

# Analysis of section 14, hindu succession act, 1956



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## STATEMENT OF PROBLEM

Section 14 talks about property possessed by a Hindu female to be her absolute property, whether acquired before or after the commencement of the Hindu Succession Act, 1956. She will hold the property as an absolute, full owner and not as a limited owner. The section empowers the Hindu female to exercise her rights over her property in an absolute manner.

Section 14 is the most significant provision in the Hindu Succession Act.

## METHODOLOGY AND SCOPE OF THE PROJECT

The methodology is doctrinal. The sources used in this project are secondary sources in form of books. Primary sources are the case laws.

In this project, we have discussed the object and scope of section 14. The position when alienation is done by a woman who is a limited owner and reconveyance of the property to the limited owner by the alienee of the property alienated by her before the commencement of this Act, have also been discussed. The project is concluded spelling out the impact of section 14 on *Stridhana*.

## INTRODUCTION

Prior to 1956, two kinds of properties were recognized by Hindu texts and writings with respect to women – *Stridhana* and non- *Stridhana* properties.

### **Stridhana Property**

It occupies a prominent place in the Sanskrit law books that had been written in ancient India. Etymologically, *Stridhana* means female's property. It includes gifts given to her at the time of marriage. On the subject of ownership of *Sridhana* property, a number of views existed. Doctrinal

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Diversity existed on the subject and these divergent outlooks only added to the difficulties surrounding the meaning of the term. The result was that, a term not difficult to understand in its etymological sense came to be understood in a narrow and limited connotation.[1]

*Stridhana* is the property over which a woman has absolute right. A *Stridhana* property has two important characteristics-

- She could dispose it off as per her sweet will in whatsoever manner;
- Its her exclusive and absolute property and would devolve upon her heir.

By virtue of *Stridhana* she would be a fresh stock of descent and her property will not go back to the reversioners.

### **Non – Stridhana Property**

The woman at her wish could not dispose off this property. It could not go to her heirs at her death but would go back to the reversioners. This property is called woman's estate or a widow's estate.

Under the classical law, non- *Stridhana* property was property acquired by her in any way. But *Stridhana* property was in form of gifts at the time of her wedding.

With respect to woman's estate, she was not a fresh stock of descent. She had limited interests. Though she could enjoy the property during her lifetime, she had limited rights over it. She could not alienate the property at her own sweet will nor could dispose it off. It is a limited estate. When the

woman's limited estate expires upon her death it would revert back to the reversioners that were the heirs of the last male holder of the property.

In her lifetime, she had an ownership, title and interest in the property but it was limited. So, absolute rights lacked.

Limited estate entails two limitations:

- No alienation or disposal of the property at woman's own discretion;
- No creation of fresh stock of descent.

Under very special circumstances, a woman could alienate her limited estate:

- 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 *shradha* and gifts to brahmins for the salvation of his soul, etc.)

Hindu women have always suffered with respect to property rights. She had an absolute right over the *Stridhana* but with respect to non- *Stridhana* property her interests were not absolute in nature. Though she had maintenance rights; recognized by law as moral, spiritual, legal and absolute right, but not beyond that.

Section 14 brought about revolutionary changes in the law of succession with regard to Hindu females. Section 14 has converted existing woman's estates into full estates.

**SECTION 14**

Property of a female Hindu to be her absolute property.

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 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.

**SCOPE AND AMBIT**

Section 14(1) is partly prospective and partly retrospective. Prospective operation is that limited interest enlarges only in 1956 and after it. With respect to acquisition of property, there is retrospective operation.

*“ 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.”*

The rule laid down under section 14(1) has a wide and extensive application and has to be read in a comprehensive manner. If a woman had a limited interest in any estate, as soon as this Act comes into force, the limited estate enlarges to absolute interest. She has full ownership of property acquired before or after 1956.

Section 14(1) is an enabling clause; limited estate converts into absolute one.

The object of sub-section (2) of section 14 is to make it clear that restricted estate can even after commencement of Act come into existence in case of interest of property given to a female Hindu, by operation of transaction inter vivos, by testamentary disposition, by decree or order of civil court under an award. Any such restricted estate created prior to the commencement of the Act will not be enlarged into full ownership by operation of sub-section (1) if the gift, will, other instrument, decree, order or award had prescribed a restricted estate. It has been held by Supreme Court that this sub-s (2) must be read only as a proviso or exception to sub-s (1).

