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1977 PLRonline 3002 (SC)

SUPREME COURT OF INDIA

P. N. BHAGWATI,J. and A. C. GUPTA,J. and S. MURTAZA FAZAL ALI,J.

Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi (dead) by L.Rs

Civil Appeal No. 1360 of 1968, D/- 17 – 3 – 1977

Hindu Succession Act (30 of 1956), S.14(1), S.14(2) – Applicability – Property acquired under compromise in lieu of satisfaction of her right of maintenance , sub-section (1) applies and not sub-section (2) – Right of widow – Under Hindu Law, the husband has got a personal obligation to maintain his wife and if he is possessed of properties then his wife is entitled as of right to be maintained out of such properties. The claim of a Hindu widow to be maintained is not an empty formality but is a valuable spiritual and moral right which flows from the spiritual and temporal relationship of the husband and wife. The widow's right to maintenance has been recognized as a pre-existing right in the property. In the light of the aforesaid principles, it was held that Section 14(2) of the said Act would apply only to cases where the grant is not in view of maintenance or in recognition of any pre-existing right but only when a fresh right is created or title is confirmed for the first time and while conferring such title restrictions are placed by the grant of transfer.

Sub-section (2) of Sec. 14 provides that 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. This provision is more in the nature of a proviso or exception to sub-section (1) and it was regarded as such by this Court in Badri Pershad v. Smt. Kanso Devi, (1970) 2 SCR 95 : (AIR 1970 SC 1963). It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). The language of sub-section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property. But that would virtually emasculate sub-section (1), for in that event, a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under an instrument, order or award would be excluded from the operation of the beneficent provision enacted in subsection (1), since in most of such cases, where property is allotted to the Hindu female prior to the enactment of the Act, there would be a provision, in consonance with the old Sastric law then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of sub-section (1). The Explanation to sub-section (1) which includes within the scope of that sub-section property acquired by a female Hindu at a partition or in lieu of maintenance would also be rendered meaningless, because there would hardly be a few cases where the instrument, decree, order or award giving property to a Hindu female at a partition or in lieu of maintenance would not contain a provision prescribing restricted estate in the property. The social purpose of the law would be frustrated and the reformist zeal underlying the statutory provision would be chilled. That

surely could never have been the intention of the Legislature in enacting sub-section (2). It is an elementary rule of construction that no provision of a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the statute so as, as far as possible, to make a consistent enactment of the whole statute. Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. This constructional approach finds support in the decision in Badri Prasad's case (supra) where this Court observed that sub-section (2) "can come into operation only if acquisition in any of the methods enacted therein is made for the first time without there being any preexisting right in the female Hindu who is in possession of the property". It may also be noted that when the Hindu Succession Bill 1954, which ultimately culminated into the Act, was referred to a Joint Committee of the Rajya Sabha, Cl. 18 (2) of the Draft Bill, corresponding to the present sub-section (2) of Section 14, referred only to acquisition of property by a Hindu female under gift or will and it was subsequently that the other modes of acquisition were added so as to include acquisition of property under an instrument, decree, order or award. This circumstance would also seem to indicate that the legislative intendment was that subsection (2) should be applicable, only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right -a kind of acquisition akin to one under gift or will. Where, however property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property. [Para 4]

Held that since in the present case the properties in question were acquired by the appellant under the compromise in lieu of satisfaction of her right of maintenance, it was sub-section(1) and not sub-section (2) of Section 14 which would be applicable and hence the appellant must be deemed to have become full owner of the properties notwithstanding that the compromise prescribed a limited interest for her in the properties AIR 1967 Mad 429.

AIR 1967 Mad 429, ILR (1967) 1 Mad 68, AIR 1972 Mad 279, (1968) ILR 47 Pat 1118,ILR (1968) Andh Pra 621,AIR 1975 All 151, AIR 1959 J and K 92 (FB), AIR 1970 Ori 131 and AIR 1976 SC 2198. Overruled

AIR 1969 Andh Pra 300, Reversed.

ILR (1967) 1 Mad 68. AIR 1972 Mad 279. (1968) ILR 47 Pat 1118, ILR (1968) Andh Pra 621,

AIR 1975 All 151, AIR 1959 J and K 92 (FB), AIR 1970 Orissa 131 and AIR 1976 SC 2198, Overruled;

AIR 1969 Andh Pra 300, Reversed; AIR 1972 Bom 16, Approved.

(Para 8)

Mr. T. S. Krishnamurthi Iyer, Sr. Adv., (M/s. R. K. Pillai and R. Vasudev Pillai, Advs, with him), for Appellants; Mr. T. V. S. Narasimhachari, Adv., for Respondents. Judgments of the Court were delivered by

Judgement

1. BHAGWATI, J. (for himself and on behalf of A. C. Gupta J.):- We have had the advantage of reading the judgment prepared by our learned brother S. Murtaza Fazal Ali and we agree with the conclusion reached by him in that judgment but we would prefer to give our own reasons. The facts giving rise to the appeal are set out clearly and succinctly in the judgment of our learned brother and we do not think it necessary to reiterate them.

2. The short question that arises for determination in this appeal is as to whether it is sub-section (1) or sub-section (2) of Section 14 of the Hindu Succession Act. 1956 that applies where property is given to a Hindu female in lieu of maintenance under an

instrument which in so many terms restricts the nature of the interest given to her in the property. If sub-section (1) applies, then the limitations on the nature of her interest are wiped out and she becomes the full owner of the property while on the other hand, if sub-section (2) governs such a case her limited interest in the property is not enlarged and she continues to have the restricted estate prescribed by the instrument. The question is of some complexity and it has evoked wide diversity of judicial opinion not only amongst the different High Courts but also within some of the High Courts themselves. It is indeed unfortunate that though it became evident as far back as 1967 that subsections (1) and (2) of Section 14 were presenting serious difficulties of construction in cases where property was received by a Hindu female in lieu of maintenance and the instrument granting such property prescribed a restricted estate for her in the property and divergence of judicial opinion was creating a situation which might well be described as chaotic, robbing the law of that modicum of certainty which it must always possess in order to guide the affairs of men, the legislature, for all these years did not care to step in to remove the constructional dilemma facing the courts and adopted an attitude of indifference and inaction, untroubled and unmoved by the large number of cases on this point encumbering the files of different courts in the country, when by the simple expedient of an amendment, it could have silenced judicial conflict and put an end to needless litigation. This is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and proved a paradise for lawyers. It illustrates forcibly the need of an authority or body to be set up by the Government or the Legislature which would constantly keep in touch with the adjudicatory authorities in the country as also with the legal profession and immediately respond by making recommendations for suitable amendments whenever it is found that a particular statutory provision is, by reason of inapt language or unhappy draftsmanship. Creating difficulty of construction or is otherwise inadequate or defective or is not well conceived and is consequently counter-productive of the result it was intended to achieve. If there is a close inter-action between the adjudicatory wing of the State and a dvnamic and ever-alert authority or body which responds swiftly to the drawbacks and deficiencies in the law in action. much of the time and money, which is at present expended in fruitless litigation would be saved and law would achieve a certain amount of clarity, certainty and simplicity which alone can make it easily intelligible to the people.

3. Since the determination of the question in appeal turns on the true interpretation to be placed on sub-section (2) read in the context of sub-section (1) of Section 14 of the Hindu Succession Act. 1956, it would be convenient at this stage to set out both the sub-sections of that section which read as follows:

“14 (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 what-soever, 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.”

Prior to the enactment of Section 14, the Hindu law, as it was then in operation, restricted the nature of the interest of a Hindu female in property acquired by her and even as regards the nature of this restricted interest there was great diversity of doctrine on the subject. The Legislature, by enacting sub-section (1) of Section 14, intended as pointed by this Court in S. S. Munna Lal v. S. S. Rajkumar, 1962 Supp (3) SCR 418 : (AIR 1962 SC 1493) “to convert the interest which a Hindu female has in property, however restricted the nature of that interest under the Sastric Hindu law may be, into absolute estate”. This Court pointed out that the Hindu Succession Act. 1956 “is a codifying enactment. And had made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The

Act confers upon Hindu females full rights of inheritance and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate". Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The words "any property" are, even without any amplification, large enough to cover any and every kind of property but in order to expand the reach and ambit of the section and make it all comprehensive, the Legislature has enacted an explanation which says that property would include "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 the Act. Whatever be the kind of property, movable or immovable and whichever be the mode of acquisition, it would be covered by sub-section (1) of S. 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Sastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognize her status as an independent and absolute owner of property. This Court has also in a series of decisions given a most expansive interpretation to the language of sub-s. (1) of S. 14 with a view to advancing the Social purpose, of the legislation and as part of that process, construed the words 'possessed of' also in a broad sense and in their widest connotation. It was pointed out by this Court in Gumalapura Taggina Matada Kotturuswami v. Setra Veeravva, 1959 Supp (1) SCR 968 : (AIR 1959 SC 577) that the words 'possessed of' mean "the state of owning or having in one's hand or power". It need not be actual or physical possession or personal occupation of the property by the Hindu female, but may be possession in law. It may be actual or constructive or in any form recognised by law. Elaborating the concept, this Court pointed out in Mangal Singh v. Rattno, AIR 1967 SC 1786 that the section covers all cases of property owned by a female Hindu although she may not be in actual, physical or constructive possession of the property, provided or course, that she has not parted with her rights and is capable of obtaining possession of the property. It will, therefore, be seen that sub-sec. (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property.

4. Now, sub-section (2) of Sec. 14 provides that 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. This provision is more in the nature of a proviso or exception to sub-section (1) and it was regarded as such by this Court in Badri Pershad v. Smt. Kanso Devi, (1970) 2 SCR 95 : (AIR 1970 SC 1963). It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). The language of sub-section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property. But that would virtually emasculate sub-section (1), for in that event, a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under an instrument, order or award would be excluded from the operation of the beneficent provision enacted in subsection (1), since in most of such cases, where property is allotted to the Hindu female prior to the enactment of the Act, there would be a provision, in consonance with the old Sastric law

then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of sub-section (1). The Explanation to sub-section (1) which includes within the scope of that sub-section property acquired by a female Hindu at a partition or in lieu of maintenance would also be rendered meaningless, because there would hardly be a few cases where the instrument, decree, order or award giving property to a Hindu female at a partition or in lieu of maintenance would not contain a provision prescribing restricted estate in the property. The social purpose of the law would be frustrated and the reformist zeal underlying the statutory provision would be chilled. That surely could never have been the intention of the Legislature in enacting sub-section (2). It is an elementary rule of construction that no provision of a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the statute so as, as far as possible, to make a consistent enactment of the whole statute. Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. This constructional approach finds support in the decision in Badri Prasad's case (supra) where this Court observed that sub-section (2) "can come into operation only if acquisition in any of the methods enacted therein is made for the first time without there being any preexisting right in the female Hindu who is in possession of the property". It may also be noted that when the Hindu Succession Bill 1954, which ultimately culminated into the Act, was referred to a Joint Committee of the Rajya Sabha, Cl. 18 (2) of the Draft Bill, corresponding to the present sub-section (2) of Section 14, referred only to acquisition of property by a Hindu female under gift or will and it was subsequently that the other modes of acquisition were added so as to include acquisition of property under an instrument, decree, order or award. This circumstance would also seem to indicate that the legislative intendment was that subsection (2) should be applicable, only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right -a kind of acquisition akin to one under gift or will. Where, however property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

5. This line of approach in the construction of sub-section (2) of Section 14 is amply borne out by the trend of judicial decisions in this Court. We may in this connection refer to the decision in Badri Parsad's case (AIR 1970 SC 1963) (supra). The facts in that case were that one Gajju Mal owning self-acquired properties died in 1947 leaving five sons and a widow. On August 5, 1950, one Tulsi Ram Seth was appointed by the parties as an arbitrator for resolving certain difference which had arisen relating to partition of the properties left by Gajju Mal. The arbitrator made his award on October 31, 1950 and under Clause 6 of the award, the widow was awarded certain properties and it was expressly stated in the award that she would have a widow's estate in the properties awarded to her. While the widow was in possession of the properties, the Act came into force and the question arose whether on the coming into force of the Act, she became full owner of the properties under sub-section (1) or her estate in the properties remained a restricted one under sub-section (2) of Section 14. This Court held that although the award gave a restricted estate to the widow in the properties allotted to her, it was subsection (1) which applied and not sub-section (2), because inter alia the properties given to her under the award were on the basis of a preexisting right which she had as an heir of her husband under the Hindu Women's Rights to Property Act, 1937 and not as a new grant made for the first time. So also in Nirmal Chand v. Vidya Wanti (dead) by her legal representatives, C. A. No. 609 of 1965, D/- 21-1 1969 (SC) there was a regular partition deed. Made on December 3, 1945 between Amin Chand, a coparcener and Subhrai Bai, the widow of a deceased coparcener, under which a certain property was allotted to Subhrai Bai and it was specifically provided in the partition deed that Subhrai Bai would be entitled only to the user of the property and she would have no right to alienate it in any manner but would only have a life interest. Subhrai Bai died in 1957 subsequent to the coming into force of

the Act after making a will bequeathing the property in favour of her daughter Vidyawati. The right of Subhrai Bai to bequeath the property by will was challenged on the ground that she had only a limited interest in the property and her case was covered by sub-section (2) and not sub-section (1). This contention was negatived and it was held by this Court that though it was true that the instrument of partition prescribed only a limited interest for Subhrai Bai in the property, that was in recognition of the legal position which then prevailed and hence it did not bring her case within the exception contained in sub-section (2) of Section 14. This Court observed:

"If Subhrai Bai was entitled to a share in her husband's properties then the suit properties must be held to have been allotted to her in accordance with law. As the law then stood she had only a life interest in the properties taken by her. Therefore the recital in the deed in question that she would have only a life interest in the properties allotted to her share is merely recording the true legal position. Hence it is not possible to conclude that the properties in question were given to her subject to the condition of her enjoying it for the lifetime. Therefore the trial Court as well as the first Appellate Court were right in holding that the facts of the case do not fall within S. 14 (2) of the Hindu Succession Act, 1956."

