



## Women's maintenance Property Right in India

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### Introduction

The Karta can grant some property to a member of the family for his or her maintenance. He has the power to grant absolutely some property to a female in the satisfaction of her claim of maintenance. A Hindu female can also be granted property for her maintenance under a family arrangement, or under a partition. "The right of a Hindu widow to get maintenance out of the joint family property is an indefinite right, yet it is a right and she does not get maintenance gratis or by way of charity. She gets it in her right under Hindu law. Where property was given to the woman by way of maintenance over which she had a right, her possession was accepted, it becomes her absolute property? If she is put in possession of certain properties in satisfaction of that right for her life, she is not a trespasser of property? If there are some restrictive clauses in the instrument conferring limited right on her, by virtue of Section" 14(1), she becomes its absolute owner? The Supreme Court has confirmed this view." In *Palchuri Henumayyayya v. Tadikamalla Kotlingamf* the testator had settled property on his wife in lieu of her maintenance. The recital in the will stated that the wife shall enjoy all his properties till death and after her death the property be divided between his daughters. It was held by the Supreme Court that will did not create any right in the daughters and it was in lieu of wife's right to maintenance, hence it would enlarge into her absolute property by virtue of Section 14 (1). In *Chinnappa v. Valliammal*, the question came in a different form before the Madras High Court. A father-in-law gave some properties for the maintenance of his widowed daughter-in-law, L11'IC18I' a maintenance deed. Subsequently, in 1960 he died. Since he died leaving behind the daughter-in-law, his interest devolved by succession. The daughter-in-law sued for partition so as to get her share of inheritance. Other members said that she could get her share only if she agreed to include the properties given to her for maintenance in the suit properties. The court held that she need not surrender the properties held by her under the maintenance deed. It is submitted that the judgment is correct. She claimed her inheritance and her claim of maintenance was a separate question.

Widow of an illegitimate son obtained possession of immovable property in lieu of maintenance. It would be enlarged into full ownership under Section 14(1).

In *Suba v. Gauranga* a Hindu female was given a life estate in lieu of maintenance under a family arrangement. The instrument of family arrangement specifically gave her a limited estate. The court held that the case came under sub-section (2) of S. 14, and therefore her limited estate would not be converted into an absolute estste by virtue of S. 14(1). In *Kunji v. Meenakshi*, under an agreement the widowed daughter-in-law took a share in the estate of her father-in-law, not as a woman's estate but as an estate for life with a vested remainder in favour of others, and there was no evidence to show that she took these properties for her maintenance. The court said that the case fell under S. 14(2). But where a settlement deed was executed by the father-in-law of the widow in lieu of her maintenance and who had succeeded to the properties of her deceased husband, such property would enlarge into her full estate. It is submitted that the difficulty arises on account of the use of the words in the Explanation: "Property includes the property acquired by a female Hindu in lieu of maintenance or arrears of maintenance". Under the old

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law, ordinarily, she took such property as a limited holder, unless it was specifically given to her absolutely. It is submitted that the test evolved by the Patna High Court in Sumeshwar should apply. If the female has no right or interest in the property prior to the grant, she will take it in accordance with the grant, but if she had an interest or right in the property prior to the grant and grant merely embodies that interest, S. 14(1) will make that grant an absolute estate. The Supreme Court has also pronounced this proposition. “ Where in a partition the brother's mother was allowed to reside in the house for life time. This will not convert the house into her absolute estate. If a Hindu female is in possession of properties other than as a limited owner, her estate cannot become full estate after the coming into force of the Hindu Succession Act. Where no property is given in lieu of maintenance and only a sum of money is given then Section 14 does not apply If she has only a charge on the property, that property does not get converted into her full estate.

#### **Under an award or decree.**

Under what circumstances will the Hindu female’s estate acquired by her under a decree or award, be converted into full estate, and in what circumstances will it not? In *Seth Badri v. Kanso*, where in a partition under an award which was subsequently embodied in a decree, certain properties were allotted to a Hindu female as her share, the Supreme Court said that S. 14(2) did not apply. Their Lordships said S. 14 should be read as a whole. It would depend on the facts of each case whether the same is covered by sub-section (1) or sub-section (2). The crucial words in sub-section are; possessed 'and 'acquired'. The former has been used in the widest possible sense and in the context of S. 14(1), it means the state of owning or having in one’s hand or power. Similarly, the word ‘acquired’ has also to be given widest possible meanings The Supreme Court was of the view that a share obtained by a Hindu female in a partition is a type of property falling under S. 14(1) even though her share is described as a limited estate in the decree or award. The Supreme Court took the same view earlier in *Munna Lal v. Raj Kumar*, where a share was declared in favour of a Hindu female by a preliminary decree passed in a partition suit before 17.6.56. Explaining the context of S. 14(2), Palekar, J. of the Bombay High Court said that sub-section (2) of S. 14 covers those cases of grants where the interest in the grantee is created by the grant itself, i.e., where the gift, will, instrument, decree, order or award is the source or origin of the interest created, in the grantee. “ But if the grant is not the source of the interest created, but merely declaratory or definitive of the right to property antecedently enjoyed by the Hindu female S. 14(2) has no application, whatever be the limitations contained in the grant? The decree contemplated by S. 14(2) appears to be a decree finally adjudicating the right of the parties and it must be one affording foundation for title and not merely a declaratory decree.

