ANALYSIS ON THE CONCEPT OF ABSOLUTE OWNERSHIP OF HINDU FEMALE UNDER SECTION 14 OF THE HINDU SUCCESSION ACT, 1956

N.K. Sharithira, School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University

Dr. P. Brinda, School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University

ABSTRACT

The absolute right over the property by women results in economic empowerment and security, reducing dependency on others and enhancing the social status of women. Section 14(1) of Hindu Succession Act, 1956 (HSA, 1956) entitles full ownership over the property acquired by the Hindu women. Section 14(2) vests limitations on absolute ownership of Hindu women on property. The Judiciary has interpreted these restrictions in divergent manner. In some cases, the Courts accepted the absolute ownership of the Hindu Female, whereas in other cases, a restrictive interpretation has been applied. The restriction imposed under Section 14 and its restrictive interpretation curbs the complete property rights of Hindu women. This implies that there is a need for proper interpretation of Section 14 to confirm the complete ownership of property of a Hindu Female to ensure that they enjoys the benefits arising out of their property rights. This paper discusses about the concept of absolute ownership of Hindu Female under the scope of Section 14 of HSA, 1956 by analysing the interpretations pronounced by the Courts and identify the impacts that will arise by confirming the absolute ownership to Hindu Female.

Keywords: Hindu, Female, Property rights, Absolute Ownership, Limited Ownership

Introduction

Ownership over the property means the owner gains certain rights over the property like right to manage, possession, utilise and alienate the owned property. Ownership of property empowers women by ensuring security through the income generated from the property. The financial independency created with the help of the property owned by the women impacts on the livelihood, education, health care of the women. In the social sphere, the financial independency of the women improvises her position, aids in decision-making, and decreases the vulnerabilities against women such as domestic violence. There is a need to recognise the women's property rights and eradicate any form of discrimination that exists in the property rights of women[1]

Evolution of Rights related to Property of Hindu Female

Rights related to property of Indian women are diversified based on the application of the personal laws. The conservatism that revolved around the religion determined the nature of the rights and privileges enjoyed by the women. In Ancient India, Hindu women were deliberately neglected to right to property and she was placed in a position to depend on the males of the family[2]. The Mitakshara and Dayabhaga law, which laid down rules regarding the Hindus personal laws established that under Mitakshara school of law, only sons possessed the right to ancestral property and the daughters right to ancestral property has been neglected. In Dayabhaga school of law, both the sons and daughters did not have coparcenary rights in ancestral property and after the father position is gone due to his death, they would inherit the property rights[3].

Women enjoyed complete power of alienation of her stridhan property and had limited powers over non stridhan property. Property received as gifts by parents or husband or any other person either at the before or after marriage, or received for performing ceremonies, or by adverse position or bequest or maintenance or its arrears or savings are considered as stridhan property[4]. This stridhan property is categorised as saudayika and non saudayika.

---

[1] UN Women, Women's Land & Property Rights, https://asiapacific.unwomen.org/en/focus-areas/women-poverty-economics/women-s-land-property-rights
[2] J. Starli, M, Critical Analysis of Disparity in Property Rights of Women in India a Glimpse, TN State Judicial Acadmey
[3] Law Commission of India, Property Rights of Women (Law Com No. 174, 2000)
[4] *Sheo Shankar v. Devi Sahai*, (1903) ILR 25 All 468

Women had absolute alienated powers with respect to saudayika property and limited alienated powers over non saudayika property where she is allowed to alienate the property only when the necessity arises. The women have limited powers over the property inherited from relations or by partition and she can only enjoy certain benefits arising out of the property[5].

The Hindu Women's Rights to Property Act, 1937, recognised that the women could maintain herself after the husband's demise. A share will be allocated to her which is equivalent to her son' share and even if the son is not present, she was still entitled to receive a share but this was only amounted to the limited enjoyment over the property.

Despite of this entitlement to maintain herself without her husband's presence, the Hindu women's concept of ownership of property still prevailed without any absolute powers. In order to confirm her rights over the property and widen the scope of property from limited to absolute estate as well as to rectify the disparities and constraints experienced by Hindu women, the Hindu Succession Act of 1956 (HSA, 1956) was introduced in India.

