

WOMEN'S RIGHT TO PROPERTY UNDER SECTION 14 OF THE HINDU SUCCESSION ACT AND STRIDHAN

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Introduction

Under the old Hindu law, property held by a female was of two categories – Stridhan and Non-Stridhan. Stridhan was considered as her absolute property, which she could alienate according to her wish, with an exception of her husband's dominion during distress. That property on her death devolved upon her own heirs. Thus, she was a fresh stock of descent in respect of her Stridhan property. When a female inherited property from a male or female, it was treated as her non-Stridhan property over which she had no power of disposition by sale, mortgage, lease, gift or will, according to all schools of Hindu Law except the Bombay school. The estate held by the female was popularly known as 'Woman's Estate' in which she had no interest in the property beyond her life. She had a limited right to alienate the property only in case for necessity or for religious purposes. Under the Hindu Women's Rights to Property Act, 1937, the old Hindu law of all schools was amended so as to confer greater rights on women but it only gave a limited interest in property known as 'Limited Estate'. In 1956 the parliament enacted Hindu Succession Act conferring absolute property rights on women through section 14. In the present project I have endeavored to trace the developments in this provision in 54 years of its existence.

Object and Scope of Section 14 of Hindu Succession Act

Section 14 – Property of a female Hindu to be her absolute property.

- (1) Any property possesses 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 limited owner.
- (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.

We can observe that the object of the present section is in two-fold:

- Firstly, to remove the disability of a female to acquire and holds property as an absolute owner;

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- And secondly, to convert any estate already held by a woman on the date of commencement of this act as a limited owner, into an absolute estate. In case of her death intestate she becomes a fresh stock of descent and the property devolves by succession on her own heirs.
- Sub – section (2) is an exception to sub-section (1) as it states that nothing contained in subsection (1) will 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, reward prescribes a restricted estate in her.

Nature of Section 14

• Whether Prospective or Retrospective?

In sub-section (1) of this section it is stated that any property possessed by a female Hindu whether acquired before or after the commencement of this act shall be held by her as its full owner. The provision is retrospective in the sense that it enlarges the Hindu women's estate even in respect of property inherited or held by a woman as a limited before the act came into force. Where a woman acquired property before the act but did not possess it on the date of its commencement, the question arises, whether this provision operates and gives her full, ownership in that property as held by her as limited owner.

In *Ramswaroop Singh v. Heeralal Singh*², it was held that even if she alienates the property and is not in possession at the commencement, she is the full owner, as she was, at one time, possessed of the property. The Supreme Court in *Kotturu Swami v. Veeravva*³, has held that where a woman is possessed of property (whether it is in her actual or constructive possession) though she has acquired the property before the act, she becomes the absolute owner. If she alienates the property subsequent to the commencement of the act, the reversionary cannot question it though the alienation is not for any religious purpose or for legal necessity of the family.

Meaning of Property

The expression any property in sub-section (1) takes in every kind of property and includes 'movable and immovable property'. Compensation for the value of the property that has been compulsorily acquired under the land acquisition act is also property for the purposes of this section. The right of a woman to a share on partition is itself property.

Meaning of Acquired Property

There are different methods by which the woman may have acquired property or would acquire property enumerated in the Explanation appended to the section. The legislature intended to cover all methods of acquisition of property by a woman known to Hindu law as it existed prior to the commencement of the act and if the property so acquired was possessed as a *Limited Estate or Widow's Estate*, it is now enlarged into an '*Absolute Estate*'.

² ILR 37 Pat 496

³ 1959 Supp 1 SCR 968

The transactions mentioned in the Explanation are:

(a) Inheritance

Before the commencement of the act where a female Hindu acquired property by inheritance, she took only as a qualified owner, with an exception in certain schools of law such as Mithila or Bombay. Where the husband died after the Hindu Women's Rights to Property Act, 1937, his widow's limited estate became absolute under section 14(1) of this act. But where the husband died in 1936 before the Hindu Women's Rights to Property Act, 1937 section 14(1) is not applicable as at that time the widow had only right to maintenance.⁴

(b) Devise or Gift

In the case of a gift or bequest to a woman without there being any words conferring absolute rights of ownership, the earlier decisions of the Privy Council were to the effect that the presumption is that the donee or legatee took a limited estate. But there has been a perceptible change in the attitudes of the courts including the Supreme Court and the present is that no distinction can be made between a bequest to a male or to a female. But even where a gift to a female gives a restricted right she gets an absolute right subject to the provisions of section 14(2).

