevertheless. become available to some one deriving her title entirely from such an alienor.

(34) In the larger prospect it is worthy of recollection that a salient concept of the limited ownership of female heirs in Hindu Law is that they did not constitute a fresh stock of decent and property in their hands reverted to the reversioners or, in other words, the heirs of the last male holder. The argument that female alienees would be entitled to the benefit of enlargement again leads to this incongruous result that such property passes neither into absolute ownership of the female limited heir nor does it revert to the heirs of the preceding male owners but by the pure accident of an alienee being a female, the latter acquires it absolutely. Such a fortuitous result could hardly have been deliberately intended by the Legislature.

(35) In fairness to Mr. Mittal, the learned counsel for the appellant, I must notice that he relied heavily on the incidents and the nature of a Hindu widow's right in the property inherited from her husband. It was contended on the basis of high authority that as long as a Hindu widow was alive she represented her husband's inherited estate fully and her interest therein could not be equated merely with a life interest as known to western jurisprudence. This is perhaps true but one fails to see how this fact would in any way advance or detract from the basic point at issue, namely, whether the mere female alienees from a female limited owner are entitled to the benefit of the enlargement of the estate under section 14. This is so because it is obvious that the section is not confined to and does not deal exclusively with a Hindu widow's estate only. The language thereof is couched in the widest terms and, therefore.

includes all female owners of property and not widows only. Equally it has within its ambit property which known a *Stridhan* (with wide and variegated fetters thereon according to different Schools of Hindu Law) as also property inhereted by a female heir from female predecessors-in-interest and also that inherited from relations other than the husband. Therefore, the specious argument sought to be rested on the very peculiar incidents of a Hindu widow's estate including her right of aleination in cases of legal necessity (and in other specified situations to which reference is unnecessary) is not of any great significance in the examination of the present point and indeed it hardly seems to be relevat at all.

(36) I have so far attempted to examine the question before us against the background of its history, on the language of the statute as also on principle in considerable detail because some aspects discussed above do not seem to have been adequately noticed in the cases cited before us. It would, however, be now wasteful and perhaps dilatory to examine the remaining arguments and rationale as if they were matters of first impression whilst in fact a large field thereof does seem to be covered by a plethora of precedents. I, therefore, proceed now to examine the case law on the point and even though there is a significant clash of authority on the point to which reference is made hereafter, it appears to me that the view I am inclined to take is well supported by an extraordinary weight of authority both within this Court and the other High Courts.

(37) Before adverting to individual cases, it is perhaps fair to notice Mr. Mittal's larger grievance that the mass of case law against him consisted primarily of instances of male alienees from the female limited owner. His submission further was that in these cases the matter had been primarily examined from the point of the alienor or of the reversioners and not from the view point of a female alienee. There is some modicum of truth in the submission of Mr. Mittal because by and large the decisions cited before us related largely to instances of male transferees or donees from widows or other female limited owners. Nevertheless, it appears to me that the rationale and the logic of the judgment referred to hereinafter does not necessarily become warped or inapplicable by this factor alone. The reasoning of the judgments is not rested necessarily on the sex of the donee or alienee alone, but on the larger and basic considerations of the intent of the Legislature, the language of the statute and obviously on the principles of logical inference.

(38) Now, the forthright enunciation of the law bearing directly on the point appears in the Full Bench judgment in *Harak Singh* v. *Kailash Singh and another*, (3). Chief Justice Ramaswami speaking for the Bench in no uncertain terms observed as follows:—

> "The object of the Hindu Succession Act (Act XXX of 1956) was to improve the legal status of Hindu women, enlarging their limited interest in property inherited or held by them to an absolute interest, provided that they were in possession of the property when the Act came into force, and, therefore, in a position to take advantage of its beneficial provisions. The Act was certainly not intended to benefit alienees or to unduly enrich the alienees who with their eyes open purchased the property from the limited owners without justifying necessity before the Act came into force and at a time when the vendors had only limited interest of Hindu women. I am, therefore, of opinion that the effect of section 14 is not to enlarge the alienee's interest into an absolute indefeasible interest. Such an interpretation of section 14 cannot be accepted as correct."

It is perhaps equally worthy of notice that the Full Bench over-ruled two previous Division Bench judgments of its own Court reported as *Ram Ayodhya Missir and others* v. *Raghunath Missir and others*, (4) and *Mt. Janki Kuer and others* v. *Chhathu Prasad and others*, (5), wherein some observations to the contrary had perhaps appeared.

(39) The aforesaid view was soon sanctified by the approval of their Lordships in *Gummalapura Taggina Matada Kotturuswami* v. *Satra Veeravva and others*, (6). It is unnecessary to quote extensively therefrom and it would suffice to mention that in para 10 of the report Imam, J., speaking for the Court noticed the over-ruling of the previous view of the Patna Division Benches and referred approvingly in express terms to the afore-quoted view.

