CHAPTER – IV

HINDU WOMEN’S RIGHT TO PROPERTY: POSITION AFTER PASSING OF THE HINDU SUCCESSION ACT, 1956

INTRODUCTION:

The Hindu Succession Act, 1956 marks a new era in the history of social legislation in India. A vigorous attempt has been made to bring some reforms of far reaching consequences in the system of inheritance and succession. The law in these areas needed complete overhauling as some of the legal provisions under the old textual law had become obsolete. For example, the non-inclusion of female relatives to inherit the property and giving preference to the males. The law in this respect needed some revolutionizing changes so as to recognize the long felt right of inheritance of Hindu females at par with males\(^1\).

Proposals for reforming the Hindu Personal Law particularly, relating to property, have been before the country in one form or the other since the forties and the setting up of Rau’s Committee to inquire into and suggest reforms in Hindu Law. The question of codifying the Hindu Law of succession was engaging the attention of the Government since 1941 when a Committee was formed which is known as Rau's Committee to report on the desirability of codifying Hindu Law and more particularly to examine the Hindu Women’s Rights to Property Act, 1937, to remove the doubts as to the construction of the Act and so to remove any injustice that might have been done to the daughter. The Committee while suggesting amendments in the existing law, recommended that the best course would be to codify the entire Hindu Law in successive stages. The Rau's Committee's Hindu Code of 1947 was the result of that recommendation.

\(^1\) R.K. Aggarwala, Hindi Law, 22\textsuperscript{nd} Ed. 2007, P. 243
The draft Hindu Code prepared by the Rau's Committee underwent substantial changes in the course of its examination by a Select Committee of Provisional Parliament in 1948. But the positive problem of modernization of Hindu Law on important issues could not be dealt with except by a straight legislation. The Hindu Code Bill introduced in the Provisional Parliament based on the recommendation of Rau's Committee, was in part vigorous attempt to incorporate radical reforms.

In pursuance of its accepted policy to codify Hindu Law in gradual stages, the Legislature passed the Hindu Marriage Act in 1955 dealing with the law relating to marriage and divorce among Hindus and it thus facilitated the passage of the Hindu Code Bill. The second of such positive measures is the enactment of the Hindu Succession Act, 1956, which became law on 17th June. 1956, the day which received the assent of the President (Published in the Gazette of India. Extraordinary, part II section 1 dated 18/06/1956). The third installment of the Code dealing with Minority and Guardianship among Hindus has also become law on 5th August, 1956, and the fourth is the Hindu Adoptions and Maintenance Act, 1956, which became law on 21st December, 1956.

REASONS:

The Rau Committee vested a Hindu woman with full rights over stridhan property and laid down certain rules of succession with respect to stridhan, The Select Committee on the Hindu Code incorporated the substance of all these provisions in a separate chapter headed "Woman's Property" and provided that after the commencement of the Code, whatever property was acquired by a woman became her absolute property and devolved on her own heirs. Clause 16 of the Bill follows the Select Committee's draft and declares that whatever property is acquired by a Hindu woman after this law, it shall be her absolute property and the term "property" is defined as comprehensively as possible for
the purpose. 

In the opinion of the Joint committee there is no reason why the Hindu woman’s limited estate should not be abolished even with respect to existing properties. Clause 19 of the Bill has, therefore, been omitted and this clause [which was clause 16 in the Joint Committee stage corresponding to the present section 14] has been suitably modified.

OBJECTS:

The Hindu Succession Act, 1956 (Act No. 30 of 1956, hereinafter referred to as the Act) has been passed to meet the needs of a progressive society. It removes inequalities between men and women with respect to rights in property and it evolves a list of heirs entitled to succeed on intestacy based on natural love and affection rather than on efficacy. The Act has been passed to codify and amend the Hindu Law regarding succession.

SCOPE AND APPLICATION OF THE ACT:

The Hindu Succession Act applies – (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj; (b) to any person who is a Buddhist, Jaina or Sikh by religion; and (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matter dealt with herein if this Act had not been passed.

The Act shall apply to the members of any Scheduled Tribe within the meaning of Clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs. (Section 2

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2 Sabzwari, Hindu Law (Ancient & codified) 2nd Ed. 2007, p. 1078.
3 R.K. Aggarwala, Hindi Law, 22nd Ed. 2007, p. 243,244.
4 Ibid p. 245-246
of the Act). The Hindu Succession Act is applicable to members of Uraon community\(^5\).

**SCHEME OF THE ACT:**

The scheme of the Act in the matter of succession to the property of Hindu dying intestate (after the coming into force of the Act) is to lay down a set of general rules of succession to the property of a male Hindu in section 8 to 13 including rules relating to ascertainment of the shares and portions of various heirs, enumerated in the schedule. It is part of this scheme to enact in sections 15 and 16 separate general rules affecting succession to the property of female intestate. Section 17 provides for modifications and changes in the general scheme of succession to the property of male and female Hindu in relation to persons hitherto governed by Marumakkattayam and Aliyasantana Law. sections 18 to 28 of the act are given the title of “General provisions relating to succession” and lay down rules which are supplementary to the provisions in sections 5 to 17.

**SALIENT FEATURES OF THE ACT:**

The following are some of the distinguishing features\(^6\) of the Hindu Succession Act, 1956:

1. The Hindu Succession Act. 1956 extends to the whole of India except the state of Jammu and Kashmir. (Sec.1)

2. The Act applies to all Hindus, (including a virashaiva, a lingayat or member of Brahma, Prarthana or Arya Samaj) Buddhists, Jains and Sikhs but not to Muslims, parsis and Jews. It has further been extended even to those persons, one of whose parents is a Hindu. Buddhist, Jain and Sikh. (Sec. 2)

\(^5\) Lalsai vs. Bodhan Ram, AIR 2001MP 159; Kailash Singh vs. Mewalal Singh AIR 2002 MP

\(^6\) Dr. S.R. Myneni, Hindu Law (Family Law – I) 1st Ed. 2009 pg. 487; R.K. Aggarwala, Hindi Law, 22nd Ed. 2007, p. 244-45
One of the most important features of the Act is that the right of a Hindu female to inherit property has been fully recognized and she has been made entitled to a share equal to the male heirs. Women's limited estate has been abolished and whatever property has been or shall be inherited by a Hindu female will be or shall be her absolute property. The Act has given an important place to Hindu females in the classification of heirs.

3. The Act has overriding effect. It abrogates all the rules of the law of succession hitherto applicable to Hindus, whether by way of any text, customs or usage, having force of law. Any other law contained in the central or state legislation shall cease to have effect in so far as it is inconsistent with any of the provisions contained in the Act. (sec. 4)

4. The Act has abolished importable estate and the special mode of its succession. (Section 5)

5. The Act does not apply to the property of a person who has contracted marriage under the provisions of the Special Marriage Act, 1954. [Section 5].

6. The concept of coparcenary has undergone a change in the sense that succession to coparcenary property was governed by rule of survivorship. In this rule the female heirs did not have any place and the property, on the death of a male heir, devolved upon the rest of the male members of the coparcenary. Now under the Act the rule of survivorship has been abolished. The Act provides for four categories of heirs, the first of which is class I heirs, which consists of eight female heirs and four male heirs.

7. The order of succession provided by the Act is based on the concept of love and affection. The rule of preference based on right to offer
pinda or propinquity of blood has been discarded by the Act.

8. The Act entitles even remotest agnate or cognate to be the heir.

9. The Act makes no distinction between male and female heirs.

10. The Act will also not apply to a Mitakshara coparcenary property except when a coparcener dies leaving female heirs mentioned in Section 6. The Act has opened the right to succeed to certain females to the interest of a deceased in his coparcenary property. (Sec. 6)

11. The Act has repealed provisions of different Acts relating to succession under Matriarchal system prevailing in the South. Separate provisions for the devolution of interest in the property of a tardwad tavazhi. kutumba. kavaru or illom have been provided (Sec.7)

12. The Act has provided uniform order of succession governing the property of a male Hindu, with a few changes in respect of the Marumakkattayam and Aliyasantana Law. (Sections 8 and 17)

13. The Act has dispensed with the rules of succession prevailing under Mitakshara and Dayabhaga law, and provided a uniform code for determining rules of succession.

14. The Act provides the order of succession among heirs in the schedule (Sec. 9), rules relating the distribution of property among heirs in class 1 of the schedule (Sec. 10), and among heirs in class II of the schedule (Sec. 11) The order of succession of agnates or cognates, as the case may be, is according to the degrees (Section 12), and they are computed according to the rules laid down therein. (Section 13)

15. The Act has abolished Hindu women's limited estate and made her absolute owner of the property irrespective of its source of acquisition. Any property acquired by a Hindu female in any lawful manner whatever and
possessed by her becomes her absolute property and she enjoys absolute power to dispose it in a way she desires (Sec. 14)

16. The Act has abolished stridhan and provided the rules of succession relating to the different kinds of stridhan (Sec. 15)

17. The Act has provided uniform order of succession also with respect to the property of a female Hindu. If a woman dies intestate, her children would become her first heirs followed by her husband and her parents. In the absence of any issue, property inherited from her father would revert to his family and property inherited from her husband or father-in-law will revert to husband heirs. [Sections 16 and 17].

18. The Act lays down some general rules of succession inter alia to the effect that heirs related to a male or female intestate by full blood are to be preferred to those related by half blood if the nature of relationship is the same in every other respect (sec 18)

19. Where two or more heirs succeed to the property of an intestate they shall take their share per capita and not per stripes and as tenants-in-common and not as joint tenants. (Section 19).

20. The right of child in womb at the intestate's death and subsequently born alive, shall relate back to the date of intestate's death. (Section 20).

21. Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which. Survived the other, then, for all purposes, affecting succession to property it shall be presumed until the contrary is proved that the younger survived the older (Sec. 21)

22. Where property of an intestate devolves upon two or more heirs and anyone of such heirs proposes to transfer his or her interest, the other heirs shall have a preferential right to acquire the interest proposed to be transferred, i.e. the Act recognizes the so called right of pre-emption.
(Section 22).

23. The right of residence to a female heir in the dwelling house of the intestate family is given if she is unmarried or is married but discarded or is a widow (sec 23) (this section has been deleted by the Hindu Succession (Amendment) Act. 2005).

24. Murderer is not entitled to succeed to the property of person murdered, an grounds of justice and equity. (Section 25).

25. A convert's descendants have been disqualified from inheriting the property of their Hindu relatives. [Section 26]. It is interesting to note that under the Act the convert has not been disqualified but it is only his descendants who are excluded from inheritance.

26. The disqualified heir is treated as one who had predeceased the intestate. (Section 27).

27. Disease, defect or deformity is now not any ground of exclusion from inheritance under the Act. (Section 28)

28. If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject (See. 29)

29. The Act entitles a male Hindu to dispose of his or her interest in a Mitakshara coparcenary property by will. [Section 30].

30. The right of illegitimate children to succeed to their mother's property has been preserved and recognized but not to the father's property. On the other hand the illegitimate son of a person by a continuously kept concubine is not recognized under the present Act)
31. In the schedule to the Act, lists of heirs in class I and class II are given as explanation to Section 8 of the Act.

Major changes have been made in the Act through the Hindu Succession (Amendment) Act, 2005.

**FUNDAMENTAL CHANGES BROUGHT BY THE HINDU SUCCESSION ACT, 1956:**

1. There were two schools in old Hindu Law namely i) Mitakshara and Dayabhaga governing the Hindu succession. However, the Hindu Succession Act, 1956 brings all the schools into a uniform system.

2. In old law there was a distinction between male and female heirs, but the Hindu Succession Act, 1956 makes no distinction between male and female heirs.

3. Under the old law the rule of preference is based on right to offer pinda or propinquity of blood, but the order of succession provided by the Act is based on the concept of love and affection.

4. Under the old law simultaneous succession of different types of heirs was not recognized. Now class 1 heirs take simultaneously under the Hindu Succession Act.

5. While female heirs (except in Bombay) took only a life estate, under the Hindu Succession Act, all female heirs take an absolute estate:

6. Under the old law, the samanodakas with the 14th degree marked the limit of agnatic kinship and similarly five degrees on the mother's side and seven degrees on the father's side marked the limits of cognate relationship. However now these limits have been removed by the Hindu Suecession Act, 1956.
7. The old law gave the benefit of the doctrine of representation only to the sons, grandsons and great grandsons of predeceased sons. But the Hindu Succession Act, 1956 extends the benefit of this doctrine also to the children of predeceased daughters and also to daughters of predeceased sons and daughters of a pre-deceased son of a predeceased son as also to the widow of a pre-deceased son and the widow of a predeceased son of a predeceased son.

8. Under old law, there were no rights to certain female heirs to succeed to the interest of a Mitakshara coparcener, but the Hindu Succession Act, 1956 has given the rights to a certain female heirs to succeed to the interest of a Mitakshara coparcener.

9. Under old law, there was stridhana and women's Estate (Limited Estate), but the Hindu Succession Act abolished stridhan and women's estate.

10. Under old law, succession to stridhana depended upon the nature of the stridhana and the nature of the marriage (whether approved or unapproved) and the particular school of law to which the parties belonged. The Hindu Succession Act devised a simplified system.

11. Under old law, there was a lot of confusion and disorder in computing the order of succession among agnates or cognates. But the Hindu Succession Act, 1956 made the provisions very clearly the order of succession of agnates or cognates as the case may be.

12. Under the old law the rights of illegitimate issue depended upon the caste to which the parents belonged and they also varied from school to school. Now, under the Hindu Succession Act, 1956 illegitimate kinship is recognized only with reference to the mother for purposes of inheritance.

13. The old law of succession had rules of disinherirtance based upon disqualifications e.g. lunacy and idiocy. Similarly unchastity of widow
disqualified her for inheritance. Now the Hindu Succession Act, 1956 removed all these disqualifications and diseases, defect or deformity is no ground of exclusion from inheritance under the Act.

14. Under old law, in a joint family, on the death of a coparcener, the principle of survivorship operated and the widow or daughter or mother of the deceased coparcener or his predeceased son's daughter, or predeceased daughter's daughter cannot inherit his share. The Hindu Succession Act, 1956 remedied this.

15. Under old law of succession a coparcener could not make a will in respect of his interest in the joint family property. Section 30 of the Hindu succession Act, 1956 enables him to execute a will in respect of such property.

16. Under old law of succession, there was a system of impartible estate. But the Hindu Succession Act abolished the impartible estate not created by statutes.

17. Under old law of succession, there was no uniform order of succession. But, Section 8 of the Hindu Succession Act provides for the uniform order of succession governing the property of a male Hindu and Section 15 of the Act provides the uniform order of succession governing the property of a female Hindu.

18. There was no particular type of organized method regarding the preferable heirs and it arouses several difficulties and disputes, injustices, inconveniences etc. However, there is a schedule appended to the Act and the schedule containing two classes of heirs. Class I are preferable heirs than class II and females are given equality on par with male.
The above are only some of the broad lines on which changes have been effected under the Hindu Succession Act, 1956\(^7\).

**OVERRIDING EFFECTS OF THE HINDU SUCCESSION ACT, 1956:**

Section 4 of the Act mentions of the overriding effect\(^8\) of the Act.

Section 4(1) of the Hindu Succession Act, 1956 provides that "save as otherwise expending provided in this Act:-

a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

b) Any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.

The Hindu Succession (Amendment) Act, 2005 omitted the sub-section (2) of Section 4 of the Hindu Succession Act, 1956 (w.e.f. 5\(^{th}\) September, 2005) which reads as below:

Sub section (2) on the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provision of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings".

According to Section 4 all existing laws texts, customs, and usages which are inconsistent with the Act, are repealed by the Act. It is obvious that the customary rules of succession according to primogeniture have been abolished by the Act. But where no provision is made in the Act, Hindu Law as found immediately before the commencement of the Act shall continue to

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\(^7\) Dr. S.R. Myneni, Hindu Law (Family Law –I) 1st Ed. 2009 p. 489.

be in force. This section does not affect the provisions of law made for the prevention of fragmentation of agricultural holdings, etc. The overriding effect of the Act created by Section 4 of the Act is only in respect of such matters, "for which provision is made in this Act". In absence of any provision in the said Act the question of the said Act overriding any test, rule, or interpretation of Hindu Law in force immediately before the commencement of the Act does not arise. For example, the fact that the right of the mother to maintenance has been recognized and codified under the Hindu Adoptions and Maintenance Act, 1956, 'is not at all indicative of the fact that she was not intended to be given a share at partition of joint-family property.\(^9\)

Section 4 abrogates only those provisions of rules of Hindu law which are inconsistent with the provisions of this Act and cannot be said to have abrogated all the rules of Hindu Law. The class of reversioners has been dispensed with and now after passing of the Act they do not enjoy any such status, The Act has conferred absolute right upon the Hindu females with respect to property acquired by them through lawful means. Hence the old class of reversioners does not find any place in the existing law. After the death of the husband, when his widow inherits any property she takes it absolutely and after her death, her legal heirs would inherit the property.

The Act is a codifying enactment. It supersedes prior law and lays down the whole of the law of succession in the form of a Code. Therefore, appeal to any rule of law of succession previously applicable to Hindus is now permissible only in respect of matters, for which no provision is made in the Act. Thus the conception of a reversioner is not completely abolished by the provision of this section;\(^10\) and appeal may still lie in respect of the properties which concerned

the reversioners before commencement of the Act.

The Hindu Succession Act, 1956, does not purport to abolish custom in the abstract. This does not create any discrimination in the application of custom in circumstances exactly similar. If custom with regard to one aspect of law is abolished that does not mean that its continuance with regard to other aspects of law would be a discrimination hit by Article 14 of the Constitution.\textsuperscript{11}

The Hindu Succession Act, 1956 does not affect the law relating to joint family and partition. It also does not abrogate any rule of customary law in Punjab relating to restriction on alienation by a male proprietor. In Joginder Singh v Kehar Singh (AIR 1965 Punj 407). It was held that the right of reversioners to challenge any such alienation made before the commencement of the Hindu Succession Act, 1956 does not cease to exist.

