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prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not effect the validity of the rules, merely because they have not been laid before the Houses of Legislature. Granting that the provisions of sub-section (5) of section 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-section (5) of section 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory”.

(20) Perhaps the question of parliamentary control of the executive is also largely a political question, in that it is for the Legislature to admonish or punish the erring Ministers and not for the judiciary to invalidate the subordinate legislation on the ground of ‘non-laying’. The judiciary may enter the picture only if the Legislature prescribes the consequence of non-laying and not otherwise. Whatever it is, we are bound by the decision of the Supreme Court wherever our own personal inclinations are likely to lead us.

(21) In the light of the foregoing discussion, we are unable to hold that the ‘non-laying’ of the rules before the Legislature invalidated the rules.

(22) The result of the above discussion is that all the Writ Petitions are dismissed with costs.

N.K.S.

FULL BENCH

APPELLATE CIVIL

Before O Chinnappa Reddy, R. N. Mittal and K. S. Tiwana. JJ.

JASWANT KAUR,—Defendant-Appellant.

versus

MAJOR HARPAL SINGH and others—Respondents.

Regular Second Appeal No. 253 of 1964

April 4, 1977.

*Hindu Succession Act (XXX of 1956)—Female acquiring a restricted estate under a will—Sub-section (2) of section 14—Whether applicable—Such female—Whether becomes a full owner on the enforcement of the Act.*

*Held*, that if property has been acquired by a female by a 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 document or decree, order or award prescribe a restricted estate, her rights in the property shall remain restricted and sub-section (1) of section 14 of the Hindu Succession Act, 1956 shall not make her full owner of the property. It appears from the language of the sub-section that a restricted estate created by will, gift, decree, award or any other instrument, prior to the commencement of the Act shall not be enlarged into full ownership under sub-section (1) and that a restricted estate can be created in favour of a female even after coming into force of the Act. A perusal of sub-section (1) and (2) shows that sub-section (2) is in the nature of a proviso to sub-section (1). If a case falls within the provisions of sub-section (2), then sub-section (1) will not apply. A plain reading of the sub-section shows that its provisions are attracted if two things exist, namely, (i) that right of the female to the property is created by an instrument in writing and (ii) that it contains such terms as create restricted estate. If any of the above ingredients is missing from the instrument, then sub-section (2) will not apply. In order to decide whether a case falls under sub-section (1) or sub-section (2), the facts of each case have to be taken into consideration. Thus, from a reading of section 14 as a whole, it is clear that if a female acquires the property for the first time by means of a gift, will, award, decree or any other document, or an order of a Court which prescribes a limited estate in such property, then sub-section (2) will apply and she would get restricted estate in the property.

(Paras 5, 6 and 9).

*Case referred by Hon'ble the Acting Chief Justice Mr. A. D. Koshal, to a larger Bench on 6th April, 1976 for the decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice O. Chinnappa Reddy, Hon'ble Mr. Justice R. N. Mittal, and Hon'ble Mr. Justice Kulwani Singh Tiwana, has finally decided the case on merits on 4th April, 1977.*

*Regular Second Appeal from the decree of the Court of Shri Surinder Singh, Additional District Judge, Faridkot, dated the 4th day of December, 1963, affirming with costs that of Shri Aftab Singh Bakhshi, Sub-Judge 1st Class, Faridkot, dated the 16th March, 1963; decreeing the suit of the plaintiff with costs.*

H. L. Sibal, Senior Advocate H. L. Sarin, Senior Advocate, A. K. Jaiswal, Rajindera Jain, Vinod Kataria, Advocates with him, for the Appellant.

M. L. Sethi, Senior Advocate C. M. Chopra, and N. C. Jain, Advocates with him, for the Respondents.

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JUDGMENT

Judgment of the Court was delivered by:—

R. N. Mittal, J.—(1) Smt. Jaswant Kaur, defendant, has filed this second appeal against the judgment and decree of the Additional District Judge, Faridkot, dated December 4, 1963, by which he affirmed the judgment and decree of the trial Court passed in favour of Major Harpal Singh, plaintiff.