The HSA, 1956, introduced in India for equitable application of succession law for the Hindu community and by Section 2 of the HSA, 1956 the HSA, 1956 applies to Hindus as well as Buddhist, Jains and Sikh and does not apply to Muslim, Christian, Parsi or Jew. It had undergone an amendment in 2005 to remove the gender inequalities in the HSA, 1956.

Absolute Ownership of Hindu Female

The HSA, 1956 governs the processes of succession and inheritance among the Hindus in India and therefore Hindu female's succession and inheritance take place in accordance with this Act. The Act vests upon women the status of absolute ownership over property obtained by women and abolishes the restricted ownership of the women over the property. Absolute ownership over the property means only the owner has the complete claim of rights over the property except any constraints placed by law. Limited ownership means there are restraints on the rights of property which affects its absolute enjoyment[6].

Section 14(1) of HSA, 1956 provides with the clear explanation that the property that owned by a Hindu woman includes both movable and immovable and thereby confirming not

[5] *Jai Shree Sahu v. Dharam Dubey*, (1962) 1 Mad LJ 258 (SC)
[6] V.D.Mahajan, Jurisprudence and Legal Theory, 5th Edition, 1987

only absolute ownership over the property but also the type of property owned by the Hindu woman. In ***Thota Sesharathamm v. Thota Manikyamm***[7]**,** the Court confirmed that the Section 14(1) asserts firmly that the property which could be movable or immovable property and held by a Hindu woman will be considered as her absolute property, and it emphasised on the abolishment of the limited interest on the property known to the customary law.

Section 14(1) also explained the modes in which the Hindu female acquires the ownership and provides a much clearer view about the property held by the hind women. It states that women could acquire the property by various means including inheritance, partition, maintenance, stridhana, gifts, personal skills, purchase, prescription, or any other legally permissible method. This Section entitles the Hindu female to acquire the property from anyone at anytime and the marital status of women does not affect the property acquired by the Hindu woman.

Section 14(1) clearly shows the determination of the legislators to vests the absolute ownership to the Hindu woman and the judiciary in its verdicts clarified that this provision eliminates the constraints and limitations on Hindu women's property rights. In ***Gulwant Kaur v. Mohinder Singh***[8], the Court guaranteed that Hindu women to have absolute ownership rights over property and completely enjoy it, regardless of the means by which she acquired it.

Issues affiliated with the concept of Absolute ownership

The objective of Section 14 of HSA, 1956 is to confirm the absolute ownership to the female Hindu but due to certain issues in the interpretation of the Section 14 its objective has been deviated. The interpretations pronounced by the judiciary in certain cases related to the affirmation of the absolute ownership concept and its exception laid down in section 14(2) deviated from the core objective of the section and emerged as a challenge to confirm the full-fledged absolute ownership to the Hindu female[9].

The Indian judiciary has interpreted this provision that paves way for the safeguard of women's entitlement to her property and upholds principles of gender justice. In ***Masilamani***

[7] 1991 SCR (3) 717
[8] AIR [1987] SC 225
[9] Vishal Kale, The Interplay Between Section 14(1) And (2) of the Hindu Succession Act, 1956, https://kaleandshinde.com/blog/the-interplay-between-section-14(1)-and-(2)-of-the-hindu-succession-act-1956

Mudaliar v. Idol of Sri Swaminath Swami[10], the complete ownership of the Hindu females over specific properties was recognised and assured this recognition by highlighting the importance of gender equality with reference to the constitutional provisions and international conventions.

Possession and Recognition of Absolute Ownership

In order to convert limited ownership to absolute ownership the Court in certain cases adopted possession as a requirement for acquiring the absolute ownership status[11]. In ***Kalwanti bai v. Soirya bai***[12], a rule has been established that a Hindu woman could attain the complete ownership over the property only if she was the limited owner of the property before the introduction of HSA, 1956. The possession of the limited interest in the property would be converted into absolute estate[13].