It will be seen from these observations that even though the property was acquired by Subhrai Bai under the instrument of partition, which gave only a limited interest to her in the property this Court held that the case fell within sub-section (1) and not sub-section (2). The reason obviously was that the property was given to Subhrai Bai in virtue of a pre-existing right inhering in her and when the instrument of partition provided that she would only have a limited interest in the property, it merely provided for something which even otherwise would have been the legal position under the law as it then stood. It is only when property is acquired by a Hindu female as a new grant for the first time and the instrument, decree, order or award giving the property prescribes the terms on which it is to be held by the Hindu female, namely, as a restricted owner, that sub-section (2) comes into play and excludes the applicability of sub-section (1). The object of sub-section (2), as pointed out by this Court in Badri Parsad's case (supra) while quoting with approval the observations made by the Madras High Court in Rangaswami Naicker v. Chinnammal, AIR 1964 Mad 387 is 'only to remove the disability of women imposed by law and not to interfere with contracts, grants or decrees etc. by virtue of which a women's right was restricted" and, therefore, where property is acquired by a Hindu female under the instrument in virtue of a pre-existing right, such as a right to obtain property on partition or a right to maintenance and under the law as it stood prior to the enactment of the Act, she would have no more than limited interest in the property, a provision in the instrument giving her limited interest in the property would be merely by way of record or recognition of the true legal position and the restriction on her interest being a "disability imposed by law" would be wiped out and her limited interest would be enlarged under sub-section (1). But where property is acquired by a Hindu female under an instrument for the first time without any pre-existing right solely by virtue of the instrument, she must hold it on the terms on which it is given to her and if what is given to her is a restricted estate, it would not be enlarged by reason of sub-section (2). The controversy before us, therefore boils down to the narrow question whether in the present case the properties were acquired by the appellant under the compromise in virtue of a pre-existing right or they were acquired for the first time as a grant owing its origin to the compromise alone and to nothing else.

6. Now let us consider how the properties in question came to be acquired by the appellant under the compromise. The appellant claimed maintenance out of the joint family properties in the hands of the respondent who was her deceased husband's brother. The claim was decreed in favour of the appellant and in execution of the decree for maintenance, the compromise was arrived at between the parties allotting the properties in question to the appellant for her maintenance and giving her limited interest in such properties. Since the properties were allotted to the appellant in lieu of her claim for maintenance, it becomes necessary to consider the nature of the right which a Hindu widow has to be maintained out of joint family estate. It is settled law that a widow is entitled to maintenance out of her deceased husband's estate, irrespective whether that estate may be in the hands of his male issue or it may be in the hands of his coparceners. The joint family estate in which her deceased husband had a share is liable for her maintenance and she has a right to be maintained out of the joint family properties and though, as pointed

out by this Court in Rani Bai v. Yadunandan Ram, (1969) 3 SCR 789 : (AIR 1969 SC 1118) her claim for maintenance is not a charge upon any joint family property until she has got her maintenance determined and made a specific charge either by agreement or a decree or order of a court, her right is “not liable to be defeated except by transfer, to a bona fide purchaser for value without notice of her claim or even with notice of the claim unless the transfer was made with the intention of defeating her right.” The widow can for the purpose of her maintenance follow the joint family property “into the hands of any one who takes it as a volunteer or with notice of her having set up a claim for maintenance”. The courts have even gone to the length of taking the view that where a widow is in possession of any specific property for the purpose of her maintenance, a purchaser buying with notice of her claim is not entitled to possession of that property without first securing proper, maintenance for her. Vide Rachawa v. Shivayogapa, (1894) ILR 18 Bom 679 cited with approval in Ranibai’s case (supra). It is, therefore, clear that under the Sastric Hindu Law a widow has a right to be maintained out of joint family property and this right would ripen into a charge if the widow takes the necessary steps for having her maintenance ascertained and specifically charged on the joint family property and even if no specific charge is created, this right would be enforceable against joint family property in the hands of a volunteer or a purchaser taking it with notice of her claim. The right of the widow to be maintained is of course not a jus in rem since it does not give her any interest in the joint family property but it is certainly jus ad rem. i. e., a right against the joint family property. Therefore, when specific property is allotted to the widow in lieu of her claim for maintenance, the allotment would be in satisfaction of her jus ad rem, namely, the right to be maintained out of the joint family property. It would not be a grant for the first time without any preexisting right in the widow. The widow would be getting the property in virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right and not making a grant of the property to her for the first time without any antecedent right or title. There is also another consideration which is very relevant to this issue and it is that, even if the instrument were silent as to the nature of the interest given to the widow in the property and did not, in so many terms, prescribe that she would have a limited interest, she would have no more than a limited interest in the property under the Hindu law as it stood prior to the enactment of the Act and hence a provision in the instrument prescribing that she would have only a limited interest in the property, would be to quote the words of this Court in Nirmal Chand’s case, C. A. No. 609 of 1965, D/- 21-1-1969 (SC) (supra) “merely recording the true legal position” and that would not attract the applicability of sub-s. (2) but would be governed by sub-section (1) of Section 14. The conclusion is, therefore, inescapable that where property is allotted to a widow under an instrument, decree, order or award (which) prescribes a restricted estate for her in the property and sub-s. (2) of S. 14 would have no application in such a case.

7. We find that there are several High Courts which have taken the same view which we are taking in the present case. We may mention only a few of those decisions, namely B. B. Patil v. Gangabai, AIR 1972 Bom 16 Sumeshwar Mishra v. Swami Nath Tiwari. AIR 1970 Pat 348 Gadam Reddayya v. Venkataraju AIR 1965 Andh Pra 66: Thatha Gurunadham v. Smt T. Navaneethamma. AIR 1967 Mad 429 H Venkatagouda v. Hanamangouda. AIR 1972 Mys 286; Smt. Sharbati Devi v. Hiralal AIR 1964 Punj 114 Sasadhar Chandra Day v. Smt. Tara Sundari Dasi, AIR 1962 Cal 438. Saraswathi Ammal v. Anantha Shenai. AIR 1966 Ker 66 and Kunji Thommen v. Meenakshi. ILR (1970) 2 Ker 45 : (AIR 1970 Ker 284) It is not necessary to refer to these decisions since we have ourselves discussed the question of construction of sub-sections (1) and (2) of Section 14 on principle and pointed out what in our view is the correct construction of these provisions. We may only mention that the judgment of Palekar. J., as he then was, in B. B. Patil v. Gangabai (supra) is a well -reasoned judgment and it has our full approval. The contrary view taken in Gurunadham v. Sundararajulu, ILR (1968) 1 Mad 567 : (AIR 1967 Mad 429) Santhanam v. Subramania, ILR (1967) 1 Mad 68: S. Kachapalava Gurukkal v. V. Subramania Gurukkal. AIR 1972 Mad 279: Shiva Pujan Rai v. Jamuna Missir. (1968) ILR 47 Pat 1118 Gopisetti Kondaiah v. G. Sub-barayudu, ILR (1968) Andh Pra 621; Ram Jag Misir v. Director of Consolidation. U. P., AIR 1975 All 151 and Ajab Singh v. Ram Singh. AIR 1959 J and K 92 (FB) does not, in our opinion, represent the correct law on the subject and these cases must be held to be wrongly decided.

8. In the circumstances, we reach the conclusion that since in the present case the properties in question were acquired by the appellant under the compromise in lieu or

satisfaction of her right of maintenance, it is sub-section (1) and not sub-section (2) of Section 14 which would be applicable and hence the appellant must be deemed to have become full owner of the properties notwithstanding that the compromise prescribed a limited interest for her in the properties. We accordingly allow the appeal, set aside the judgement and decree of the High Court and restore that of the District Judge, Nellore. The result is that the suit will stand dismissed but with no order as to costs.

9. FAZAL ALI, J:-. This is a defendant's appeal by special leave against the judgment of the High Court of Andhra Pradesh dated November 22, 1967 and arises in the following circumstances.

10. Venkatasubba Reddy, husband of appellant No. 1 Vaddeboyina Tulasamma – hereinafter to be referred to as 'Tulasamma' – died in the year 1931 in a state of jointness with his step brother V. Sesha Reddy and left behind Tulasamma as his widow. On October 11, 1944 the appellant Tulasamma filed a petition for maintenance in forma pauperis against the respondent in the Court of the District Munsif, Nellore. This application was set ex parte on January 13, 1945 but subsequently the petition was registered as a suit and an ex parte decree was passed against the respondent on June 29, 1946. On October 1, 1946 the respondent filed an interlocutory application for recording a compromise alleged to have been arrived at between the parties out of Court on April 9, 1945. The appellant Tulasamma opposed this application which was ultimately dismissed on October 16, 1946. An appeal filed by the respondent to the District Judge. Nellore was also dismissed. Thereafter Tulasamma put the decree in execution and at the execution stage the parties appear to have arrived at a settlement out of Court which was certified by the Executing Court on July 30, 1949 under O. XXI, Rule 2 of the Code of Civil Procedure. Under the compromise the appellant Tulasamma was allotted the Schedule properties, but was to enjoy only a limited interest therein with no power of alienation at all. According to the terms of the compromise the properties were to revert to the plaintiff after the death of Tulasamma. Subsequently Tulasamma continued to remain in possession of the properties even after coming into force of the Hindu Succession Act, 1956 – hereinafter to be referred to as 'the 1956 Act' or 'the Act of 1956." By two registered deeds dated April 12, 1960 and May 25, 1961, the appellant leased out some of the properties to defendants 2 and 3 by the first deed and sold some of the properties to defendant 4 by the second deed. The plaintiff/respondent filed a suit on July 31, 1961 before the District Munsiff. Nellore for a declaration that the alienations made by the widow Tulasamma were not binding on the plaintiff and could remain valid only till the lifetime of the widow. The basis of the action filed by the plaintiff was that as the appellant Tulasamma had got a restricted estate only under the terms of the compromise her interest could not be enlarged into an absolute interest by the provisions of the 1956 Act in view of Section 14 (2) of the said Act. The suit was contested by the appellant Tulasamma who denied the allegations made in the plaint and averred that by virtue of the provisions of the 1956 Act she had become the full owner of the properties with absolute right of alienation and the respondent had no locus standi to file the present suit. The learned Munsiff decreed the suit of the plaintiff holding that the appellant Tulasamma got merely a limited interest in the properties which could be enjoyed during her lifetime and that the alienations were not binding on the reversioner. Tulasamma then filed an appeal before the District Judge. Nellore, who reversed the finding of the trial Court allowed the appeal and dismissed the plaintiff's suit holding that the appellant Tulasamma had acquired an absolute interest in the properties by virtue of the provisions of the 1956 Act. The learned Judge further held that sub-section (2) of Section 14 had no application to the present case, because the compromise was an instrument in recognition of a pre-existing right. The plaintiff / respondent went up in second appeal to the High Court against the judgement of the District Judge. The plea of the plaintiff / respondent appears to have found favour with the High Court which held that the case of the appellant was clearly covered by Section 14 (2) of the Hindu Succession Act and as the compromise was an instrument as contemplated by S. 14 (2) of the 1956 Act, Tulasamma could not get an absolute interest under S. 14 (1) of the Act. The High Court further held that by virtue of the compromise the appellant Tulasamma got title to the properties for the first time and it was not a question of recognising a pre-existing right which she had none in view of the fact that her husband had died even before the Hindu Women's Right to Property Act, 1937.We might further ad that the facts narrated above have not been disputed by counsel for the parties.