(2) Briefly the facts of the case are that Gurnam Singh, deceased, was the owner of the property in dispute and other properties. He executed a will in respect of his entire property on June 5, 1938 and bequeathed half of his landed property and some houses in favour of Major Harpal Singh, his younger brother and the remaining moveable and immoveable property in favour of Smt. Jaswant Kaur, subject to the condition that she would utilise the income of the property during her life time for the purpose of maintaining herself and her two daughters, and after her death, that would revert to the plaintiff. Gurnam Singh got the aforesaid will registered on June 6, 1938, at Kasauli. He died on June 8, 1938, leaving behind Smt. Jaswant Kaur widow, two minor daughters, and Major Harpal Singh, brother.

(3) Smt. Jaswant Kaur executed five instruments regarding the property in dispute, namely, three gift deeds, Exhibit P. 22, P. 23 and P. 24 in favour of her two daughters, one sale deed, Exhibit P. 25, in favour of defendant No. 4 and one mortgage deed, Exhibit P. 26 in favour of Defendants 5 and 6. Major Harpal Singh, plaintiff, instituted a suit for declaration to the effect that all the alienations effected by Smt. Jaswant Kaur, were illegal and in excess of the rights conferred upon her by the will and consequently these are not binding on the plaintiff. He also made a prayer for grant of mandatory injunction restraining the said defendant from making further alienations of the property in her possession. The suit was contested by Smt. Jaswant Kaur, defendant, *inter alia*, on the ground that by virtue of Hindu Succession Act, 1956 (hereinafter referred to as the Act), the estate conferred on her was enlarged and she became full owner of the property. The trial Court held that she did not become owner by virtue of the provisions of the Act. Consequently it decreed the suit of the plaintiff. Smt. Jaswant Kaur, defendant, went up in appeal before the Additional District Judge, Faridkot,

who affirmed the judgment and decree of the trial Court and dismissed the same. She has come up in second appeal to this Court.

(4) The appeal came up for hearing before A. D. Koshal, J. A contention was raised on behalf of the appellant that the widow had a pre-existing right in the property of her husband whose will granting her a restricted estate, fell within the ambit of sub-section (1) of section 14 of the Act. In support of the contention, the learned counsel placed reliance on a Division Bench judgment of this Court in *Nand Singh v. Nachhattar Singh* (1). Mr. Sethi, counsel for the respondent, challenged the aforesaid contention of the appellant. The learned Judge observed that the question raised was one of difficulty and importance which required to be determined by a Full Bench as *Nand Singh's* case was disposed of by a Division Bench of this Court. That is how this case has been placed before us for decision.

(5) The sole question that requires determination is whether the case of the appellant is governed by sub-section (1) or sub-section (2) of section 14 of the Act. For determining this question, it will be necessary to refer to some portions of the will dated June 5, 1938, executed by Gurnam Singh deceased. He has written in the will that after his death, his real brother, Harpal Singh, would become owner of half share of his agricultural property in various villages along with some of the residential properties, as detailed in the will. The remaining share of his agricultural and residential property, together with other moveable and immoveable property, viz., goods, cash and ornaments, were given by him to Smt. Jaswant Kaur, his wife, for her life time. He specifically restricted the estate given to his wife for her life time and expressly provided that she would not be competent to transfer any property. The relevant conditions on which the property was given by him to his wife are in the following terms:—

“The remaining share of my agricultural and residential property, together with my other moveable and immoveable property, viz., goods, cash and ornaments, shall be owned and possessed by Mst. Jaswant Kaur, my wife, for her life time. With its income she shall bring up the above-mentioned daughters and maintain herself. When the daughters become of marriageable age, she herself shall perform

(1) 1976 (1) I.L.R. Pb. & Hy. 394.

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their marriages according to custom. *She shall not be competent to transfer any property.* After the death of Mst. Jaswant Kaur, my wife, Harpal Singh shall become the exclusive owner of the entire agricultural and residential property together with other effects, etc.”

In order to determine the controversy it will also be necessary to reproduce section 14 of the Act which is as follows:—

- “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 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.”