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(3) A.I.R. 1958 Patna, 581.
(4) A.I.R. 1957 Patna, 480.
(5) A.I.R. 1957 Patna, 674.
(6) A.I.R. 1959 S.C. 577.

(40) Within this Court the matter has been authoritatively considered by the Full Bench in *Amar Singh and others* v. *Sewa Ram and others*, (7), and the Bench also adverted to the fact of the Supreme Court decision in *Gummalapura Taggina Matada Kotturuswami's case* (6) (supra). Though the question before the Full Bench was slightly different, it was at the very outset noticed by Mehar Singh, J. (as his Lordship then was) that the matter turned largely on the consideration and effect of section 14 of the Act. Though there was some slight difference of opinion on an ancillary issue, there appears to be complete unanimity betwixt the learned Judges of the Full Bench on the point which falls for consideration here as is evident from the following observations of Dulat. J. :—

> "As far as the first case is concerned, I have no difficulty in agreeing with what Mehar Singh J. has said, and in view of the observations of the Supreme Court in A.I.R. 1959 S.C. 577, there can, in my opinion, be no doubt that section 14 of the Hindu Succession Act was never intended to benefit transferees from a female owner purchasing property from her at a time when her estate was limited."

It is unnecessary to multiply authorities and it would suffice to mention that the view that section 14 does not ensure for the benefit of the alienees of a Hindu female has again been authoritatively expressed in *Gaddam Venkayamma and others* v. *Gaddam Veerayya (died) and others*, (8), *Marudakkal and another* v. *Arumugha Goundar*, (2) (supra) and *S. Kanthimathinatha Pillai* v. *Vayyapuri Mudaliar*, (9). Particular mention, however, must be made of the recent Division Bench decision of the Calcutta High Court in *Anath Bandhu Sen Mondal* v. *Chanchala Bala Dasi* (10). Therein, after exhaustive discussion of the case law including the discordant view in *Chinti* v. *Daulty*, (11), it was observed :—

> "After giving our careful consideration and relying on the proposition of law as laid down by the Supreme Court in the cases referred to above and also the principles laid

(7) AIR 1960 Pb. 530.
(8) AIR 1957 Andhra Pradesh 280.
(9) AIR 1963 Madras 37.
(10) 80 Calcutta Weekly Notes 461.
(11) AIR 1968 Delhi 264.

down by several High Courts including the Calcutta High Court, we have no hesitation to hold that Section 14 was not meant to benefit an alienee. Section 14 wanted to benefit those female Hindus who were limited owners in the then existing Hindu Law before the commencement of the Act.

* * * * * * *

In conclusion we hold that Section 14 does not come forward to benefit the alienees who with their eyes open purchased the property of a limited owner; section 14 was enacted with the object of enlarging the limited interest of female Hindu acquiring the property in any of the modes mentioned in the section and who was in possession of the property either actual or constructive at the time of the commencement of the Act. It never intended to enlarge the limited interest of such female Hindu who before the commencement of the Act has parted with the possession of the property by executing either a deed of sale or a deed of gift."

(41) It is obvious from the catena of cases referred to above that there is an overwhelming weight of authority in favour of the proposition that section 14 of the Act was not intended to benefit the alienees of a limited female Hindu owner.

(42) It, however, remains to consider the view of the Full Bench of the Delhi High Court in *Chinti's case* (11) (supra). It is the mainstay of reliance on behalf of the appellant. Undoubtedly, this authority lends direct support to the appellant's case. However, with the greatest deference, I would wish to dissent from the view expressed therein. It perhaps deserves notice that the case was a hard one wherein the gift had been made by a widow in favour of her daughter, which was the subject-matter of challenge by the reversioners and it appears that the equity of the case in the alienee's favour perhaps subconsciously weighed with the Bench. It is an old adage that hard cases sometimes tend to make bad law.

(43) It is significant to notice that the learned Judges of the Full Bench were themselves conscious of the anomalous results

which necessarily flow from the interpretation accepted by them. They noticed the earlier view that if a female donee is given the benefit of section 14 it would create an anomaly inasmuch as a male donee under similar circumstances would remain a limited owner whereas a female donee would become an absolute owner. However, they brushed away this patent difficulty by observing that the anomaly was inherent in section 14 itself. With great respect I may say that this is not so. There is no compulsion either in the language of section 14 which necessitated the acceptance of such an anomaly as inherent. As noticed by me earlier, two constructions on the language of section 14 were plainly possible and on accepted canons of construction an interpretation which led to anomalies could easily have been avoided. In this context it is again worthy of attention that the Full Bench merely noticed a single anomaly and perhaps was oblivious of numerous others which would also necessarily arise and to which detailed reference has been made by me in the earlier part of the judgment. Yet again the learned Judges made not the least reference to the history of the law on the point or the background which necessitated the enactment of section 14(1) in the light of which the same was to be construed. No reference again was made to the explanation to Section 14(1). To my mind the language of the explanation does provide a key to the interpretation of the preceding section and this matter has been adverted to in detail by me earlier.