11. The appeal has been argued only on the substantial questions of law which turn upon the interpertaion of sub-sec. (1) and (2) of Section 14 of the Hindu Succession Act, 1956. It is common ground that in this case as also in the other connected appeals, the properties in suit were allotted under a compromise or an instrument in lieu of maintenance. It is also admitted that the appellant Tulasamma was in possession of the properties at the time when the 1956 Act came into force. Finally it is also not disputed that the compromise did purport to confer only a limited interest on the widow restricting completely her power of alienation. We have now to apply the law on the facts mentioned above. Similar points were involved in the other two appeals Nos. 135 of 1973 and 126 of 1972. We have heard all the three appeals together and in all these appeals counsel for the parties have confined their arguments only to the questions of law without disputing the findings of fact arrived at by the Courts below.

12. Thus the two points that fall for determination in this appeal may be stated thus :

(1) Whether the instrument of compromise under which the properties were given to the appellant Tulasamma before the 1956 Act in lieu of maintenance falls within S. 14 (1) or is covered by S. 14(1) or is covered by S. 14 (2) of the 1956 Act : and

(2) Whether a Hindu widow has a right to property in lieu of her maintenance, and if such a right is conferred on her subsequently by way of maintenance it would amount to mere recognition of a pre-existing right or a conferment of a new title so as to fall squarely within section 14 (2) of the 1956 Act.

13. There appears to be serious divergence of judicial opinion on the subject and the High Courts have taken contrary views on this point. Some High Courts particularly the Bombay, Punjab, Calcutta and Patna have veered round to the view that a right of maintenance claimed by a Hindu widow is a pre-existing right and any instrument or document or transaction by which the properties are allotted to the widow in lieu of her maintenance would only be in recognition of a pre-existing right and would now confer any new title on the widow. Following this line of reasoning the aforesaid High Courts have held that the properties allotted to the Hindu widow even though they conferred a limited interest would fall clearly within the ambit of Section 14 (1) of the 1956 Act by virtue of which the limited interest would be enlarged into an absolute interest on the coming into force of 1956 Act. On the other hand the Orissa, Allahabad, Madras and Andhra Pradesh High Courts have taken a contrary view and have held that as the Hindu widow's right to maintenance is not a right to property, the property allotted to her in lieu of maintenance confers on her a right or title to the property for the first time and therefore such conferment is protected by S. 14 (2) of the 1956 Act and is not covered by S. 14 (1). Unfortunately, however, there is no decision of this Court which is directly in point, though there are some decisions which tend to support the view taken by the Bombay High Court.

14. Before, however, resolving this important dispute it may be necessary to consider the real legal nature of the incidence of a Hindu widow's right to maintenance. In order to determine this factor we have to look to the concept of a Hindu marriage. Under the Shastric Hindu Law, a marriage, unlike a marriage under the Mohammadan Law which is purely contractual in nature, is a sacrament – a religious ceremony which results in a sacred and holy union of man and wife by virtue of which the wife is completely transplanted in the household of her husband and takes a new birth as a partner of her husband becoming a part and parcel of the body of the husband. To a Hindu wife her husband is her God and her life becomes one of selfless service and unstinted devotion and profound dedication to her husband. She not only shares the life and love, the joys and sorrows, the troubles and tribulations of her husband but becomes an integral part of her husband's life and activities. Colebrooke in his book 'Digest of Hindu Law' Vol. II describes the status of wife at p. 158 thus :

"A wife is considered as half the body of her husband, equally sharing the fruit of pure and impure act: whether she ascend the pile after him, or survive for the benefit of her husband, she is a faithful wife". This being the position after marriage, it is manifest that the law enjoins a corresponding duty on the husband to maintain his wife and look after her comforts and to provide her food and raiments. It is well settled that under the Hindu Law the husband has got a personal obligation to maintain his wife and if he is possessed of properties then his wife is entitled as of right to be maintained out of such properties. The

claim of a Hindu widow to be maintained is not an empty formality which is to be exercised as a matter of concession or indulgence, grace or gratis or generosity but is a valuabale spiritual and moral right which flows from the spiritual and temporal relationship of the husband and wife. As the wife is in a sense a part of the body of her husband, she becomes co-owner of the property of her husband though in a subordinate sense. Although the right of maintenance does not perse create a legal charge on the property of her husband yet the wife can enforce this right by moving the Court for passing a decree for maintenance by creating a charge. This right is available only so long as the wife continues to be chaste. Thus the position is that the right of maintenance may amount to a legal charge if such a charge is created either by an agreement between the parties or by a decree.

15. There are a number of authorities which have taken the view that even if the property is transferred and the transferee takes the property with notice of the right of the widow to be maintained out of the property, the purchaser takes the obligation to maintain the widow out of the property purchased and the wife or widow can follow the property in the hands of the purchaser for the limited purpose of her maintenance. We shall, however, deal with these authorities a little later.

16. Colebrooke in his 'Digest of Hindu law", Vol. II, quotes the Mahabharata at p. 121 thus :

"Where females are honoured, there the deities are pleased; but where they are unhonoured, there all religious acts become fruitless."

This clearly illustrates the high position which is bestowed on Hindu women by the Shastric Law. Again Colebrooke in his book Vo. II at p. 123, while describing the circumstances under which the maintenance is to be given to the wife, quotes Manu thus.

"MANU: – Should a man have business abroad, let him assure a fit maintenance to his wife, and then reside for a time in a foreign country; since a wife, even though virtuous, may be tempted to act amiss, if she be distressed by want of subsistence :

While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities, but if he leave no support, let her subsist by spinning and other blameless arts".

This extract clearly shows that there is a legal obligation on the part of the husband to make arrangements for his wife's due maintenance even if he goes abroad for business purposes. Colebrooke again quotes Yajnwalkya at p. 243 of his book Vol. II thus :

"When the father makes an equal partition among his sons, his wives must have equal shares with them, if they have received no wealth either from their lord or from his father.

If he makes an equal partition among his sons by his own choice, he must give equal shares to such of his wives also as have no male issue."

This shows that when a partition is effected, the Hindu Law enjoins that the wife must get an equal share with the sons. Thus reinforcing the important character of the right of maintenance which a Hindu wife or widow possesses under the Hindu Law.

17. Similarly Golapchandra Sarkar Sastri dealing with the nature and incidents of the Hindu widow's right to maintenance observes in his treatise 'Hindu Law' at p. 533 thus :

"When the husband is alive; he is personally liable for the wife's maintenance, which is also a legal charge upon his property; this charge being a legal incident of her marital co-ownership in all her husband's property. ..... But after his death, his widow's right of maintenance becomes limited to his estate, which, when it passes to any other heir, is charged with the same. ..... There cannot be any doubt that under Hindu the wife's or widow's maintenance is a legal charge son the husband's estate; buy the Court appear to hold, in consequence of the proper materials not being placed before them, that it is not so by itself, but is merely a claim against the husband's heir, or en equitable charge on his estate; hence the husband's debts are held to have priority, unless it is made a charge on the property by a decree". The view of the author appears to be that the Courts hold that the right of maintenance of a widow does not amount to a legal charge and this is so because proper materials were not placed before the Courts. In other words, the author seems to indicate that the original Hindu Law contained clear provisions that a right of

maintenance amounts to a charge on the property of her husband and the obligation runs with the property so that any person who inherits the property also takes upon the obligation to maintain the widow. Sastri quotes from the original texts various extracts regarding the nature and extent of the right of maintenance of the Hindu woman some of which may be extracted thus :

"The support of the group of persons who should be maintained, is the approved means of attaining heaven, but hell is the man's portion if they suffer; therefore he should carefully maintain them.

The father, the mother the Guru (an elderly relation worthy of respect) a wife, an offspring, poor dependants, a guest, and a religious mendicant are declared to be the group of persons who are to be maintained. – Manu, cited in Srikrishnas' commentary on the Dayabhaga, 11, 28.

It is declared by Manu that the aged mother and father, the chaste wife, and an infant child must be maintained even by doing a hundred misdeeds. – Manu cited in the Mitakshara while dealing with gifts."

The last extract clearly shows the imperative nature of the duty imposed on the owner of the property to maintain wife, aged mother, father etc., even at the cost of perpetrating a hundred misdeeds. Similarly Sastri in his book quotes Yajnavalkya at p. 523 thus :

"Property other than what is required for the maintenance of the family may be given." The learned author highlights the importance of the right of maintenance as being a charge on the property of the husband and observes as follows :

"The ancestral immovable property is the hereditary source of maintenance of the members of the family, and the same is charged with the liability of supporting its members, all of whom acquire a right to such property from the moment they become members of the family by virtue of which they are at least entitled to maintenance out of the same. Such property cannot be sold or given away except for the support of the family; a small portion of the same may be alienated, if not incompatible with the support of the family.

There is no difference between the two schools as regards the view that the ancestral property is charged with the maintenance of the members of the family, and that no alienation can be made, which will prejudicially affect the support of the group of persons who ought to be maintained. Hence heirs are bound to maintain those whom the last holder was bound to maintain."

The author further points out that under the Mitakshara law the daugther-in-law does, with her husband, acquire a right to the ancestral property, since her marriage, but she becomes her husband's co-owner in a subordinate sense and the principal legal incident of this ownership is the right to maintenance, which cannot be defeated by gift or devise made by the holder of such property. Similar observations have been made by the learned author at p. 528 of the book which may be extracted thus :

"According to both the schools, the lawfully wedded wife acquires from the moment of her marriage a right to the property belonging to the husband at the time and also to any property that may subsequently be acquired by him, so that she becomes a co-owner of the husband, though her right is not co-equal to that of the husband, but a subordinate one, owing to her disability founded on her status of perpetual or life long tutelage or dependence.

....

This right of the wife of maintenance from her husband is not lost even if the husband renounce Hindism.

This right subsists even after the husband's death although her husband's right as distinguished from hers may pass by survivorship or by succession to sons or even to collaterals; these simply step into the position of her husband, and she is required by Hindu law to live under their guardianship after her husband's death."

Finally it is pointed out by the learned author at p. 529 of the Book that the right which a

woman acquires to her husband's property subsists even after his death and observed thus :

"According to both the schools, the right which a woman acquires to her husband's property subsists after his death, whether his interest passes by succession or by survivorship to the male issue or any other person, and that this right does not depend upon the widow's not possessing other means of support."

18. Summarising the nature of the liability of the husband to maintain his wife, the learned author observed as follows at p. 533 of his Book :

"When the husband is alive, he is personally liable for the wife's maintenance, which is also a legal charge upon his property, this charge being a legal incident of her marital co-ownership in all her husband's property ..... But after his death, his widow's right of maintenance becomes limited to his estate, which, when it passes to any other heir, is charged with the same ..... There cannot be any doubt that under Hindu law the wife's or widow's maintenance is a legal charge on the husband's estate: but the Courts appear to hold, in consequence of the proper materials not being placed before them, that it is not so by itself, but is merely a claim against the husband's heir, or an equitable charge on his estate; hence the husband's debts are held to have priority, unless it is made a charge on the property by a decree."

To sum up, therefore, according to Sastri's Interpretation of Shashtric Hindu Law the right to maintenance possessed by a Hindu widow is a very important right which amounts to a charge on the property of her husband which continues to the successor of the property and the wife is regarded as a sort of co-owner of the husband's property though in a subordinate sense, i.e. the wife has no dominion over the property.

19. Similarly Mayne in his "Treatise on Hindu Law and Usage". 11th Edn., has traced the history and origin of the right of maintenance of a Hindu woman which according to him arises from the theory of an undivided family where the head of the family is bound to maintain the members including their wives and their children. The learned author observes thus: (P. 813)

"The importance and extent of the right of maintenance necessarily arises from the theory of an undivided family. The head of such a family is bound to maintain its members, their wives and their children, to perform their ceremonies and to defray the expenses of their marriages;" Again at p. 816 para, 684 the author stresses the fact that the maintenance of a wife is a matter of personal obligation on the part of the husband and observes thus :

"The maintenance of a wife, aged parents and a minor son is a matter of personal obligation arising from the very existence of the relationship and quite independent of the possession of any property, ancestral or acquired. ..... 'It is declared by Manuy that the aged mother 'and father, the chaste wife and an infant child must be maintained even by doing a hundred misdeeds.'"

The author points out at p. 821 paragraph 689 that even after the coming into force of the Hindu Women's Right to Property Act, 1937 which confers upon the widow a right of succession in respect of the non-agricultural property, she is still entitled to maintenance from the family property. The author observes thus:

"It cannot, therefore, be said that the reason of the right has ceased to exist and the right is gone. It was accordingly held that the widow of a deceased coparcener is still entitled to maintenance notwithstanding her right under the Act to a share in the non-agricultural part of the family estate."

Furthermore, the author cites the passage of Narada cited in Smritichandrika regarding which there is no dispute. the sayingrns thus:

"Whichever wife (patni) becomes a widow and continues virtuous, she is entitled to be provided with food and raiment."

At p. 822 para, 690 the author points out that the right of a widow to be maintained is taken over even by the heirs of the husband who succeed to his property either by inheritance or by survivorship. In this connection the following observations are made :

She is entitled to be maintained where her husband's separate property is taken by his male issue. Where, at the time of his death, he was a coparcener she is entitled to maintenance as against those who take her husband's share by survivorship."

