

Stridhan And Womans' Estate Under Section 14 of Hindu Succession Act 1956

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INTRODUCTION

The paper intends to analyze the scope of section 14 and how it has brought the fundamental change in concept of women's estate. Section 14 provides that any property possessed by a Hindu female, whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as limited owner sub-section (1) explains further that 'property' in this sub-section includes both movable and immovable property acquired by her by inheritance, partition, gift or will or acquired in lieu of maintenance or arrears of maintenance or acquired by her own skill or exertion or by purchase or by prescription or any other manner whatsoever, and also any property held by her as *stridhana* immediately before the commencement of the said Act. It is immaterial whether it be obtained by inheritance of the deceased husband's separate property or of his share in coparcenary property by virtue of the proviso to section 6 of the Act, or by devise of her deceased husband or gift from a relative or any other person, and whether before, at or after her marriage. But, as expressly provided by sub section (2) of this section, a Hindu female shall not be entitled to hold any property as an absolute owner if she has acquired the same 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.

Thus Section 14 has abolished women's estate by converting it into stridhan and woman's estate and has converted existing woman's estates into full estates. It has introduced fundamental changes in the traditional Hindu law of property of woman. The objects of this section are:

- To remove all disability of Hindu woman to acquire and deal with property, that is, all the property that she acquires will be her absolute property.
- To convert existing woman's estate into full estate.

It incorporates the following propositions.

(A)

- Any property acquired by a Hindu female after the commencement of the Act will be held by her as her absolute property.
- Any property held by a Hindu female as woman's estate and is in her possession will also become her property.

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- But, if any property is covered by the provision of subsection (2) neither (a) nor (b) above will apply. In other words, if any property is acquired by a Hindu female by way of gift or under a will or any other instrument under a decree or order of a civil court or under an award, and the terms of the gift, will or other instrument or the decree order or award prescribe a restricted estate in such property, she will take it accordingly.
- (B) The requirement of being possessed in subsection (1) applies only to the woman's estate existing at the time of the commencement of the Act; this obviously cannot apply to the properties acquired by her after the commencement of the Act.
- (C) The definition of the term property contained in the explanation applies to both types covered under (a) and (b) of (A).
- (D) This section has qualified retrospective application. It applies retrospectively to those woman's estates which were in the possession of the Hindu female when the Act came into force. It does not apply to those woman's estate over which she had no possession when the Act came into force. To such estates old Hindu law continues to apply.

Stridhan And Woman's Estate

Stridhan means woman's property¹. In the entire history of Hindu Law, woman's rights to hold and dispose of property has been recognized.

Kinds of Woman's Property

What is the character of property that is whether it is stridhan or woman's estate, depends on the source from which it has been obtained. They are:

- **Gifts and bequests from relations-** Such gifts may be made to woman during maidenhood, coverture or widowhood by her parents and their relations or by the husband and his relation. Such gifts may be inter vivos or by will. The Dayabhaga School doesn't recognize gifts of immovable property by husband as stridhan.²
- **Gifts and bequests from non-relations-** Property received by way of gift inter vivos or under a will of strangers that is, other than relations, to a woman, during maidenhood or widowhood constitutes her stridhan. The same is the position of gifts given to a woman by strangers before the nuptial fire or at the bridal procession. Property given to a woman by a gift *inter vivos* or bequeathed to her by her strangers during coverture is stridhan according to Bombay, Benaras and Madras schools.
- **Property acquired by self exertion, science and arts-**A woman may acquire property at any stage of her life by her own self exertion such as by manual labour, by employment, by singing, dancing etc., or by any mechanical art. According to all schools of Hindu Law, the property thus acquired during widowhood or maidenhood is her stridhan. But, the property thus acquired during coverture does not constitute her stridhan according to Mithila and Bengal Schools, but according to the rest of the schools it is stridhan. During husband's lifetime it is subject to his control.

¹ Mitakshara II ix, 2.

