PUNITHAVALLI AMMAL

v.

RAMALINGAM (MINOR) AND ANR

March 4, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Hindu Law—Whether full ownership acquired by widow under s. 14(1) of Hindu Succession Act defeasible by adoption made after the enactment.

A Hindu died leaving behind his widow and daughters. The properties left behind by the deceased were inherited by the widow, and they were in her possession when the Hindu Succession Act, 1956 came into force. Subsequent to the enforcement of the Act, she adopted a son and thereafter settled a part of the property on one of the daughters. The adopted son challenged the validity of the settlement deed contending that the adoption must be deemed to relate back to the death of the widow's husband and therefore she was incompetent to make the impugned alienation. Rejecting the contention, this Court;

HELD :—The rights conferred on a Hindu female under s. 14(1) of the Act are not restricted or limited by any rule of Hindu law. The section plainly says that the property possessed by a Hindu female on the date the Act came into force whether acquired before or after the commencement of the Act shall be held by her as full owner thereof. The provision makes a clear departure from the Hindu law texts or rules. Those texts or rules cannot be used for circumventing the plain intendment of the provision. [897 F-G]

The fiction of relation back in the case of adoption under Hindu law is based on Hindu law texts or rules or at any rate it is based on interpretation of Hindu law. Therefore, by virtue of s. 4 of the Act that rule ceased to have effect from the date the Act came into force with respect to any matter for which provision is made under the Act. [896 F-G]

Yamunabai and Ant v. *Ram Maharaj Shreedhar Maharaj and anr.* A.I.R. 1960 Bom. 463; approved.

Shrinivas Krishanarao Kango v. *Narayan Devji Kango and ors.* [1955] 1 S.C.R. p. 1; *Krishnamurthi Vasudeorao Deshpande* v. *Dhruwaraj,* [1962] 2 S.C.R. 813, referred to.

Sukhram and anr. v. *Gauri Shankar and anr.* [1968] 1 S.C.R. 476 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 139 of 1967.

Appeal from the judgment and Decree dated September 3. 1963 of the Madras High Court in Second Appeal No. 1021 of 1960.

B. Datta, for the appellant.

M. Srinivasan, K. N. Balasubramanian and *Lily Thomas,* for respondent No. 1.

A The Judgment of the Court was delivered by

Hegde, J. The question for decision in this appeal by certificate is whether the full ownership conferred on a Hindu female under s. 14(1) of the Hindu Succession Act (to be hereinafter referred to as the Act) is defeasible by the adoption made by B her to her deceased husband after the Act came into force.

The facts relevant for the purpose of deciding that question of law may now be stated. One Somasundra Udayar of Poongavur village in Tanjavoor District died prior to 1937 leaving behind him his widow Sellathachi and two daughters Kuppaimal and Punithavalli Ammal. The properties left behind by the C deceased were inherited by his widow and they were in her possession when the Act came into force on June 17, 1956. By virtue of s. 14(1) of the Act Sellathachi became the full owner of the properties inherited by her from her husband. On July 13, 1956, she adopted the plaintiff—1st respondent in this appeal. Thereafter on June 19, 1957 she settled 9 acres 16 D cents of land and half share in a house inherited by her from her husband on her daughter Punithavalli Ammal, the appellant in this appeal. The validity of this settlement deed was challenged by means of a suit by the adopted son even during the life time of Sellathachi. The settlor who was impleaded as the 1st defendant to the action died soon after the institution of E the suit. Various contentions were raised in defence but it is unnecessary to go into them. The trial court dismissed the suit on the ground that in view of s. 14(1) Sellathachi was the full owner of the properties inherited by her from her husband and hence the adopted son cannot impugn the alienation made by her. This decision was upheld in appeal but in second appeal, F a division bench of the High Court of Madras reversed that decision holding that the adoption of the plaintiff must be deemed to relate back to the date of the death of Somasundara Udayar and therefore Sellathachi was incompetent to make the impugned alienation. This correctness of this finding is in issue in this appeal.