In Sundari vs. Laxmi (AIR 1980 SC 198), it was held that the provisions of Section 7 of the Hindu Succession Act. 1956 will apply in case of the undivided interest of a Hindu in the Aliyasantana. Kutumba or Kaveru and the rule of devolution given in Section 36 (5) of the Madras Aliyasanta Act will be suppressed in this respect.

In Ram Singari Devi v. Govind Thakur (AIR 2006 Pat 169), it was held that once the law with regard to succession among Hindus has been codified making drastic changes in otherwise well established norms of succession, codified law will have to be given effect to as against pre existing practices or rules.

It is to be noted that private properties of the earstwhile Rulers of Indian states do not become properties of Hindu United family by virtue of merger and accession. Accordingly section 4 of this Act and the twenty-sixth Amendment to Constitution have no applicability to such cases.\textsuperscript{12}

\textsuperscript{11} Kesr Dev vs. Nanuk Singh. AIR 1958 Punj. 44.
DEVOLUTION OF INTEREST IN COPARCENARY PROPERTY BEFORE HINDU SUCCESSION (AMENDMENT) ACT, 2005, SECTION 6:

This provision deals with the question of devolution of undivided share of a Mitakshara coparcener in coparcenary property, who dies intestate after coming into operation of this Act.\(^{13}\)

It is worthwhile to note that the Mitakshara law recognised two modes of devolution of property namely, survivorship and succession. The rule of survivorship applied with respect to coparcenary property, whereas the rule of succession applied to property held as separate or self acquired property by male Hindu who may be a member of joint family. The property of a male Hindu may consist of his own separate or self acquired property or an interest in the Mitakshara coparcenary property or both. Whenever a question arises as to mode of devolution of coparcenary interest of a Mitakshara Coparcener, Section 6 of the Hindu Succession Act, 1956. provides the solution. Section 6 runs as under:

"Whenever a male Hindu dies after the commencement of this Act, having at the time of his death, an interest in the Mitakshara Coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative, specified in that class who claims, through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

**Explanation 1**— For the purposes of this Section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that

\(^{13}\) Dr. U.P.D. Kesari, Modern Hindu Law, 6\(^{th}\) Ed., 2007 page 262.
would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2 — Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein. This section may be read with Sections 8 and 30 of the Act."

The Section contains one of the most revolutionary changes in this Act. First of all, it provides a rule of survivorship to be applied with respect to an undivided share in the Mitakshara coparcenary property of a Mitakshara coparcener who dies intestate. At the second instance, it provides a special rule of devolution of undivided share of Mitakshara coparcener in Mitakshara coparcenary property who dies intestate. In the second case the devolution will be in accordance with the provisions of this Act, which lay down that where a Mitakshara coparcener dies intestate leaving behind a female heir of class I or a male heir claiming through such female heir, the rule of survivorship will not apply, instead the undivided interest will devolve in accordance with this Act, i.e., according to intestate succession under Section 8. Thus two modes of devolution of undivided coparcenary interest of a Mitakshara coparcener has been laid down in section 6.

(i) The rule of survivorship—(first part of Section 6)

(ii) The rule of succession—(Proviso to Section 6)

The first, mode, as given above, is strictly according to Mitakshara law, whereas the second mode is the creation of this Act, which includes the female heirs of class I also, along with the male heirs, who shall be entitled to claim
equal shares in the coparcenary interest of Mitakshara coparcener dying intestate.

The implications of the first mode would be that where the Mitakshara Coparcener dies intestate leaving behind only the male heirs of class I the rule of survivorship will apply. This kind of situation can hardly be conceived, as the rule of survivorship will come into operation only if there is complete absence of female heirs of class I heirs. On the other hand presence of any of the female heirs of class I would demolish the rule of survivorship and the entire law of devolution will be governed by intestate succession as laid down in Section 8 to 12.

In any case the concept of Mitakshara coparcenary and coparcenary property remains relevant in the context of Sections 6 of the Act. It would be desirable to explain these two concepts:

**Mitakshara Coparcenary**

Coparcenary consists of male members who acquire an interest by birth in the coparcenary property and can claim partition of his interest in such property from its holder. It commences with a common ancestor and includes a holder of joint property and all his descendants in male line who are not removed from him by more than three degrees. Thus a son, grandson and great grandson are coparceners along with the last male holder of the joint property but a great great-grandson cannot be a coparcener with him because he is removed by more than three degrees from the holder. Besides only males can be coparceners and all females are excluded from the coparcenary. Though a common ancestor is necessary for the origin of a coparcenary it may yet continue without him.\(^\text{14}\)

\(^\text{14}\) Dr. U.P.D. Kesari, Modern Hindu Law, 6\(^{th}\) edition, 2007, page 263
In the above diagram M is the common male ancestor. A B C D are his four sons. In the lifetime of M, A B C D his four sons, S^1 and S^2, S^5 and S^6, S^7 and S^8, i.e., his grand sons and great grand sons are coparceners with him. S^3, S^4, S^9 and S^{10} are not coparceners as they are beyond three degrees from M, the common ancestor. But if M dies during the life time of above-mentioned descendants, S^3 and S^9 will enter the coparcenary and would become coparceners, but S^4 and S^{10} would be out from the coparcenary as both of them are beyond three degrees from A and D.

Coparcenary property — Coparcenary property means and includes

(i) Ancestral property, i.e., a property which a person has inherited from his father, father's father and father's father's father.

(ii) Acquisition made by the coparceners with the help of ancestral property;
(iii) Joint acquisitions of the coparceners even without such help provided there was no proof of intention on their part that the property should not be treated as joint family property, and

(iv) Separate property of the coparceners thrown into common Stock.

The Section contemplates the existence of a coparcenary consisting of propositus and one or more males at the time of death of the propositus. Once the coparcenary comes to an end by partition there is no question of one member of the erstwhile coparcenary taking the property obtained by another member of that coparcenary at the partition by survivorship. The section does not apply to separate property obtained at partition of coparcenary.\(^\text{15}\)

**Rule of survivorship**

The first part of the section makes it clear that in case a Mitakshara coparcener dies intestate leaving behind only male heirs of class I of the Schedule and there is no female heir mentioned in that list of class I, the rule of survivorship shall come into operation with respect to undivided share of the deceased coparcener in the coparcenary property.

In Mitakshara, the rule of survivorship applied with respect to coparcenary interest of a coparcener who dies intestate. According to the rule, coparcenary interest devolved upon only male surviving coparceners not on females. For example, A, B, C three brothers constitute a coparcenary. On the death of A, his interest in the coparcenary property devolved on B and C, i.e., his two surviving brothers not on his own heirs that is his widow and daughter.\(^\text{16}\)

In Bhaga Pruseth vs. Purni Devi,\(^\text{17}\) the court observed that if coparcenary property was on devolution and a member of joint family died during jointness of

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15 Tripursundari vs. Srinivas Pillai. AIR 1072 Mad. 264.  
16 AIR 1972 Mad. 284  
17 AIR 2003 NOC (Orissa) p. 171
family without male issue, his married daughter will not be entitled for any share in coparcenary property because devolution of property is by survivorship.

Proviso to Section 6.—The proviso to the section confers new rights upon the specified females heirs mentioned in class I of the Schedule and superimposes upon the entire structure of Mitakshara law of survivorship a rule whereby female heirs would replace such coparceners who have not found place in class I of the Schedule. Thus for practical purposes the rule of survivorship has become redundant. Class 1 of the Schedule includes 12 heirs out of which 8 are female heirs and four are male heirs but out of them one male heir claims through a female i.e., deceased daughter's son. The list is as under:


In view of above large number of female relatives it is hardly conceivable that there would be an occasion to attract the rule of survivorship. Thus where a Mitakshara coparcener dies intestate having his interest in the coparcenary property and leaves behind him any of the above female relatives or a male relative claiming through female, his interest would devolve according to the provisions of this Act which provides for the equal shares among the male and female relatives of class I of the Schedule.

In G.VS. Kishan Rao vs. Andhra Pradesh State, the Court observed that where a Mitakshara coparcener dies leaving his interest in the coparcenary property and behind him there is some female relative mentioned in class I of the Schedule, his interest would devolve according to the provisions of this Act. In the instant case a male Hindu died leaving behind his widow and three sons and

\[18\] AIR 1987 A.P. p. 239
two daughters. Here the widow at first would be entitled to an equal share along with her sons. Thus just before the demise of her husband, if his coparcenary interest had been partitioned, it would have been divided into five equal shares and so her husband three sons and herself would be entitled to l/5th share each. By fictional partition she would be entitled to l/5th share as if partition has been effected between her husband and three sons. Thereafter l/5th share of the deceased husband will be equally divided among the three sons, two daughters and the widow. Accordingly each one of them would be getting l/30th.

In Sushilabai vs. Narayanrao Gopairao, the Bombay High Court observed: "The effect of the proviso read with Explanation 1 thereto is that when there is an heir of the nature specified in the proviso, the share of the deceased coparcener has to be determined on the assumption and deemed fiction that a partition of the property has taken place immediately before his death as the Explanation points out that such legal fiction has to be given effect to, irrespective of the fact whether the deceased coparcener is entitled to claim partition or not.

The widowed daughter-in-law can claim a share in the coparcenary interest of her father-in-law after he dies intestate in a joint family as she is class I heir to him as mentioned in the Schedule to Section 8.

Where there is a coparcenary between A B and C and A dies leaving behind his widow and daughter the l/3rd share of A in coparcenary property will devolve on the widow and daughter together and each one will take 1/6 share. Later on B also dies intestate leaving no heirs mentioned in class I of the Schedule. The l/3rd share of B shall devolve on C as he is the only surviving coparcener. The widow and daughter of deceased A would get nothing out of the share of deceased coparcener B.

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19 AIR 1975 Bom p. 237
20 Basavalingamma vs. Shardamma. AIR 1984 Karn p. 27
21 Raghutmath Tewari vs. Mt. Rikhiyn. AIR 1985 Pat. p. 29
Where a Mitakshara Coparcener dies leaving behind his son and a son of the predeceased daughter. His interest in the coparcenary property would devolve upon them in equal shares, as both are class I heirs. Thus 1/2 share of the deceased coparcener shall be taken in equal shares by the son and the predeceased daughter's son.22

**Explanation 1—Computation of interest of a deceased coparcener**—In a Mitakshara coparcenary the interest of a deceased coparcener is not defined but the fluctuating interest of the coparcener has been settled by the Explanation 1 of the section for purposes of devolution. Explanation 1 lays down that for purposes of this section the interest of a Hindu Mitakshara coparcener shall be the share which he would have got had there been a partition immediately before his death irrespective of the fact whether he was entitled to claim partition or not. The language of the Explanation expressly indicates that, though fictional partition to ascertain the share of the deceased is presumed to have taken place immediately before his death, it does not automatically result in the disruption of family. To determine the share ordinary rule of Hindu law will be applied.

The Explanation 1 incorporates the concept of notional partition. This notional partition is for the purpose of determining the interest which was otherwise liable to devolve by survivorship and for the ascertainment of the share of the relatives mentioned in class I of the Schedule out of the interest of the deceased coparcener. The operation of the notional partition and its inevitable corollaries and incidents is to be only the purposes of this section, namely, devolution of interest of the deceased in the coparcenary property. It need not to be taken to be an actual partition.23

The Supreme Court made a very important pronouncement in Gurupada Khandappa vs. Heerabai24 on Explanation 1 of Section 6 which has set at rest

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22 Rang Natham Chettiar vs. Annamalai Mudaliar. 82 Mad L.W. 258
24 AIR 1978 S.C 1239.
the controversy between the Bombay, Orissa and Gujarat High Courts on the one hand and Allahabad and Delhi High Courts on the other hand regarding the interpretation of the Explanation 1 of Section 6. Some of the writers on Hindu law also agreed with the two interpretations of the Explanation 1 which was an incorrect approach. The confusion arose on account of not taking into account the provisions of Hindu Women's Right to Property Act, 1937 which conferred new rights on widows of coparceners. In 1960, Section 31 of the Hindu Succession Act, 1956 was amended as a result of which Hindu Women's Right to Property Act, 1937 was revived and according to the concept of notional partition (as incorporated in the Explanation 1) a specific share would be allotted to her along with her husband (deceased) and sons in the coparcenary property and thereafter the concept has the effect of vesting in the widow her aliquot share in the interest of deceased.

In the above case, one Khandappa died leaving behind his wife, Heerabai two sons and three daughters after coming into force of the Act. His wife, Heerabai filed a suit for partition and separate possession of 7/24 share in the joint family property on the basis of Section 6 of the Act. She claimed that if a partition, had taken place between her husband and two sons immediately before the death of her husband Khandappa, she, her husband and two sons would have each been allotted a one fourth share in the family property and on the death of her husband the one fourth share which would have been allotted in her favour had devolved in equal shares on her two sons and three daughters. Thus she claimed the one fourth share which had to be allotted in her favour on the notional partition and 1/24th share, (which was one sixth of the one fourth share of her husband) i.e. in all 7/24th share. The court accepted the claim and decreed the suit. The court made the following observation:

"In order to ascertain the share of heirs in the property of a deceased coparcener it is necessary in the very nature of things, and as the very first step, to ascertain the share of the deceased in the coparcenary property. For, by doing
that alone can one determine the extent of the claimant’s share. Explanation 1 to Section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of a Hindu Mitakshara coparcener "shall be deemed to be." The share in the property that would have been allotted to him if a partition of that property had taken place immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on that assumption and ascertain the share of the heirs without reference to it."25

In State of Maharastra vs. Narayan Rao,26 the Supreme Court accepted the rationale of the above case to the effect that when a female member who inherits an interest in the joint family property under Section 6 of the Act files a suit for partition expressing her willingness to go out of the family she would be entitled to get both the interest she has inherited and the share which would have been notionally allotted to her, as stated in Explanation 1 to Section 6 of the Act. But it cannot be an authority for the proposition that she ceases to be a member of the family on the death of a male member of the family whose interest in the family property devolves on her without her volition to separate herself from the family. A legal fiction should no doubt be carried to its logical end and to carry out the purposes for which it is enacted but it cannot be carried beyond that.

It is thus clear that notional partition does not disrupt the joint; family nor does it bring the coparcenary to an end. However, the Mitakshara concept of coparcenary and the rule of survivorship, one of the necessary corollary of coparcenary have necessarily been eroded.

26 AIR 1985 SC. 716.
In Smt. Raj Rani vs. Chief Settlement Commissioner,\(^{27}\) the court reiterated the view expressed in Gurupada Khandappa case. In this case A, a male Hindu, died leaving behind him three sons, three daughters and one widow. In the division of coparcenary property between the deceased A and his three sons as per notional partition, the property shall be divided into five shares, i.e., A, the widow and three sons getting one fifth share each. Thereafter one fifth share of the deceased A was equally divided amongst the three sons, three daughters and the widow each getting \(\frac{1}{35}\)th share out of \(\frac{1}{5}\) share left. The following diagram would make the whole position clear:

\[
\begin{array}{cccccccc}
A & & & W & & & & \\
& & & \frac{1}{5} + \frac{1}{35} & & & & \\
S & & & \frac{1}{5} + \frac{1}{35} & S1 & \frac{1}{5} + \frac{1}{35} & S2 & \frac{1}{5} + \frac{1}{35} & D & \frac{1}{35} & D1 & \frac{1}{35} & D2 & \frac{1}{35}
\end{array}
\]

In Vidya Ben vs. Jagdish Chandra,\(^{28}\) a coparcener died leaving behind a widow, a son and four daughters. It was held by the Gujarat High Court that the coparcenary property according to Explanation I to the section would be divided into three shares, deceased coparcener being entitled to \(\frac{1}{3}\) share, widow \(\frac{1}{3}\) share and son also entitled to one third share. Thus the \(\frac{1}{3}\) share of the deceased coparcener would thereafter devolve upon his heirs of class I namely, widow, the son and four daughters, each one of them will be entitled to \(\frac{1}{18}\)th share as per present law.

In Rangubhai vs. Laxman\(^{29}\) A died leaving behind his widow W and an adopted son S. The question arose as to the shares of W and S. According to

\[^{27}\text{AIR 1984 SC. 1234.}\]
\[^{28}\text{AIR 1974 Guj. 23}\]
\[^{29}\text{AIR 1966 Bom 169}\]
Bombay High Court, as per rule of notional partition A’s share shall be determined as 1/3 (one third) as also the share of W and S being determined 1/3 each. Subsequently 1/3 share of deceased, A would be equally divided into W and S i.e., each getting 1/6 share. Thus 1/3+1/6 that is 1/2 would be the share of W and S each.

In Aii and Naik vs. Haribandhu Naik, the Orissa High Court as early as in 1967 interpreted the rule of notional partition as above. A died leaving behind his widow W, two sons S₁ and S² and five daughters D₁, D², D³, D⁴ and D⁵. It was held that in order to determine the share of the deceased coparcener, A, notional partition has to be assumed and accordingly his share would be deemed to be one fourth (1/4). Thus the shares of S₁ and S² and the W would be 1/4 (one fourth) each. The one fourth share of deceased A would be divided into eight parts equally and each son each daughter and the widow i.e., W, S₁, S², D₁, D², D³, D⁴ and D⁵ would get 1/32. Thus W will get 1/4+1/32, S₁ and S² will get 1/4+1/32 each and D₁, D², D³, D⁴ and D⁵ will get 1/32 each.

**Explanation 2 — Separated member of the Coparcenary** - Whenever there is a partition in the Mitakshara coparcenary, each coparcener gets an equal share. The partition may be absolute or partial. When it is partial i.e. one coparcener separates from the others and others remain joint or become united, on the death of any one of the coparceners who remained joint the proviso will come into operation but the separated coparcener or his heirs cannot claim any share in the interest of the deceased coparcener in the coparcenary. This explanation is not applicable to a female heir, as she is not a coparcener.

