

GURDIP SINGH AND ANR.

v.

AMAR SINGH AND ANR.

FEBRUARY 14, 1991

[K.N. SAIKIA AND MADAN MOHAN PUNCHHI, JJ.]

*Hindu Succession Act, 1956: Section 14—Enlargement of widow's estate—Property gifted in lieu of maintenance—Whether the limited estate enlarged into an absolute estate.*

The grandfather of the appellants and respondents had two wives. The first wife and her only son died during his life time. The pre-deceased son left behind four sons and a daughter. In 1947, the grandfather made three oral gifts of certain properties in favour of his second wife, in lieu of maintenance. Later, the grandmother gifted some of these properties to two step grandsons. The gift was challenged by the other two grandsons. The lower courts held that she had the absolute estate in the properties after the passing of the Hindu Succession Act, 1956. In Second Appeal, the High Court held that she derived only a limited estate inasmuch as the gift in her favour would fall directly under section 14(2) of the Hindu Succession Act, 1956 and as such her limited estate would not stand enlarged into an absolute estate. This appeal is against the said judgment of the High Court.

Allowing the appeal, this Court,

HELD: 1. There is no doubt that the donee had the right of maintenance and the gift was explicitly in lieu of maintenance. It was not a case of her acquiring any new property by virtue of the gift but it was a case of her right of maintenance being given to her by way of a gift. It was a property acquired by gift in lieu of maintenance. The acquisition made on 26th April, 1947 having been prior to the Hindu Succession Act, and she having acquired the property by way of gift in lieu of her antecedent right to maintenance, it would fall under sub-section (1) and not under sub-section (2) of section 14 of the Hindu Succession Act, 1956 and she derived absolute estate in the properties. [387E-F]

*Bai Vajia (Dead) by Lrs. v. Thakorbbhai Chelabhai & Ors.* [1979] 3 SCR 291; *Gulwant Kaur & Anr. v. Mohinder Singh & Ors.*, [1987] 3 SCC 674; *Maharaja Pillai Lakshmi Ammal v. Maharaja Pillai Thil-lanayakom Pillai & Anr.*, [1988] 1 SCC 99; *Jaswant Kaur v. Major*

A *Harpal Singh*, [1989] 3 SCC 572; relied on.

*Mst. Karmi v. Amru & Ors.*, [1972] 4 SCC 86; *Kothi Satyanarayana v. Galla Sithayya & Ors.*, [1986] 4 SCC 760; distinguished.

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2877 of 1977.

From the Judgment and Decree dated 19.8.1977 of the Punjab and Haryana High Court in R.S.A. No. 334 of 1975.

R. Bana for the Appellants.

C Harbans Lal and G.K. Bansal for the Respondents.

The following Order of the Court was delivered:

D Kehar Singh had two wives, Basant Kaur and Sahib Devi. Sahib Devi died during Kehar Singh's life time. Sahib Devi's son was Niranj Singh who also died during Kehar Singh's life time. Niranj Singh had four sons and one daughter. On 26th April, 1947 Kehar Singh in lieu of maintenance made three oral gifts of properties situated in three different villages in favour of his wife Basant Kaur. The question which arose for consideration before the lower Court was whether E Basant Kaur got an absolute estate in the gifted properties as result of the passing of the Hindu Succession Act. In regard to the land in village Ballowal the lower Courts have held that she got an absolute estate. The High Court was concerned in the second Appeal with the lands in village Dhaipai and Chominda, and it held the gift having been without any power of alienation would fall under Section 14(2).

F The Exhibit D-1 was the report of the Patwari in connection with the mutation proceedings and it said:

G "Today Kehar Singh owner of Khewat came along with Narain Singh Lambardar and stated that he had on 14th April, 1947, made an oral gift of land-half of total land measuring 8 bighas Pukhta, 3 Biswas and 3 Biswani, which is 4 Bighas Pukhta, 12 Biswas and 1 Biswani as detailed in favour of his wife Mst. Basant Kaur, and given possession of the same. I had only one son who is dead and he had four sons and no other male issue. There is no certainty of life. She served me. Lambardar attests so the mutation is entered."

H

On 30th July, 1947, the Assistant Collector made the following orders:

“In the gathering, Kehar Singh donor and Basant Kaur donee, identified by Kishan Singh Lambardar are present. The change of possession of this case is admitted and verified by the donor and the donee. Donor stated that he has got no son. I had got two wives. My grand sons, it is possible may not gift maintenance to my wife. With this view I make the gift. Gift is for maintenance. After gift there would be no powers of mortgage or sale. After the death of Basant Kaur Malkiat Singh, Amar Singh, Gurdeep Singh and Mohan Singh, children would be heirs. This gift is of 1/2 share or Khasra No. 4658/2468 measuring 4 Bighas, 12 Biswas 1 Biswani, Khewat Nos. 324 to 326, which is attested in favour of Mst. Basant Kaur donee.”

The High Court on interpretation of the Assistant Collector's report came into conclusion that Basant Kaur derived only a limited estate inasmuch as such a gift, according to the High Court, would fall directly under-section 14(2) of the Hindu Succession Act and as such the limited estate of Basant Kaur would not stand enlarged into an absolute estate. The challenge was to the gift made by Basant Kaur in favour of two step grand sons ignoring the other two.

There is no doubt that Basant Kaur had the right of maintenance and the gift was explicitly in lieu of maintenance. As such we are of the view that it was not a case of her acquiring any new property by virtue of the gift but it was a case of her right of maintenance being given to her by way of a gift. It was a property acquired by gift in lieu of maintenance. This acquisition on 26th April, 1947 having been prior to the Hindu Succession Act, we are of the view that she having acquired this property by way of gift in lieu of her antecedent right to maintenance, it would fall under sub-section (1) and not under sub-section (2) of section 14 of the Hindu Succession Act, 1956. In this view we are in consonance with the decisions in *Bai Vija (Dead) by Lrs. v. Thakorbbhai Chelabhai & Ors.*, [1979] 3 SCR 291; *Gulwant Kaur & Anr. v. Mohinder Singh & Ors.*, [1987] 3 SCC 674; *Maharaja Pillai Lakshmi Ammal v. Maharaja Pillai Thillanayakom Pillai & Anr.*, [1988] 1 SCC 99 and *Jaswant Kaur v. Major Harpal Singh*, [1989] 3 SCC 572. In view of the facts and circumstances, we are of the view that the decisions of *Mst. Karmi v. Amru & Ors.*, [1972] 4 SCC 86 and *Kothi Satyanarayana v. Galla Sithayya & Ors.*, [1986] 4 SCC 760 are distinguishable on facts.