The Hindu Law is so zealous in guarding the interests of Hindu women that the obligation for maintaining the Hindu woman falls even on the King when he takes the estate by escheat or by forefeiture.

20. Similarly Mulla in his book "Hindu Law", 14th Edn., describes the incidents and characteristics of Hindu wife's right to maintenance and observes thus at p. 597 :

"A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style. The maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relationship, and quite independent of the possession by the husband of any property, ancestral or self-acquired."

We might further mention that the Hindu women's right to maintenance finally received statutory recognition and the entire law on the subject was consolidated and codified by the Hindu Married Women's Right to Separate Maintenance and Residence Act. 1946 – hereinafter to be referred to as 'the Act of 1946' – which came into force on April 23, 1946. Thus there appears to be complete unanimity of the various schools of Hindu Law on the important incidents and indicia of the Hindu women's right to maintenance which has now received statutory recognition and which only shows that the right to maintenance though not an indefeasible right to property is undoubtedly a pre-existing right. We shall now refer to some of the authorities which have dealt with this aspect of the matter.

21. In Narayan Rao Ramchandra Pant v. Ramabai, (1878) 6 Ind App 114 (PC) the Judicial Committee pointed out that the widow's right to maintenance arises from the common law which developed from time to time. Justice West of the Bombay High Court appears to have entered into a very elaborate discussion of the entire law on the subject in Lakshman Ramchandra v. Satyabhamabai. (1877) ILR 2 Bom 494 and observed as follows.

"These several authorities, no doubt afford in combination, a strong support to the proposition that a widow's maintenance, especially as against the sons, is a charge on the estate, a right in re in the fullest sense adhering to the property, into whatever hands it may pass."

These observations were reiterated in a later case in Narbadabai v. Mahadeo Narayan, (1880) ILR 5 Bom 99. The observations of West, J., in Lakshman Ramchandra Joshi's case were fully approved by the Judicial Committee in Mst. Dan Kuer v. Mst. Sarla Devi, 73 Ind App 208 : (AIR 1947 PC 8) where it was observed:

"But, apart from this circumstance, the judgment of West J., whose dissertations on Hindu Law must always command great esteem, contains an exposition of the law on this point and the case is therefore rightly regarded as a leading authority on the question. In the course of his judgment that learned Judge quotes with approval the remarks of Phear J., in Srimati Bhagabati v. Kanailal Mitter, (1872) 8 Beng LR 225 – that "as against one who has taken the property as heir, the widow has a right to have a proper sum for her maintenance ascertained and made a charge on the property in his hands. She may also, doubtless, follow the property for this purpose into the hands of anyone who takes it as a volunteer, or with notice of her having set up a claim for maintenance against the heir" and that "when the property passes into the hands of a bona fide purchaser without notice, it cannot be affected by anything short of an already existing proprietary right, it cannot be subject to that which is not already a specific charge, or which does not contain all the elements necessary for its ripening into a specific charge".

Summarising the entire position the Privy Council enunciated the law thus:

"The true rule of Hindu law in such matters would appear to be as follows :- Two obligations confront a joint Hindu family. (1) The obligation to pay the debts (for instance, of the father) binding on the family; and (2) the moral obligation to provide maintenance to the widows of the family. The latter obligation would, under certain circumstances, ripen into a legal obligation, as, for instance, when a charge is created on specific property of the

family either by agreement or a decree of the court; that, so long as neither of these two obligations has taken the form of a charge on the family property, the obligation to pay the binding debts will have precedence (as, for instance, in the course of the administration of the estate) over mere claims of a female member's maintenance, but, if either of these two obligations assumes the shape of a charge, it would take precedence over the other."

In Pratapmull Agarwalla v. Dhanabati Bibi, 63 Ind App 33 : (AIR 1936 PC 20) the Judicial Committee pointed out that while a mother may not be the owner of her share until partition is made and has no pre-existing right with regard to the share in the property, but she has a pre-existing right for maintenance. This Court also has made similar observations in a large number of cases regarding the nature and extent of the Hindu women's right to maintenance. In (1969) 3 SCR 789 : (AIR 1969 SC 1118) this Court, while dealing with a situation where a widow claimed the right of maintenance but refused to hand over possession of the property until she secured her proper maintenance, observed as follows:

"It cannot be disputed that the appellant who is the widow of a predeceased son of Jangi Jogi was entitled to receive maintenance so long as she did not remarry out of the estate of her father-in-law. Although her claim for maintenance was not a charge upon the estate until it had been fixed and specifically charged thereupon her right was not liable to be defeated except by transfer to a bona fide purchaser for value without notice of a claim or even with notice of a claim unless the transfer was made with the intention of defeating her right. The courts in India have taken the view that where a widow is in possession of a specific property for the purpose of her maintenance a purchaser buying with notice of her claim is not entitled to possession of that property without first securing proper maintenance for her: [vide Rachawa v. Shivayagoappa. (1894) ILR 18 Bom679] ..... In the present case it is difficult to understand how the appellant could be deprived of the possession of properties by a trespasser. Moreover she was presumably in possession of these properties in lieu of her right of maintenance and could not be deprived of them even by Jugli Bai without first securing proper maintenance for her out of the aforesaid properties."

In Shev Dyal v. Judoonath. (1868) 9 Suth WR 61 the Calcutta High Court stressed the fact that although the widow may not be the owner of a share but she had a pre-existing right of maintenance.

22. Elucidating the nature and extent of a right of a Hindu wife to maintenance, the Calcutta High Court pointed out in Srinath Das v. Probodh Chunder Das. (1910) 11 Cal LJ 580 that the right of maintenance is really identified with the husband's proprietary right though of a subordinate nature.

23. In Namangini Dasi v. Dedarnath Kundu Chowdhury, (1889) U R 16 Cal 758 (PC) the Privy Council held that if the estate remained joint and undivided the maintenance of the mother remained a charge on the whole estate and that any share that the widow took in the property which was equal to the share of a son was really in lieu of maintenance for which the estate was liable.

24. The position has been very succinctly stated and meticulously analysed by a decision of the Madras High Court in K. V. Thangavelu v. The Court of Wards. Madras. (1946) 2 Mad LJ 143 : (AIR 1947 Mad 38)where, dealing with the entire history of the matter and relying on various original texts of the Hindu Jurists, the Madras High Court pointed out that a cogent ground for preferring the widow's claim is to be found in h er qualified or subordinate co-ownership in the husband's property declared by the Mitakshara. The Court referred to verse 52 of Vyavaharadhaya (Chapter II) where the Mitakshara refers to Apestamba's Dharmasutra as follows:

"From marriage arises also jointness (Sahatwam) in the holding of property (dravyaparagraphestiu)."

25. In an earlier case Sarojinidevi v. Subrahmanvam. ILR (1945) Mad 61 : (AIR 1944 Mad 401) the Madras High Court held that even after the coming into force of the Hindu Women's Right to Property Act. 1937, which did not apply to agricultural lands, the right of the Hindu widow to maintenance stood intact and the widow was entitled to maintenance notwithstanding her right under the Act to a share in the non-agricultural part of the family estate.

To the same effect is an earlier decision of the Madras High Court in Jayanti Subbiah v. Alamelu Mangamma. (1904) ILR 27 Mad 45 where the High Court pointed out that under the Hindu Law the maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of her relationship and quite independent of the possession by the husband of any property ancestral or self-acquired. We fully agree with this exposition of the law which is supported by a large number of authorities as discussed above.

26. In Vellawa v. Bhimangavda, (1894) ILR 18 Bom 452 the Bombay High Court was of the view that even the heir of the husband's property could not be allowed to recover possession from the widow without first making proper arrangements for her maintenance. This case was approved by this Court in Rani Bai's case (AIR 1969 SC 1118) (supra).

27. Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidence and characteristics of a Hindu woman's right to maintenance:

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on the property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i. e. it is a jus and rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right ;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her coownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to property or purchases the same is in a position to make due arrangements for her maintenance.

28. With this preface regarding a Hindu woman's right to maintenance and the necessary concomitants and incidents of those rights, we now proceed to determine the question of law that arises for consideration in this appeal. Before taking up that question, I might trace the historical growth of the legislation introducing slow and gradual changes in the Shastric Hindu Law from time to time. The exact origin of Hindu Law is steeped and shrouded in antiquity and, therefore, it is not possible to determine the ethics of justification for assigning a somewhat subordinate position to a Hindu woman in matters of inheritance, marriage and the nature of the limited interest which she took even after inheriting her husband's property. It is also strange that the Hindu Law made no provision for divorce at all. This may be due to the fact that during the time of Manu and Yajnavalkya the structure of the Hindu society was quite different and there being no social problem of the magnitude that we have today, it was not considered necessary to break up the integrity and solidarity of a Hindu family by allowing ownership rights to the Hindu females. Another object may have been to retain the family property within the family in order to consolidate the gains which a particular family may have made. However, theses are matters of speculation. But one thing is clear, namely, that the Hindu jurists were very particular in making stringent provisions safeguarding the maintenance of the Hindu females either by the husband or even by his heirs after his death. Perhaps they thought that the property which a widow may receiving in lieu of maintenance or the expenses which may be incurred for her maintenance would be a good substitute for the share which she might inherit in her

husband's property. Nevertheless, the Legislature appears to have stepped in from time to time to soften the rigors of the personal law of Hindus by adding new heirs, conferring new rights on Hindu females and making express provisions for adoption, maintenance etc. It appears that the question of conferring absolute interest on the Hindu female had engaged the attention of the Legislature ever since 1941 but the idea took a tangible shape only in 1954 when the Hindu Succession Bill was introduced and eventually passed in 1956. This Bill was preceded by a Hindu Code Committee headed by Mr. B. N. Rau who had made a number of recommendations which formed the basis of the 1956 Act.

29. After the attainment of independence, the entire perspective changed, the nature of old human values assumed a new complexion and the need for emancipation of womanhood from feudal bondage became all the more imperative. Under the strain and stress of socio-economic conditions and a continuous agitation by the female Hindus for enlargement of their rights a new look to the rights of women as provided by the Shastric Hindu Law had to be given. In pursuance of these social pressures it was necessary to set up a new social order where the women should be given a place of honour and equality with the male sex in every other respect. This was the prime need of the hour and the temper of the times dictated the imperative necessity of making revolutionary changes in the Hindu Law in order to abolish the invidious distinction in matters of inheritance between a male and a female. Similarly it was realised that there should be express provision for divorce on certain specified grounds inasmuch as the absence of such a provision had perpetrated a serious injustice to the Hindu females for a long time. It seems to me that it was with this object in view that the Legislature of our free country thought it as its primary duty to bring forth legislation to remove the dangerous anomalies appearing in the Hindu Law. Even during the British times, there were certain legislations modifying certain provisions of the Hindu Law e. g., the Hindu Law Inheritance Act which added a few more heirs including some females; the Hindu Women's Right to property Act, 1937, which provided that on partition a widow would be entitled to the same share as the sons in the property of her husband. The Act of 1937, while giving a share to the wife on partition had not disturbed her right to claim maintenance which was preserved intact and although she was now permitted to sue for partition she was undoubtedly entitled to sue for maintenance without having recourse to the remedy of partition. After independence the Parliament passed the Hindu Minority and Guardianship Act, 1956 the Hindu Adoptions and Maintenance Act, 1956; the Hindu Marriage Act, 1955 which regulated the law of marriage and divorce and ultimately the Hindu Succession Act, 1956 which provided for intestate succession. The Hindu Succession Act, 1956 was therefore, undoubtedly a price of social legislation which fulfilled a long felt need of the nation and was widely acclaimed by the entire people as would appear from the debates which preceded the passing of the Act.

30. It is in the light of these circumstances that we have now to interpret the provisions of S. 14 (1) and (2) of the Act of 1956. Section 14 of the 1956 Act runs thus:

"14. (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."