[2]

“ POSSESSION”

Under Section 14, possession implies a lawful and legal possession or title or ownership. Hence, possession here implies ownership or title. There is the

widest possible interpretation to this term. In 1956, this Act came into force and irrespective of whether she had actual possession or not, her rights were absolute.

In 1959, in the case *Gummalapura Kothuruswami v. Setra Veeravva* [3], the word possession was interpreted. Court said here that “ possession in section 14 is used in a broad sense...possession may be actual or constructive...”

In 2002, in the case *Muthuswami v. Angamal* , distinction between legal and actual possession was laid down. Under Section 14(1), it is the legal possession that is important. It is not the possession in its narrow sense but the broadest. There must be a legal possession though there is not any actual possession.

Under Section 14 (1) possession must be lawful and legal.

Where a woman has lost possession of property before commencement of Hindu Succession Act, 1956, she is not entitled to avail benefits of Section 14(1).

#### ALIENATION OF THE LIMITED ESTATE BY THE LIMITED OWNER BEFORE COMMENCEMENT OF ACT

Before 1956, A Hindu female had a limited estate. There was no alienation at her sweet will. Where a Hindu woman makes an unauthorized alienation before 1956, she loses possession over that property, she is not entitled to benefits of Section 14(1). The alienee, even he or she cannot avail Section 14(1). Now the possession of property does not allow alienee to avail this subsection.

To avail benefits of Section 14(1), the possession must be a legal possession.

The alienee here cannot avail provision of Section 14 because it was the widow who made the alienation. Purpose of section 14 is to ameliorate the position of widow and not the alienee. Both the woman and the alienee are devoid of the benefit of s. 14 (1) and the third party, i. e. the reversioners will be benefited.

Where alienation is unauthorized reversioners can always challenge. There was a prospective abolition of reversioners after 1956. But reversioners do exist after 1956. 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 always a presumptive reversioner who has only a *spes successionis* in the lifetime of the widow. It is their vested interest. The property of the female devolves on the reversioners only when her estate terminates on her death.

#### REMEDIES WITH THE REVERSIONERS

1. They can file a suit in the court for a ' declaratory decree' under which the reversionary rights are protected. So despite unauthorized alienation, their reversionary rights are secure.
2. They can demand from the court during the lifetime of the widow, that estate of the widow must be protected from damage or waste.

But reversioners cannot bring any injunction to refrain a widow from making an unauthorized alienation. When a Hindu widow makes an unauthorized



alienation, it is binding upon her and not on the reversioners. Estate is in favour of the widow or the alienor; it is binding upon her. Now alienee is entitled to all the rights which alienor was enjoying by alienation. But alienee gets a limited title.

After unauthorized alienation, the limited estate has passed to the alienee - who has a limited interest in it. Because a Hindu woman cannot convey a better title than what she had, the alienee will also have a limited interest in the estate. When the alienor dies, i. e. the widow, the role of reversioners accrues.

In the case of *Kalawati Bai v. Soirya Bai* [4], a Hindu female had inherited property from her husband by way of gift. In 1954, she gifted entire property to one of her two daughters. In 1968, the Hindu widow died and donee daughter, in whose favour the gift was made, took possession of the property. The second daughter objected this possession arguing that alienation was an unauthorized alienation. Since, the alienation itself is unauthorized, donee daughter does not have any right to possess the property. It was held that the other daughter would get half of the share from the entire property. After the death of the widow, the property goes back to reversioners, i. e. the heirs of the last male holder of the property. After widow's death it will be presumed that her husband had died too. Since in 1968, the Act came into force; the two daughters will get equal half shares.