It has been applied in certain cases that if the transfer of property takes place and Hindu women lose her possession, she could not claim absolute interest over the property. If this loss of possession is temporary then she is entitled to full ownership[14]. Similarly, women who have acquired the possession illegally[15] or continued to be in possession only as trustee[16] in not entitled to be a absolute owner.

The Courts had conflict opinion with regard to the time period of possession held by the women. It has been clarified by the Court in ***Jaganatha Pillai v. Kunjithaopadam Pillai***[17], the language of the Section 14(1) states that property taken over by the women before or after the enactment of the HSA, 1956, will be declared as absolutely owned property and not limitedly owned property.

In ***Tulassamma v. V. Sesha Reddy***[18], the Court observed that term possessed by should be conceived as the term owned by under Section 14(1) of the HSA, 1956. The possession can be

---

[10] 1996 AIR 1697
[11] *GummalapuraTaggiana Matada Kotterswami v. SetraVeerawa, Supp*. (1) S.C.R.
[12] AIR 1991 SC 1581
[13] *Venkatrama v. Palamal*, (1970) 2 Andh WR 264
[14] Dr. Poonam Pradhan Saxena, Family Law Lectures, 3rd Edition, 2011
[15] *Eramma v. Verrupana,* AIR, 1966, SC, 1879
[16] *Chandradip Rai v. Mahip Rai*, AIR 1960 Pat 112
[17] AIR 1987 SC 1493
[18] 1978 SC 361 (5) R 1979 SC 993

actual, physical, or constructive in nature[19]. In order to diminish the difficulties arouse out of requirement of possession of property by Hindu female, which eventually curbed the property from the women, the Indian judiciary has widened the scope of Section 14(1)[20].

Remarriage and Recognition of Absolute Ownership

It has been contested in many cases that the remarried women is not entitled to absolute ownership and argued that they only have limited estate. This has been contested due to the application of the Section 2 of the Hindu Widow Remarriage Act, 1856 (HWRA, 1856) where it forfeits the interest of Hindu widow when she remarries. It is now established that if a Hindu women remarries after the enactment of the HSA 1956, her property would not be relinquished by the virtue of the HWRA, 1856[21]. Therefore the absolute rights under Sec 14(1) HSA, 1956 cannot be diminished in any circumstance[22].

At present, many raise contentions to the application of this rule to women estate that it would create unjust among heirs when the succession take place after the death of the women who remarried in her lifetime[23]. One has to understand, these complication may tend to arise even if the Hindu male remarries in his life time. If these contentions are recognised in the court of law then it would forfeit the absolute interest of the Hindu women especially the one who remarries, therefore the confirmation of absolute rights to the women who remarries helps to achieve the objective of the Section 14.

Exception to Absolute Ownership

The exception to absolute ownership has been laid down in Section 14(2) of the HSA, 1956. It applies to properties when they are acquired through a gift, will, decree, order, award, or any document which dictates the conditions of a restricted estate in such property. In such cases, property does not become absolute property of female Hindu and her rights are governed by instrument through which she acquired property. The Courts justified this exception in

---

19 *Gummalapura Teeina Matada Kutturuswamy v. Setra Veeravva* (1959) Supp. 1, SCR, 968

20 Ms Monika and Ms Seema Rani , Property Of A Female Hindu To Be Her Absolute Property: Section 14 Of Hindu Succession Act, 1956, International Journal of Current Science, Volume 14, Issue 2 May 2024

21 *Bhuri Bai vs. Champa Bai*, AIR 1968 Raj.

22 *Punithavalli v. Ramalingam, AIR 1970 SC 1730*

23 R.K. Pandey, Status of Remarried Hindu Widow, Eastern Book Company, (1973) 1 SCC (Jour) 25

Bhura v. Kashi Ram[24], that Section 14(2) should be strictly interpreted to respect the intention of the transferor.

In many cases, the Courts erroneously interpreted Section 14(2) as part of Section 14(1) though these two provisions serve different purposes. In ***Sellammal v. Nellammal***[25], it has been imposed that a women will acquire the right over the property in accordance with the grant she acquired as per Section 14(2) but she acquired the property which she already had an interest then she gain absolute interest as per Section 14(1).