² Banerjee, *Hindu Law of Marriage and Stridhan*, Pg 321

- **Property purchased with the income of stridhan-** In all schools of Hindu Law it is a well settled law that the properties purchased with stridhan or with the savings of stridhan as well as all accumulations and savings of the income of stridhan, constitute stridhan.
- **Property purchased under a compromise-** When a person acquires property under a compromise; what estate he will take in it, depends upon the compromise deed. In Hindu Law there is no presumption that a woman who obtains property under a compromise takes it as a limited estate. Property obtained by a woman under a compromise where under she gives up her rights, will be her stridhan. When she obtains some property under a family arrangement, whether she gets a stridhan or woman's estate will depend upon the terms of the family arrangement.
- **Property obtained by adverse possession-** Any property acquired by a woman at any stage of her life by adverse possession is her stridhan.
- **Property obtained in lieu of maintenance-** Under all the schools of Hindu Law payments made to a Hindu female in lump sum or periodically for her maintenance and all the arrears of such maintenance constitute stridhan. Similarly, all movable or immovable properties transferred to her by way of an absolute gift in lieu of maintenance constitute her stridhan.
- **Property received in inheritance-** A Hindu female may inherit property from a male or a female; from her parent's side or from husband's side. The Mitakshara constituted all inherited property a stridhan, while the Privy Council held such property as woman's estate.
- **Property obtained on partition-** When a partition takes place except in Madras, father's wife mother and grandmother take a share in the joint family property. In the Mitakshara jurisdiction, including Bombay and the Dayabhaga school it is an established view that the share obtained on partition is not stridhan but woman's estate.

Stridhan has all the characteristics of absolute ownership of property. The stridhan being her absolute property, the female has full rights of its alienation. This means that she can sell, gift, mortgage, lease, and exchange her property. This is entirely true when she is a maiden or a widow. Some restrictions were recognised on her power of alienation, if she were a married woman. For a married woman stridhan falls under two heads:

- the *sauadayika* (gifts of love and affection)- gifts received by a woman from relations on both sides (parents and husband).
- the *non-sauadayika*- all other types of stridhan such as gifts from stranger, property acquired by self-exertion or mechanical art.

Over the former she has full rights of disposal but over the latter she has no right of alienation without the consent of her husband. The husband also had the power to use it.

On her death all types of stridhan passed to her own heirs. In other words, she constituted an independent stock of descent. In *Janki v. Narayansami*³, the **Privy Council** aptly observed, "her right is of the nature of right of property, her position is that of the owner, her powers in that character are, however limited... So long as she is alive, no one has vested interest in the succession."

Powers Of A Hindu Female Over Her Woman's Estate

³ (1906)43 IA 87

(a) **Power of Management**- like the *Karta* of a Hindu joint family she has full power of management. The *Karta* is merely a co-owner of the joint family, there being other coparceners, but she is the sole owner. She alone is entitled to the possession of the entire estate and its income. Her power of spending the income is absolute. She need not save and if she saves, it will be her stridhan. She alone can sue on behalf of the estate and she alone can be sued in respect of it.⁴ Any alienation made by her proper or improper is valid and binding so long as she lives. She continues to be its owner until the forfeiture of estate by her re-marriage, adoption, death or surrender.

(b) **Power of Alienation**- She has limited powers of alienation, Like *Karta* her powers are limited and she can alienate property only in exceptional cases. She can alienate the property for the following:

- **Legal necessity** (that is, for her own need and for the need of the dependants of the last owner)
- **For the benefit of estate**, and
- **For the discharge of indispensable duties** (such as marriage of daughters, funeral rites of her husband, his shrada and gifts to brahmans for the salvation of his soul; that is, she can alienate her estate for the spiritual benefit of the last owner, but not for her own spiritual benefit.)