Explanation (2) of Section 6 will not be attracted in such cases and it cannot be said that the sons will not be entitled to any share. Explanation 2 excludes the son who has separated himself from the coparcenary to claim any share from the coparcenary’ interest of the father, but where all the sons have

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AIR 1967 Orissa. 194
separated on account of a general partition, Explanation 2 will not apply as in that case all the sons are equally placed. The Patna High Court in Satya Narayan Mahto vs. Rameshwar Mahto,\(^{31}\) clearly maintained that ii is not correct to say that in view of Explanation 2 to Section 6. because the deceased had separated from his sons, the sons or their heirs cannot claim a share in his property and that his widow shall be sole successor. Under Explanation 2, the undivided person excludes the divided one from succession. Where a Hindu father who has separated from all his sons dies leaving behind a widow, two daughters, one son and heirs of two predeceased sons, Section 8 and proviso to Section 6 would apply to the succession of the coparcenary property owned by the deceased. The property has to be divided equally and each set of heirs has to take 1/6 share.

**SECTION 8 OF THE HINDU SUCCESSION ACT, 1956:**

That the property of a male Hindu dying intestate shall devolve according to the provisions of this Section\(^ {32}\):

a) Firstly, upon the heirs being the relatives specified in class 1 of the schedule;

b) Secondly, if there is no heir of class I. then upon the heirs being the relatives specified in class II of the schedule;

c) Thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

d) Lastly, if there is no agnate, then upon the cognates of the deceased.

**Class 1 heirs**

As per the schedule of the Act, the following are class 1 heirs:

\(^{31}\) AIR 1982 Pat 44.

i) son;  ii) daughter;  iii) widow;  iv) mother;  v) son of a pre-deceased son;  vi) daughter of a pre-deceased son;  vii) son of a pre-deceased daughter;  viii) daughter of pre-deceased daughter;  ix) widow of a predeceased son;  x) son of a pre-deceased son of a pre-deceased son;  xi) daughter of a pre-deceased son of a pre-deceased son;  xii) widow of a pre-deceased son of a pre-deceased son.

By the Hindu Succession (Amendment) Act, 2005 the following heirs have been added to the list of heirs of class 1.  xiii) son of a pre-deceased daughter of a pre-deceased daughter;  xiv) daughter of a pre-deceased daughter of a pre-deceased daughter;  xv) daughter of a pre-deceased son of a pre-deceased daughter; and  xvi) daughter of a pre-deceased daughter of a pre-deceased son.

Now class 1 contains a list of 16 persons. Out of these 16 relations 5 are males and 11 are females. Of them, the son, the daughter, the widow and the mother are the only four primary heirs and they inherit by reason of their own relationship to the propositus.

The others are the 2nd, 3rd and 4th degree descendants of the propositus and get their shares because they are related to the propositus through his predeceased son or predeceased daughter. The principle of representation, after enacting the amendment of 2005, goes up to two degrees both in male line and female line of descent. Regarding ascendants of the propositus only his mother is a class I heir; all other heirs (except the widow or the propositus) are his descendants or their widows. Widows of predeceased son and grandson are class I heirs, bin the husband of a deceased daughter or granddaughter is not an heir at all. Except this there are some female heirs in class II also.

The two systems of inheritance to the separate or self-acquired property and coparcenary interest of male intestate which hitherto prevailed under the Mitakshara and Dayabhaga Law have been abolished and a uniform system comes into operation in Section 8. The three recognized classes of heirs: sapindas, samanodakas and bandhus cease to exist after the coming into force
of the Act. The heirs are divided only in four classes under the Act, viz., (i) heirs in class I of the Schedule, (ii) heirs in class II of the Schedule, (iii) agnates, and (iv) cognates.

SCOPE AND AMBIT:

The rule laid down in sub-s (1) has very wide and extensive application and has to be read in a comprehensive manner. The Act overrides inter alia, the old law on the subject of stridhana in respect of all property possessed by a female, whether acquired by her before or after the commencement of the Act and this section declares that all such property shall be held by her as full owner. The Act confers full heritable capacity on the female heir and this section dispenses with the traditional limitations on the powers of a female Hindu to hold and transmit property. The effect of the rule laid down in this section is to abrogate the stringent provisions against the proprietary rights of a female which are often regarded as evidence of her perpetual tutelage and to recognise her status as independent and absolute owner of property. A qualification to the rule is laid down in sub-s (2), but it does not relate to the incidents of woman's property

In Punithavalli vs. Ramalingam, the Supreme Court pointed out that the estate taken by a female Hindu under sub-s (1) is an absolute one, and is not defeasible and its ambit cannot be cut down by any text or rule of Hindu law or by any presumption or any fiction under that law.

In Eramma vs. Veerupana, the Supreme Court examined the ambit and object of this section and observed:

The property possessed by a female Hindu, as contemplated in the, section is clearly property to which she has acquired some kind of title.

34 AIR 1970 SC ,1730.
Whether before or after the commencement of the Act. It may be noticed that the Explanation to s 14(1) sets out the various modes of acquisition of the Property 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. The words 'as full owner thereof and not as a limited owner' in the last portion of sub-s (1) of the section clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, s 14(1) of the Act contemplates that a Hindu female, who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige or title.

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

The section should be read with S4 which gives overriding effect to the provisions of this Act with respect to all matters dealt with in the Act and also enumerates matters which are not affected by this Act. Reference may also be made to S5.

The expression 'female Hindu' in the section would, as explained by
the Supreme Court in Vidya vs. Nand supra, mean and include any female Hindu. A daughter being a female Hindu would be covered within the ambit of the section. Thus when a father put his daughter in possession of property, such daughter would become full owner on this Act coming into force.

The expression 'any property possessed by a female Hindu read with the expression 'in any other manner whatsoever' in the explanation to the sub-section is wide enough so as to envisage a female Hindu coming into possession of property otherwise than by the modes prescribed in the earlier part of the explanation. The use of the above words demonstrates that the legislature also envisaged other legal modes by which a female Hindu could come into possession of property.

SECTION 14 OF HINDU SUCCESSION ACT, 1956:

The Hindu women's limited estate is abolished and any property possessed by a female Hindu howsoever acquired is now held by her as absolute property and she has full power to deal with or dispose of it by will as she likes. The restraint and limitations on her power cease to exist even in respect of existing property possessed by a female Hindu at the date of the Act coming into force whether acquired by her before or after the commencement of the Act. It is now held by her as full owner and not as limited owner (Section 14).36

The absolute property belonging to a woman was called Stridhan. Stridhan varied in form. On the basis of nature of manage and source of Stridhan. The Act by Section 15 abolishes all this and propounds a uniform scheme of succession to the property of a female Hindu who dies intestate after the commencement of the Act. The section groups heirs of a female dying intestate into five categories described in entries (a) to (e) and specified in sub-

section (I) but these provisions do not apply to persons governed by Marumakkattayam and Aliyasantana laws, as will be clear from the provisions of Section 17 of the ACT.

PROPERTY OF A FEMALE HINDU TO BE HER ABSOLUTE PROPERTY (SEC. 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.

This section explicitly declares the law that a female holds all property in her possession whether acquired by her before or after the commencement of the Act as an absolute owner and not as a limited owner. The rule applies to all property movable and immovable howsoever and whenever acquired by her, but subject to the qualification mentioned in sub-s-(2).

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.
Under the Hindu law in operation prior to the coming into force of this Act., a woman's ownership of property was hedged in by certain delimitations on her right of disposal by acts inter vivos and also on her testamentary power in respect of that property. Doctrinal diversity existed on the subject. The ancient texts purported to enumerate heads of Stridhana, but without comprehensive signification. Some of the expressions used in those texts were merely supplementary and there was no logical classification. Divergent authorities only added to the difficulties surrounding the meaning of a term to which it sought to give a technical significance. The result was that, a term not difficult to comprehend in its etymological sense came to be understood in a narrower and arbitrarily limited connotation. Absolute power of alienation was not regarded, in case of a female owner, as a necessary concomitant of the right to hold and enjoy property and it was only in case of property acquired by her from particular sources that she had full dominion over it. Even so the ancient law laid down in the texts and interpreted by the Nibandhakars was considerably more liberal in its recognition of her power of alienation, than the rules of Roman law affecting a woman's peculiam and other systems of law under which, till recent times, incorporated and merged the legal existence of the wife during coverture with that of the husband. The restrictions imposed by Hindu law on the proprietary rights of a woman depended on her status as a maiden, as a married woman and as a widow. They also depended on the source and nature of the property. The order of succession to stridhana was different from that in case of property of a male owner and it varied under the different schools. All this gave rise to a branch of law the most complicated of its kind- one which till the passing of the present Act continued to be regarded as a complex and very difficult subject. As already pointed out in the introductory note to the Act, there was some
fragmentary legislation,\textsuperscript{37} which only added to the number of anomalies already existing and gave rise to conundrums.

Section 14 (1) is not violative of art 14 or 15(1) of the constitution. Nor is it incapable of implementation.\textsuperscript{38}

**Absolute ownership of females**

It is an established position of law that a female in possession of property even as a limited owner becomes an absolute owner by the operation of section 14(1) of the Act. Thus, where a widow was put in possession of property by a deed executed by her husband giving her life estate in 1945, she was held to have become absolute owner by virtue of section 14(1). Any alienation made by her, could not, therefore, be challenged by other heirs of the deceased husband.\textsuperscript{39} So also in Gulab vs. Vuhal\textsuperscript{40} where a widow after the death of her husband was residing in one-third portion of the house with her brother-in-law, it was held that after the coming into force of the Act she became the absolute owner of the portion notwithstanding the fact that in the partition deed made in 1938 it was stated that she has only a right of residence therein. A registered gift deed executed by her in 1965 was consequently held to be valid\textsuperscript{41}.

A widow's limited interest in the property of her deceased husband given to her in lieu of maintenance by way of compromise prior to the Act was held to have ripened into full ownership right after the Act.\textsuperscript{42}

When first wife died in 1923 before the death of the deceased husband, and two widows who were surviving in 1946 inherited as widow's estate as joint

\textsuperscript{37} Hindu ,Women’s Rights to Property Act 1937
\textsuperscript{38} Pratap Singh v Union of India AIR ,1985 SC 1694: Amar Singh v Balder Singh AIR 1960 Punj 666(FB). The section applies to all ‘property’ including agricultural lands and is a valid legislation.
\textsuperscript{39} Agasti Karuna vs. cherukuri Krishnaiah, 2000 AIHC 84(AP) relying on Nazar Singh VS. Jagjit Kaur, AIR 1996 SC 855.
\textsuperscript{40} 2000 AIHC 913 (Bom)
\textsuperscript{41} Annual Survey of Indian Law Institute, 2000, Vol. XXXVI, pg. 308
\textsuperscript{42} Mahesh Kumar Pate V Mahesh Kumar vysa, 2000 AIHC 485 (MP) see also Bhala Ram vs. Madan Lal, AIR 2000P&H 55.
tenants, they became absolute owners on the coming into force of the Act in 1956. On the death of one of them in 1974 without any heirs, the sole surviving widow would succeed to the entire property by survivorship. The daughter of the widow who died in 1923 was held not entitled to property which devolved on the surviving widow.\footnote{Bhikabai vs. Mamtabai, AIR 2000, Bom 172.}

In A. K. Laxmanagounda vs. A. K. Jayaram\footnote{AIR 2001 Kant 123 also see Annual Survey of Indian Law Institute, 2001, Vol. XXXVII, p. 363} a sale deed was challenged by the sons on the ground that the mother had only a life interest in the property. The facts were that the deceased had bequeathed the property to the sons and life interest was created in favour of the widow in lieu of maintenance. Her life interest blossomed into absolute ownership by virtue of section 14(1) of the Act. The widow sold the properties to meet the marriage expenses of her daughter and the sale deed executed by her was for valid consideration. The alienation was held to be legal and valid.

Likewise, in Kuthala Kannu Animal vs. L Nadar\footnote{AIR 2001 Mad 320 also see supra Note 40} where the widow was granted property during partition in recognition of her right of maintenance and subsequently the Act came into force, it was held that, her limited right transformed into full ownership entitling her to execute a gift deed of the same to her grandson.

Yamanappa Dudappa Marve vs. Yellubai\footnote{AIR 2003 Kant 396 also see Annual Survey of Indian Law Institute, 2003, Vol. XXXIX, p. 395.} a part of joint family property was settled upon the widow in lieu of her right towards maintenance, by the father-in-law. In a suit for pa'\'ion filed by the widow the father-in-law admitted that the property was given to the widow. It was held that such admission made by the father-in-law was binding on the other son who challenged the widow's absolute ownership.
On the other hand in Gulabrao Balwant Rao Shinde vs. Chhabubai Balwant Rao Shinde\footnote{AIR 2003 SC 16 (From Bom.) also see supra note 42} and Anoop Kaur vs. Anup Singh Grewal\footnote{AIR 2003 P&H 241 also see supra note 43} the widows were held to be only limited owners. In the former case, the dispute was between the children of two widows. The deceased had remarried after death of the first wife. Children of the first wife filed a suit for recovery of half share of property left by their father whereas the respondents, children of second wife, claimed ownership of entire property on the plea that their mother was the absolute owner of those properties. The high court held that the second wife possessed properties left by the husband in lieu of maintenance and after coming into force of the HSA, her right enlarged into full ownership. On appeal by the children of first wife, the court held that in the absence of any pleadings and evidence to the effect that deceased had given the property to the widow in lieu of maintenance, the high court was wrong in holding that property in her possession became her absolute property. Moreover, the property in the hands of the deceased being ancestral, entire property could not have been given to the wife by way of maintenance.

In Gorachand Mukherjee vs. Malabika Dutta\footnote{AIR 2002 Cat. 26 also see Annual Survey of Indian Law Institute, 2002, Vol. XXXVIII, p. 399.} where a widow who had no pre-existing right of maintenance was given right of possession to the suit property till the death of her maternal uncle and aunt it was held that her life interest could not ripen into absolute title under section 14(1). The court held that the maternal uncle or aunt had no moral or legal obligation to maintain their niece and the right to possession of property given to her by them is not in lieu of maintenance and so it does not ripen into absolute right.

In Komireddy Venkata Narasamma vs. Kondareddy Narasimha Murthy\footnote{AIR 2006 A.p.40} a childless couple brought up the wife’s niece as their own child, a also married her off. The husband executed a deed of settlement in 1961, created a wested
remainder in favour of the wife and a life interest in his own favour. In 1963, he 
executed a will creating a life interest in favour of his wife and after her death, the 
property was to devolve on the niece absolutely. After the death of the husband, 
the wife though has a life interest in her favour, executed a deed of settlement of 
the same property in favour of X. The question before the court was whether the 
right created in favour of the wife by the husband had enlarged into an absolute 
right. Was it a right primarily to secure her maintenance rights, i.e., in lieu of her 
pre-existing rights of maintenance? Since this property was in the nature of a 
residence, the question before the court was whether a residence is akin to 
maintenance or it can be distinguished as conferring a mere right of residence. 
The court relied on its earlier decision and concluded that the right of residence 
is a facet of maintenance and what was created in favour of the wife was not a 
right of maintenance alone but right to enjoy the property during her life time 
without the right to alienated. This right by operation of S 14 (1) of the Act, 
enlarged into an absolute right. Since the wife had an absolute right in her favour, 
the settlement made by her in favour of X was capable of taking effect in law and 
thus the vested remainder created in favour of the niece did not materialize.

Under the law as it stood prior to 1956, a Hindu widow had only a limited 
interest in the property of her husband on his death, and on her death the 
property was to revert on the reversioners. However, under S 14 of the Act, the 
property possessed by a Hindu widow, whether acquired before or after the 
enactment of The Hindu Succession Act, would be held by her as an absolute 
owner thereof. The term acquired would include the property acquired by the 
widow through succession and she would hold it as an absolute owner with full 
powers of alienation.

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51 Palchuri Henumayyamma vs. Tadikamalla Kotilingam, AIR 2001 SC 3062.
52 Annual survey of Indian Law Institute, 2006 vol. XLII p. 398.
53 Dayalal Bhaiyalal, AIR 2007 MP 72
54 Managal Singh vs. Kehar Singh, AIR 2007 (NOC) 212 (P&H)
According to S 14(2), the owner of a property is competent to confer a limited estate in favour of any Hindu female voluntarily and such limited estate would not mature into an absolute one. The reason is that the owner has a liberty to make a disposition of the property in accordance with his wishes. However, where even under a will, the property was given to the Hindu female in lieu of her pre-existing maintenance rights, such property notwithstanding the fact that it was bequeathed to her as a limited estate, would mature into an absolute ownership. Thus, where the husband settled the property in favour of his wife through the will, in lieu of her maintenance rights, such property would become her absolute estate on the commencement of the 1956 Act, in the provision of S14 (2) would not be attracted.

**EFFECT OF SECTION 14:**

Section 14 of the Act contains revolutionary provisions in respect of Hindu women’s proprietary rights and is a step towards gender justice. “The effect of the rule laid down in this section is to abrogate the stringent provisions against the proprietary rights of female which are often regarded as evidence of her perpetual tutelage and to recognized her status as independent and absolute owner of property.”

Before the enactment of this Act, the Hindu woman’s property commonly known as Stridhan was of two kinds: (i) absolute property and (ii) limited estate. She had the absolute right to deal and dispose of the former kind of property but with respect to limited estate, no such rights were available. It was a peculiar kind of property almost unknown in any other system of jurisprudence. The present Act has conferred absolute ownership on Hindu females with respect to also that kind of property which was known as her 'limited estate.' In this way, this section has enlarged the limited estate of Hindu woman into her absolute property.