This Court has interpreted the scope and ambit of S. 14 (1) and the Explanation thereto on several occasions and has pointed out that the object of the legislation was to make revolutionary and far-reaching changes in the entire structure of the Hindu society. The word "possessed" used in S. 14 (1) has also been interpreted by this Court and it has been held that the word has been used in a very wide sense so as to include the state of owning

or having the property in one's power and it is not necessary for the application of Section 14 (1) that a Hindu woman should be in actual or physical possession of the property. It is sufficient if she has a right in the property and the said property is in her power or domain. In S. S. Munnalal v. S. S. Rajkumar, (1962) Supp 3 SCR 418 : (AIR 1962 SC 1493) it was held by this Court that the interest which a widow got by declaration of her share under a preliminary decree would fall within the ambit of Section 14 (1) and even though the widow did not get actual possession of the property until a final decree is passed she would in law be deemed to be in possession of the property. In that case the High Court had held that mere declaration of the share of the widow passed only an inchoate interest to her and she never came to possess the share within the meaning of S. 14 of the Act and, therefore, the property remained joint family property. This Court reversed the judgment of the High Court holding that once a preliminary decree was passed in favour of the widow granting her a share in the property she must be deemed to be in possession of the property in question. Their Lordships emphasised that the words "possessed by" used in S. 14 (1) clearly indicated that such a situation was envisaged by the Legislature. While interpreting the provisions of S. 14 the Court also pointed out that the 1956 Act was a codifying enactment which had made far-reaching changes in the structure of the Hindu Society and object was to sweep away traditional limitations placed on the rights of the Hindu Women. In this connection, the Court observed as follows:

"The Act is a codifying enactment, and has made far-reaching changes in the structure of the Hindu Law of inheritance and succession. The Act confers upon Hindu females full rights of inheritance, and sweeps away the traditional limitations on her powers of dispositions which were regarded under the Hindu Law as inherent in her estate .....Normally a right declared in an estate by a preliminary decree would be regarded as property, and there is nothing in the context in which S. 14 occurs or in the phraseology used by the Legislature to warrant the view that such a right declared in relation to the estate of a joint family in favour of a Hindu Widow is not property within the meaning of S. 14. In the light of the scheme of the Act and its avowed purpose it would be difficult, without doing violence to the language used in the enactment, to assume, that a right declared in property in favour of a person under a decree for partition is not a right to property. If under a preliminary decree the right in favour of a Hindu male be regarded as property the right declared in favour of a Hindu female must also be regarded as property.

Earlier the Court observed in that very case as under:

"By S. 14 (1) the Legislature sought to convert the interest of a Hindu female which under the Shastric Hindu law would have been regarded as a limited interest into an absolute interest and by the explanation thereto gave to the expression "property" the widest connotation. The expression includes property acquired by a Hindu female 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. By S. 14 (1) manifestly it is intended to convert the interest which a Hindu female has in property however restricted the nature of that interest under the Sastric Hindu law may be into absolute estate."

31. The matter was again considered by this Court in Eramma v. Verrupanna, (1966) 2 SCR 626 : (AIR 1966 SC 1879) where it was held that before a widow can get absolute interest under S. 14 (1) she must have some vestige of title, i. e. her possession must be under some title or right and not be that of a rank trespasser. In this connection the Court observed as follows:

"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 Section 14 (1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however, restricted the nature of her interest may be ..... It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal posession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of S. 14 (1) of the Act cannot be attracted in the case of a Hindu

female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property."

32. In Mangal Singh v. Smt. Rattno, (1967) 3 SCR 454 : (AIR 1967 SC 1786) a widow came into possession of her husband's property in 1917 and continued to be in possession of the same till 1954 when she was dispossessed by a collateral of her husband under the orders of the Revenue authorities. She filed a suit for recovery of possession and during the pendency of the suit the Act of 1956 came into force. This Court upholding the judgment of the High Court held that the dispossession of the widow being illegal, she must be deemed to be, in the eye of law, to continue in possession of the properties and acquired an absolute interest with the coming into force of the Act of 1956. It was not a case where a Hindu female had parted with her right so as to place herself in a position where she could in no manner exercise her rights in that property any longer when the Act came into force. This Court observed as follows:

"It is significant that the Legislature begins S. 14 (I) with the words "any property possessed by a female Hindu" and not "any property in possession of a female Hindu". If the expression used had been "in possession of" instead of "possessed by", the proper interpretation would probably have been to hold that, in order to apply this provision, the property must be such as is either in actual possession of the female Hindu or in her constructive possession. The constructive possession may be through a lessee mortgagee, licensee, etc. The use of the expression" possessed by" instead of the expression "in possession of", in our opinion, was intended to enlarge the meaning of this expression. It is commonly known in English language that a property is said to be possessed by a person if he is its owner, even though he may, for the time being, be out of actual possession or even constructive possession."

"It appears to us that the expression used in S. 14 (1) of the Act was intended to cover cases of possession in law also where lands may have descended to a female Hindu and she has not actually entered into them. It would of course, cover the other cases of actual or constructive possession. ^pOn the language of Section 14 (1), therefore, we hold that this provision will become applicable to any property which is owned by a female Hindu, even though she is not in actual, physical or constructive possession of that property."

33. Again, while referring to an earlier case, namely, Eramma v. Verrupanna, (AIR 1966 SC 1879) (supra) the Court clarified the position thus:

"This case also, thus, clarifies that the expressed by" is, not intended to apply to a case of mere possession without title, and that the legislature intended this provision for cases where the Hindu female possesses the right of ownership of the property in question. Even mere physical possession of the property without the right of ownership will not attract the provisions of this section. This case, also, thus, supports our view that the expression "possessed by" was used in the sense of connoting state of ownership and, while the Hindu female possesses the rights of ownership, she would become full owner if the other conditions mentioned in the section are fulfilled. The section will, however, not apply at all to cases where the Hindu female may have parted with her rights so as to place herself in a position where she could, in no manner, exercise her rights of ownership in that property any longer."

34. In Sukhram v. Gauri Shanker, (1968) 1 SCR 476 : (AIR 1968 SC 365) the facts were as follows:

Hukam Singh and Sukh Ram were two brothers. Chidda, the second appellant was the son of Sukh Ram and thus Chidda, Hukam Singh and Sukh Ram were members of a joint Hindu family governed by the Benares School of Mitakshara Law. Hukam Singh died in 1952 leaving behind his widow Krishna Devi. On December 15, 1956, Krishna Devi sold half share of the house belonging to the joint family. This sale was challenged by the other members of the joint family on the ground that Krishna Devi had merely a life interest. The question raised was whether Krishna Devi acquired an absolute interest in the properties after coming into force of the Hindu Succession Act, 1956. It was argued before this Court that according to the Benaras School, a male co-parcener was not entitled to alienate even for value his undivided interest in the coparcenary without the consent of other co-parceners and, therefore, Krishna Devi could not have higher rights than what her husband possessed. This Court, however, held that in view of the express words of S. 14 of the 1956

Act, once the widow was possessed of property before or after the commencement of the Act, she held it as full owner and not as a limited owner and, therefore, any restriction placed by Shastric Hindu Law was wiped out by the legislative intent as expressed in the Act of 1956. The Court observed thus:

"But the words of S. 14 of the Hindu Succession Act are express and explicit: thereby a female Hindu possessed of property whether acquired before or after the commencement of the Act holds it as full owner and not as a limited owner. The interest to which Krishna Devi became entitled on the death of her husband under S.3 (2) of the Hindu Women's Right to Property Act, 1937, in the property of the joint family is indisputable her "property" within the meaning of S. 14 of Act 30 of 1956, and when she became "full owner" of that property she acquired a right unlimited in point of user and duration and uninhibited in point of disposition."

This case indirectly supports the view that if the intention of the legislature was to confer absolute interest on the widow, no limitation can be spelt out either from the old Shastric law or otherwise which may be allowed to defeat the intention. This Court went to the extent of holding that the words in Section 14 (1) are so express and explicit that the widow acquired a right unlimited in point of user, though a male member governed by the Benares School had no power of alienation without the consent of other coparceners. Under the Act the female had higher powers than the male because the words of the statute did not contain any limitation at all. On a parity of reasoning, therefor, where once a property is given to the widow in lieu of maintenance and she enters into possession of that property, no amount of restriction contained in the document can prevent her from acquiring absolute interest in the property because the contractual restriction cannot be higher than the old Hindu Shastric Law or the express words of the Act of 1956.

35. In Badri Pershad v. Smt. Kanso Devi, (1970) 2 SR 95 : (AR 1970 S 1963) the propositus died in 1947 leaving behind five sons and a widow, Soon after his death disputes arose between the parties and the matter was referred to an arbitrator in 1950. The arbitrator in his award allotted shares to the parties wherein it was stated that the widow would only have widow's estate in those properties. While the widow was in possession of the properties, the Act of 1956 came into force and the question arose whether or not she became full owner of the property or she only had a restricted interest as provided in the grant, namely, the award. This Court held that although the award had given a restricted estate, but this was only a narration of the state of law as it existed when the award was made. As the widow, however, inherited the property under the Hindu Women's Right to Property Act, her interest became absolute with the passing of the Act of 1956 and she squarely fell within the provisions of S. 14 (1) of the Act. It was further held that the mere fact that the partition was by means of an award would not bring the matter within S. 14 (2) of the Act, because the interest given to the widow was on the basis of a pre-existing right and not a new grant for the first time. This Court observed as follows:

"The word "acquired" in sub-s. (1) has also to be given the widest possible meaning. This would be so because of the language of the Explanation which makes sub-s. (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female's own skill or exertion or by purchase or prescription or in any manner whatsoever. Where at the commencement of the Act a female Hindu has a share in joint properties which are later on partitioned by metes and bounds and she gets possession of the properties allotted to her there can be no manner of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement."

This Court relied upon two earlier decisions: viz., S. S. Munnalal's case (AIR 1962 SC 1493) and Sukhram's case (AIR 1968 SC 365) (supra). This case appears to be nearest to the point which falls for determination in this appeal, though it does not cover the points argued before us directly.

36. Lastly our attention was drawn to an unreported decision of this Court in Nirmal Chand v. Vidya Wanti (dead) by her legal representatives C. A. No. 609 of 1965 decided on Jan. 21. 1969 (SC) in which case Amin Chand and Lakhmi Chand were the owners of agricultural and non-agricultural properties. The properties were partitioned in the year 1944 and Lakhmi Chand died leaving behind him the appellant and his second wife Subhrai

Bai and his daughter by this wife. There was a regular partition between Amin chand and Subhrai Bai by a registered document dated December 3, 1945 under which a portion of the property was allotted to Subhrai Bai and it was provided in the document that Subhrai Bai would be entitled only to the user of the land and she will have no right to alienate it in any manner but will have only life interest. Later, Subhrai Bai bequeathed the property in 1957 to her daughter Vidya Wanti. Subhrai Bai died and Vidya Wanti's name was mutated in the papers after coming into force of the Act of 1956. The point raised before the High Court was that as Subhrai Bai had been given only a limited interest in the property she had no power to bequeath the property to her daughter as her case was not covered by S. 14 (1) but fell under S. 14 (2) of the Act. This Court pointed out that at the time when the property was allotted to Subhrai Bai, the Hindu Succession Act had not come into force and according to the state of Hindu Law as it then prevailed Subhrai Bai was undoubtedly entitled only to a limited interest. There was a restriction in the partition deed that Subhrai Bai would enjoy usufrcut of the property only and shall not be entitled to make any alienation. It was not a restriction as such but mere statement of law as it then prevailed. Such a restriction, therefore, would not bring the case of Subhrai bai under Section 14 (2) of the Act and, therefor, she would acquire an absolute interest after the passing of the Act of1956 and was, therefor, competent to execute the will in favour of her daughter. This Court observed as follows:

"It Subhrai Bai was entitled to a share in her husband's properties then the suit properties must be held to have been allotted to her in accordance with law. As the law then stood she had only a life interest in the properties taken by her. Therefore the recital in the deed in question that she would have only a life interest in the properties allotted to her share is merely recording the true legal position. Hence it is not possible to conclude that the properties in question were given to her subject to the condition of her enjoying it for her lifetime. Therefor the trial Court as well as the first Appellate Court were right in holding that the facts of the case do not fall within S. 14 (2) of the Hindu Succession Act, 1956."

37. In the light of the above decisions of this Court the following principles appear to be clear:

(1) that the provisions of Sec. 14 of the 1956 Act must be liberally construed in order to advance the object of the At which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times;

(2) it is manifestly clear that sub-s. (2) of Sec. 14 does not refer to any transfer which merely recognises a pre-existing right without creating or conferring a new title on the widow. This was clearly held by this Court in Badri Pershad's case (AIR 1970 S 1963) (supra).

(3) that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu Society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession:

(4) that sub-s. (2) of S. 14 is merely a proviso to sub-s. (1) of Sec. 14 and has to be interpreted as a proviso and not in a manner so as to destroy the effect of the main provision.

38. We have given our anxious consideration to the language of Section 14 (1) and (2) and we feel that on a proper interpretation of Section 14 (2) there does not appear to be any real inconsistency between Section 14 (1), the explanation thereto and sub-s. (2). To begin with, Section 14 (1) does not limit the enlargement of the estate of a Hindu widow to any particular interest in the property. On the other hand the explanation to S. 14 (1) brings out the real purpose of S. 14 (1) by giving an exhaustive category of cases where principle of S. 14 (1) has to operate, i. e. to cases where a Hindu female would get an absolute interest. The argument of the learned counsel for the appellant is that as the right of maintenance was a preexisting right, any instrument or transaction by which the property was allotted to the appellant would not be a new transaction so as to create a new title but would be only in recognition of a pre-existing right, namely, the right of maintenance. On the other hand Mr. Natesan appearing for the respondents submitted that the object of the proviso was to validate rather than to disturb the past transactions which had placed

certain restrictions or curbs on the power of Hindu female and as the language of the proviso is very wide there is no warrant for not applying it to cases where pre-existing rights are concerned. In the alternative, Mr. Natesan argued that the Hindu Women's right to maintenance is not a legal right unless an actual charge is created in respect of the property and is, therefore, not enforceable at law. It is, therefore, not correct to describe a claim of a Hindu female's right to maintenance simpliciter as a pre-existing right because all the necessary indicia of a legal right are wanting.