The various cases the Court clarified the interconnection between Section 14 (1) & (2) as follows:

1. The Hindu female will obtain the absolute interest over the property in accordance with Section 14(1), if she has pre-existing right over that property[26].

2. The Hindu female will have limited interest over the property in accordance with Section 14(2), if the property has been bestowed to her by a document and this document decides the nature of constrains directed on the enjoyment of the property[27].

3. If the Hindu female has pre-existing right on the concerned property and acquires it through an instrument, then the right acquired by Hindu women is absolute and limited[28].

4. To limit the right of Hindu female over the property only the methods mentioned in the Section 14(2) should be applied and these methods should be applied for the first time and create new title or interest[29] to women in the property without any prior rights[30].

The affirmation of absolute ownership of Hindu women through Section 14(1) has to done with widest application and the interpretation should be perceived in a nature that empowers the socio economic aspect of the women which was aimed as the objective of the HSA, 1956.

---

[24] AIR 1994 SC 1202
[25] AIR, 1977, SC, 1265
[26] *Nirmalchand v. Vidyawati, C.A. 609 of 1966*
[27] *Rangaswami Naicker v. Chinnammal* ,AIR 1964 Mad 387
[28] *Rangaswami Naicker v. Chinnammal* AIR, 1964, Mad. 387
[29] *Sharad Subramanyan v. Soumi Mazumdar*, AIR 2006 SC 1993
[30] *Seth Badri Prasad v. Smt. Kansodevi* (1969) 2, SCC, 586

Therefore, the interpretation of Section 14(2) should not annihilate the absolute right affirmed under Section 14(1)[31].

Conclusion

It has to be noted the judicial interpretation of Section 14 of HSA, 1956 and the recognition of limited interest into absolute interest over the property had contrary opinions. The concept of possession and status of remarried for the recognition of absolute estate has been settled and the judiciary preferably lean towards the aspect where the absolute property rights has been ensured to the women yet there is a risk of the interpretation and the contentions may reverse this recognition.

With respect to exception clause of Section 14 of HSA, 1956, the decisions are incompatible with one another due to the circumstances of the cases like modes and time of possession or acquisition instruments. The diverse judicial opinion failed to stick to the intention of the legislators and objective of the HSA, 1956. Thus, the language of legislature and legal instruments which confers property rights to the Hindu female should be interpreted in a proper manner that assures the property rights to the Hindu female. If the interpretation does not take place with the intended manner, it would deviate from the objective of the objective of the HSA, 1956 which tries to rectify the unjust treatment occurred to the women with respect to the property rights[32]. This could be achieved only if the interpretations of Section 14(1) and (2) of HSA, 1956 take places in ambiguous manner[33].

---

[31] *V.Tulsamma v. Sesha Reddy,* (1977) 3, SCC, 99

[32] *V.Tulsamma v. Sesha Reddy,* (1977) 3, SCC, 99

[33] *Tej Bhan (D) thro. LR & Ors. v. Ramkishan (D) thro. LRs & Ors.* Civil Appeal No.6557 of 2022, SC

References

Bibliography

Books

1. V.D.Mahajan, Jurisprudence and Legal Theory, 5^{th} Edition, 1987

2. Dr. Poonam Pradhan Saxena, Family Law Lectures, 3^{rd} Edition, 2011

Journals

1. Starli, M, Critical Analysis of Disparity in Property Rights of Women in India a Glimpse, TN State judicial Acadmey

2. Ms Monika and Ms Seema Rani , Property Of A Female Hindu To Be Her Absolute Property: Section 14 Of Hindu Succession Act, 1956, International Journal of Current Science, Volume 14, Issue 2 May 2024

Report

1. Law Commission of India, Property Rights of Women (Law Com No. 174, 2000)

Webliography

1. UN Women, Women's Land & Property Rights, https://asiapacific.unwomen.org/en/focus-areas/women-poverty-economics/women-s-land-property-rights

2. Vishal Kale, The Interplay Between Section 14(1) And (2) of the Hindu Succession Act, 1956, https://kaleandshinde.com/blog/the-interplay-between-section-14(1)-and-(2)-of-the-hindu-succession-act-1956