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55 Pentapali Subba Rao vs. Jupudy Pradhasarthy, AIR 2007 (NOC) 220 (AP)
57 R.K. Aggarwala, Hindi Law, 22nd Ed. 2007, P. 279-80
58 Mulla: Principles of Hindu Law, Ed. xvi (reprint 1994) p. 806
Moreover, the pre-Act textual and judicially developed law of woman's limited estate, which was very complicated; has now been simplified. It may be noted that the enhancement of woman's limited estate into absolute interest is within the spirit of the Constitution of India, and is not violative of fundamental right (to equality) guaranteed under Articles 14 or 15 (1) of the Constitution.\

From a plain reading of Section 14(I) it is clear that the estate taken by a Hindu female under that provision is an absolute one and is not defeasible under any circumstance. The ambit of that estate cannot be cut by any text, rule or interpretation of Hindu Law. In Sukhiram vs. Gauri Shanker, their Lordships of the Supreme Court held that though a male member of a Hindu family governed by the Banaras School of Hindu Law is subject to restriction qua alienation of his interest in the joint family property but a widow acquiring an interest in that property by virtue of Hindu Succession Act is not subject to any such restriction. It has also been held by the Supreme Court that Section 14 clearly says that the property possessed by a female Hindu on the date the Act came into force whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof. That provision makes a clear departure from the Hindu Law texts or rules. Those texts or rules cannot be used for circumventing the plain intendment of the provisions.

**SECTION 14 IS RETROSPECTIVE:**

Section 14 is retrospective in so far as it enlarges a Hindu woman's limited estate into an absolute estate even with regard to property inherited or held by her as limited owner at the time when the Act came into force. But the section have no application to the properties of female Hindu which she had inherited before the Act came into force and had already alienated absolutely before the Act, for she cannot be deemed to be the owner of the property of

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59 Pratap Singh vs. Union of India. AIR (1985) SC 1694.
60 AIR 1968SC 356.
which she made an absolute alienation and was not in possession at the date of the commencement of the Act. The section applies only to properties "possessed by" the female at the date of the commencement of the Act. The expression "any property possessed by a female Hindu" in Section 14 means "any property owned by a female Hindu" at the date of the commencement of the Act, and, these words are prospective in their application. Any property "acquired before" the commencement of the Act shall be the absolute property of the female, provided it was in her possession at the date of the commencement of the Act. The expression "whether acquired before or after the commencement of this Act" shows that section is operative retrospectively.

In case came before Supreme Court, A Hindu widow who was in possession of lands belonging to her deceased husband in 1917 but who was illegally dispossessed by the collaterals of her husband in 1954 brought a suit for possession. During the pendency of the suit, the Hindu Succession Act, 1956, came into force and subsequently in 1958 the widow died and her legal representative was brought on record.

Held, that the land was possessed by the plaintiff when she died in 1958 within the meaning of Section 14(1) and, therefore, her legal representative must be deemed to have succeeded to those rights. The court laid down that word 'acquired' in sub-section (1) has to be given the widest possible meaning. This would be so because of the language of the Explanation which makes sub-section (1) applicable to acquisition of property in manners mentioned therein.

In Koppurswami vs. Veeravva, the Supreme Court approving the view of Calcutta High Court observed that "the opening words of Section 14, i.e., property possessed by a female Hindu, obviously mean that to come within the

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64 Magal Singh v Rattno AIR 1967 SC 1786.
65 R.K. Aggarwala, Hindi Law, 22nd Ed. 2007, P. 280
66 AIR 1959 S.C. 577.
preview of the Section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female’s possession when the Act came into force. The possession must have been either actual or constructive or in any form recognised by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking the word ‘possession’ in its widest connotation, when the Act came into force, the section would not apply." The court further observed that the Object of the Act was to improve the legal status of Hindu women, enlarging their limited interest in property inherited or held by them to an absolute interest, provided they were ill possession of the property when the Act came into force and, therefore, in a position to take advantage of the beneficial provisions, but the Act did not intend to benefit alienee who with their eyes open purchased the property from the owners without justifying necessity before the Act came into force and at a time when the vendors had only a limited interest in the property."

In 1987 the Supreme Court decided a landmark case in Jagannathan Pillai vs. Kunjithapadam Pillai,67 in which the scope of Section 14(1) was considerably enlarged. The court observed that “the expression “possessed” has been used in the sense of having a right to the property or control over the property. The expression any property possessed by a Hindu female whether acquired before or after the commencement of the Act” on an analysis yields to the following interpretation: (1) Any property possessed by Hindu female acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner. (2) Any property possessed by a Hindu female acquired after the commencement of the Act will be held as a full owner thereof and not as date of coming into operation of the Act is not the sine qua non for the acquisition of full ownership in property. In fact, the intention of the

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67 AIR 1987 S.C. 1493.
legislature was to do away with the concept of limited ownership in respect of the property owned by a Hindu female altogether.

In the above case a widow before the commencement of the Act inherited certain property of which she was a limited owner. She disposed of that property through a registered sale deed before the Act came into force. After the Commencement of the Act the transferee again transferred the same property to the widow for consideration. The court held that she became absolute owner of the property. She has regained possession of the property subsequent to the commencement of the Act upon the retransfer of the very same property to her by the transfer in whose favour she had transferred it prior to the commencement of the Act; she would become its ‘absolute owner’. When she bought the property from the alienee to whom she had sold the property prior to the enforcement of the Act, she acquired the property within the meaning of the Explanation to Section 14(1) of the Act. Where the property was alienated before the commencement of the Act and the widow trespassed on the property and had physical possession as a trespasser without any title, she can not claim the benefit of Section 14(1)\(^68\).

**APPLICABILITY OF THE SECTION:**

Widow getting right to say in family house and to receive some money does not create any interest in her favour so as to attract Section 14 of the Act.\(^69\)

Under the U.P Zamindari Abolition and Land Reforms Act which regulated the tenancy rights, there is no provisions applying personal law to any of the tenures created under that Act and thus the provisions of the Hindu Succession Act are wholly inapplicable to the land tenures under the U.P

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\(^68\) Dr. U.P.D. Kesari, Modern Hindu Law, 3rd Ed., 2001 p. 249-50
\(^69\) Janki vs. Govind Shenoi, AIR 1980 Ker 218
Zamindari Abolition and Land Reforms Act.\(^{70}\)

Section 14 applies to a case where no title passed to the done under document executed by Hindu widow.\(^{71}\)

Section 14 applies only to the property possessed by a Hindu widow at the date of commencement of the Act and not for the property already transferred by her before the Act came into force.\(^{72}\)

It is the settled law that Section 14 of the Hindu Succession Act will apply to a case where a woman is in constructive possession or is in physical possession of the suit properties. If it is found that a woman is not in constructive possession or in actual physical possession, then Section 14 of the Hindu Succession Act cannot apply.\(^{73}\)

For the application of Section 14 what is necessary is that the property should be 'possessed' by a Hindu female, even when the succession opened earlier than the enforcement of the Act. The word "Possessed" in the section appears to refer to possession at the date when the Act came into force. The conception of possession which is, certainly not actual or physical possession, but any sort of possession which is deemed possession in the eye of law, whether actual constructive or otherwise.\(^{74}\)

Reference to property acquired before the commencement of the Act certainly makes the provisions of this section retrospective, but in such cases the property must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of this section applicable.\(^{75}\)

\(^{70}\) Smt Prema Devi vs. Joint Director of Consolidation (Head Quartrrr) at Gorakpur Camp, AIR 1970 All 238
\(^{71}\) Koduri venkata Subbaiah vs. Abburi Rangaiah, AIR 1972 AP246
\(^{73}\) Ramacharitra Singh vs. Soneful Devi, AIR 1977 Pat 201
\(^{74}\) Sukh Ram vs. Gori Shankar, AIR 1962 AH p. 18: 1961 All LJ 709: 1961 All WR(HC) 529
\(^{75}\) Ram Gulam Singh vs. Plakdhari Singh AIR 1961 Pat 60 p 62,63,66: ILR 39 Pat 775
Section 14 refers to property which was either acquired before or after the commencement of the Act and that such property should be possessed by a female Hindu reference to, property acquired before the commencement of the act certainly makes the provisions of the section retrospective, but ever, in such a case the property must be possessed by a female Hindu at the time the Act came into force, in order to make the provisions of the section applicable.\(^7^6\)

There is no warrant for the suggestion that the two factors, namely, acquisition and possession, actual or constructive, must be simultaneous. What is necessary is that they must co-exist, although at different points of time. For this reason, Section 14 of the Act will be attracted when these two ingredients co-exist, and not that they must co-exist simultaneously. It is enough if they co-exist at different point of time. This will be the only rational interpretation to be put on Section 14 of the Act.\(^7^7\)

It is absolutely necessary for the applicability of Section 14 of the Hindu Succession Act that the acquisition and possession, either actual or constructive should co-exist in order to convert a limited estate of a Hindu female into an absolute estate. If any of the two ingredients, namely, acquisition and possession is wanting, the estate continues to be limited estate. When these two ingredients combine, it is only at that time that the estate becomes an absolute estate\(^7^8\).

The provisions contained in Section 14 of the Hindu Succession Act, 1956, would apply to property possessed by a Hindu female and to which she had some kind of title, however restricted the nature of her interest may be. This section would have no application to a case where a widow had no

\(^7^6\) Chabu Priya Dasya vs. Roma Kanta, AIR 1964 Assam 106
\(^7^7\) Anandibai VS. Sundarabai, AIR 1965 MP 85:1965 MP 85:1965 Jab LJ 532.
\(^7^8\) Sabzwari, Hindu law (ancient & Codified) 2\textsuperscript{nd} Ed. 2007, p. 1086 para 3&4.
right whatsoever in the properties and had only a right of maintenance.\textsuperscript{79}

Acquisition and possession, although necessary elements for attracting Section 14 of the Act, may co-exist at different points of time. It is at that time when they co-exist that Section 14 of the Act would become applicable. Therefore, if on the date of acquisition whether prior to or after the Act, a limited owner is not in possession, she continues to be a limited owner till such time, as she obtains juridical possession of the property, either actual or constructive.\textsuperscript{80}

A female Hindu could not derive any advantage from Section 14, if she had parted with her interest in the limited estate before the commencement of the Act. To attract the applicability of Section 14, she must be in possession of the property at the time of the coming into force of the Hindu Succession Act. It is only then that her limited estate would be enlarged and she would become the full owner thereof. In such an event, no claim could be put forward by any person to that estate as the reversioner of the late male-holder.\textsuperscript{81}

If the adoption is absolutely, invalid, i.e., for instance, where no Dattahoma was performed in a case where it should be, the widow must in law be supposed to be in possession of the whole of the estate of her husband despite the invalid adoption. To such a case Section 14 would apply in the first instance and at the time of her death.\textsuperscript{82}

**INAPPLICABILITY OF THE SECTION:**

Widow received only maintenance allowance and not in possession of any property in, lieu of maintenance Section 14 is not applicable.\textsuperscript{83}

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\textsuperscript{79} Suraj Mal vs. Balm Lal, AIR 1985 Delhi 95
\textsuperscript{80} Anandibai vs. Sundarabai, AIR 1965 MP 85:1965 Jab LJ 532
\textsuperscript{81} Kuppa Viswpathi vs. Kuppa Venkata Krishan Saatr, AIR 1963AP9: (1962) 2Andh WR 119
\textsuperscript{82} AIR 1959 AP 244: 1959 Andh LT 329: (1958) 2 Andh WR 6620
\textsuperscript{83} Sulbha Gounduni vs. Abhimanyer Gouda, AIR 1982 Orissa 71 see also Sabzwari, Hindu law (ancient &
Section 14 is completely out of the picture and principles of Hindu law alone will determine the fate of the suit.\textsuperscript{84}

Widow divesting herself of possession by a settlement deed executed by her before the Act and dying after passing of the Act. Held that section is not applicable.\textsuperscript{85}

**FEMALE HINDU:**

The use of the term 'female Hindu' in the section was recently interpreted by the Supreme Court.\textsuperscript{86} In that case, a husband had executed a will bequeathing the property to his daughter from his second wife. The same property was also bequeathed to his three wives in lieu of maintenance, which was however qualified and restricted to their lifetime. One of the widows who was alive at the time when this Act came into force, further bequeathed her share in the property to her son from a previous marriage. It was held that since the widow became a full owner of her share, the disposition on the son was valid. It was contended that this section would have no application, as under Hindu law, a man cannot have more than one wife. It was further contended that it was only the first wife who could claim maintenance. This submission was repelled stating that the words 'female Hindu' could not be read only as 'wife'. It was held that such an interpretation would place a very constricted meaning to the words 'female Hindu', which would mitigate against the plain meaning of the section.\textsuperscript{87}

A full bench of the Punjab High court\textsuperscript{88} has held that the section

\textsuperscript{84} Chinakolandai Goundan vs. Thanji Gounder, AIR 1965 Mad 497 : 78 Mad LW 256 : (1965) 2 Mad LJ 247

\textsuperscript{85} Karuppudayarvs. Periathamibi Udayar, AIR 1966 Mad 165: 78 Mad LW 616


\textsuperscript{87} Mulla, Hindu Law 20\textsuperscript{th} Ed. 2007, Vol II P. 396

\textsuperscript{88} Joginder Singh v Kher Singh AIR 1965 Punj 407(FB)
provides enlarged rights over 'land' to Hindu females on the ground that it enacts law on a matter of special property of females.

A Division Bench of the Allahabad High Court\(^{89}\) overruling its earlier decisions, has held that the provisions in the present section are inapplicable to land tenures under the UP Zamindari Abolition and Land Reforms Act.

**FEMALE HINDU – INTERPRETATION- IT INCLUDES DAUGHTERS ALSO:**

The expression “female Hindu” in the heading of Section 14 of the Act as well as the expression “any property possessed by a female Hindu” have to be given a wider interpretation in consonance with the wishes and desires of the farmers of the Constitution.\(^ {90}\) If that is so, the expression “female Hindu” which occurs in Section 14(1) also would take in “daughter” also, consequently we hold that the limited interest of the daughter would get enlarged to full right after the commencement of the Hindu Succession Act, 1956 when male Hindu following Mitakshara law died before the commencement of the Hindu Succession Act leaving behind his self acquired property.\(^ {91}\)

**PROPERTY – MEANING:**

The expression ‘property’ in this section means property of the deceased heritable under the Act. It includes both movable and immovable property owned by a female Hindu and acquired by her by inheritance,\(^ {92}\) or by devise; or at a partition; or by gift from any person whether her relative or not (before, at or after her marriage); or her own skill or exertion; or by purchase; or by prescription; or

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\(^{89}\) Prema Devi v joint Director Consolidation AIR 1970 ALL 238; Biswanath v Badami Kaur AIR 1980 SC 1329

\(^{90}\) Gupte, : Hindu Law, II Ed. 2010, Vol. II, P. 1388, Para i

\(^{91}\) Jose vs. Ramakrishnan Nair, 2004 (1) Civil LJ 571 p. 575,

\(^{92}\) Balasabebn vs. jinwala AIR 1991 1978 Bom 44 (inherited from brother).
in any other manner whatsoever. It also includes all property, which was held and
possessed by her at the date of the commencement of the Act and of which she
is declared to be the full owner by s 14 of the Act.\(^93\)

A died in 1927, leaving surviving him his widow W and a married daughter
D. W. who was in possession of the property left by A, who died in 1946. D died
in 1958 leaving her surviving daughter D1, her son S and four children of
dughter D2 who had pre-deceased D. In a suit by D1 for partition and
possession of a one-third share, it was held that D had become full owner of the
property (Sec. 14) in 1956 when the act came into operation and succession to
her property would be under this section and the claim of D1 was upheld.\(^94\)

In a case before the High Court of Punjab and Haryana,\(^95\) D gifted her
entire estate in favour of her daughters A and S. Both daughters were alive when
the present Act came into force. S. died n 1972 without leaving her husband or a
descendant. At the time of her death, her husband’s son HS, by a previous
deceased wife, was alive. HS died after the death of, S leaving behind his widow
and children, The court held that the estate of S would be inherited by the widow
and children of HS under Sub-s (1)(b) if this section and the case would not be
governed by sub-s (2). This view has been overruled by the Supreme court in the
case of Bhagat Ram vs. Teja Singh,\(^96\) while- holding that the source of the
females coming into possession is important in deciding the manner of
devolution.

The rules of succession laid down in this section apply to agricultural land
subject however to this that legislation relating to prevention of fragmentation of
agricultural holdings or fixation of ceilings or the devolution of tenancy rights in
respect of such holdings is not to be affected by anything contained in the Act.

\(^94\) Munnusami v Rajambal AIR 1977 Mad 228; Daya Singh v Dhan Kaur AIR 1974 SC 665; Kumaraswami
v. DR Nanjappa AIR1978 Mad 285 (FB)
\(^95\) Ammar Karu v Raman Kumari AIR 1985 P&H 86; Jai Singh V Mugbla (1967)09 PLR 425.
\(^96\) AIR 2002 SC 1 (overruling Amman Kaur VS. Raman Kumari, AIR 1985 P&h 86.
However, the rules of succession laid down in this section do not apply to property expressly excluded from the operation of the Act by s 5.