For the purpose of interpreting the section, it will be advantageous to refer to the rights of females in the properties acquired by them in various ways before coming into force of the Act. Normally the property inherited by a female before the Act used to be her limited estate. In case she got the property by gift/will, the court was entitled to assume that the donor/testator intended the donee/legatee to take limited estates unless it was clear from the document that the donor/testator wished otherwise. A plain reading of sub-section (1) shows that a female in possession of any property as limited owner,

whether acquired before or after the commencement of the Act, became full owner thereof by virtue of the said sub-section. The explanation appended to the sub-section gives various modes by which a female can acquire limited estate in property. The matter has been very clearly enunciated by the Supreme Court in *Eramma v. Veerupana and others* (2). The relevant observations are as follows:—

“The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the explanation to section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however, restricted the nature of her interest may be. The words ‘as full owner thereof and not as a limited owner’ as given in the last portion of sub-section (1) of section 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called ‘limited estate’ or ‘widow’s estate’ in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to sub-section (1) of section 14 defines the word ‘property’ as including “both movable and immovable property acquired by a female Hindu by inheritance or devise...” Sub-section (2) of section 14 also refers to acquisition of property. Though the Explanation has not given any exhaustive connotation of the word ‘property’

(2) A.I.R. 1966 S.C. 1879.

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but word 'acquired' used in the Explanation and also in sub-section (2) of section 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquired after the commencement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title."

Now, I shall advert to sub-section (2) of section 14. It says that if the property has been acquired by a female by a 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 document or decree, order or award prescribe a restricted estate, her rights in the property shall remain restricted and sub-section (1) shall not make her full owner of the property. It appears from the language of the sub-section that a restricted estate created by will gift, decree, award or any other instrument, prior to the commencement of the Act shall not be enlarged into full ownership under sub-section (1) and that a restricted estate can be created in favour of a female even after coming into force of the Act. A careful perusal of sub-section (1) and (2) shows that sub-section (2) is in the nature of a proviso to sub-section (1). If a case falls within the provisions of sub-section (2), then sub-section (1) will not apply. It is to be determined now in what circumstances sub-section (2) will apply. A plain reading of the sub-section shows that its provisions are attracted if two things exist, namely, (i) that right of the female to the property is created by an instrument in writing and (ii) that it contains such terms as create restricted estate. If any of the above ingredients is missing from the instrument, then sub-section (2) will not apply.

(6) In order to decide whether a case falls under sub-section (1) or sub-section (2), the facts of each case have to be taken into consideration. In this regard I may refer to observations of the Supreme Court in *Badri Parshad v. Smt. Kanso Devi* (3), which supports the above view. It was held in that case that while determining whether a particular case is governed by sub-section (1) or sub-section (2) of section 14, the section has to be read as a whole and it would depend on the facts of each case to come to the conclusion as to by which section it is governed. It is further observed that sub-section (2) is more in the nature of a proviso or an exception to sub-section

(3) A.I.R. 1970 S.C. 1963.

(1) and it comes into operation only if acquisition is by any of the methods indicates therein and made for the first time without there being any pre-existing right by the female Hindu who is in possession of the property. In *Sampuran Singh (deceased) and others v. Labh Singh and another* (4), following the aforesaid view, this Court observed as under: —

“Section 14(1) provides that 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. The Explanation to section 14(1) provides that property for the purpose of section 14(1) includes property acquired by a female Hindu by inheritance or device, 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, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as Stridhana. Section 14(2), which is in the nature of an exception to 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.”

(7) In the present case, an extract from the will has been reproduced above and the important words which are pointer to the fact that the property has been given by Gurnam Singh to Smt. Jaswant Kaur as a limited estate, have been underlined. It cannot be disputed that during the lifetime of Gurnam Singh, Smt. Jaswant Kaur had no right in the aforesaid property. Her rights have been created by virtue of the will which specifically mentions that Smt. Jaswant Kaur shall have the property for her life time; that she would maintain herself and bring up the daughters with the income of the property and that she would not be competent to transfer any property. The intention of the testator is very clear from the aforesaid words, that a restricted estate had been created by him in favour of Smt. Jaswant Kaur. In the aforesaid circumstances, the provisions of sub-section (1) do not apply and the estate conferred on Smt. Jaswant Kaur will not be enlarged. On the other hand, the case is fully



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covered by sub-section (2) of section 14 of the Act. The estate given to Smt. Jaswant Kaur was a restricted estate and she would hold it as such throughout her life time.

(8) It is contended by Mr. H. L. Sibal, learned counsel for the appellant, that the present case is covered by sub-section (1) and not sub-section (2). He argues that if a property is given by gift or will to a female who is not a stranger to the family and is entitled either to inherit that property or to maintenance from donor/testator, then sub-section (1) will be applicable. He vehemently contends that otherwise the purpose of sub-section (1) is wholly frustrated. In support of his contention, he has mainly placed reliance on *Ude Chand and others v. Mst. Rajo* (5), *Ram Sarup and others v. Shrimati Toti and others* (6), and *Nand Singh v. Nachhatar Singh and others* (1) *Supra*.