Under the first two heads her powers are more or less the same as that of the *Karta*. Restrictions on her powers of alienation are an incident of the estate and not for the benefit of the reversioners.⁵ As to the power of alienation under the third head, a distinction is made between the indispensable duties for which the entire property could be alienated, and the pious and charitable purposes for which only small portion of property can be alienated. She can make alienation for religious acts, which are not essential or obligatory but are still pious observances which conduce to the bliss of her deceased husbands soul.⁶

(c) **Surrender**- means renunciation of estate by the female owner.⁷ She has the power of renouncing the estate in favour of the nearest reversioner. This means that by a voluntary act she can accelerate the estate of the reversioner by conveying absolutely the estate thereby destroying her own estate. This is an act of self-effacement on her part and operates as her civil death.

For a valid surrender, the first condition is that it must be of the entire estate⁸, though she may retain a small portion of her maintenance⁹. The second condition is that it must be in favour of the nearest reversioner or reversioners, in case there are more than one of the same category. Surrender can be made in favour of female reversioners also. The third condition is that the surrender must be bonafide and not a device of dividing the estate with the reversioners.¹⁰

(d) **Reversioners**- On the death of the female owner the estate reverts to the heir or the heirs of the last owner as if the latter died when the limited estate ceased. Such heirs may be male or female known as reversioners. So long as the estate endures there are no reversioners though there is

⁴ *Sitaji v. Bijendra* AIR 1964 SC 601

⁵ *Jaisri v. Rajdewan* (1962) SCJ 578

⁶ *Smt. Kamala Devi v. Mukund Ram* AIR 1955 SC 481

⁷ *Dayabhaga* XI, I, 56-57

⁸ *Natvarlal Punjabhai v. Dahubhai Manubhai* AIR 1954 SC 61

⁹ *Chinnamarappa Goundar v. Narayammal* AIR 1906 Mad 169

¹⁰ *Bhagwant Koer v. Dhanukdhari Prasad Singh* AIR 1919 PC 75

always a presumptive reversioner who has only a *spes successionis*¹¹ (an exception). The property of the female devolves on the reversioners when her estate terminates on her death, but it can terminate even during her lifetime by surrender.

(e) **Right of Reversioners**- the reversioners have a right to prevent the female owner from using the property wastefully or alienating it improperly. It is in this context that the expression “**presumptive reversioner**” came into vogue¹². The reversioners have the following three rights:

- They can sue the woman holder for an injunction to restrain waste.
- They can in a representative capacity sue for a declaration that alienation made by the widow is null and void and will not be binding on them after the death of the widow. However by such a declaration the property does not revert to the woman nor do the reversioners become entitled to it. The alienee can still retain the property so long as the widow is alive.¹³
- They can after the death of the woman or after the termination of estate, if earlier, file a suit for declaration that an alienation made by the widow was improper and did not bind them. The **Supreme Court**, observed that when a Hindu female holder of woman’s estate improperly makes alienation, the reversioners are not bound to institute a declaratory suit during the lifetime of the female holder. After the death of the woman, they can sue the alienee for possession of the estate treating alienation as a nullity.¹⁴

SOURCES OF WOMAN’S PROPERTY

PROPERTY RECEIVED IN LIEU OF PARTITION

The Karta can grant some property to a member of the family for his or her maintenance. A Hindu female can also be granted property for her maintenance under a family arrangement or a partition. In *Chinnappa Govinda v. Valliammal*,¹⁵ a father-in-law gave some properties for the maintenance of his widowed daughter-in-law under 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.

Section 14 lays down that any property which a Hindu female gets on partition after the commencement of the Act will be her absolute property and any property which she got at a partition before the commencement of the Act will also become her absolute property provided it was in her possession at the commencement of the Act. The **Kerala High Court** in *Pachi*

¹¹ *Daayati Upadhiya v. Ram Bharos Pande* AIR 1930 All109

¹² *Bakshi Ram v. Brij Lal* AIR 1995 SC 395

¹³ *Bijoy Gopal Mukherji v. Krishna Mahishi Debi* (1907) 34 IA 87, where the alternative remedies of the reversioners are laid out.