RECONVEYANCE TO THE LIMITED OWNER BY THE ALIENEE OF THE PROPERTY, ALIENATED BY HER BEFORE THE ACT CAME INTO FORCE

A rather unusual situation arises where an alienee from a limited owner, for instance a widow, re-conveys the property to the widow in consequence of a challenge by the reversioners or after reversioners obtain the decree declaring that the alienation would not bind the reversioners after the death of the widow.[5]The view has been taken that the widow would become the absolute owner of the property by operation of this section even though re-conveyance might have taken place after the Act came into operation.[6]

In the case of *Daya Singh v. Dhan kaur* [7], A Hindu male died in 1933 and his widow inherited his property as a limited owner. After two months she gifted this limited estate of hers to her daughter Dhan Kaur. Daya Singh, who was the brother of the deceased male, objected to the alienation made by the widow and filed a suit in the court. The suit was decreed in his favour. In the mean time, Act of 1956 was passed and the property got re-conveyed back to the widow. She then again made a second gift to Dhan Kaur. The widow died in 1963. The reversioners wanted to exercise their rights and challenged the validity of the second gift. Their contention was that the widow has already lost possession of the limited estate before 1956 while making first gift. But the court rejected the contention. It was held that reversioners in the lifetime of the widow have a mere right to succeed. Post 1956, when same property was re-conveyed back to the widow, it cures the defect in it and she becomes a full and absolute owner of the property. Her limited estate enlarges into a full estate. She then has every right to alienate it.

#### OBSERVATION

Absolute power of alienation was not regarded, in case of a female owner, as a necessary association to the right to hold and enjoy property and it was only in case of property acquired by her from particular sources that she had full dominion over it. The restriction imposed upon proprietary rights of a woman by Hindu Law depended on her status as a maiden, as a married woman and as a widow. They also depended on the source and nature of the property. The Act overrides the old law on the subject of Stridhana in respect of all property possessed by a female, whether acquired by her before or after the commencement of the Act and this section declares that all such property shall be held by her as the full owner. The Act confers full heritable capacity on the female heir and this section dispenses with the traditional limitations on the powers of a female Hindu to hold and transmit property.

In *Erumma v. Veeruppana* [8], the Supreme Court examined the ambit and object of this section and observed:

“ The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title, whether before or after the commencement of the Act. It may be noticed that the Explanation to s. 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to the property to which female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words ‘ as full owner thereof and not as a limited owner’ in the last portion of sub-section (1) of the section clearly suggest that the legislature intended that the limited ownership. In other words ownership of a Hindu female should be changed into a full ownership. In other words, s. 14(1) of the act contemplates that a

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Hindu female, who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of this section is to extinguish the estate called “limited estate’ or ‘widow’s estate’ in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all the powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder.... It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige or title.”

The trend of more recent decisions of the Supreme Court has been to lay stress on the Explanation to sub-section (1). In one such decision, the Supreme Court adopted the approach of giving ‘a most expansive interpretation’ to the sub-section with a view to advance the social purpose of the legislation, which is to bring about a change in the social and economic position of women.[9]

## CONCLUSION

The effect of the rule laid down in this section is to abrogate the rigid provisions against the proprietary rights of females and to recognize her status as the independent and absolute owner of the property. Section 14 is acting as a piece of social legislation promoting gender justice and equality between Hindu males and females. It is a revolutionary provision.

Section 14 abolishes various kinds of Stridhana and property of every kind possessed by a Hindu female howsoever acquired and whether once acquired becomes now her absolute property. She will hold the property as

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an absolute, full owner and not as a limited owner. The section empowers the Hindu female to exercise her rights over her property in an absolute manner. The limited estate has been abolished and has been enlarged into the status of a full estate. Now the estate after a widow's death goes to her heirs and not to the heirs of the last male holder of the estate. Section 14 is thus the most significant provision in the Hindu Succession Act.

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Section 14, Hindu Succession Act, 1956 |

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[1]Mulla, Hindu Law, Vol. 2, 19<sup>th</sup> Ed., LexisNexis Butterworths, 2005, P. 378

[2]Supra 1

[3]AIR 1959 SC 577

[4]AIR 1991 SC 1581

[5]Mulla, Hindu Law, Vol. 2, 19<sup>th</sup> Ed., LexisNexis Butterworths, 2005, P. 383

[6] *Jagat Singh v. Teja Singh* , AIR 1970 P&H 309 (FB)

[7]AIR 1974 SC 665

[8]AIR 1966 SC 1879

[9] *Vaddeboyina Tulsamma v. Seshi Reddy* , AIR 1997 SC 1944