The rules of succession laid down in this section cannot apply to property acquired by a female under an instrument or a decree or an order of a Civil Court or under an award which itself prescribed a restricted estate in such property. In any such case succession to such property would be controlled by the nature and extent of the restricted estate thereby created.\(^{97}\)

Nor can the rules of succession laid down in this section apply to the case of the death of a female, who had acquired property as a limited owner and alienated the same before the commencement of the Act. In her case S 14 would not become applicable as the property cannot be regarded as property of the deceased intestate.\(^{98}\)

**PROPERTY INCLUDES BOTH MOVABLE AND IMMOVABLE PROPERTY:**

Even in cases where a Hindu female may not be held to be a limited owner of the property as in a case of coming in possession of the property in lieu of maintenance or residence still because of the inclusive definition of the word 'property' given in the explanation, she will be a limited owner for the purpose of sub-section (1) of Section 14 of the Act.\(^{99}\)

The explanation defining the property includes within the connotation a property given to a female Hindu in lieu of maintenance or arrears of maintenance. According to that sub-section, property given to a female Hindu in lieu of maintenance, whether before or after the Act is her absolute property. It is of moment whether such a property is given to her by an

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\(^{97}\) See S 14(2)
\(^{98}\) Renuka Bala v Aswini Kumar AIR1961 AP 498; reference may also be made to the notes under s 14.
\(^{99}\) Kusumgauri vs. Umiben, AIR 1977Guj 26 see also Sabzwari, Hindu law (ancient & Codified) 2nd Ed. 2007, p. 1190.
agreement or by award or a decree of Court.\textsuperscript{100}

Explanation to Section 14 (1), it may be noted, gives an inclusive definition of "property" referred to in sub-section (1) which provides for cases where a female Hindu has inherited it, or acquired it by 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.\textsuperscript{101}

The Explanation to Section 14(1) defines the word 'property' occurring in that sub-section as including both movable and immovable property, acquired by a female Hindu be inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance.\textsuperscript{102}

**WIDOW AS SOLE HEIR:**

When a male Hindu dies possessed of property after the coming into force of the Act, leaving his widow as his sole heir, she inherits the property as a class I heir.\textsuperscript{103} In the circumstances, the question of applicability of S 14 does not arise on succession after the Act came into force. The widow inherits an absolute estate, even without calling in aid this section.\textsuperscript{104}

**CO-WIDOWS:**

Since this section makes it very explicit that property possessed by a female Hindu whether acquired by her before or after the commencement of this Act, shall be her absolute property, even in case of co-widows who are

\textsuperscript{100} Somthim Veerabadra Rao vs. Dugirala Lakshmi Devi, AIR 1965 AP 367: (1965) 2Andh WR 72

\textsuperscript{101} Vaddeboyina Sesh Reddi Vaddeboyina Tulesmma, AIR 1969 AP300

\textsuperscript{102} Revabai vs. Sitaram, AIR 1984 MP 102:194 Jab LJ 46.

\textsuperscript{103} Mulla, Hindu Law 20\textsuperscript{th} Ed. 2007, Vol II P. 396.

\textsuperscript{104} Sadhu Singh v Gurudwara Singh Narike AIR 2006 SC 322
bequeathed property under the will of their husband, such widows would succeed to the estate in equal shares and therefore as common owners and not joint owners. If such widows are common owners at the time the Act came into force and are in possession of their respective undivided half share, both widows become absolute owners of their respective half shares.

WIDOW AS A MEMBER OF JOINT-HINDU FAMILY:

The expression "shall have the same interest as her husband" did not equate her to a coparcener. She was still a member of the joint Hindu family. What she got was the fluctuating interest of her husband, and it was a limited estate known as widow's estate. The joint family still continued as before except that the widow acquired a special limited statutory right. Because the joint family continued, its well-recognised incidents also continued, namely, his right of the Kerala to represent the family and to be in management of its affairs.

ACQUIRED – MEANING OF:

The word ‘acquired’ in sub-s (1) is to be given the widest possible meaning. This is amply borne out by the very comprehensive language used in the explanation to the sub-section. The object of this section, as already pointed out, is to declare a Hindu widow, in cases falling under the section, to be the absolute owner of the property; the section puts her in aequati jura.

PROPERTY POSSESSED BY A FEMALE HINDU, WHETHER ACQUIRED BEFORE OR AFTER THE COMMENCEMENT OF THIS ACT:

The expression 'possessed' in the initial part of the section appears to
have been deliberately used by the legislature. The radical change intended to be made in the limited connotation of the woman's property and the distinct departure from the old law speaking generally has the effect of converting limited ownership where it existed into absolute ownership. The necessary consequence of the altered law will immediately affect the incidents of woman's property not merely in respect of property that might be acquired and held by a female after the coming into force of the Act, but also in respect of property already acquired by her in, the past and possessed by her. In that sense the operation of the law has been carried back and the section can be said to have been given retrospective effect.

In Harish Chandra vs. Triloki Singh, the Supreme Court pointed out that by reason of the expression 'whether acquired before or after the commencement of this Act' the section is retrospective in effect.

POSSESSION - MEANING AND NATURE:

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 the force of S 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

110 ibid p. 399
111 Vinod Kumar vs. State of Punjab (1982) PLR 337 (FB)
112 This passage was quoted with approval in Mohari vs. Chukli AIR 196 Raj , P82, p. 85 see also Mulla, Hindu Law 20th Ed. 2007, vol. II P. 399
113 Sabzwari, Hindu law (ancient & Codified) 2nd Ed. 2007, p. 1161-63
any right or title.114

"Possession" as contemplated under Section 14 of the Act not only required of physical possession but even a constructive possession should but even a constructive possession should also be construed as possession for making it absolute by the act of 1956.115

Word "possession" includes not only actual possession but also constructive possession. The possession may be either actual or constructive or in any from recognised by law.116 possession of property by widow need not be actual or constructive. If the property has not vested in another person legally she will be deemed to be in possession.117

The opening words property possessed by a female Hindu obviously means that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. That possession might have been either actual or constructive or in any from recognised by law, but unless the female Hindu, whose limited estate in the dispute property is claim to have been transformed into absolute estate in the dispute property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession taking the word "possession' in the widest connotation, when the Act came into force, the section would not apply.118

When a man is in possession he may use force to keep out a trespasser but if a trespasser has gained possession, the rightful owner cannot use force to put him out but must appeal to law for assistance. In

114 Smt Chhabubai Balwantrao Shinde and others vs. Gulabrao Balwantrao Shinde and another AIR 2001 Bom 486.
115 Mistt. Prema Devi and others vs. Mistt. Kalawati Devi and others, 2000AIJHC 1135 (Pat)
117 Shib Dai vs. Ghauri Lal, AIR 1965 J&K 10
118 Peddi Sivaiah vs. Tekcand, AIR 1966 AP 305: (1965) 2 Andh LT 187
such a case the owner cannot have a right of the immediate actual possession of the property. He has to wait till he succeeds in an action in Court against the trespasser and recovers possession. There cannot be any doubt that the words "estate of owning or having a thing in one’s own hands or power” cannot mean of include a case where the actual possession is with the trespasser.

By the possession is meant the kind of interest in the immovable property which a mortgagor, lesser, licensor, minor, ward or a beneficiary would have in an immovable property while that property will be in the actual possession of the mortgagee, lessee, licensee, guardian or trustee, as the case may be. In all those cases the former classes of people are taken to be in constructive possession of the property through the person of the latter classes. When. Some property is descended upon a particular person but that person has not taken actual possession of the same, he is said to be in possession in law.119

The expression possession occurring in Section 14 has been interpreted to have a broader and wider meaning. Even if the limited owner is entitled to possession. Section 14 gets attracted. It is thus seen that the general trend of the Act is to abolish the limited ownership and confer as far as possible absolute right immediately after the Act on limited owners except those. Which are left out under Section 14 (2) of the Act.120

It is now well-settled that the word possession, occurring in Section 14 (1) does not mean only physical possession, but includes also legal possession. If the first defendant and his mother can be taken to be in joint possession, under law, then such interest and joint possession of the plaintiffs mother in the suit properties will be enlarged into an absolute

119 Nathuni Prasad Singh vs Mst. Kachnar Kuer, AIR 1965 Pat 160
120 Ramulu v Govur Venkanna (died) Govur Narayana, AIR 1965 AP 466: (1965)2Andh WR 111
estate under Section 14 (1).\textsuperscript{121}

Hindu widow should be in possession either actual or constructive on the date, on which the Act came into operation.\textsuperscript{122}

**NATURE OF POSSESSION:**

That possession might have been either actual or constructive or in any from recognised by law but unless the female Hindu, whose limited estate in the dispute property is claimed to have been is transformed into absolute estate under this particular section, was at least in such possession, taking the word "possession" in the widest connotation, when the Act came into force, the section would not apply. Section 14 (1) refers to property, which was either acquired before or after the commencement of the Act, and, that such property should be possessed by a female Hindu.\textsuperscript{123}

**CONNOTATION OF POSSESSED:**

The word "possessed" used in Section 14 (1) does not refer to actual or Khas possession of the land given to a female in lieu of her maintenance.\textsuperscript{124} Section 1 (1) of the Act covers all cases of property owned by female Hindu, although she may not be in actual physical or constructive possession of the Property, provided if she had not parted with her rights and is capable of obtaining the possession of the property.\textsuperscript{125}

If a Hindu female who acquired any property prior to the commencement of the Act is not possessed of that property at the time of the coming into force of the Act, she cannot hold that property as full owner and

\textsuperscript{121} M.VS. Chockalingam Pillai vs. Alameht Ammal AIR 1982 Mad 29: (1981) 94Mad LW 328
\textsuperscript{122} Ratilal vs Parikh Indravadan, AIR 1966 Guj 133(1965)6 Guj LR7970
\textsuperscript{123} Ram Gulam Singh vs. Palakdhari Singh AIR 1961 Pat 6 at pp. 62, 63, 66: ILR 39 Pat 775
\textsuperscript{124} Sabzvari, Hindu law (ancient & Codified) 2nd Ed. 2007, p. 1165.
\textsuperscript{125} P Rameswara Rao vs. I. Sunjeeva Rao, AIR 2004 AP 117: 2003 (5) Andh LT 697
secondly that the word 'possessed' as used in the Section 14 has a very wide connotation and means the state of owning or having in one's hand or power.\textsuperscript{126}

The word's Any property possessed by a female Hindu with which sub-section (1) of Section 14 opens, limit the benefit conferred on such female to property which was possessed by her at the date of the commencement of the Act. Such possession may be actual or constructive. It is enough if she has control over the property and possesses a separate legal interest, which could be enforced by her under the law.\textsuperscript{127}

\textbf{PROPERTY POSSESSED BY A FEMALE HINDU-MEANING OF:}

The expression "possessed" has been used in the section in a broad sense and in its widest connotation. It means 'the state of owning or having in one's hand or power'. The possession may be actual or constructive or in any form recognised by law. It has been held in Mahesh Chandra v, Raj Kumari Sharma\textsuperscript{128} that plea based on Section 14 can be allowed to be raised for first time before Supreme Court because Section 14 operates on its own force once the facts requisite to attract its application are established. Moreover "possessed" in Section 14 meant right to possess and not actual physical possession. Where a property comes into the possession of a female Hindu under certain will and she gets only the life interest in it for her maintenance the court has held that it will convert into absolute estate.\textsuperscript{129}

In the case of Badri Prasad vs. Kanso Devi,\textsuperscript{130} a Hindu inherited certain property under the Hindu Women's Right to Property Act, 1937 from her husband after his death. Later on there was partition in the family and a settlement about the division of shares was reached by arbitration. The widow received a share in

\textsuperscript{126}Devi Singh vs. S. T Phulma, AIR 1961 HP 10
\textsuperscript{127}Domodhar Rao vs. Bhima Roa, AIR 1965 Mys 290
\textsuperscript{128}AIR 1996 SC 869
\textsuperscript{129}Rangnaiki Ammal vs. Srinivas Raghav, AIR 1990 Mad 379.
\textsuperscript{130}AIR 1970 S.C. 1963 also see Prof. UPD Kesri, Modern Hindu Law 3rd 2001 p 250.
the property and remained in its possession at the date of the commencement of this Act. The Court held that such property became her absolute property within the meaning of Section 14(1). It was further observed that the term "possessed" includes cases of simple possession as well as constructive possession, where a person has been illegally dispossessed of any property. In Mangal Singh vs. Rattno\(^{131}\) the Court reiterated the above view and said 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 that property, provided of course that she has not parted with her rights and is entitled to getting possession of the property. In this case a widow inherited certain land and came into its possession on the death of her husband in 1917. Her possession continued till 1954 when she was wrongfully dispossessed and consequently she filed a suit in March 1956 and died in 1958. It was held that she must be regarded to have possessed the property on the date of the enforcement of the Act in 1956 for the purposes of this Section and as such become full owner of it. In such a case the female owner would be regarded as being "possessed" of the property if the trespasser has not perfected his title by adverse possession before the Act came into force. Since she died in 1958, her legal representative must be deemed to have succeeded to those rights.\(^{132}\)

The female Hindu must be alive and be in possession of the property on the date of the commencement of the Act for getting the benefit of the Section. If she had died before the Act came into existence or had ceased to be in possession of that property, the provisions of the Section would not be attracted. Where she had sold away the property before the Act and thereby divested herself of that property, Section 14(1) would not help.\(^{133}\)

Thus only such property becomes absolute which has been in her possession at the date of the commencement of the Act. In Mahesh Chand Sharma

\(^{131}\) AIR 1967 S.C. 1786  
\(^{132}\) Dr. U.P.D. Kesari, Modern Hindu Law, 3\(^{rd}\) Ed., 2001 p.250  
\(^{133}\) Baburam vs. Nerooji 1967 Bom. 300
vs. Raj Kumari Sharma\textsuperscript{134} house was bequeathed to wife of testator for life. There was a compromise between wife of testator and her son. Wife gave up her right to house except first flour of house. Meanwhile Hindu Succession Act came into force. It was held that the wife became absolute owner of only of the first floor of house and not the whole house. Where the widow acquires life interest in some property in lieu of maintenance and she gets limited ownership in it, such property also becomes her absolute property within the meaning of Section 14(1) notwithstanding her limited interest in it.\textsuperscript{135} Where a provision is made for the maintenance of a female. Hindu by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the female Hindu acquires far more than a vestige of title which is deemed sufficient to attract Section 14(1). In Mangal Mal vs. Smt. Punni Devi\textsuperscript{136} the Supreme Court reversing the decision of Rajasthan High Court held that where a widowed daughter-in-law through an arbitration was given a residential home for life only in lieu of her right to maintenance and she remained in possession of the said property on the day of the enforcement of the Hindu Succession Act, 1956, her limited interest blossomed into full ownership rights. If she has sold away a part of that, property after the Act came into force, the sale would be upheld as she became entitled to sell it.

In Bhagwan Dattaray vs. Viswa Nath Pandari Nath\textsuperscript{137} a widow inherited certain property and sold it away before the commencement of the Act. The sale was challenged by the reversioners and held invalid by the court. After this declaration by the court, holding the sale invalid, she purchased the property and sold it away again. It was challenged by the reversioners again. The Court held that inspite of its previous declaration, as the property came in her possession after the enforcement of the Act, it became her absolute property and therefore

\textsuperscript{134} AIR 1996 S.C. 869
\textsuperscript{135} Vindhya Vasini vs Sivaratti Kaur, AIR 1971 Patna 104, AIR 1972 Bom 16; AIR 1978 Mad. 21; AIR 1979 A.P. 46
\textsuperscript{136} AIR 1996 S.C. 172
\textsuperscript{137} AIR 1979 Bom 1
the reversioners could not challenge the alienation thereafter, as the widow had become absolute owner of the property and enjoyed full right of dealing with it.

Another important pronouncement came in the case of VS. Tulsamma vs. B. Sheshareddi\textsuperscript{138} In this case the appellant claimed maintenance out of the joint family properties in the hands of the respondents who was her deceased husband's brother. The claim was decreed in favour of the appellant and in the execution of the decree for maintenance, a 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. It was 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. The court observed:

"Sub-section (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 the commencement of the Act or was subsequently acquired and possessed, she would become full owner of the property."

Sub-section (2) is more in the nature of a proviso or exception to sub-section (1). It being an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social-and-economic position of a woman in Hindu society, 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 can not 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

\textsuperscript{138} AIR 1977 S.C. 1944 Sellammal vs. Nellammal AIR 1977 S.C. 1265
her by sub-section (1).

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 case 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 or order or award, the terms of which prescribe a restricted estate in the property. Where, however, property is acquired by a female Hindu 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.

Where a widow of a deceased coparcener was in possession of part of joint Hindu family properties allotted to her for life in lieu of maintenance without any power of alienation and she dies in possession of that property after the Act came into force, it became her absolute property under Section 14(1) as soon the Act came into force and not under Section 14(2).\(^{139}\)

Any property coming in possession of a female Hindu an account of partition in joint Hindu family, becomes her absolute property irrespective of the fact that she acquired only limited right in the property before the commencement of the Act.\(^{140}\) Where the office of Shibait was transferred by the shibait through a will to his wife before the Act came into being but the right to alienate the same was not given to her, it was held by the court that the office of shibait like a movable property vested in the wife absolutely after the Act.\(^{141}\) Recently in Vijaya Pal Singh vs. Deputy Director of Consolidation,\(^{142}\) the Supreme Court reiterated that the limited estate of the widow, if it was in her

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\(^{139}\) Santhanam K. Gurukkal vs. VS. Subramanyam, AIR 1977 S.C. 2024  
\(^{140}\) Asha Ram vs. Sarjubai AIR 1976 Bom 272  
\(^{141}\) Shambhu Charan Shukla vs. Sri Thakur Ladli Radha Chandra Mohan Gopalji Maharaj, AIR 1985 S.C. 985  
\(^{142}\) AIR 1996 S.C. 146
possession on the day when the Hindu Succession Act came into force, would be enlarged into absolute right. The court reversing the judgment of Allahabad High Court held that where it was established that husband of the widow was separated from his brothers and was in possession of his share of property and after his death in the year 1910, his widow's name was mutated and continued in the record of rights, her limited estate would be enlarged into absolute right by operation of Sections 14(1) of the Hindu Succession Act as she was in possession when the Act came into force, and when she died intestate, her only daughter would become as absolute owner as class I heir and would be entitled to the extent of share of property which her father held.