(9) I have given a thoughtful consideration to the argument of the learned counsel for the appellant, but am unable to subscribe to the aforesaid view. From a reading of the section as a whole, it is clear that if a female acquires the property for the first time by means of a gift, will, award, decree or any other document, or an order of a Court which prescribes a limited estate in such property, then sub-section (2) will apply and she would get restricted estate in the property. No distinction in females is spelt out from section 14 as is sought to be created by the counsel. The learned counsel for the appellant laid great emphasis on the words 'devise' and 'gift' as mentioned in explanation to sub-section (1). According to him, the aforesaid words had not been used in the explanation by the legislature without any purpose. No doubt it is true that in sub-section (1) words 'devise' and 'gift' have been used, but these words are to be taken in the context in which these were taken under Hindu Law, prior to coming into force of the Act. The position before coming into force of the Act was that if the property was given by a deed of gift or a will, the Court was entitled to assume that the donor intended the donee to take a limited estate only unless the contrary appeared from the document itself. The basis of the aforesaid rule was that a female, as a rule, took a limited estate only in the property inherited by her from male relations and consequently it was presumed that the donor/testator made the gift with that fact present

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(5) 1966 P.L.R. 382.

(6) 1972 P.L.R. 971.

to his mind. (See clause (2) of paragraph 401 of Hindu Law by Mulla, 13th Edition). In case the gift or will was made in the aforesaid circumstances, sub-section (1) enlarged the estate of a female. But if only a limited estate was given to a female in express words by a gift deed or a will, she did not become full owner of the property. In these circumstances, it is sub-section (2) which is applicable and not sub-section (1).

(10) The facts of all the cases referred to by the learned counsel for the appellant are different, and the observations in those cases are to be read in the context of the facts. In *Ude Chand's case* (5) (supra), on the death of last male holder, the property was mutated in favour of his widow. Subsequently the collaterals of her deceased husband filed a suit for possession on the ground that she had contracted Karewa marriage and had forfeited her rights in the property. She resisted the suit and denied the allegation of Karewa. During the pendency of the suit, a compromise was effected between the parties whereby the widow was allowed to continue in possession of a part of the land till her life time and after her death, that property had to go to the collaterals. It was observed by P. C. Pandit, J., speaking for a Division Bench, that the case was covered by sub-section (1) of section 14 and not by sub-section (2) as the widow had acquired the widow's estate after the death of her husband. In *Ram Sarup's case*, (6) (supra) on the death of last male holder, the property was inherited by his mother. The mutation of the land was, however, attested by the revenue authorities in favour of the reversioners of the last male holder. The mother instituted a suit for declaration that she was in possession of the property with life interest therein, which was decreed prior to coming into force of the Act. She, after coming into force of the Hindu Succession Act, made certain alienations which were challenged by the reversioners. It was held by this Court that the mother had become full owner of the property by virtue of the provisions of section 14(1), read with the explanation. The facts of *Nand Singh's case* (1) (supra), may be given slightly in detail, which are as follows.

(11) Ishar Singh, who was governed by Customary Law, was owner of the property in dispute. He died in 1942 leaving behind Smt. Har Kaur, his widow and Nand Singh, son (stepson of Smt. Har Kaur). The mutation of the land was attested in Har Kaur's favour. Nand Singh brought a suit against Smt. Har Kaur for possession of the entire land left by his father on the ground that he

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was entitled to the same. During the pendency of the suit, a compromise was effected between the parties in June, 1945, by which Smt. Har Kaur retained 2/3rd land under a settlement that she would remain in its possession during her lifetime and would not alienate the same without consideration and legal necessity. The remaining 1/3rd land was given by her to Nand Singh. After coming into force of the Act, she alienated the property in dispute, which was challenged by Nand Singh. The matter came up in a letters patent appeal before P. C. Pandit, J., and myself. It was held by us that when the last male holder died and the compromise was effected, the parties were governed by the Customary Law under which the widow had a right of maintenance and the same was charge on the husband's estate. It was only by virtue of section 4(1)(a) of the Act that the Customary Law ceased to have effect. The widow had, therefore, pre-existing right in her husband's property. It was further held that she was in possession of the property in lieu of maintenance when the Act came into force and as such by virtue of section 14(1), she had become full owner. It is also noteworthy that Smt. Har Kaur had been given a right to alienate property for legal necessity. In the present case no such right was conferred on the appellant.