G According to Hindu law texts as interpreted by courts on adoption by a Hindu widow, the adopted son acquires all the rights of an *aurasa* son and those rights relate back to the date of the death of the adoptive father—see *Shrinivas Krishnarao Kango* v. *Narayan Devji Kango and ors.*(1). Hence the estate held by a widow was a defeasible estate. The same is the case with H a person possessing title defeasible on adoption; not only his title but also the title of all persons claiming under him will be

(1) [1955] 1 S.C.R. p. 1.

extinguished on adoption—see *Krishnamurthi Vasudeorao Deshpande* v. *Dhruwaraf*(1). In fact under the Benaras School of Mitakshra rule where a male coparcener is not entitled to alienate even for value his undivided interest in the coparcenary property without the consent of the other coparceners, the alienation effected by a sole surviving male coparcener can be successfully challenged by a person adopted subsequent to the alienation. The fiction of relation back has been given full effect by courts and consequences spelled out as if the fiction is a fact. The adopted son is deemed for all practical purposes, subject to some minor exceptions, to have born as an *aurasa* son on the date his adoptive father died. Admittedly but for the relevant provisions in the Act the settlement in favour of the appellant could have afforded no basis for resisting the claim of the adopted son. Therefore we have to see whether the provisions of the Act have effected any change in the law as regards the fiction referred to. Section 4(1) of the Act provides :

"Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it inconsistent with any of the provisions contained in this Act."

It is undisputed that the fiction of relation back in the case of adoption under Hindu law is based on Hindu law texts or rule or at any rate it is based on interpretation of Hindu law. Therefore that rule ceased to have effect from the date the Act came into force with respect to any matter for which provision is made under the Act. Hence we have to see whether the matter dealt with under s. 14(1) impinges on the rule of adoption relating back to the date of death of the adoptive father.

Adoption is a mode of affiliation which confers a right of inheritance under Hindu law. Under that law a widow in the absence of any preferential heir succeeded to the estate of her deceased husband but she took only an estate known as widow's estate. After her death the property devolved on the nearest

(1) [1962] 2 S.C.R. 813.

A reversioner of her husband. Section 14(1) of the Act made an important departure in that respect. That section provides :

> "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
B limited owner."

The explanation to the section is not necessary for our present purpose. It was conceded at the bar that Sellathachi was in possession of the property in dispute on the date the Act came into force. By virtue of the aforesaid provision, she became the
C full owner of the property on that date. From a plain reading of s. 14(1), it is clear that the estate taken by a Hindu female under that provision is an absolute one and is not defeasible under any circumstance. The ambit of that estate cannot be cut by any text, rule or interpretation of Hindu law. The presumption of continuity of law is only a rule of interpretation. That presump-
D tion is inoperative if the language of the concerned statutory provision is plain and unambiguous. The fiction mentioned earlier is abrogated to the extent it conflicts with the rights conferred on a Hindu female under s. 14(1) of the Act. In *Sukhram and anr.* v. *Gauri Shankar and anr.*(1) this Court held that though a male member of a Hindu family governed by the Benaras School of
E Hindu law is subject to restrictions *qua* alienation of his interest in the joint family property but a widow acquiring an interest in that property by virtue of Hindu Succession Act is not subject to any such restrictions. This Court held in *S. S. Munna Lal* v. *S. S. Rajkumar and ors.*(2) that by virtue of s. 4 of the Act the legislature abrogated the rules of Hindu law on all matters in
F respect of which there is an express provision in the Act. In our opinion the rights conferred on a Hindu female under s. 14(1) of the Act are not restricted or limited by any rule of Hindu law. The section plainly says that the property possessed by a Hindu female on the date the Act came into force whether acquired before or after the commencement of the Act shall be held by
G her as full owner thereof. That provision makes a clear departure from the Hindu law texts or rules. Those texts or rules cannot be used for circumventing the plain intendment of tl provision.

In our judgment the learned judges of the Madras High Court were not right in limiting the scope of s. 14(1) by taking the
H aid of the fiction mentioned earlier. That in our opinion is wholly impermissible. On the point under consideration the

(1) [1968] 1 S.C.R.476. (2) [1962] 3 Supp. S.C.R. 418.

decision of the Bombay High Court in *Yamunabai and anr.* v. *Ram Maharaj Shreedhar Maharaj and anr.*(1) lays down the law correctly. A

In the result we allow this appeal and set aside the decree and judgment of the High Court and restore that of the trial court but in the circumstances of the case we make no order as to costs. The 1st respondent will pay the Court fee payable by the appellant in this appeal. B

Appeal allowed.

Y.P.

(1) A.I.R. 1960 Bom. 463.