(c) Partition

Prior to the act, when the mother was given the property at the time of partition it was held by her only as a limited owner unless that was specifically given to her to be held by as her Stridhan. But she now takes the property as full owner. In *Tulasamma v. Sesha Reddi*⁵, it was held that the woman in a Hindu family is having an existing right to be maintained and has rights against the family property. It is therefore, based upon that right that the mother is given a share in the family property at the time of partition by the coparceners. Consequently, the partition is not one that creates a new right in her. It does not amount to create a new right for the first time in her in property.

(d) Maintenance and its arrears

If the right of maintenance of a Hindu female in the family being a pre-existing right and if properties were given in lieu of the maintenance, such a case falls within the scope of the explanation under section 14(1). Where a husband executed a will bequeathing a life estate on her wife in his properties and no reference was made to the vested remainder, it was held that it may be presumed that the bequest to the wife is in recognition of the pre-existing, right in the property for maintenance and hence, the wife gets an absolute interest.

However, in *Subrahmanya Pillai v. Packirisam Pillai*⁶, where a person executed a will bequeathing his property to his wife a life interest and no power of alienation with a vested remainder to his brother's son it was held that as no material was placed to show that the property was given to her in confirmation of a declaration of a pre-existing right off hers, the legatee did not get an absolute estate under section 14(1) of the act.

⁴ Suraj Mal v. Babulal AIR 1985 Delhi 95

⁵ AIR 1977 SC 1944

⁶ 1988 2 MLJ 34

In *Jaswant Kaur v. Major Harpal Singh*⁷ the Supreme Court had to consider a case where the husband bequeathed to his wife half of his property in posing certain restriction on alienation. The Supreme Court observed that if a Hindu female acquires property under a written instrument or decree, where such acquisition is not traceable to any antecedent title sub-section (2) would be attracted and where an antecedent title is traceable a document in the nature of a will is of no consequence and the case will be covered by sub-section (1). The Supreme Court held in this case that section 14(1) applies and the wife had an absolute right and the suit challenging alienation made by her was liable to be dismissed.

Where a widow, whose husband died in 1950 came into possession of the entire property to the exclusion of her husband's nephew who was the sole surviving coparcener and continue to be in possession till 1965, when a suit was filed by the nephew, it was held that she became the absolute owner of the entire property: firstly, because she was in exercise of the powers, within the meaning of section 14(1) and secondly, because she perfected her right by adverse possession so far as the share of the nephew is concerned.

(e) Acquisition by own skill or exertion

Under the old Hindu law, the property acquired by skill and exertion would fall under the expression "Stridhan". Under Dayabhaga, however till the death of the husband, the woman could not exercise absolute rights in such property also. In the profits of a wife in a joint trade belonging to husband and wife, her share in the Stridhan and it devolves upon her heirs after the death of the wife. Under section 14(1) it is now declared as her absolute and she can dispose it if at any time.

(f) By Purchase

Even prior to this act, the property purchased by the women is presumed as her Stridhan property, unless it is proved that it was purchased from the funds of the estate inherited from her husband or other person. Under this section, unless it is shown that she is only a benamidar, or her purchase by her was in trust of another, it is her absolute property under section 14(1).

(g) Prescription

By remaining in possession of property for the statutory period, claiming to be her property openly, and enjoying it without interruption, one gets title by prescription. Even prior to this act, the woman who got the title by prescription got it as her Stridhan property with absolute rights. If however, she was in possession on behalf of the last male holder and not in her own individual capacity, she acquired title by prescription only to a limited estate. Under section 14(1) of the Act, even in such a case she requires an absolute estate.

(h) Acquired by any manner whatsoever

This is a wide expression to cover the property acquired by a female by any method whatsoever. If a female is inducted into possession of property without executing a deed of transfer as envisaged in transfer of property act, the acquisition by female Hindu in such a case is unlawful and will be covered by the explanation to section 14(1). Acquisition by females by means of an exchange falls within this expression. This expression cannot extend to protect a trespasser.

⁷ 1990 1 MLJ 1

(i) Property held by her as Stridhan

Though it may appear that it is unnecessary to include this category under section 14(1) as the woman already has an absolute estate, this has been included in view of the fact that even in the case of Stridhan there are certain limitations on the absolute rights of the woman e.g. husband's right at the right of distress.