(12) From the perusal of the facts of the aforesaid cases, it is evident that the female in all the cases had a pre-existing right in the property. In none of the above mentioned cases, the property was vested for the first time in females by virtue of any document conferring restricted estate. In these circumstances, the learned counsel for the appellant cannot derive any benefit from the observations in the said cases.

(13) For the reasons recorded above, the appeal fails and the same is dismissed. In the circumstances of the case, the parties are, however, left to bear their own costs.

Vide separate order.

O. Chinnappa Reddy, J.

Kulwant Singh Tiwana, J.—I agree.

O. Chinnappa Reddy, J.—(14) I agree with the conclusion of my brother Rajinder Nath Mittal, J., that the appeal should be dismissed. I only wish to emphasise what I had said earlier in *Sampuran*

*Singh v. Labh Singh* (7), that section 14 of the Hindu Succession Act is not intended to interfere with the freedom to give, the freedom to bequeath and the freedom to contract. A donor is not barred by section 14 from giving a restricted estate in a property to a woman. It is not pretended that he may not give a restricted estate in property to a man. So too a propositus may bequeath a restricted estate in property to a woman. Nor is there any bar to a woman entering into a contract with someone for good consideration restricting her estate in property possessed by her. In *Sampuran Singh v. Labh Singh*, I had said:

“The clear object of section 14(2) as was pointed out in *Rangaswami Naicker v. Chinnammal*, (8), was not to interfere with contracts, grants or decree, etc., by virtue of which woman's right was restricted though the disability on woman imposed by law was removed by section 14(1). If a donor expressly gave a life interest in some property to a Hindu female, it was not to be enlarged, into an absolute estate. If similarly a Hindu female entered into a contract restricting the nature of her own interest in property to that of a life interest, it was not to stand enlarged by section 14(1) of the Act. The freedom of the donor to give such interest as he pleased and the freedom of contracting parties to create such interest as they agreed upon was not meant to be encroached upon by section 14(1). That is the effect of section 14(2). If as a result of some agreement between the parties, a Hindu female is left with some interest which she already has in the property, namely, a Hindu widow's estate that would stand enlarged into an absolute estate under section 14(1) of the Act. Section 14(2) would not be applicable to such case. On the other hand, if a Hindu female expressly enters into a contract restricting the interest already possessed by her, the interest so restricted of her own volition or agreement would not get enlarged as a result of section 14(1). In such a case section 14(2) alone would be applicable.”

In regard to *Nand Singh's* case I had said, “In that case, a Hindu widow entered into a compromise under which she was allotted a two-third share in her husband's properties upon her agreeing that she would remain in possession

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(7) 1976 P.L.R. 785.

(8) A.I.R. 1964 Mad. 387.

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during her life-time but would not alienate the same without consideration and for legal necessity. The question arose, whether the interest which she got in the two-third share of the property left by her husband stood enlarged into an absolute estate. Relying upon the decision of the Supreme Court in *Badri Parshad's case* (supra), a Division Bench of the High Court held that the widow's interest in the property stood enlarged into an absolute estate. If the view of the learned Judges was that the widow already had the identical interest in the property, which was recognised by the compromise, and, therefore, it stood enlarged under section 14(1) of the Hindu Succession Act, I have nothing more to say. If, on the other hand, the learned Judges meant to lay down that widow who enters into an agreement expressly restricting her interest in certain property must take advantage of section 14(1) and claim an absolute interest in the property, I venture to express my doubts about it. Earlier, I have pointed out that the effect of section 14(2) is not to restrict either the freedom of the donor to donate or the freedom of the widow to contract."

My brother Rajinder Nath Mittal, J., has explained the decision in *Nand Singh's case*. I do not wish to add anything more.

N.K.S.

FULL BENCH

*Miscellaneous Civil.*

Before O. Chinnappa Reddy, S. S. Sandhawalia and R. N. Mittal, JJ.

SURJIT SINGH,—Petitioner.

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ No. 1779 of 1976.

April 5, 1977.

Punjab Police Rules 1934—Rules 12.2(3), 13.8(1), 13.17, and 14.1(2)—Rule 14.1—Whether statutory—Seniority of lower subordinates—Whether to be finally determined by the date of their confir-