#### **Under an agreement or compromise**

The same test will be applicable when a Hindu female acquires the property under an agreement or compromise. This distinction is clearly brought out by *Mahadeo v. Bansraj* and *Laxmi v. Sukhdevim*. In the former case, a widow inherited some properties from her husband.

Subsequently, she entered into a compromise with some reversioners that she would hold the estate as limited owner and would not cut the trees on the land. After the Hindu Succession Act came into force, the widow started constructing a house and cutting the trees. The reversioners brought a suit to prevent her from doing so. It was contended on behalf of the reversioners that the case fell under S. 14(2). The court said that the compromise acknowledged what was laid down in law, and therefore, it cannot undo



the effect of S. 14(1) which converts her woman's estate into full estate as she did not acquire any right under the compromise. In the latter case a Hindu widow, having no right to any share in the property, except her right of maintenance and residence, was allotted some property for her residence and maintenance during her life time under an agreement. The agreement specifically prohibited her from alienating properties during her life time. She was in possession of properties when the Act came into force. It was held that her case was covered under S. 14(2) and not under S. 14(1)

In Smt. Himi v. Smt. Hira Devi equal share was granted to a stepmother a stepdaughter. Under a compromise decree between the two, the stepmother recognized the ownership of the stepdaughter and was allowed to retain the possession of the entire property during her life time. Since her right was not in lieu of any pre-existing right, she did not become absolute owner of the stepdaughter's share.

A widow was allowed a share in her husband's property under a compromise. On a subsequent compromise decree, her rights were not secured. On her death, her daughter could not claim to represent her.

#### **Under a will**

The question whether a limited estate conferred under a will becomes a full estate by virtue of S. 14(1), came for consideration before the Supreme Court in Karmi v. Amru. A Hindu, under a registered will, conferred a life estate on his wife Nihali, with the direction that after the death of Nihali, the properties would devolve on Bhagtu and Amru, two of his collaterals. Nihali took possession of the properties and died in 1960. On her death, her heir claimed properties on the assertion that after the coming into force of the Hindu Succession Act, Nihali's life estate became her full estate. It was held that where only life estate is conferred under a will, S. 14(2) will apply, and the estate will not become full estate. Where husband gives a life interest in his self acquired property by a way of Will, she does not become absolute owner of the same. But if a will confers on her full estate, she will take absolutely.

Where under a settlement properties were given to the widow which were to revert to the settler or his brother on her death, do not get enlarged into full estates.

When a female Hindu sells her property, the right of pre-emption is available. Under the Punjab Pre-emption law, the persons who are entitled to pre-emption are those mentioned in S. 15(1), Punjab Pre-emption Act, 1913-1964.

#### **Dowry**

Dowry and traditional presents made to the wife at the time of the marriage constitute her stridhan, and if the husband or her in-laws refuse to give it back to her, on her demand, they would be guilty of criminal breach of trust. Similarly, if any item of stridhan is entrusted to them at the time of the marriage or thereafter and if they refuse to give it to her on demand, they would be guilty of criminal breach of trust under Section 405, Indian Penal Code.

#### **Succession**

A Hindu female succeeding to the property takes it absolutely.

#### **Conclusion**

A Hindu female can also be granted property for her maintenance under a family arrangement, or under a partition. "The right of a Hindu widow to get maintenance out of the joint family property is an indefinite right, yet it is a right and she does not get maintenance gratis or by way of charity. She gets it in her right under Hindu law. Where property was given to the woman by way of maintenance over which she had a right, her possession was accepted, it becomes her absolute property. The recital in the will stated that the



wife shall enjoy all his properties till death and after her death the property be divided between his daughters. It was held by the Supreme Court that will did not create any right in the daughters and it was in lieu of wife's right to maintenance, hence it would enlarge into her absolute property by virtue of Section 14 (1).

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