According to Madhya Pradesh High Court where a widow was in possession of suit property as per mutation entries made in 1920 i.e., before 1956 when Hindu Succession Act came into force, her possession in terms of Explanation to Section 14(1) would be deemed as possession in exercise of her pre-existing right to maintenance on the death of her husband. How she came into possession viz. as per mutation entries is not material because it makes no difference whether the property is acquired by inheritance, or devise or at partition or in lieu of maintenance, or in any manner whatsoever. By operation of law, therefore, she became "full owner of the suit property" and she could make valid alienation thereof.¹⁴³

But this expansion is not intended to apply to a case of mere possession without title. Even mere physical possession of the property without the right of ownership will not attract the provisions of this Section. Thus, where a widow succeeds to the property of her deceased husband after his death and sometimes later validly gifts away the same to her daughter and after the death of the daughter takes possession of the property, her possession is that of a trespasser and continues to be so when the Hindu Succession Act later on comes into force and even thereafter till her death. She cannot be held to have

¹⁴³ AIR 1994 MP18
acquired under the Act because before any property can be said to be "possessed" by the Hindu woman, two things are necessary, (a) she must have had a right to the possession of that property and (b) she must have been in possession of that property either actually or constructively.\textsuperscript{144} In V.S. Subba Rao vs. Chatlappali Seetharamamthanta Rangnayakama,\textsuperscript{145} widow had obtained the properties from her husband prior to Act in recognition of her pre-existing right to maintenance. In subsequent documents she had also acknowledged that what she obtained was a limited right with provision that property would revert to her son. In these circumstances the Court held that Section 14(2) and not Section 14(1) would be attracted and her right would not be enlarged into absolute estate.

In Haridatta vs. Shivaram,\textsuperscript{146} a Hindu woman got a portion of the joint property from her father-in-law by way of gift. Her husband challenged the validity of the gift in the Court. Later on there was a compromise between them and a portion of the property given in the gift was again given to her but she was given only life interest in such property. She later on executed a will in 1963 with respect to that property in favour of someone else. The validity of will was again challenged. The Court held that after the compromise decree was passed she became the absolute owner of the property. The will executed by her was valid as she had become absolute owner of the property.

In Gopal Singh vs. Dile Ram\textsuperscript{147} where in a suit for declaration that the gift of properties made before coming into force of the Act was invalid, a compromise decree was passed and it declared that the gift was invalid, the effect of that declaration was that the widow continued to be the limited Owner of the properties after the decree until 1956 when Hindu Succession Act came into operation and by virtue of Section 14, it was held by the

\textsuperscript{144} Dindayal vs. Raja Ram AIR 1970 S.C. 1019.
\textsuperscript{145} AIR 1997 S.C. 3082
\textsuperscript{146} AIR 1979 H.P. 4.
\textsuperscript{147} AIR 1987 S.C. 2394
Supreme Court, her limited estate became absolute estate and, as such, the will of the properties made by the widow subsequent to the coming into force of the Act was a valid will.

Where a Hindu wife got land in lieu of maintenance from her husband and she enjoy, the produce there from, her right became absolute by virtue of Section 14(1) of the Act.\textsuperscript{148} The Court observed that "Section 14 aimed at removing restrictions or limitations on the right of a female Hindu to enjoy, as a full owner, property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a vestige of title. It makes no difference whether the property is acquired by inheritance-or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The expression expressly refers to property acquired in lieu of maintenance and the widow is not required to establish any further title before she can claim full ownership under Section 14(1) in respect of property given to her and possessed by her in lieu of maintenance.\textsuperscript{149}

Where a property was given to female Hindu in lieu of her maintenance by way of compromise and she was in possession and enjoyment thereof from date of compromise, provisions of Section 14(1) were attracted and not of Section 14(2). It was therefore held that she became absolute owner irrespective of several restrictive covenants accompanying grant.\textsuperscript{150}

In Smt. Beni Bai vs. Raghuvir Prasad\textsuperscript{151} will executed by the husband, his son was to be owner of disputed house. After the death of testator, the widow of tester was given only life interest in the said house in lieu of maintenance. After death his widow entered into possession of house for life
time. She was confirmed that her limited right in lieu of maintenance in recognition of her pre-existing right. The said right transformed into an absolute right by virtue of Section 14(1) of Hindu Succession Act. Under such circumstances, then she became the absolute owner of the house and was fully competent to execute the gift deed in favour of her daughter in this case the Supreme Court held that the gift deed executed by the widow is fully valid.

In Bai Vijia vs. Thakarbai Chelabhai,\(^{152}\) the court overruling Gujarat High Court had held that the widow's right to maintenance though not an indefeasible right to property, undoubtedly a 'pre-existing' right. It is true that 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 properly where it is charged. It can not 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 can not be said that such a right has been conferred 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.

**POSESSION NEED NOT NECESSARILY BE PHYSICAL:**

No doubt, the possession under Section 14 of the Act need not necessarily be physical, but may also include the possession of a licensee, mortgagee, lessee etc., from the female owner, but there must be something to show that she was still in control of the property as

\(^{152}\) AIR 1979 S.C. 933
owner.\textsuperscript{153} Where, however, the property itself has been sold away and the possession delivered to the vendee, the vendor can in no sense be said to be still in control or possession of the property.\textsuperscript{154}

It is true that "possession" referred to in Section 14 (1) of the Act need not be actual physical possession personal occupation of the property by the Hindu female, but may be possession in law. The possession of licensee, lessee or a mortgagee from the female owner or the possession of a guardian, or, a trustee, or an agent of the female owner would be her possession for the purpose of Section 14 (1) of the Act.\textsuperscript{155}

It is settled position of law that a female need not be in actual physical possession or personal occupation of the property, but may be possession in law. It may be either actual or constructive or in any from recognised by law.\textsuperscript{156}

The last type of possession 'naked possession' cannot come within Section 14 because it speaks of property acquired and possessed by a female Hindu. Acquisition would mean a thing acquired lawfully: the different modes of acquisition have been indicated in the explanation under Section 14, such as, inheritance, device, gift purchase, prescription or by partition, or in lieu of maintenance. The word 'possessed' employed in Section 14 (1) has to be taken in a broad sense and not in the restricted sense of actual and physical possession.\textsuperscript{157}

\textbf{POSSSESSION MUST REFER TO SOME LEGITIMATE CLAIM:}

Hindu concerned has got vested in herself at least limited ownership

\textsuperscript{153} Sabzwari, Hindu law (ancient & Codified) 2\textsuperscript{nd} Ed. 2007, p. 1164 para 49
\textsuperscript{154} Gangadharan Charon Naga Goewami vs. Smt. Saraswati Bewa, AIR 1962 Orissa 190: 28 Cut LT 423
\textsuperscript{155} Ram Gulam Singh vs. Palakdhari Singh, AIR 1961 Pat 60 at pp. 62,63,66: ILR 39 Pat 775
\textsuperscript{156} Tukaram Pandurang Sutpugade vs. Sou. Lilahai Yeshwant Devker 1994 Bom CJ 75
\textsuperscript{157} Nathuni Prasad Singh vs. Mst. Kahnar kuer, AIR 1965 Pat 160.
of the property and there must be something to prove that such right to the property was transferred to her.\textsuperscript{158} By no stretch of imagination can it be said that mere mutation of names effected in the revenue records by the husband in favour of the wife would amount to her having 'acquired' the said property. The revenue records may at the most serve as evidence of possession and, on occasion, even as presumption of title but mere possession by a female Hindu of any property does not make her a full owner of the said property under said section 14, of the Hindu Succession Act. The possession must refer to some legitimate claim of title as owner, may be as owner, may be as full owner or limited owner.\textsuperscript{159}

**PERMISSIVE POSSESSION CANNOT BE CONVERTED INTO ABSOLUTE OWNERSHIP:**

Where a Hindu widow sold her property to her brother under a registered sale deed and the brother had allowed her to be in permissive possession of it and make use of the usufruct for her maintenance during her life time, she would not acquire any ownership in the property by such permission and would not become the full owner of the property by virtue of S. 14(1).\textsuperscript{160}

**RESTRICTED ESTATE-SECTION 14(2):**

The rule that the property howsoever acquired by a female Hindu shall be her absolute property stated in sub-section (1) is subject to provision of sub-section (2). According to sub-section (2) the female Hindu does not become absolute owner of the property acquired by gift, will or any other instrument, decree or order of a Civil Court or an award if such gift, will or instrument, decree, order or award gives her only restricted right. The purpose and legislative intent

\textsuperscript{158} Sabzwari, Hindu law (ancient & Codified) 2nd Ed. 2007, p. 1164 para 50
\textsuperscript{159} Narayanrao vs. The State of Maharashtra and other, AIR 1981 Bom 271
\textsuperscript{160} T.K. Chandraiah vs. Chandraiah and others, AIR 1992Kant. 153: 1992 (1) Kar LJ 47; also see Sabzwari, Hindu law (ancient & Codified) 2nd Ed. 2007, p. 1165 para 51
which surfaces from a combined reading of Sub-section (I) and (2) of Section 14 is that it attempts to remove the disability which was imposed by customary Hindu law on acquisition of rights by a female Hindu but it does not enlarge the right which she gets under a will etc. giving her a limited estate.\textsuperscript{161} Where a woman acquires a right to property for the first time under some instrument or on account of some decree of the court and restrictions on her right to alienate have been imposed in such decree or instrument, it will attract the provisions of Section 14(2) but in no case sub-section (1) of Section 14. Thus she would be only a limited owner not an absolute owner of such property.\textsuperscript{162} According to Karnataka High Court, where any property is given to female Hindu in lieu of maintenance, it will become her absolute property only if it remained in her possession. If such property has not been in her possession, Section 14(1) will not be applied.\textsuperscript{163}

Sub-section (2) to Section 14 covers any kind of instruments besides the deed of gift, or will. Such other instruments may be a partition deed, a deed relating to maintenance, joint family settlement deed etc. Where any property is given to daughter-in-law for life interest through a will, she can not validly transfer that property to another person for a period extending beyond her life time. The transferee will have interest in it till the life time of the transferor.\textsuperscript{164} Similarly where any property is given to one's daughter under a will for life interest and it was further provided that after death the property will come back to the heirs of the executor of the will, such property in possession of the daughter will not convert into absolute estate. The terms of the will shall remain intact and Section 14(2) will not allow the property to be free from the restrictions imposed under the will.\textsuperscript{165} But where a property is given to a widow in lieu of maintenance after the Commencement of the Act of 1956, it became her absolute property and if such

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\textsuperscript{161} Gumpa vs. Jaibai (1994) 2 SCC 511
\textsuperscript{162} AIR 1979 S.C. 933
\textsuperscript{164} P. Achyut Rao vs. Union AIR 1977 AP. 337
\textsuperscript{165} Charan Singh vs. Balwant Kaur, AIR 1984 P&H. 203.
\end{flushleft}
property is alienated by her, the alienation would be valid.\textsuperscript{166}

In Kothi Satyanarayan vs. Galla Seethayya,\textsuperscript{167} certain property was given to the widow of the brother for life interest with a condition that the property will revert back to the heirs of the giver, it was held that such property will not be regarded as her absolute estate under Section 14(1) but on the other hand it would remain as a restricted estate in the hands of the widow. Where after the partition was affected among the brothers, the mother was granted the right to residence in the house of one of the brothers till she was alive, while this right was not related to her right to maintenance, it was held that Section 14(1) will not be attracted in that case.\textsuperscript{168}

It is important to note that in order to determine the absolute ownership of a woman it is not necessary to take cognizance only of the terms of instrument or the decree of the Court but also the attendant circumstances under which the instrument was executed or the decree was passed. For example, where an alienation of certain property is made by the widow prior to the commencement of the Act and its validity is challenged by the reversioners and during the pendency of the suit an agreement is reached between the parties and resultant compromise decree is passed whereby the widow gets life interest which she possesses with her after the commencement of the Act, she would become absolute owner of the same despite the terms of the compromise decree. In this case she does not get the property under some instrument or by dint of a decree of the court but on the other hand as a result of compromise decree, hence Section 14(2) would not be attracted and the property would be her absolute property.\textsuperscript{169} In Kamleshwari vs. Jodabai, the Bombay High Court held that Section 14(2) would be attracted with respect to that property in which she acquires a new right. It would not apply where she acquires a limited estate

\textsuperscript{166} Sursh Govinda vs. Raghunath, AIR 1989 Bom. 267
\textsuperscript{167} AIR 1987 S.C. 353
\textsuperscript{168} Chitramal vs. Kamnagi, AIR 1989 Mad 85
under a partition deed. But where she has been deprived of the right to alienation under the partition deed, the provisions of Section 14(2) would not apply. But it becomes doubtful as to whether the decision of the Bombay High Court is appropriate as all the partition deed can not be regarded to be of such renderings which may attract the application of Section 14(2) and the view that such partition deeds are not covered within the expression "any other instrument" does not seem correct.\(^\text{170}\)

According to Karnataka High Court the restrictions on the property under Section 14(2) could be imposed under some written instrument but not under some oral contract. If there does not exist any such limitation under the instrument, then absolute ownership shall be conferred with respect to that property.\(^\text{171}\)

Where a woman did not enjoy any right in certain property prior to the passing of the decree by the court and later on she acquires the right only by virtue of such decree but it conferred upon her only the limited right, it was held that in that case it is only Section 14(2), which would apply and not Section 14(1). The Supreme Court held the similar view in Smt. Naraini Devi vs. Smt. Rama Devi.\(^\text{172}\) In this case the husband died in 1925 leaving his property in which the widow (the deceased husband's wife) did not get any share nor did she have any share in it from before. In 1946 as a result of an arbitration award she got a limited estate in the property leftover by the husband. The court held that such a limited estate would not convert into absolute estate under section 14(1) even after the commencement of the Act. Such property would be covered under section 14(2). Similarly where a female Hindu gets a landed property by way of gift over which the donor had limited ownership, the court held that although she held it even after the commencement of the Act yet it would not become her absolute estate within the meaning of section 14(1). Since the donor himself had

\(^{170}\) 1977 Mad 459: (1967) I Mad. 68; 1966 PLR 6
\(^{171}\) AIR 1982 N O C 76 Karnataka.
\(^{172}\) AIR 1976 S.C. 2198
limited estate, he could not transfer absolute estate and thus the transferee of limited estate would not become the absolute owner of it. Where a woman gets any property under a will but it was only the life interest given thereunder with an express provision that she would maintain herself and her daughter out of it, it was held that such property would remain a restricted estate within the meaning of Section 14(2) even after the commencement of the Act. Similarly where certain property was given to a woman in lieu of maintenance but it was only a limited right for limited purpose and for a limited time given to him, the court held it to be restricted estate under Section 14(2).

Where a Hindu widow sold away her property to her brother and later on he gave her a licence and possession over it for her life time for her usufruct and maintenance, it was held that she could not acquire any right to ownership in such property within the meaning of Section 14(1), only clause (2) would apply to such cases.

In Bhura vs. Kashi Ram, a Hindu father bequeathed certain sir land and a house to his daughter. The Supreme Court after perusal of the entire will learnt that the intention of the executor was to confer only a life time estate upon the daughter not an absolute estate. Such a limited estate, irrespective of the daughter's possession over the bequeathed property on the date of the commencement of the Act, could not be enlarged into an absolute estate.

In Smt. Himi d/o Smt. Lachhmu and another vs. Smt. Hira Devi Widow of Budhu Ram and others equal shares in the property was granted under will to step mother and step daughter. There was a compromise decree between the legatees. The step mother recognised the ownership of step daughter but was

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173 Smt Parmeshwari vs. Smt. Santoshi, AIR 1977 Punj 141
174 Smt. Jaswant Kaur vs. Harpa singh AIR 1977 Punj 341
175 Subba Naidu vs. Rajammal Thapamal, AIR 1971 Mad 64; See also S. Goduni vs. Abhimanyu Gaur, AIR 1983 Orissa 71; Lalji vs. Shyam Bihari AIR 1979 all 279
176 J.K Chandria vs. Chandria AIR 1992 Karn 153
177 (1994) 2 SCC 112.
178 AIR 1997 SC 83
allowed to remain in possession of entire property during her lifetime. Since the right to possession was conferred upon her for the first time under compromise decree, step mother was held not to have become the absolute owner of step daughter’s share. Hence the donees were bound by the obligations flowing from the consent decree which were binding upon the donor step-mother. Thus they were held not entitled to claim any better right than what the donor had in the properties.\textsuperscript{179}

**EFFECT OF PRELIMINARY DECREE:**

Under a preliminary decree, in a partition suit, no property is acquired by the female and it is only under the final decree that a person can be said to acquire the ownership in the property. Preliminary decree only declares the share in property under the provisions of Hindu law. Thus Section 14(2) is not applicable in such cases. The decree contemplated by sub-section (2) signifies a decree finally adjudicating the right of the parties and such a decree must be one affording basis for the title and it must not be merely a declaratory decree.\textsuperscript{180}

A decree within the meaning of Section 14(2) cannot be a decree which is under appeal but only a decree which has become final. In H. Uduman vs. Venkatachala Mudaliar,\textsuperscript{181} the court held that if before the date of the decree, the female Hindu had no interest in property and her only source of title is the decree which confers upon her a restricted estate, section 14(2) will apply and such a restricted estate would not be enlarged into an absolute estate under Section 14(1). Where in a family settlement which was rendered into a deed, a female Hindu acquired a limited right in certain property and all her previous rights were put to an end, the court held it to be her restricted right under sub-section (2) of Section 14 of the Act. It cannot be converted into her absolute estate within the

\textsuperscript{179} Dr. U.P.D. Kesari, Modern Hindu Law, 3\textsuperscript{rd} Ed., 2001 p.256-59

\textsuperscript{180} Ibid 259

meaning of Section14 (1).\textsuperscript{182}

**ALIENATION OF PROPERTY MADE BY A FEMALE BEFORE COMMENCEMENT OF THE ACT:**

The interpretation of the expression 'possessed' in the present context has considerable hearing on the question of alienations of property made by female before the commencement of the Act when such alienations were liable to be set aside at the instance of persons other than the alienor. In case of any alienation of property or surrender of her interest made by a female having only the limited estate of a Hindu woman, alienation or surrender could be challenged on certain grounds and by certain persons (reversioners). The question arose whether after the coming into operation of the Act it was open to the reversioners to challenge the validity of any alienation made by a widow when the alienation was liable to be set aside under the old law. The answer to this would seem to be in the affirmative.\textsuperscript{183}

There was however, considerable diversity of judicial opinion of the meaning and effect of the expression 'possessed' in the phrase 'possessed by a female Hindu, whether acquired before or after the commencement of the Act.