39. After considering various aspects of the matter we are inclined to agree with the contentions raised by Mr. Krishna Murthy Iyer appearing for the appellant. In the first place, the appellant's contention appears to be more in consonance with the spirit and object of the statute itself. Secondly, we have already pointed out that the claim of a Hindu female for maintenance is undoubtedly a pre-existing right and this has been so held not only by various Courts in India but also by the Judicial Committee of the Privy Council and by this Court. It seems to us, and it has been held as discussed above, that the claim or the right to maintenance possessed by a Hindu female is really a substitute for a share which she would have got in the property of her husband. This being the position, where a Hindu female who gets a share in her husband's property acquires an absolute interest by virtue of S. 14 (1) of the Act, could it be intended by the legislature that in the same circumstances a Hindu female who could not get a share but has a right of maintenance would not get an absolute interest? In other words, the position would be that the appellant would suffer because her husband had died prior to the Act of 1937. If the husband of the appellant had died after 1937, there could be no dispute that the appellant would have got an absolute interest, because she was entitled to her share under the provisions of the Hindu Women's Right to Property Act, 1937. Furthermore, it may be necessary to study the language in which the Explanations to S. 14 (1) and sub-s. (2) of S. 14 are couched. It would be seen that while the Explanation to S. 14 (1) clearly and expressly mentioned "property acquired by a female Hindu" at a partition or in lieu of maintenance or arrears of maintenance, there is no reference in sub-s. (2) at all to this particular mode of acquisition by a Hindu female which clearly indicates that the intention of the Parliament was to exclude the application of sub-s. (2) to cases where the property has been acquired by a Hindu female either at a partition or in lieu of maintenance etc. The Explanation is an inclusive definition and if the Parliament intended that everything that is mentioned in the Explanation should be covered by sub-s. (2) it should have expressly so stated in sub-s. (2). Again the language of sub-s. (2) clearly shows that it would apply only to such transactions which are absolutely independent in nature and which are not in recognition of or in lieu of pre-existing rights. It appears from the Parliamentary Debates that when the Hindu Succession Bill, 1954, was referred to a Joint Committee by the Rajya Sabha, in S. 14 (2) which was clause 16 (2) of the Draft Bill of the Joint Committee, the words mentioned were only gift or will, Thus the intention of the Parliament was to confine sub-s. (2) only to two transactions, namely a gift or a will, which clearly would not include property received by a female in lieu of maintenance or at a partition. Subsequently, however, an amendment was proposed by one of the members for adding other categories, namely, an instrument, decree, order or award which was accepted by the Government. This would show that the various terms, viz., gift, will, instrument, decree, order or award mentioned in S. 14 (2) would have to be read ejusdem generis so as refer to transactions where right is created for the first time in favour of the Hindu female. The intention of the Parliament in adding the other categories to sub-s. (2) was merely to ensure that any transaction under which a Hindu female gets a new or independent title under any of the modes mentioned in S. 14 (2), namely, gift, will, decree, order, award or an instrument which prescribes a restricted estate would not be disturbed and would continue to occupy the field covered by S. 14 (2). This would be the position even if a Hindu male was to get the property by any of the modes mentioned in S. 14 (2); he would also get only a restricted interest and, therefore, the Parliament thought that there was no warrant for making any distinction between a male or a female in this regard and both were therefore, sought to be equated.

40. Finally, we cannot overlook the scope and extent of a proviso. There can be no doubt that sub-section (2) of S. 14 is clearly a proviso to S. 14 (1) and this has been so held by this Court in Badri pershad's case (AIR 1970 S 1963) (supra). It is well settled that a provision in the nature of a proviso merely carves out an exception to the main provision and cannot be interpreted in a manner so as to destroy the effect of the main provision or

to render the same nugatory. If we accept the argument of the respondents that sub-s. (2) to S. 14 would include even a property which has been acquired by a Hindu female at partition or in lieu of maintenance then a substantial part of the Explanation would be completely set at naught which could never be the intention of the proviso. Thus we are clearly of the opinion that sub-s. (2) of S. 14 of the proviso should be interpreted in such a way so as not to substantially erode S. 14 (1) or the Explanation thereto. In the present case we feel that the proviso has carved out completely a separate field and before it can apply three conditions must exist:

(i) that the property must have been acquired by way of gift, will, instrument, decree, order of the Court or by an award;

(ii) that any of these documents executed in favour of a Hindu female must prescribe >

(iii) that the instrument must create or confer a new right, title or interest on the Hindu female and not merely recognise or give effect to a pre-existing right with the female Hindu already possessed.

Where any of these documents are executed but no restricted estate is prescribed, sub-s. (2) will have no application. Similarly where these instruments do not confer any new title for the first time on the female Hindu, S. 14 (2) would have no application. It seems to me that Section 14 (2) is a salutary provision which has been incorporated by the Parliament for historical reasons in order to maintain the link between the Shastric Hindu law and the Hindu Law which was sought to be changed by recent legislation, so that where a female Hindu became possessed of property not in virtue of any pre-existing right but otherwise, and the grantor chose to impose certain conditions on the grantee, the Legislature did not want to interfere with such a transaction by obliterating or setting at naught the conditions imposed.

41. There was some argument at the bar regarding the use of the term “limited owner” in S. 14 (1) and “restricted estate” in S. 14 (2) . Not much, however, turns upon this. I think that the Parliament advisedly used the expression “restricted estate” in S. 14 (2), because while a limited interest would indicate only a life estate, a restricted estate is much wider in its import. For instance, suppose a donor while giving the property to a Hindu female, inserts a condition that she will have to pay Rs. 200/- to donor or to one of his relatives till a particular time, this would not come within the term “limited interest”, but it would be included by the term “restricted estate”. That is the only justification for the difference in the terminology of S. 14 (1) and (2) of the Act.

42. Having discussed the various aspects of S. 14 (1) and (2) we shall now deal with the authorities cited before us by counsel for the parties which are by no means consistent. We will first deal with the authorities which took the view that we have taken in this case. In this connection the sheet-anchor of the argument of the learned counsel for the appellant is the decision of the Bombay High Court in B. B. Patil v. Gangabai, AIR 1972 Bom 16 and that of the counsel for the respondents is the decision of the Madras High Court in Gurunadham v. Sundrarajulu, ILR (1968) 1 Mad Mad 429)and Santhanam v. Subramania, ILR (1967) 1 Mad 68. The latter case was affirmed in appeal by the Division Bench of the Madras High Court in S. Kachapalava Gurukkal v. V. Subramania Gurukkal. AIR 1972 Mad 279 and the aforesaid Division Bench judgment forms the subject-matter of Civil Appeal No. 135 of 1973 which will be disposed of by us by a separate judgment.

43. We will now take up the case of the Bombay High Court relied upon by the learned counsel for the appellant which in our opinion, lays down the correct law on the subject. In B. B. Patil v. Gangabai, AIR 1972 Bom 16 (supra) the facts briefly were that the properties in question were the self-acquired properties of Devgonda and after his death in 1902 Hira Bai daughter-in-law of Devgonda (widow of his son Appa, who also died soon thereafter) came into possession of the properties. Disputes arose between Hira Bai and Nemgonda, the nephew of Devgonda, and the matter having been referred to the arbitrator he gave his award on October 15, 1903 and a decree in terms of the award was passed on October 24, 1903. Under the decree in terms of the award 65 acres of land and one house was allotted to Hira Bai out of which 30 acres were earmarked for the provision of maintenance and marriage of the three daughters and the rest of the property was ordered to be retained by Hirabai for life with certain restrictions. After her death these properties were to revert to Nemgonda. The dispute which was the subject-matter of the appeal before the High Court

was confined to 35 acres of land and the house which was in possession of Hira Bai. Hira Bai continued to be in possession of these properties right upto February 25, 1967. Meanwhile Nemgonda had died and his sons defendants 2 to 6 claimed the properties. After the death of Hira Bai the plaintiffs who were two out of the three daughters of Hira Bai, filed a suit for possession claiming entire title to the properties in possession of Hira Bai on the ground that Hira Bai was in possession of the properties as limited owner at the time of the passing of the Hindu Succession Act, 1956 and so her limited estate was enlarged into an absolute estate and the plaintiffs were therefore, entitled to succeed to her properties in preference to the reversioners. The suit was contested by defendants 2 to 6 mainly on the ground that as Hira Bai under the compromise was to retain only a life interest in the properties, her case would be covered by S. 14 (2) of the Act and after her death the properties would revert to the reversioners. The Court held that as Hira Bai was put in possession of the properties in lieu of her maintenance, S. 14 (2) had no application, because the award merely recognised the pre-existing rights of Hira Bai and did not seek to confer any fresh rights or source of title on Hira Bai. Thus even though the award did provide that Hira Bai would have a limited interest, S. 14 (2) would have no application and Hira Bai will get an absolute interest after the coming into force of the Hindu Succession Act, 1956. The Court observed:

"The explanation thus, brings under its purview all properties traditionally acquired by a Hindu female in which merely by reason of the incidents of the Hindu law she has limited ownership. In other words, sub-section (1) read with this explanation provides that any property, howsoever acquired and in possession of a Hindu female after the commencement of the Act shall be held by her as a full owner in all cases where she formerly held merely limited ownership. As a matter of fact, this sub-section proceeds on the basis that there are several categories of properties of which a Hindu female, under the provisions of the Hindu Law, is merely a limited owner. By this enactment her rights are enlarged and wherever under the Hindu Law she would merely obtain limited ownership she would after the commencement of the Act, obtain full ownership."

"There is consensus of judicial opinion with regard to the ambit of sub-s. (2) of S. 14 of the Act. It covers only those cases of grants where the interest in the grantee is created by the grant itself, or, in other words, where the gift, will, instrument, decree, order or award is the source or origin of the interest created in the grantee. Where, however, the instruments referred to above are not the source of interest created but are merely declaratory or definitive of the right to property antecedently enjoyed by the Hindu female, sub-section (2) has no application; and it matters not if in such instruments it is specifically provided in express terms that the Hindu female had a limited estate or that the property would revert on her death to the next reversioner, such terms are merely the reiteration of the incidents of the Hindu Law applicable to the limited estate." Dwelling on the nature and incidents of the right of the widow to maintenance before the Hindu Women's Rights to Property Act, 1937. Palekar J., speaking for the Court described the various characteristics and incidents of the right of a Hindu female for maintenance (which have already been discussed by us). Finally, the Judge observed as follows:

"It appears to us that in the context of the Hindu widows the right to maintenance conferred under the Hindu Law is indistinguishable in quality from her right to a share in the family property. That may well be the reason why the explanation to sub-section (1) of Section 14 of the Act makes the female allottee of property "in lieu of maintenance" as much a limited owner as when the widow acquires on "inheritance" or "at a partition". And if in the latter two cases it is conceded that sub-section (2) does not apply on the ground of antecedent right to the family properties we do not see any rational justification to exclude a widow who has an equally sufficient claim over the family properties for her maintenance."

44. Thus the following propositions emerge from a detailed discussion of this case:

(1) that the widow's claim to maintenance is undoubtedly a tangible right though not an absolute right to property so as to become a fresh source of title. The claim for maintenance can, however, be made a charge on the joint family properties, and even if the properties are sold with the notice of the said charge, the sold properties will be burdened with the claim for maintenance;

(2) that by virtue of the Hindu Women's' Rights to Property Act, 1937 the claim of the widow to maintenance has been crystallized into a full-fledged right and any property allotted to her in lieu of maintenance becomes property to which she has a limited interest which by virtue of the provisions of Act of 1956 is enlarged into an absolute title:

(3) Section 14 (2) applies only to cases where grant is not in lieu of maintenance or in recognition of pre-existing rights but confers a fresh right or title for the first time and while conferring the said title certain restrictions are placed by the grant or transfer. Where, however, the grant is merely in recognition or in implementation of a pre-existing right to claim maintenance, the case falls beyond the purview of Section 14 (2) and comes squarely within the explanation to S. 14 (1).

The Court dissented from the contrary view taken by the Orissa and Madras High Courts on this question. We find that the facts of this case are on all fours with the present appeal, and we are in complete agreement with the view taken and the reasons given by Palekar, J. Once it is recognised that right of maintenance is a pre-existing tangible right, it makes no difference whether a Hindu widow died before or after the enactment of Hindu Women's Rights to Property Act, 1937.

45. A similar view was taken by an earlier decision of the Andhra Pradesh High Court in Gadem Reddayya v. Varapula Venkataraju, AIR 1965 Andh Pra 66, where the Court held that the family settlement was only in recognition of the pre-existing right of the widow to maintenance and, therefore, was not covered by Section 14 (2) of the Act of 1956. In our opinion, this case correctly states the law on the subject.