MEANING OF WORD 'POSSESSED'

The word 'possessed' is used in a broad sense. The property need not be in actual possession according to law. If the female dies before the commencement of the act or if she ceased to have possession prior to such commencement, having sold away the property cannot attract the provisions of the act. A property is said to be possessed by a person if she is its owner even though she may, for the time being out of the actual possession or even though she is in the constructive possession.

It is enough if the property is held by the female in her power so as to invoke the provisions of this section. If she is possessed of the property, even if her interest is restricted in any way; the provision of this section will apply. In *Dindayal v. Rajaram*,⁸ it was observed by the Hon'ble Supreme Court of India that the expression used is "possessed by a female Hindu" and not "in the possession of a female Hindu." This indicates that the female should have some right or interest akin to ownership with a right to possession. It need not be actual possession. It is sufficient if she can be said that she had constructive possession which courts accept as having possession in law.

In a case where, a preliminary decree was passed on 27-07-1955 in a suit between a widow, her sons and grandsons, whereby the widow, whose husband died prior to the Act of 1937, was declared entitled to a forth share in the property, and where an appeal was pending on date of commencement of this act, the supreme court held that the widow possessed her share on the date of commencement of the Act and became an absolute owner thereof.⁹

A woman holds a property only when:

- (i) There is a right to possession of the property, and
- (ii) She is in possession actually or constructively.

A Hindu widow remaining in possession without any right whatsoever to such possession, will not get absolute rights in the property under this section. Two elements constitute possession viz. (1) *animus possidenti* and (2) *corpus possessionis* the intention or animus to possess and the actual realization of the intention by the act of possession. Thus, if without an intention to possess, a woman is in possession that will not be sufficient for section 14 (1) to confer absolute power on her. Again, if she has an intention to possess property unless she is in actual possession or constructive possession, she cannot get benefit under section 14(1).

If a female is merely in possession without having any sort of right in it, she cannot be said to have possessed of the property within the meaning of this section. Distinguishing *Tulasamma's case*, it was held in

⁸ AIR 1970 SC 1019

⁹ Munna lal v. Raj Kumar 1962 SC 1493

*Patchi Krishanamma v. Kumaran Krishnan*¹⁰, that where the right of a Hindu widow was only to be maintained from out of the income of the joint family property and a charge on the property, that did not mean she had a right to possession of joint family property nor was she a coparcener entitled to claim its possession along with the other members and as she could not demand partition of the joint family property, section 14 (1) would not apply.

RELATIONSHIP BETWEEN SUB-SECTION (1) AND (2)

Sub-section (2) is an exception to sub-section (1). Sub-section (2) would not come in the way of sub-section (1). Both the sub-sections speak of gift, will or any other instrument by which any property might be acquired by any female Hindu. Sub-section (1) speaks about the property possessed by a female Hindu in whatever manner the property was acquired by the date of the act. This acquisition is further defined in the explanation by referring to various methods of acquisition. On reading sub-section (1) with explanation, it is clear that whatever the property was possessed by a female Hindu as her limited estate, it would become on and from the date of commencement of the act her absolute owner thereof. However, if she acquires property after the act with a restricted estate, sub-section (2) applies. Such acquisition may be under the terms of a gift, will or other instrument or a decree or order or award.

In *Naraini Devi v. Ramo Devi*,¹¹ the Supreme Court held where, by an award an interest was created on favour of a widow, that she should be entitled to rent out her property for her life time, it amounted to a restricted estate by virtue of an instrument within the meaning of subsection (2) and sub-section (1) did not apply and the widow did not get absolute rights in the Property. In *Tulsamma v. Sesha reddy*¹², it was held that various aspects were not brought to notice of the Supreme Court or considered in *Naraini's case* viz., the nature and the extent of the Hindu Women's Right to Private Act, 1937, the limited scope of sub-section (2) which is only proviso to sub-section (1) and the effect of the explanation. The decision of the supreme court in *Tulasamma's case* was followed and reiterated in the very next year.

PROPERTY GIVEN IN LIEU OF MAINTENANCE

The rights of a widow in lieu of her maintenance have got enlarged by section 14 (1) even though subsequent to the giving of the rights to her, the rights were restricted to life interest by means of a deed. The father-in-law gifted to the deserted wife of his son. The son filed a suit that such gift of ancestral property without his consent was void. But it was decided in the case, *Haridutt v. Shiva Ram*¹³ was compromised and the rights of the donor were restricted to her life. It was held following *Tulsamma v. Seshareddy* that the decree does not amount to one which created right in her for the first time as:

¹⁰ 1985 Ker 137

¹¹ AIR 1976 SC 2198

¹² AIR 1964 Punj 493

¹³ ILR 1978 H.P. 293

- (i) She was having a right to maintenance from the family property as she was not divorced but was only a deserted wife; and
- (ii) The absolute rights granted by the father-in-law are only restricted by the decree and not by the instrument itself.