¹⁴ *Radha Rani Bhargava v. Hanuman Prasad Bhargava* AIR 1966 SC 216

¹⁵ AIR 1969 Mad 187

Krishnamma v. Kumaran Krishnan¹⁶ observed that the share a woman got on partition would be her absolute property on account of her pre-existing right to maintenance enlarged to an absolute title to property by virtue of **section 14(1)**.¹⁷

PROPERTY GIVEN UNDER AN AWARD OR DECREE

In Badri Prasad v. Kanso Devi,¹⁷ where a partition under an award was subsequently embodied in a decree, certain properties were allotted to a Hindu female as her share, the Supreme Court said that section 14(2) did not apply. Their Lordships said that section 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 the subsection are 'possessed' and 'acquired'. The former has been used in the widest possible sense and in the context of section 14(1) it means the state of owning or having in one's hand or power. Similarly the word acquired has also been given widest possible meaning. The **Supreme Court** was of the view that a share obtained by a Hindu female in a partition under section 14(1) even though her share is described as a limited estate in the decree or award.

PROPERTY UNDER AN AGREEMENT OR COMPROMISE

The test that if the decree or award is the recognition of pre-existing right then sub-section (1) will apply and if property is given to the Hindu female for the first time under an award or decree sub-section (2) will apply. It has been applied to the acquisition of property under an agreement or compromise. This distinction has been clearly brought out by Mahadeo v. Bansraji¹⁸ and Lakshmichand v. Sukhdevi.¹⁹

PROPERTY RECEIVED IN INHERITANCE

Any property that a Hindu female inherited from a male or female relation was taken by her as limited estate except in the Bombay school. Section 14 lays down that any property that a Hindu female inherits from any relation after the commencement of the Act will be her absolute property. On her death it will devolve on her heirs under the provisions of section 15 and 16. If any property has been inherited by her before the commencement of the Act and if it is in her possession then that property also became her absolute property.

PROPERTY RECEIVED IN GIFT

Under the Act, there is no distinction between the gifts received by her from relatives or strangers and at any stage of her life, and all gifts that she receives will be her absolute property. Ornaments received by her at the time of her marriage are ordinarily her stridhan property. A full bench in Vinod Kumar Sethi v. State of Punjab²⁰ held that dowry and traditional presents made to a wife at the time of the marriage constitute her stridhan. In Gopal Singh v. Dile Ram²¹, a widow having a life estate purported to make a gift of the property before the **Hindu Succession Act 1956** came into force.

¹⁶ AIR 1982 Ker 137

¹⁷ AIR 1970 SC 1963

¹⁸ AIR 1971 ALL 515

¹⁹ AIR 1970 Raj 285

²⁰ AIR 1982 P& H 372

²¹ AIR 1987 SC 2394

PROPERTY RECEIVED UNDER A WILL

In *Karmi v. Amru*²² A Hindu , under a registered will , conferred a life estate on his wife Nihali , with the direction that after the death of Nihali , properties would devolve on Bhagtu and Amru , two of his collaterals Nihali took possession and died in 196. On her death her heirs claimed property 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 , Section 14(2) will apply , and the estate will not become full estate .But if a will confers on her full estate , she will take absolutely . Properties given under a settlement to the widow which were to revert to the settlor on his brother on her death , do not get enlarged into full estate .

²² AIR 1971 SC 745

CONCLUSION

Section 14 of **The Hindu Succession Act 1956** has abolished certain women's estate and in respect of woman's estate which are outside the purview of section 14, a reversioner's right under old Hindu Law still endures.

Section 14(1) has qualified retrospective application, it converts only those woman's estates into full estates over which she has possession when the Act came into force. It does not apply to those woman's estates over which the Hindu female has no possession when the Act came into force; in such a case old Hindu Law continues to apply.

Section 14(2) uses the words "any other instrument". Applying the principle of ejusdem generis, these words should be read along with the preceding words, "acquired by way of gift or under a will" and would thus, mean the instruments under which title to property has been conveyed to the Hindu female.²³

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²³ *Chinamma v. Lingamma* AIR 1972 Mysore 333