46. In Sumeshwar Mishra v. Swami Nath Tiwari, AIR 1970 Pat 348 the High Court of Patna appears to have taken the same view, and in our opinion very correctly. The Patna High Court differed from the decision of the Madras High Court in Thatha Gurunadhan Chetti v. Smt. Thatha Navaneethamma, AIR 1967 Mad 429 and in our opinion rightly. We are of the opinion, for the reasons that we have already given above, that the view of the Madras High Court was not legally correct. A later decision of the Patna High Court in Lakshmi Devi v. Shankar Jha, AIR 1974 Pat 87 has also taken the same view. We, however, fully approve of the view expressed by the Patna High Court and Andhra Pradesh High Court referred to above.

47. Similarly in H. Venkatagouda v. Hanamangouda, AIR 1972 Mys 286, the Mysore High Court adopted the view of the Bombay High Court in B. B. Patil v. Gangabai, AIR 1972 Bom 16 (supra) and dissented from the contrary view taken by the Madras and the Orissa High Courts. In our opinion, this decision seems to have correctly interpreted the provisions of S. 14 (2) of the 1956 Act and has laid down the correct law. The view of the Madras High Court and the Orissa High Court which was dissented from by the Mysore High Courts, is in our opinion legally erroneous and must be overruled.

48. In Smt. Sharbati Devi v. Hiralal, AIR 1964 Punj 114, the Punjab High Court clearly held that application of S. 14 (2) was limited to only those cases where a female Hindu acquired a title for the first time for otherwise the property acquired in lieu of maintenance even though conferring a limited estate fell clearly within the ambit of explanation to S. 14 (1) of the Act and would , therefore, become the absolute property of the widow. Thus the Punjab High Court also fully favours the view taken by the Bombay, Patna, Mysore, Andhra Pradesh and other High Courts discussed above and has our full approval. The only distinction in the Punjab case is that here the widow got the properties after the coming into force of the Hindu Women's Rights to Property Act, 1937, but that, as we shall point out hereafter makes no difference with respect to the legal right which a widow has to maintain herself out of the family property.

49. The Calcutta High Court has also taken the same view in Sasadhar Chandra Dey v. Smt. Tara Sundari Desi, AIR 1962 Cal 438 which we endorse.

50. In Saraswathi Ammal v. Anantha Shenoi, AIR 1966 Ker 66 the Kerala High Court, after a very detailed discussion and meticulous analysis of the law on the subject, pointed out that the right of a widow to maintenance was not a matter of concession but under the Sastric Hindu Law it was an obligation on the heirs who inherited the properties of the husband to maintain the widow and any property which the widow got in lieu of maintenance was not one given purely as a matter of concession, but the widow acquired a

right in such property. We fully agree with the view taken by the Kerala High Court in the aforesaid case.

51. In Kunji Thomman v. Meenakshi, ILR (1970) 2 Ker 45: (AIR 1970 Ker 284) although the Kerala High Court reiterated its previous view, on the facts of that particular case the High Court held that under the family settlement the widow did not get any right to maintenance but was conferred a new right which was not based on her pre-existing right and on this ground the High Court felt that the widow would not get an absolute interest in view of the explanation to S. 14 (1).

52. In Chellammal v. Nellammal, (1971) 1 Mad LJ 439 the facts were almost similar to the facts of the present case. A single Judge of the Madras High Court held that the case was clearly covered by the Explanation to S. 14 (1) of the Act and the properties given to the widow in lieu of maintenance became her absolute properties and would not be covered by S. 14 (2) of the Act. This decision appears to have been overruled by a later decision of the same High Court in S. Kachapalaya Gurukkal v. V. Subramania Gurukkal, (AIR 1972 Mad 279) (supra) which is the subject-matter of Civil Appeal No. 126 of 1972 and we shall discuss the Division Bench's decision when we refer to the authorities taking a contrary view. We find ourselves in complete agreement with the view taken by the single Judge in Chellammal v. Nellammal (supra), and we overrule the Division Bench decision in S. Kachapalaya Gurukkal's case (supra).

53. Thus all the decisions discussed above proceed on the right premises and have correctly appreciated the nature and incidents of a Hindu woman's right to maintenance. They have also properly understood the import and applicability of Sec. 14 (2) of the 1956 Act and have laid down correct law on the subject.

54. We now deal with the authorities taking a contrary view, which in our opinion, does not appear to be the correct view.

55. In Narayan Patra v. Tara Patrani, 36 Cut LT 867 : (AIR 1970 Orissa 131) the Orissa High Court, following a decision of the Andhra Pradesh High Court in G. Kondiah v. G. Subbarayudu, (1968) 2 Andh WR 455, held that since the widows were given only a restricted estate their case squarely fell within the ambit of Section 14 (2) of the Act and their interest would not be enlarged. Reliance was also placed on a Madras decision in Thatha Gurunadham Chetty v. Thatha Navaneethamma, (AIR 1967 Mad 429) (supra). It is obvious that the conclusions arrived at by the High Court are not warranted by the express principles of Hindu Sastric Law. It is true that a widow's claim for maintenance does not ripen into a full-fledged right to property, but nevertheless it is undoubtedly a right which in certain cases can amount to a right to property where it is charged. It cannot be said that where a property is given to a widow in lieu of maintenance, it is given to her for the first time and not in lieu of a pre-existing right. The claim to maintenance as also the right to claim property in order to maintain herself is an inherent right conferred by the Hindu Law and therefore any property given to her in lieu of maintenance is merely in recognition of the claim or right which the widow possessed from before. It cannot be said that such a right has been conferred on her for the first time by virtue of the document concerned and before the existence of the document the widow had no vestige of a claim or right at all. Once it is established that the instrument merely recognised the pre-existing right, the widow would acquire absolute interest. Secondly, the Explanation to Section 14 (1) merely mentions the various modes by which a widow can acquire a property and the property given in lieu of maintenance is one of the modes mentioned in the Explanation. Sub-section (2) is merely a proviso to S. 14 (1) and it cannot be interpreted in such a manner as to destroy the very concept of the right conferred on a Hindu woman under S. 14 (1). Sub-section (2) is limited only to those cases where by virtue of certain grant or disposition a right is conferred on the widow for the first time and the said right is restricted by certain conditions. In other words, even if by a grant or disposition a property is conferred on a Hindu male under certain conditions, the same are binding on the male. The effect of sub-s. (2) is merely to equate male and female in respect of grant conferring a restricted estate. In these circumstances we do not agree with the views expressed by the Orissa High Court.

56. The other High Courts which have taken a contrary view are mainly the Andhra Pradesh, Allahabad and the Madras High Courts. In an earlier decision of the Patna High Court in Shiva Pujan Rai. v. Jamuna Missir. (1968) ILR 47 Pat 1118 the High Court seems to

rally round the view taken by the Madras High Court.

57. We shall take up the decisions of the Andhra Pradesh High Court. As already indicated above, the earlier decision of the Andhra Pradesh High Court in Gadam Reddayya v. Varapula Venkataraju. AIR 1965 Andh Pra 66 took the same view which was taken later by the Bombay High Court and held that in a case like the present, a Hindu female would get an absolute interest and her case would not be covered by sub-section (2) of S. 14 of the 1956 Act. In Gopisetti Kondaiah v. Gunda Subbarayudu. ILR (1968) Andh Pra 621 another Division Bench of the same High Court appears to have taken a contrary view. Jaganmohan Reddy. C. J., speaking for the Court observed as follows:

"In so far as the right of a Hindu woman to maintenance is concerned, it is necessary at this stage to point out one other basic concept. A Hindu woman has a right to be maintained by her husband or from her husband's property or Hindu joint family property. But that is merely a right to receive maintenance out of the properties without in any way conferring on her any right, title or interest therein. It is not a definite right, but is capable of being made a charge on specific properties by agreement, decree of Court or award, compromise or otherwise..... But this indefinite right, to be maintained from out of the properties of a Hindu Joint family, does not, however, create in her a proprietary right in the property..... But if a restricted estate is given by any such instrument, even if it be in lieu of maintenance, which is inconsistent with an estate she would get under the Hindu Law, then sub-section (2) of Section 14 would operate to give her only a restricted estate..... But if it is the latter, notwithstanding the fact that it was transferred in lieu of maintenance, if only a restricted estate was conferred by the instrument, then she would only have the restricted estate."

While we fully agree with the first part of the observations made by the learned Chief Justice, as he then was, that one of the basic concepts of Hindu Law is that a Hindu woman has right to be maintained by her husband or from her husband's property or the joint family property, we respectfully disagree with his conclusion that even though this is the legal position yet the right to receive maintenance does not confer on her any right, title or interest in the property. It is true that the claim for maintenance is not an enforceable right but it is undoubtedly a pre-existing right even though no charge is made on the properties which are liable for her maintenance. We also do not agree with the view of the learned Chief Justice that if the property is given to the widow in lieu of maintenance she will get only a restricted estate. In our opinion, the High Court of Andhra Pradesh has proceeded on wrong premises. Instead of acknowledging the right of a Hindu woman to maintenance as a right to a right – or for that matter a pre-existing right – and then considering the effect of the subsequent transactions, the High Court has first presumed that the claim for maintenance is not a tangible right at all and, therefore, the question of a pre-existing right does not arise. This as we have already pointed out is against the consistent view taken by a large number of Courts for a very long period. Furthermore, this case does not appear to have noticed the previous Division Bench decision in Gedam Reddayya's case (supra) taking the contrary view, and on this ground alone the authority of this case is considerably weakened. At any rate, since we are satisfied that the claim of a Hindu woman for maintenance is a pre-existing right, any transaction which is in recognition or declaration of that right clearly falls beyond the purview of Section 14 (2) of the 1956 Act and therefore this authority does not lay down the correct law. We, therefore, do not approve of the view taken in this case and overrule the same.

58. As regards the Madras High Court the position appears to be almost the same. There also while a single Judge took the same view as the Bombay High Court and held that Section 14 (2) was not applicable, the Division Bench of the Court in an appeal against the order of another single Judge took the contrary view. In S. Kachapalaya Gurukkal v. V. Subramania Gurukkal. (AIR 1972 Mad 279) (supra) the Court seems to draw an artificial distinction between a claim of a widow for maintenance and a pre- existing right possessed by her. According to the High Court, while a claim for maintenance simpliciter was not a right at all the right to get a share in the husband's property under the Hindu Woman's Rights to Property Act, 1937 was a pre-existing right. The Madras High Court appears to have fallen into an error by misconceiving the scope and extent of a Hindu woman's right to maintenance. Secondly, it appears to have interpreted the proviso in such a manner as to destroy the effect of the main provision, namely. S. 14 (1) and the explanation thereto, for

which there can be no warrant in law. The decision of Natesan, J., in Gurunadham v. Sundrarajulu Chetty. (AIR 1967 Mad 429) (supra) which had been affirmed by this judgment also appears to have taken the same view and had fallen into the same error. Furthermore, the view of the learned Judge that on the interpretation given and the view taken by the Bombay High Court which we have accepted. Section 14 is intended to override lawful terms in contracts, bargains, bequests or gifts etc. is not correct, because the scope and area of sub-section (2) of S. 14 is quite separate and defined. Such a sub-section applies only to such transactions as confer new right, title or interest on the Hindu females. In such cases the titles created under sub-s. (2) are left intact and S. 14 (1) does not interest with the title so created under those instruments.

59. Thus, in short, these two decisions suffer from the following legal infirmities: (i) the Madras High Court has not correctly or properly appreciated the nature and extent of the widow's right to maintenance; and (ii) the distinction drawn by the Court regarding the share given to the widow under the Hindu Women's Rights to Property Act allotted to her before the passing of the Act in lieu of maintenance is based on artificial grounds. In fact the Act of 1937 did not legislate anything new but merely gave statutory recognition to the old Shastric Hindu Law by consolidating the same and clarifying the right of the widow which she already possessed in matter of succession under the Hindu Law. This being the position the Act of 1937 makes no difference so far as the legal status of a widow in regard to her right to maintenance was concerned. The Act neither took away the right of maintenance nor conferred the same. (iii) the Court appears to have given an extended meaning to sub-s. (2) of S. 14 of the 1956 Act which has been undoubtedly enlarged so as to set at naught the express words in the Explanation to sub-section (1) of S. 14 which expressly exclude the property given to a widow in lieu of maintenance or at a partition from the ambit of sub-s (2). In other words, such a property, according to the Explanation, is a property in which the widow would have undoubtedly a limited interest which by operation of law (i.e. force of Section 14 (1)) would be enlarged into an absolute interest if the widow is in possession of the property on the date when the Act was passed: (iv) similarly the Court failed to notice that sub-s. (2) of Section 14 would apply only where a new right is created for the first time by virtue of a gift, will etc. or the like executed in favour of the widow in respect of which she had no prior interest in the property at all. For instance, a daughter is given a limited interest in presence of the widow. Here the daughter not being an heir in presence of the widow (before the Hindu Succession Act came into force) she had no right or share in the property, and if she was allotted some property under any instrument, a new and fresh right was created in her favour for the first time which she never possessed. Such a case would be squarely covered by Section 14 (2) of the Act.