**RIGHT OF A WIDOW TO ALIENATE HER PROPERTY:**

An adoption of a son does not deprive the adoptive mother of the power to dispose of her separate property by transfer or by Will. Hence, such adoption would not divest the widow of the suit property which vested in her by succession on the death of her husband.\textsuperscript{184}

A widow who originally succeeded to some land or property through

\textsuperscript{182} Lalji Maitra vs. Shyam Bihari, AIR 1979 All 279 see also Mulla, Hindu Law 20\textsuperscript{th} Edi. (2007) vol II p 399
\textsuperscript{183} Mulla, Hindu Law 20\textsuperscript{th} Ed. (2007) vol II p 399
\textsuperscript{184} Urge Gowda VS. Nagegowda (D) by L. Rs. And others., AIR 2004 SC 3974
her husband as a limited owner under the Hindu Law, was not within the meaning of Clause (b) of sub-section (2) of Section 15 of the pre-emption Act, deemed to have succeeded to the absolute and full ownership of the estate in the said land or property which she acquired under Section 14(1) of the Hindu Succession Act, on the coming into force of the said provi-
sion, by the merger of her lesser estate into the greater one and that, therefore, a sale of such absolute estate by her after the coming into of the Succession Act, and not under sub-section (2) of Section 15 of the preemption Act.\textsuperscript{185}

When a Hindu female makes an absolute transfer i.e. by sale or a gift, and puts the transferee in possession, she is not "possessed" of any property within the meaning of Section 14 of the Hindu succession Act. It is, thus, clear that in such property the Hindu female will not retain any interest at the date of her death.\textsuperscript{186}

Widow on commencement of the Act cannot claim any right under Section 14 in absence of evidence that alienee has agreed to treat sale as cancelled by passing with possession in her favour.\textsuperscript{187}

Where a female Hindu makes an absolute alienation of property without legal necessity, by way of sale or gift before the coming into force of the Act, the right of an heir of the last male-holder to repudiate the alien-

ation and his claim of possession thereof from the transferee, on the death of the female Hindu, or on the extinction of the women's estate otherwise is not adversely affected and taken away by Section 14 of the Hindu Succession Act.\textsuperscript{188}

A female who become full owner after commencement of this Act

\textsuperscript{185} Dalip singh v jasi Ram, AIR 1981 HP 49 at pp 55,56
\textsuperscript{186} Rameshwar vs. Hardas, AIR 1964 All 308 see also Sabzwari,, Hindu Law (ancient and codified) 22nd Edi 2007 P 1148
\textsuperscript{187} Bai Champa vs. Chandrakanta, AIR 1973 Guj 227
\textsuperscript{188} Sheopujan Pandey vs. Rameshwar Ojha, AIR 1963 Pat 330
was competent to sell her undefined interest for own purpose without the consent of male coparceners of her husband.\textsuperscript{189}

In case where the property has been acquired after the commencement of the Act or where even though the property has been acquired before the commencement of the Act but has been alienated after the commencement of the Act, there should be no difficulty because in either case the property would be deemed to be held and possessed by the widow even though her husband died in a state of jointness.\textsuperscript{190}

Under the Law of Mitakshara as administered in the territory governed by the Maharashtra and the Madras School and even in the State of Madhya Pradesh, a Hindu coparcener is competent to alienate for value his undivided interest in the entire joint family property or any specific property without the assent of his coparceners, A male member of a Hindu family governed by the Benares School of Hindu Law is undoubtedly subject to restrictions qua alienation of his interest in the joint family property but a widow acquiring an interest in that properly by virtue of the Hindu Succession Act is not subject to any such restrictions. That is, owner, not a ground for importing limitations which the Parliament has not chosen to impose.\textsuperscript{191}

**WIDOW’S RIGHT TO ALIENATE CANNOT BE CURTAILLATED:**

In lieu of the land owned by the deceased in Pakistan, land was allotted to his widow and son (step-son of widow) in equal shares. The suit filed by son for declaration that his step-mother was not owner, was compromised and she was held entitled to partition in lieu of maintenance but was restrained from alienating the suit land. From the fact that the widow has got limited estate by virtue of the compromise decree passed

\textsuperscript{189} Sonekali v Bahuria Akashi Devi, AIR Pat 477
\textsuperscript{190} Sukh Ram vs. Gori Shanker, AIR 1962 All 18 app 19,20; 1961 All Lj 709; 1961 All WR (HC) 529
\textsuperscript{191} Sukh Ram vs. Gauri Shanker, AIR 1968 SC 565
after commencement of the Hindu Succession Act, it could not be said that she would not become absolute owner. Under the compromise decree the widow was restrained alienating the land given to her on partition. However, that clog on her right to alienate the property will not bar her from becoming the full owner of the property by operation of law i.e. the provisions of S. 14 (1) of the Hindu Succession Act.\footnote{Lal Chand v Smt. Kali Bai and another, AIR 2004 P&H 173:2004(2) Pun LR 312 ; Sabzwari., Hindu law (ancient & Codified) 2nd Ed. 2007, p. 1149 para 35}

An adoption of a son does not deprive the adoptive mother of the power to dispose of her separate property by transfer or by Will. Hence, such adoption would not divest the widow of the suit property which vested in her by succession on the death of her husband.\footnote{Urg Gowda VS. Nagegowda (D) by L. Rs. And others., AIR 2004 SC 3974}

The property allotted to widow at partition of family property and partition deed providing that widow shall not alienate the property then such prohibition becomes in operative after enlargement of estate of widow. Partition deed cannot be deemed to be 'any other instrument' within the meaning of Section 14(2) of the Hindu Succession Act.\footnote{Gidab Fakirji Khodaskar and Others Vs. Vilhal Bapurao Shingawde and other, 2000 (1) mh L.J. 668.}

INHERITANCE:

Where the discussed had 1/2 share in the joint family property, his 1/2 share would be inherited equally by the Class-I heirs of the deceased.\footnote{Virupakshappa Malleshappa vs. Akkamahadevi, AIR 2002 Kant 83 at p. 96.}

Needless to emphasise that the section was a step forward towards social amelioration of women who had been subjected to gross discrimination in matter of inheritance.

Property acquired by a female Hindu before the Act came into force comprised, broadly, of inherited property or stridhana property acquired by her from a male or female. Nature of her right in either class of property, unlike
males, depended on the school by which she was governed as well as whether it
came to her by devolution or transfer from a male or female. This invidious
discrimination was done away with after coming into force of 1956 Act and the
concern of Hindu widow's estate or limited estate stridhana ceased to exist by
operation of Section 1 read with Section 4 of the Act which has an overriding
effect.\footnote{Gupte, Hindu Law 2nd Ed. 2010 vol II p. 1454, para 33}

A female Hindu could become absolute owner only if she was a limited
owner. Sub-section (1) of Section 14 deals with rights of female Hindus both
before and after the Act came into force. Female Hindu could become absolute
owner of property possessed by her on the date the Act came into force only if
she was a limited owner whereas she would become absolute owner after 1956
of the property of which she would otherwise have been a limited owner.\footnote{Kalawatibai vs. Soiryabai, AIR 1991 SC 1581 ; AIR 1968 Del 2643—Overruled.}

Succession in case of death of Hindu female intestate. Even if the female
Hindu who is having a limited ownership becomes full owner by virtue of Section
14(1). Special rules of Succession given under Section i 5(2) of the Act can be
applied because they are based on the source from which she in her its the
property.\footnote{Bhagat Ram (D) bv LRs. vs. Teja Singh (D) LR S, 2002 (1) Civil LJ 605 at p. 608 (SC) : AIR 2002 SC 1 ; State of Punjab vs. Balwant Singh. AIR 1991 SC 2301.}

In State of Punjab vs. Balwant Singh and Chand Singh vs. Balwant
Singh,\footnote{AIR 1991 SC 2301.} also, a question, of similar nature was considered. In that case, the
female Hindu inherited the property from her husband prior to Hindu Succession
Act, and she died after the Act. On being informed that there was no heir entitled
to succeed to her property, the Revenue authorities effected mutation in favour of
the State. There was no heir from her husband's side entitled to succeed to the
property. Plaintiff, who was the grandson of the brother of the female Hindu
claimed right over the property of the deceased. The High Court held that the
property inherited by female Hindu from her husband became her absolute property in view of Section 14 and the property would devolve upon the heirs specified under Section 15(1). The above view was held to be faulty and this Court did not accept that. It was held that it is important to remember that female Hindu being the full owner of the property becomes a fresh stock of descent. If she leaves behind any heir either under sub-section (1) or under sub-section (2) of Section 15, her property cannot be escheated.

Term "Hakdarans" used in the Will could never be understood any other than the persons entitled to inherit under the law on the death.  

Where suit property belonged to 'A' who had two sons, 'B' and 'C' but 'B' died in 1945 and his widow 'D' died in 1961 and 'E' was pre-deceased son of 'B', therefore, due to the fact that in the year 1945. Sakti State Wajibul Arz was in force and neither Hindu Right to Property Act nor Central Provinces States Land Revenue order was applicable in this area, so in absence of any other statutory provision providing for succession, 'D' who was getting maintenance succeeded interest of her husband 'B' therefore, on death of 'D' widow of pre-deceased son 'E' would inherit the property of her father-in-law 'B'.

INHERITANCE OF THE PROPERTIES OF FEMALES AFTER COMMENCEMENT OF THE ACT:

One of the surviving sisters died after the commencement of the Act. Son of the pre-deceased sister along with the son of surviving sister will have to inherit the property in equal proportion.

WIDOW'S RIGHT OF MAINTENANCE:

Following propositions emerge from a detailed discussion of

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200 PmtamSingh v Bechan Kaur. AIR 1985 Punj 4 (FB) : (1985) 1 Punj LR 147
201 Omkar Prasad(dead) through LRs vs. Bhoodlmr Prasad. AIR 2007 (NOC) 524 (Chhattisgarh).
202 Gaya vs. Moti Lal 1981 HLR 740; also see Sabzwari, Hindu law (ancient & Codified) 2nd Ed. 2007, p. 1176
Section 14 of Hindu Succession Act, 1956 and Hindu Women’s Rights to Property Act, 1937 -

(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 section 14(1)\textsuperscript{203}

Once the property is given to the widow in lieu of her maintenance, she will become full owner thereof after coming into force of the Act, in case she had that right pre-existing. No such question arises in the present case because nothing was done in recognition of her pre-existing right of maintenance and

\textsuperscript{203} VS. Tulasamma vs. Sesha Reddi, AIR 1977 SC 1944
residence. The widow was allowed to continue to reside in joint family house without apportioning any particular portion for her residence as such.\textsuperscript{204}

The right of a Hindu widow to get maintenance out of the joint family properties is an indefinite right: yet it is a right and she does not get maintenance gratis or by way of charity. She gets it in her right under the Hindu Law. Even if the restrictive clause is there in the instrument conferring a limited right on the widow it will have no effect because under sub-section (1) she will become the full owner of the property.\textsuperscript{205}

The right of a Hindu widow is only to be maintained from out of the income of the joint family properties. She will have a charge on the property itself. But that does not mean she has a right to possession or joint family property she a coparcener entitled to claim joint possession along with the other members. Under sub-section (1) of Section 14 of the Hindu Succession Act 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 and not as a limited owner. The 2nd plaintiff had no possession of joint family properties which would entitle her to claim full ownership under sub-section (J) of Section 14 of the Act.\textsuperscript{206}

Where joint family property was in possession of Karta and other coparceners, it was held that widow of coparcener has right of maintenance during pendency of suit for partition filed by her.\textsuperscript{207}

In this case, their Lordships have the picture S. Bai actually recovering the rent from the tenants in the property and enjoying the same as and by way of her maintenance. S. Bai, thus, was in charge and management of the suit house.

\textsuperscript{204} Mt. RamRakhi vs. AmarNaih, AIR 1983 P&H 156.
\textsuperscript{205} Bindbashni Singh vs. Smt. Sheorati Kuer, AIR 1971 Pat 104 ; AIR 1971 Pat 348—Followed; also see Gupte, Hindu Law 2\textsuperscript{nd} Ed. 2010 vol II p. 1497, para 41
\textsuperscript{206} Pachi Krishnamma vs. Kwnaran Krishan, 1982 HLR 482.
\textsuperscript{207} Smt. Janahai Ramchandra Barge vs. Mahadeo Manyaba Barge (since deceased) through. LRs AIR 2007 (NOC) 92 (Bom) : 2006 (6) AIR Bom R 68.
She was enjoying the rent thereof she was maintaining herself therefrom. She was undoubtedly, therefore, in possession and her possession is further undoubtedly covered by Section 14(1) of the Hindu Succession Act. Consequently, she having died must after the coming into force of the Hindu Succession Act, became the full and absolute owner of the suit property.\(^{208}\)

The compensation money payable to a Hindu widow, lying invested under Section 32 of the Land Acquisition Act, at the date when the Hindu Succession Act, 1956 came into operation must be treated to be "possessed" by the female Hindu, within the meaning of Section 14(1) of the Said Act.\(^{209}\)

It is settled-law that the widow is entitled only to limited estate for maintenance. By operation of sub-section (1) of Section 14 of the Hindu Succession Act, her limited estate enlarged into absolute right as she was in possession when the Act came into force. Thereby she becomes the absolute owner of the property. When she died intestate, her daughter became absolute owner as Class I heir, since she was in possession and enjoyment of the land in her own right. The entries in the revenue record corroborate the same. Thereby she became the absolute owner.\(^{210}\)

It is obvious that on the death of the husband of respondent 'H' his share in the joint property went to enlarge the share of the other coparceners of the family, and simply for that reason widow would be entitled to claim maintenance from the property belonging to the family.\(^{211}\)

**PRE-EXISTING RIGHT OF WIDOW:**

Right existed independently of the Will made by her husband in her

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\(^{208}\) Kamalabai Champalal Sahu vs. Annapumabai, 1981 HLR 352.


\(^{211}\) Sin Ram vs. Smt. Hukmi, AIR 1979 HP 46.
favour. The Will merely recognised her said right. Even if it was not so recognised, it would have prevailed. Since the property was given to her in recognition of the said right and she was in possession of it when the Act came into force, she had become absolute owner of it. She had, therefore, the right to alienate it in any manner she liked.\textsuperscript{212}

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 of 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 concerned, 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.\textsuperscript{213}

On the coming into force of the provisions of Section 14 of the Hindu Succession Act the restricted rights of the widow became enlarged and she became the full owner of the properties.\textsuperscript{214}

Widow's right to maintenance was pre-existing right, that it was in recognition of such a right that she obtained property under the compromise and that the compromise, therefore, did not fall within the ambit of sub-section (2) of Section 14 of the Act but would attract the provisions of sub-section (1) thereof.

\textsuperscript{212} Suresh Govind Mandavgane v Raghunath Moreshwar Pendase, AIR 1989 Bom 267; AIR 1977 SC 1944; Vaddeboyina Tulasamma vs. Vaddeboyina Sesha Reddi, AIR 1979 SC 993; Bai Vajia vs. Thakorbhai Chelabhai, AIR 1987 SC 2251.


coupled with the Explanation thereto.\textsuperscript{215}

The widow's right to maintenance, though not an indefeasible right to property, is undoubtedly a "pre-existing" right. 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.\textsuperscript{216}

There is a string of authorities of the Supreme Court in this behalf that where a Hindu female is given immovable property in recognition of her pre-existing right, she becomes the full owner thereof by virtue of Section 14 (I) of the Act and the limited estate which she held immediately before coming into force of the Act, gets converted into full ownership.\textsuperscript{217}

Where a Hindu female came into possession of the property by virtue of pre-existing right of maintenance out of the estate of her late husband, she becomes full owner over the said property and as a full owner has power to execute the agreement for sale.\textsuperscript{218}

Where settlor gave his second wife a right to enjoy rents and profits from

\textsuperscript{215} Bai Vijay (dead) by LRs. VS. Thakorbhai Chelabhai AIR 1979 SC 993; Tulasamma’s case, AIR 1977 SC 1944-Relied on.
\textsuperscript{216} Smt. Sharbati Devi v Satendra Prakash Singhal, 1982 HLR 661
\textsuperscript{217} Sultan Singh vs. Amar Nath, 1993 (1)Civil LJ 675.
suit property in implementation of pre-existing right to claim maintenance, so the
right granted to the wife was enlarged into full ownership rights on account of
enactment of Section 14 (I) of Hindu Succession Act and Section 14 (2) had no
application and, therefore, due to death of second wife being issueless, the
property would revert back to the legal heirs of her husband namely her
husband's son and grandson.\textsuperscript{219}

**PROPERTY ACQUIRED BY HINDU WIDOW IN LIEU OF MAINTENANCE:**

Where the properties were allotted to widow in lieu of her maintenance
right, in reconnection of a pre-existing right, Section 14(2) cannot be attracted
widow acquires absolute right in those properties under Section 14(1) of the
Act.\textsuperscript{220}

Hindu widow in possession of the property in lieu of her maintenance
became full owner of the property after commencement of the Act.\textsuperscript{221}

Where widow taking possession of joint family property in lieu of her main-
tenance she becomes an absolute owner.\textsuperscript{222}

Property acquired in lieu of maintenance by widow after enforcement of
Act becomes her property with full ownership.\textsuperscript{223}

Widow in possession of property in lieu of her maintenance she became
the full and absolute owner of property under Section 14 of the Act and entitled to
alienate the property by way of sale.\textsuperscript{224}

\textsuperscript{219} Ram Krishan Mutt vs. M. Maheswaran, AIR 2007 Mad 180 see also Gupte, Hindu Law 2\textsuperscript{nd} Ed. 2010 vol
II p. 1499, para 42
\textsuperscript{220} Sallammal vs. Nellammal (dead) by LR’s AIR 1977 SC 1265.
\textsuperscript{221} Gulab Chand vs. Sheo Karan Lal, AIR 1964 Ori 45
\textsuperscript{222} Gullapalli Krishna Das vs. Vishwnolakala Venkayya, AIR 1978 SC 361; (1977)UJ (SC)747 (1978) 1
SCC 67.
\textsuperscript{223} Lingamma vs. Basavaraju, 1988(Civil LJ 632(Kant);AIR 1976 SC 2198-Held, Overruled in; AIR
\textsuperscript{224} Kempanna vs. M. Shantarajiah, AIR 1979Mys 66; AIR 1972 Mys 286-Followed
maintenance, becomes the absolute property.  