(44) With great deference I am also inclined to the view that the reliance on authority for arriving at the conclusion, which the Full Bench has, does not appear to be well merited. Primary reliance therein seems to have been made on *Gummalapura Taggina Matada Kotturuswami* v. *Setra Veeravva and others*, (6) (supra) wherefrom an extensive quotation was made. Those observations, however, appear to me as being totally remote to the point at issue. The core of the matter discussed therein was whether section 14 visualises only those limited owners who were in possession and not those who had already parted with possession. The whole emphasis was directed to construe the word 'possessed' in section 14. The issue of the enlargement of the alienees' interest did not at all arise and was not even remotely touched by their Lordships of the Supreme Court. The relevant observations indeed were in para 10 of the report, to which a reference was not made and as already noticed by me those observations lend support to a contrary view and in

terms approve the Patna Full Bench in *Harak Singh* v. *Kailash Singh* (3), (supra). Some reliance was also placed on *Gostha Behari* v. *Haridas Samanta* (12), but with great respect it may be said that the judgment does not in any way aid or lend support to the view expressed. Apparently faced with the contrary observations in the Full Bench in *Amar Singh and others* v. *Sewa Ram and others* (7), (supra), a passing reference was made thereto and it was rather summarily observed that the view taken by the Full Bench did not conflict with the Punjab case. With respect that does not seem to be so and the relevant part of the observations which have been quoted by me in the earlier part of this judgment seems to have been missed altogether. It appears that the learned counsel for the parties were rather remiss in not bringing to their Lordships' notice the forthright views expressed in *Venkayamma* v. *Veerayya* (8), (supra), and the Full Bench case in *Harak Singh's case* (3) (supra). Consequently no reference to them appears to have been made nor have they been distinguished or explained. In order to avoid burdening this judgment with more reasons, I may mention that the Division Bench in *Anath Bandhu Sen Mondal* v. *Chanchala Bala Dasi* (10), (supra), considered the view in *Chinti's case* (11) (supra) in depth and for detailed reasons differed with the same. I am entirely in agreement with the reasoning of the Calcutta Bench in this context.

(45) For the afore-mentioned reasons, with great deference and respect I would record my dissent with the view of the Full Bench in *Smt. Chinti's case*.

(46) For closely similar reasons given above, which need not be repeated, it has to be held that the Single Bench view of this Court reported in *Smt. Chawli and another* v. *Hansa and others* (13), in so far as it sought to give the benefit of Section 14 to even an alienee of a Hindu female limited owner is erroneously decided. The relevant observations seem to have been made entirely as an ancillary ground after the matter had been concluded in favour of the appellant on the main issue. A reference to the judgment would show that this aspect of the case was decided as if it was one of first impression. There is neither any discussion in depth nor any reference

(12) A.I.R. 1957 Cal. 557.
(13) 1960 P.L.R. 87.

to the mass of the case law on the point but in fairness to the learned Judge it may be said that at least some of it is subsequent to his decision. The observations in this case rested primarily on the issue of the possession of the alienees. Relying upon the interpretation placed on the word 'possessed' by their Lordships *in Kotturu swami's case* (6) (supra), an inference in favour of the alienees was sought to be made. I have already shown above that this process of reasoning was neither adequate nor well warranted. With respect I would overrule the said decision.

(47) I conclude, therefore, that in view of the history and the background of the legislation; the language of section 14(1) itself and in particular the explanation thereto; the anomalous consequences which would ensue from any other interpretation of the statute; and the overwhelming weight of authority, the answer to the question before the Full Bench must be returned in the negative.

Prem Chand Jain, J.—I agree.

S. C. Mital, J.—I agree.

N. K. S.

FULL BENCH

MISCELLANEOUS CIVIL

Before O. Chinnappa Reddy, Mhopinder Singh Dhillon, Gurnam Singh, Ajit Singh Bains and Harbans Lal, JJ.

JASWANT KAUR and another,—*Petitioners.*

versus

THE STATE OF HARYANA and another,—*Respondents.*

Civil Writ Petition No. 3530 *of* 1976.

March 17, 1977.

Haryana Ceiling on Land Holdings Act (*XXVI of* 1972) *as amended by Act XVII of* 1976—*Sections* 4, 8, 9(4) (*c*), 12 *and* 20-*A*—*Constitution of India* 1950—*Article* 254(2) *and Seventh Schedule*