60. as the Madras High Court. This case does not discuss the various aspects which have been pointed out by us and proceeds purely on the basis that as the widow acquired a restricted estate under the compromise, Section 14 (2) would at once apply. It has not at all considered the decision of this Court that a mere description of limited interest in a grant or compromise is not a restriction but may just as well be merely a statement of the law as it stood when the grant was made. The Court has also not considered the various incidents and characteristics of the widow's right to maintenance under the Hindu Law

61. Reliance was also placed by the learned counsel for the respondents on a Division Bench decision of the Patna High Court in Shiva Pujan Rai v. Jamuna Missir, (1968) ILR 47 Pat 1118 (supra) where the High Court held that the property given to a widow under a compromise in lieu of her maintenance was covered by sub-s. (2) of S. 14. This decision was really based on the peculiar findings of fact arrived at by the Courts of fact. The High Court in the first place held that on the facts there was nothing to show that the widow acquired any interest independent of the compromise under which she was given the property. In these circumstances, it may be that the widow was given a fresh or a new title under the compromise in which case the matter would be clearly covered by S. 14 (2) of the 1956 Act. Even if this case be treated as an authority for the proposition that any property allotted to a widow under a compromise in lieu of maintenance would be covered by S. 14 (2) of the Act, then we dissent from this view, and for the reasons which we have already given we choose to prefer the view taken by the Patna High Court in later case in Sumeshwar Mishra v. Swami Nath Tiwari, (AIR 1970 Pat 348) (supra) which lays down the correct law on the subject.

62. Reliance was also placed on a Full Bench decision of the Jammu and Kashmir High Court in Ajab Singh v. Ram Singh, AIR 1959 J and K 92 (FB). In this case also the various aspects which we have indicated and the nature and extent of the Hindu women's right to maintenance were not considered at all and the Court proceeded by giving an extended meaning to the provisions of sub-section (2) of S. 14 which in that case was sub-s. (2) of S. 12 of the Jammu and Kashmir Hindu Succession Act, 1956. It is true that the leading judgment was given by one of us (Fazal Ali, J.,) but I must confess that the important question of law that has been argued before us in all its comprehensive aspects was not presented before me in that case and even the counsel for the respondents did not seriously contend that sub-section (2) of S. 14 was not applicable. For these reasons we are not in a position to approve of the Full Bench decision of the Jammu and Kashmir High Court in Ajab Singh's case which is hereby overruled.

63. Thus on a careful scrutiny and analysis of the authorities discussed above, the position seems to be that the view taken by the High Courts of Bombay, Andhra Pradesh, Patna, Mysore, Punjab, Calcutta and Kerala to the effect that the widow's claim to maintenance, even though granted to her subject to certain restrictions, is covered by S. 14 (1) and not by sub-s. (2) is based on the following premises!

(1) That the right of a Hindu widow to claim maintenance is undoubtedly a right against property though not a right to property. Such a right can mature into a full-fledged one if it is charged on the property either by an agreement or by a decree. Even otherwise, where a family possesses property, the husband, or in case of his death, his heirs are burdened with the obligation to maintain the widow and, therefore, the widow's claim for maintenance is not an empty formality but a pre-existing right.

(2) Section 14 (2) which is in the nature of a proviso to S. 14 (1) cannot be interpreted in a way so as to destroy the concept and defeat the purpose which is sought to be effectuated by S. 14 (1) in conferring an absolute interest on the Hindu women and in doing away with what was heretobefore known as the Hindu women's estate. The proviso will apply only to such cases which flow beyond the purview of the Explanation to S. 14 (1).

(3) That the proviso would not apply to any grant or transfer in favour of the widow hedged in by limitation or restrictions, where the grant is merely in recognition or declaration of a pre-existing right, it will apply only to such a case where a new right which the female did not possess at all is sought to be conferred on her under certain limitations or exceptions. In fact in such a case even if a conditional grant is made to a male, he would be bound by the condition imposed. The proviso wipes out the distinction between a male and a female in this respect.

64. The contrary view taken by the Madras, Orissa, Andhra Pradesh, Allahabad and Jammu and Kashmir High Courts proceeds on the following grounds:

(1) That a widow's claim to maintenance is merely an inchoate or incomplete right having no legal status, unless the widow gets a property in lieu of maintenance or unless a charge is created in a particular property the claim for maintenance cannot be legally enforced. Thus, where under a grant, compromise, transfer or a decree, a property is allotted to the widow in lieu of maintenance, it is not the recognition of any pre-existing right but it amounts to conferment of a new right for the first time which in fact did not exist before the said demise. This view is really based on the provisions of the Hindu Women's Rights to Property Act, 1937, under which the widow has got the right to get a share of her son in lieu of partition and even otherwise she is entitled to her share in the joint Hindu family property on partition. These High Courts, therefore, seem to be of the opinion that in view of the provisions of the Hindu Women's Rights to Property Act, the widow in claiming a share in the property has a pre-existing right which is recognised by law, namely, the Act of 1937. The same, however, cannot be said of a bare claim to maintenance which has not been recognised as a legal right and which can mature into a legally enforceable right only under a grant or demise. This view suffers from a serious fallacy, which is based on a misconception of the true position of a Hindu widow's claim for maintenance. It has been seen from the discussion regarding the widow's claim for maintenance and her status in family that under the pure Sastric Hindu Law the widow is almost a co-owner of the properties with her husband and even before the Act of 1937 she was entitled to the share of a son on the death of her husband after partition according to

some schools of Hindu Law. The Act of 1937 did not introduce any new right but merely gave a statutory recognition to the old Sastric Hindu Law on the subject. In this respect the Act of 1937 is very different from the Act of 1956, the latter of which has made a revolutionary change in the Hindu Law and has changed the entire complexion and concept of Hindu women's estate. In these circumstances, therefore, if the widow's claim for maintenance or right to get the share of a son existed before the Act of 1937, it is futile to dub this right as flowing from the Act of 1937. The second fallacy in this view is that the Court failed to consider that the claim for maintenance is an important right which is granted to the widow under the Sastric Hindu Law which enjoins the husband to maintain his wife even if he has no property. Where he has a property the widow has to be maintained from that property so much so that after the death of her husband any one who inherits that property takes the property subject to the burden of maintaining the widow. Even where the property is transferred for payment of family debts and the transferee has the notice of the widow's claim for maintenance, he has to discharge the burden of maintaining the widow from the property sold to him. Thus the nature and extent of the right of the widow to claim maintenance is undoubtedly a pre-existing right and it is wrong to say that such a right comes into existence only if the property is allotted to the widow in lieu of maintenance and not otherwise.

65. Another reasoning given by the courts taking the contrary view is that sub-s. (2) being in the nature of a proviso to S. 14 (1) all grants with conditions take the case out of Section 14 (1). This, as we have already pointed out, is based on a wrong interpretation of the scope and ambit of sub-s. (2) of S. 14.

66. Lastly, the contrary view is in direct conflict with the observations made by this Court in the cases referred to above, where a grant in lieu of maintenance of the widow has been interpreted as being in recognition of a pre-existing right so as to take away the case from the ambit of sub-s. (2).

67. For these reasons and those given heretobefore, we choose to prefer the view taken by Palekar, J., in B. B. Patil v. Gangabai, AIR 1972 Bom 16 (supra) which appears to be more in consonance with the object and spirit of the 1956 Act. We, therefore, affirm and approve of the decisions of the Bombay High Court in B. B. Patil v. Gangabai; of the Andhra Pradesh High Court in Gadam Reddayya v. Varapula Venkataraju, AIR 1965 Andh Pra 66; of the Mysore High Court in H. Venkanagouda v. Hanamanagouda, AIR 1972 Mys 286; of the Patna High Court in Sumeshwar Mishra v. Swami Nath Tiwari, AIR 1970 Pat 348; of the Punjab High Court in Smt. Sharbati Devi v. Hiralal, AIR 1964 Punj 114 and Calcutta High Court in Sasadhar Chandra Dey v. Smt. Tara Sundari Dasi, AIR 1962 Cal 438 (supra) and disapprove the decisions of the Orissa High Court in Narayana Patra v. Tara Patrani, AIR 1970 Orissa 131; Andhra Pradesh High Court in Gopisetty Kondaiah v. Gunda Subbarayudu, ILR (1968) Andh Pra 621 (supra); Madras High Court in S. Kachapalaya Gurukkal v. V. Subramania Gurukkal, AIR 1972 Mad 279 (supra) and Gurunadham v. Sundrarajulu, (AIR 1967 Mad 429); of the Allahabad High Court in Ram Jag Missir v. Director of Consolidation, U. P., (AIR 1957 All 151) and in Ajab Singh v. Ram Singh, AIR 1959 J and K 92 (FB) of the Jammu and Kashmir High Court.

68. Lastly strong reliance was placed by Mr. Natesan counsel for the respondents on a decision of this Court in Smt. Naraini Devi v. Smt. Ramo Devi, (1976) 1 SCC 574: (AIR 1976 SC 2198) to which one of us (Fazal Ali, J.,) was a party. This case is no doubt directly in point and this Court by holding that where under an award an interest is created in favour of a widow that she should be entitled to rent out the property for her lifetime, it was held by this Court that this amounted to a restricted estate under Section 14 (2) of the 1956 Act. Unfortunately the various aspects, namely, the nature and extent of the Hindu women's right to maintenance, the limited scope of sub-s. (2) which is a proviso to sub-s. (1) of S. 14 and the effect of the Explanation etc., to which we have adverted in this judgment, were neither brought to our notice nor were argued before us in that case. Secondly, the ground on which this Court distinguished the earlier decision of this Court in Badri Pershad v. Smt. Kanso Devi, (AIR 1970 SC 1963) (supra) was that in the aforesaid decision the Hindu widow had a share or interest in the house of her husband under the Hindu Law as it was applicable then, and, therefore, such a share amounted to a pre-existing right. The attention of this Court, however, was not drawn to the language of the Explanation to S. 14 (1) where a property given to a widow at a partition or in lieu of maintenance had been

placed in the same category, and therefore, the reason given by this Court does not appear to be sound. For the reasons that we have already given, after taking an overall view of the situation, we are satisfied that the Division Bench decision of this Court in Naraini Devi's case (supra) was not correctly decided and is, therefore, overruled.

69. Indeed, if the contrary view is accepted, it will, in my opinion, set at naught the legislative process of a part of Hindu Law of the intestate succession and curb the social urges and aspirations of the Hindu women, particularly in the International Year of Women, by reviving a highly detestable legacy which was sought to be buried by the Parliament after independence so that the new legislation may march with the times.

70. We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of S. 14 (1) and (2) of the Act of 1956. These conclusions may be stated thus:

(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring of recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14 (1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of S. 14 is in the nature of a proviso and has a field of its own without interfering with the operation of S. 14 (1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by S. 14 (1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of S. 14 applies to instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14 (1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14 (1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-s. (2) and would be governed by Section 14 (1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance" "or arrears of maintenance" etc. in the Explanation to Section 14 (1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words "possessed by" used by the Legislature in S. 14 (1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14 (1) she would get absolute

interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words “restricted estate” used in S. 14 (2) are wider than limited interest as indicated in Section 14 (1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee.

71. Applying the principles enunciated above to the facts of the present case, we find-

(i) that the properties in suit were allotted to the appellant Tulasamma on July 30, 1949 under a compromise certified by the Court;

(ii) that the appellant had taken only a life interest in the properties and there was a clear restriction prohibiting her from alienating the properties.

(iii) that despite these restrictions, she continued to be in possession of the properties till 1956 when the Act of 1956 came into force; and

(iv) that the alienations which she had made in 1960 and 1961 were after she had acquired an absolute interest in the properties.

72. It is, therefore, clear that the compromise by which the properties were allotted to the appellant Tulasamma in lieu of her maintenance were merely in recognition of her right to maintenance which was a pre-existing right and, therefore, the case of the appellant would be taken out of the ambit of Sec. 14 (2) and would fall squarely within Section 14 (1) read with the Explanation thereto. Thus the appellant would acquire an absolute interest when she was in possession of the properties at the time when the 1956 Act came into force and any restrictions placed under the compromise would have to be completely ignored. This being the position, the High Court was in error in holding that the appellant Tulasamma would have only a limited interest and in setting aside the alienations made by her. We are satisfied that the High Court decreed the suit of the plaintiffs on an erroneous view of the law.

73. The result is that the appeal is allowed, the judgment and decree of the High Court are set aside, the judgment of the District Judge, Nellore is hereby restored and the plaintiff’s suit is dismissed. In the peculiar circumstances of this case and having regard to the serious divergence of judicial opinion of the various Courts in India, we would make no order as to costs in this Court.

Appeal Allowed.