Hindu Succession Act, 1956, section 14—Restricted Estates in Wills—Sakunthala Devi *v.* Beni Madhav*

The decision of the Allahabad High Court in *Sakunthala Devi* v. *Beni Madhav* lays down doubtful canons of construction in the law of wills. The material facts are: one Pundarikaksh died in 1947 possessed of Zamindari and other properties. In a will executed he stated: "That after my death my wife Smt. Sakunthala Devi will be entitled to my share in the property and will enjoy the same as a Hindu widow." On the acquisition of the Zamindari, the compensation bonds of the value of Rs. 10,000 were given to her and the rest was withheld on the ground that she was only entitled to a limited estate. The material contention of the widow was that under section 14(1) of the Hindu Succession Act, 1956, she was entitled to an absolute interest in the properties of her deceased husband. The respondents *inter alia* relied on the exception provided in sub-section (2) of section 14 of the Hindu Succession Act. Reversing the decisions of the Compensation Officer and the lower Appellate Court Katju, J., held that the widow was entitled to an absolute estate under section 14(1) of the Hindu Succession Act.[1] Stating that the question was not free from difficulty, he proceeded to observe:

"The question, however, is that where under a will executed by her husband the widow got a Hindu widow's interest whether that interest could be enlarged by the provisions of sub-section (1) of Sec. 14. If there had been no such testamentary disposition and the

* A.I.R. 1964 All. 165.

1. Section 14 of the Hindu Succession Act:

(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 purchase 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 civil court or under an award where the terms of the gift, will, other instrument, or decree, order or award prescribe a restricted estate in such property.

widow had succeeded in the ordinary course of succession to the properties of her deceased husband that interest would have been transformed into full ownership on the passing of the Hindu Succession Act, but since the interest of the widow was directly traceable to the will executed by her husband it could be said that she was not entitled to the benefit of sub-section (1) ".

Pointing out the distinction between the Hindu Women's Estate under Hindu law and a life interest, the learned judge proceeded to observe :

"What the applicant got under the will was the interest of a 'Hindu widow' in her husband's property and not a restricted estate for life. If Pundarikaksh intended to give her a life estate in the property he would have said so. But he gave her the interest of a 'Hindu widow' which was defined by law and which could be enlarged or restricted by law. It was the interest of Hindu widow which was enlarged directly into full ownership. If under a will the applicant got a Hindu widow's interest then I see no reason why such interest could be restricted by provisions of sub-section (2) and could not *ripen* into full ownership."

From the above it would appear that the learned judge's view proceeds from two underlying assumptions : Firstly, the interest of a "Hindu widow" or rather the Hindu Women's Estate is a creature of law and could be enlarged or restricted by law ; secondly, that it stands enlarged into full ownership under the Hindu Succession Act. Both these assumptions, it is submitted with respect, cannot be accepted *in toto* and are subject to important qualifications. It is to be noted that section 14 of the Hindu Succession Act does not enlarge every limited estate of a Hindu woman into full ownership and two clear exceptions follow from the language of the section : (i) where the limited owner is not possessed of the property either actually or constructively ; (2) where the property has been acquired under a gift, will or other instrument, or under a decree or award which prescribes a restricted estate in the property. [Section 14(2)]

The language of section 14 throws a difficult task on the courts to mark the dividing line between the operation of sec. 14(1) and of sec. 14(2) in cases of limited estates under wills. For, according to the explanation to sec. 14(1) property obtained under a *devise* stands enlarged into full ownership, whereas sec. 14(2) provides that a restricted estate conferred under a will is not hit by sec. 14(1). It is

to be regretted that the judgment does not advert to this important aspect of sec. 14 of the Hindu Succession Act, nor does it seek to illuminate on this point.

In any event, whether one proceeds from the niceties of the language of section 14 of the Hindu Succession Act, or from the principles of the law of wills, the paramount consideration should be to give effect to the intention of the testator. It is also to be remembered that according to sec. 74 of the Indian Succession Act, no technical words are necessary to express the intention of a testator. The principles applicable in the instant case have been succinctly stated by the Supreme Court in *Laxmana* v. *R. Ramier*[2] thus:

"At one time it was a moot point whether a widow's estate could be created by a will, it being an estate created by law, but it is now settled that a Hindu can confer by means of a will on his widow the same estate which she would get by inheritance. *The widow in such a case takes as a demisee and not as an heir.* The court's primary duty in such cases is to ascertain from the language employed by the testator 'what are his intentions' keeping in view the surrounding circumstances, his ordinary notions as a Hindu in respect to devolution of his property, his family relationships etc., in other words, to ascertain his wishes by putting itself, so to say, in his arm chair." [emphasis added] [2b]

The learned judge in *Sakunthala Devi's* case comes to the conclusion that the testator intended to confer on the widow "the Hindu widow's interest" (at para. 13). In other words she takes the property as a devisee and not under inheritance. How then can the operation of sec. 14(2) be excluded to the bequest?[3] To say because the testator did not give a life interest, sec. 14(2) does not apply is to give a restricted meaning to the words "restricted estate" as connoting a life estate only.

2. [1953] S.C.R. 848 at 852.

2-b. Apparently demisee is a misprint for devisee.

3. Commenting on Sec. 14(2) of the Hindu Succession Act, 1956, the learned Editor of "Mulla" observes:

"It is also intended to make it clear that any such restricted estate created prior to the commencement of the Act will not be enlarged into full ownership by operation of sub-sec. (1), if the gift, will, other instrument, decree, order or award had prescribed a restricted estate."

"The sub-section does not require that the restricted estate must be prescribed in express terms. Whether any such restricted estate has been created or not in any such case must obviously be a question of construction.....". *Principles of Hindu Law*, p. 980. Ed. 12th.

Even if one comes to the conclusion that the words "will enjoy the same as a Hindu widow" are not words of limitation, but are only descriptive of the nature and quality of enjoyment (though it was not so held in the present case) the question would arise: From what period the will is deemed to speak to ascertain the intention of the testator? On this Jarman observes: [4]

"For some purposes a will is considered to speak from its date of execution, and for others from the death of the testator: the former being the period of inception, and latter that of the consummation of the instrument."

Here the will was executed in 1947 and the testator died in the same year. So the conclusion can only be that only a limited estate was intended.

In this context it is equally relevant to consider whether a statute can alter the construction of a will. The decisions of the English Courts deny any such effect being given to a statute. The judgment of the Court of Appeal in *In re March, Manders* v. *Harris* [5] is apposite in this connection. There a testatrix executed a will in 1880 and it came into operation in 1883. In the meantime *The Married Women's Right to Property Act, 1882*, was passed. The question arose whether the legatee gets her interest according to the law in 1880 or in 1883. Lindley, L. J., observed: [6]

"What, then did she acquire under the will? That depends upon the proper construction of the will, and for the purposes of construction these rules which prevailed when the will was made and with reference to which wills may be fairly presumed to have been framed must be observed."

A fortiori in the case under review, as the execution and consummation of the will took place in 1947, it is not open to court in the absence of compelling reasons to enlarge the interest of the widow under the provisions of a subsequent statute passed in 1956.

Thus whether viewed from the general principles of the law of wills or from the angle of statutory construction of sec. 14 of the Hindu Succession Act, 1956, the decision seems to be open to question.

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4. *Jarman on Wills*, Vol. I, p. 412 (8th Ed.).
5. 27 Ch. D. 166.
6. 27 Ch. D. 166 at 169.

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