In the case of *Prem Shankar v. Tara Devi*¹⁴, a widowed mother having been allotted a share in the Mitakshara coparcenary property equal to that of her son, it was held that the source of title was not the partition deed, but her right to get share; and hence under section 14(1) she got absolute rights.

RECENT JUDGMENTS

The following judgments give the present scenario, scope and extent of Section 14 of the Hindu Succession Act.

In the case of *Gangamma v. G. Nagarathnamma and Ors.*¹⁵, the supreme court held that Hindu female is the full owner of the properties which stand in her name on the date of the commencement of the Hindu Succession Act and even thereafter. Also, affirmed the view that Sub-section (1) of Section 14 is very large in its amplitude and covers every kind of acquisition of property by a female Hindu. Regardless of whether such property was possessed by a female Hindu on the date of commencement of the Act or was subsequently acquired or possessed, she would be the full owner of the property.¹⁶ In another case, *Komalam Amma v. Kumara Pillai Raghavan Pillai*¹⁷, it was held by the Supreme Court that concept of maintenance includes provision for food and clothing. The provision made by giving life interest in property for residence in lieu of pre-existing right to maintenance and Hindu lady acquires far more than vestige of title deemed to sufficient to attract section 14(1).

Supreme Court has not only widened the scope and extent of Section 14 but has also limited it to the reasonable extent. In the case of *Smt. G. Rama v. T.G. Seshagiri Rao*¹⁸, the Apex Court held that mere possession does not automatically attract Section 14 of the Hindu Succession Act. Earlier, with reference to remarriage and property of a woman, the Supreme Court in *Cherotte Sugathan v. Cherotte Bharathi*¹⁹ held that upon the death of the husband, his share vested in his wife absolutely, which could not be subjected to divestment, save and except by reason of a statute. Also, remarriage of the wife cannot be a ground for her losing right to succeed to her deceased husband's property. In *Santhosh v. Saraswathibai*²⁰, it was held that Section 14 (1) not only takes within its sweep a land which was not only in possession of the female Hindu but also covers the land over which she has a right to possess. Section 14 (1) will also be applicable to a land possessed by female Hindu, which she received for her maintenance.

¹⁴ AIR 1980 Punj 536

¹⁵ AIR 2009 SC 2561

¹⁶ *Vaddeboyina Tulasamma and Ors. v. Vaddeboyina Sesha Reddi (dead) by L.Rs.* AIR 1977 SC 1944

¹⁷ AIR 2009 SC 636

¹⁸ 2008 (9) SCALE 666

¹⁹ AIR 2008 SC 1467

²⁰ AIR 2008 SC 500

CONCLUSION

Section 14 has provided women with those rights, which were denied to her for centuries. It is undoubtedly a colossal step for the protection of the human rights of womenfolk. This section remove the disability of a female to acquire and hold property as an absolute owner and to convert any estate already held by a woman on the date of commencement of this act as a limited owner, into an absolute estate. In case of her death intestate, she becomes a fresh stock of descent and the property devolves by succession on her own heirs. This section enlarges the maintenance rights of women by providing them absolute rights upon it.

Sub-section (2) is an exception to sub-section (1) as it states that nothing contained in sub-section (1) will apply to any property acquired by way of gift, or under a will, or any other instrument or under a decree, order of a civil court or under an award where the terms of the gift, will or other instrument restricted estate in her. So over all, what can be said that legislature has done a wonderful job to strengthen the position of women in India through section 14 but practically it would only be possible with the support of the existing society which is very orthodox in its nature. The legislation's work can be held wonderful with the support of judiciary that the law commission till date has not found any reform needed for Section 14 of the Hindu Marriage Act to fulfill any need of the concept of Stridhan.

A large, light blue watermark of the IJRTI logo is centered on the page. It features a stylized 'I' and 'J' forming a circle, with 'R', 'T', and 'I' positioned below them. At the bottom of the logo is a grey rectangular box containing the text 'IJRTI' in white, bold, sans-serif capital letters. Below this box are two more grey shapes: a rectangle and a semi-circle.

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