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 pre-existing right in the widow. The widow would be getting the property by 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.

If the widow of a coparcener was in possession of a joint family property in lieu of her maintenance, even under an instrument, decree or award, prior to the commencement of the Act, she becomes the full owner thereof by virtue of sub-section (1) of Section 14 of the Act and that sub-section (2) of that section has no application to such case.

In the case widow's stand was that her husband had died as separate from the coparceners and the "old house" belonged to him and after his death she continued in that building. In that case, her possession over this building was adverse to the other members of the family including the plaintiffs.

Such adverse possession has been since 1918 when B. Lal died, and by the 17th June, 1956, when Hindu Succession Act came into force, she had prescribed her limited title to that property against other members of the family. Under Section 14 of that Act (Hindu Succession Act, 1956) she has become full owner of that property. Even if she was in possession of that property in lieu of maintenance, her title will be absolute also. In any view that 'old house" cannot

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225 Tirath vs. Mamohon singh  AIR 1981 Puj  174  
226 Smt. Ram Rakhi vs. Amar Nath  AIR 1981 Puj  156  
227 Hanamangouda Venkanagouda vs. hanamangouda, AIR 1972 Mys 286  
228 A.G. Gupte, Hindu Law 2nd Ed. 2010 vol II p. 1500, para 43
now be partitioned as belonging to the joint family.\textsuperscript{229}

A testator gave a right to a widow to reside in the family house and also to receive money and paddy. It was held that deposition did not create the interest in lieu of maintenance so as to attract Section 14(1). The Provisions of Section 14(2) would only apply.\textsuperscript{230}

In the case the finding of the Trial Court that the plaint properties were dedicated to the first defendant Temple as per Will and it was not a case of creation of mere charge over the suit properties, was not adjudicated but was left open by the High Court.

During the pendency of the appeal in this Court an order was passed requiring the plaintiff to deposit Rs. 2,500/- as contribution for the maintenance of the Temple. Courts suggested to Counsel, as to why A and B Schedule properties should not be made liable and charged to that extent for the performance of the charities in the first defendant Temple, are of the view that it is only just and fair and for doing complete justice in the matter, that a sum of Rs. 24,000/- per year should be paid to the 1st defendant temple for the performance of the charities specified in Will and a charge created over plaint A and B Schedule properties to that extent.\textsuperscript{231}

Even if no specific charge is created in favour of widow, yet the right of maintenance possessed by her is enforceable against the joint family property left by deceased irrespective of the fact whether the property may be in the hands of reversioners of deceased. The right is enforceable against the joint family property or even against a volunteer or reversioner or even against a purchaser, taking the same with notice of her claim.\textsuperscript{232}

When the brothers divide their family properties after the demise of their

\textsuperscript{229} Gulab Chand vs. Seo Karan Lall Seth, AIR 1964 Pat 45.
\textsuperscript{230} Janki vs. Govinda Shenoi, AIR 1980 Ker 218.
\textsuperscript{231} Shri Mahaliamman Temple and Vigneswarer Koil vijayamml, AIR 1996 SC 3189.
\textsuperscript{232} Shiv Narain vs. Mst. Raji, AIR 1982 Raj 119.
father and certain properties are set apart for the mother in which she is given right to enjoy the income by paying kist and the corpus is to be taken by the brothers on her death, it is only a life estate given to her in recognition of her pre-existing right for maintenance. Though there is in specific recital in partition-deed that the properties are allotted for the purpose of maintenance, the intention is obvious.\(^\text{233}\)

Even if there is no direct evidence that the property in dispute was given to Smt. K. for residence and in lieu of maintenance, it will not be unreasonable to presume that she had acquired this property in lieu of maintenance and consequently, she became full owner thereof on coming into force of the Act.\(^\text{234}\)

A Hindu wife is entitled to be maintained by a husband whether he possesses properties or not as it is a matter of personal obligation arising from the existence of the relationship and quite independent of the possession by the husband of any property ancestral or self-acquired.\(^\text{235}\)

Property in possession of widow in lieu of maintenance she become full owner of the property in her possession.\(^\text{236}\)

Widow obtained certain land for maintenance under compromise decree in 1917 she got only a life estate and not absolute estate in view of the nature of transaction her alienee cannot claim absolute right by virtue of Section 14(1).\(^\text{237}\)

Widow's right of maintenance is not upon the estate of deceased-husband unless it is fixed or charged upon the estate where family property in lieu of maintenance is given to widow under family arrangement he becomes owner

\(^{233}\text{M.Shanmugha Udayar vs. Sivanandam, AIR 1994 Mad 123.}\)
\(^{234}\text{Mst. Gaumali vs. Shankar Lal, AIR 1974 Raj 147.}\)
\(^{235}\text{Sheo Nandan Bhagat vs. Ramdhari Singh, AIR 1988 Pat 154.}\)
\(^{236}\text{Lakshmi Devi vs. Shankar Jha, AIR 1974 Pat 87.}\)
\(^{237}\text{Santhanam Kachapalaya Gurukkal vs. VS.Subramania Gurukkal, AIR 1972 Mad 279.}\)
under Section 14 of the Act.\textsuperscript{238}

Where widow was allotted property in lieu of her maintenance she got absolute interest in the property.\textsuperscript{239}

If widow getting possession of part of joint family property in lieu of her maintenance without power to alienation and died after the commencement of the Act the case is covered under Section 14(l) of the Act.\textsuperscript{240}

Where the property is charged for maintenance allowance and widow is looking after the property as guardian, she does not get absolute interest in the property.\textsuperscript{241}

If widow's right to maintenance is a held a charge on the property and getting certain land in lieu of her maintenance allowance prior to enforcement of the Act, she became full owner after commencement of the Act and she is entitled to make valid gift of such lands.\textsuperscript{242}

Where widow is receiving only maintenance allowance and not in possession of any property in lieu of maintenance, Section 14 is not applicable.\textsuperscript{243}

Hindu widow is not acquiring property in lieu of her maintenance, Section 14 (2) applies to her and the restrictive clause contained in Will, would fully be operative on her right.\textsuperscript{244}

**RE-MARRIAGE OF WIDOW:**

Section 14 of the Act prevails over Section 2 of Hindu Widows Marriage

\textsuperscript{238} Radhabai vs. Bhimrai Gyanoba, 1976 HLR 282.
\textsuperscript{239} Sellammal vs. Nellammal (dead) by LR’s 1977 HLR 712.
\textsuperscript{240} Santhanam Kachapalaya Gurukkal vs. VS. Subramanya Gurukkal AIR 1977 SC 2024
\textsuperscript{241} Sheo Nadan vs. Ramdhari singh AIR 1988 Pat 154.
\textsuperscript{242} Dalip Chand vs. Chuhru Ram, AIR 1989 HP 44; AIR 1977 SC 1944:AIR 1987 SC 1492- Followed
\textsuperscript{243} Sulabha Gounduni vs. Abimanyer Gouda, AIR 1982 Ori 71.
\textsuperscript{244} Smt. Narayan Naidu vs. Sonpal, 1986(1)Civil LJ 630.(All)
Act, 1856.\textsuperscript{245} Section 2 of Hindu Widow’s Re-marriage Act, 1856 has taken away the right of widow in the event of re-marriage and the statute is very specific to the effect that the widow on re-marriage would be deemed to be otherwise dead. Therefore, in the event of a re-marriage, the widow losses the rights of even the limited interest in such property and after re-marriage the next heirs of her deceased’s husband shall thereupon succeed to the same.\textsuperscript{246}

The Hindu Succession Act of 1956 is prospective in operation and in the event of a divestation prior to 1956, question of applicability of Section 14(1) would not arise since on the date when it applied, there was already a re-marriage disentitling the widow to inherit the property of the deceased-husband. In the present case, Act of 1856 had its full play on the date of re-marriage itself, as such Succession Act could not confer the widow who has already remarried, any right in terms of Section 14(l) of the Act of 1956. The Succession Act has transformed a limited ownership to an absolute ownership but it cannot be made applicable in the event of there being a factum of pre-divestation of estate as a limited owner. If there existed a limited estate or interest for the widow, it could become absolute but if she had no such limited estate or interest in lieu of her right of maintenance from out of deceased-husband’s estate, there would be no occasion to get such non-existing limited right converted into full ownership right.\textsuperscript{247}

Once the property of deceased-husband has devolved on the widow after the commencement of the Act she acquires and absolute interest in the property under Section 14 (1) and cannot be divested of the same even after her re-marriage with some other person.\textsuperscript{248}

\textsuperscript{245} Chinnappavu Naidu vs. Meenakshi Ammal, AIR 1971 Mad 453.
\textsuperscript{246} Velamuri Venkata Sivaprasad vs. Kothuri Venkateswaralu, AIR 2000 SC 434 at p 439:2000 (2)Civil LJ 810(SC)
\textsuperscript{247} Supra Note 248
The provisions of Section 2 of Act 15 of 1856 being inconsistent with the provisions of Section 14 of the Hindu Succession Act, the former and/or any other such provision in any other law ceased to apply to the Hindus and the same stand repealed to the extent of repugnancy. Accordingly widow who has acquired absolute ownership over the suit properties under Section 14(1) of the Act, cannot be divested of her said right in the suit properties even on her re-marriage with any other person.\textsuperscript{249}

Of course the word 'possessed' used in that sub-section connotes both ownership and possession and not possession alone without any title, say the case of a trespasser widow. The relevant portion of Section 2 of the Hindu Widow's Re-marriage Act says that rights and interests which any widow may have in her deceased-husband's property by way of maintenance or inheritance or by Will or testamentary disposition without any express permission to marry shall, upon her re-marriage, cease or determine as if she had then died.\textsuperscript{250}

(i) Rule of forfeiture

The effect of forfeiting the interest of a widow remarrying viz., the Hindu Widow's Re-marriage Act XV of 1856, was repealed by Section 4(l) of the Hindu Succession Act. The repeal is, however, only to the extent of repugnancy with the latter Act. By Section 2 of Act XV of 1856, the right of a Hindu widow in her husband's property cease on re-marriage, and that provision qua property possessed by Hindu widow may stand repealed after the enactment of the Hindu Succession Act, 1956. But 'T' remarried in 1945 and under the rules of Hindu Law and Act XV of 1856 her interest in her husband's property stood determined. Possession of property by a Hindu female at the date when the Act comes into operation or thereafter

\textsuperscript{249} Harabati vs. Jasodhara Debi, AIR 1977 Ori 142:ILR (1965)Cut 39- Relied on; also see Gupte, Hindu Law 2\textsuperscript{nd} Ed. 2010 vol II p. 1503, para 44

\textsuperscript{250} Sankar Prasad Khan vs. Smt. Ushabala Das, AIR 1978 Cal 525 at pp. 527,529; AIR 1919 All 52 and AIR 1948 Mad 155- Followed.
is in terms made a postulate to the enlargement of her estate; if the property is not possessed. Section 14(1) of the Act has no application.  

It is well established by authorities that in the case of remarriage of a Hindu widow the estate which she has inherited from her deceased-husband is forfeited and title of the widow to that estate is lost.

(ii) Widow forfeits all her right ill the family property upon her remarriage

In the case on a consideration of the oral evidence, defendant No.7, ‘R’ did remarry ‘B’ Lai about a year after the death of her father-in-law and since then (1947) she was living with B. Lai in his village. By that remarriage, she forfeited all her rights in the joint family property of her first husband. In that view, she could not be in a position to derive any benefit of absolute ownership about any interest in that property, on account of the provisions of the Hindu Succession Act. 1956, as long before that, her remarriage had taken place.

(iii) Widow becoming full owner of the property after passing of the Act-remarriage of widow its effect

She does not forfeit her rights in the property of which she has become full owner by virtue of the Act The moment the Act came into Force, by virtue of Section 14(1), she has become full owner of the property in dispute with the result that if she remarried thereafter, she could not forfeit the rights in the property of which she became full owner.

251 Ramchandra Sitaram vs. Sakharam, AIR 1958 Bom 244.
252 MT. Anarajia vs. Tengari Kabar, AIR 1962 Pat 65; SheobaranMahto v. MT. Bhaogia, AIR 1918 Pat 590; 3 Pat LJ 639; Matungini Gupta vs. Ramruttan Roy, ILR 19 Cal 289; Vithu vs. Govinda, ILR 22 Born 321 (FB); MT. Suraj Jotea Kuer vs. MT. Altai Kumari, AIR 1922 Pat 378-Relied on.
for the first time by virtue of the Act and would be treated as Fresh stock of descendant in her own right, having acquired ownership, not by inheritance but by virtue of the Act, that is, by fiction of law.  

(iv) Subsequent re-marriage will not work forfeiture

Section 2 of the Hindu Widow’s Re-marriage Act, 1856, is definitely in conflict with Section I4( l) which says that, if the widow was possessed of a limited estate at the commencement of the Act, it would be converted into a full ownership in her. The intention of the Hindu Succession Act, whether it is deliberate or not appears to be as its provisions stand, that a subsequent re-marriage will not work forfeiture.

(v) Widows re-marriage its effect on the estate on the inherited by her under Section 14 from her husband

The Hindu Widow Re-marriage Act, 1856 had legalised the remarriage of a Hindu Widow but had the effect of divesting the estate inherited by her as a widow. By her second marriage she fortified the interest taken by her in her husband's estate and it passed on to the next heirs of her husband as if she was dead. The Hindu Widows Remarriage Act, 1856 has not been repealed by the Hindu Succession Act, 1956 but Section 4 of the latter Act has an overriding effect and in effect abrogated the operation of the Hindu Widow Re-marriage Act.

THE HINDU WIDOW’S ESTATE AND THE RIGHT OF REVERSION:

There can be no doubt that the Hindu widow’s estate and the right of

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256 Chanda Mahtainand vs. Khublal Monto, 1983 HLR 278.
reversion have been done away with by the provisions of section 14 of the Hindu succession Act, 1956.\textsuperscript{257}

In other words, whether the 'widow prescribes to an absolute title to the property by reason of Section 14 and consequently, the reversioner is disentitled to maintain the suit.\textsuperscript{258} It is not disputed that a female Hindu could not derive any advantage from Section 14. If she had parted with her interest in the limited estate before the commencement of the Act. To attract the applicability of Section 14, she must be in possession of the property at the time of the coming into force of the Hindu Succession Act. It is only then that her limited estate would be enlarged and she would become the full owner thereof. In such an event, no claim could be put forward by any person to that estate as the reversioner of the late male-holder.

Further, a gift, under law, is not effective unless it is accompanied by delivery from the donor to the donee. Therefore, mere execution of a document would not divest a Hindu widow of her limited estate.

If the second defendant was in possession of the property at the time of the Hindu Succession Act came into force and consequently, her limited estate was enlarged. There was no question of preserving the estate, for the benefit of the reversioner. It was open to her to deal with her property in any manner she liked and it was not competent for the plaintiff to question the factum and validity of the adoption.\textsuperscript{259}

Since now the widow's estate has been abolished by the Hindu Succession Act. It necessarily follows that the right of a reversioner, which is otherwise a spes-sucession, cannot now be enforced.\textsuperscript{260}

\textsuperscript{257} Bhabani Prasad Sahai vs. Smt. Sarat Sundari Choudhurani, AIR 1957 Cal 527.
\textsuperscript{258} Gupte, Hindu Law 2\textsuperscript{nd} Ed. 2010 vol II pg. 1477, para xi
\textsuperscript{260} Dhiraj kunwar vs. Lakshan Singh. AIR 1957 MP 38 ; Ram Avodhya Missir v, Raghunath. Missir. 1956 Bih UR 734 . Lachmeshwar Prasad Shukul vs. Keshwar Lal, AIR 1941 FC 5 : 1940 FCR 84 -
Where before the Act came into force, the female owner had sold away the property in which she had only a limited interest and put the vendee in possession, she should in no sense be regarded as 'possessed' of the property when the Act came into force. The object of the Act was to confer a benefit on Hindu females by enlarging their limited interest in property inherited or held by them into an absolute estate, with retrospective effect, if they were in possession of the property when the Act came into force and were, therefore, in a position to take advantage of its beneficent provisions.

SCOPE AND APPLICATION OF SECTION 15:

Section 15 lays down certain rules of succession to the property of a female Hindu. Section 16 supplements and elaborates the working of these rules.

As the section says it applies when a female Hindu dies intestate leaving behind property of which she was an absolute owner. Section 15 will not apply where she leaves property over which she had only a limited right.

The section gives a list of 5 broad groups who can inherit one after another and fixes their order of priority. Section 16 goes further and fixes the order of priority within each group and their details the section is not retrospective.

RULES OF SUCCESSION OF THE PROPERTY OF FEMALES:

Section 15 of the Act prescribes the General Rules of Succession of the property of a female dying intestate, and Section 16 lays down the Order of

**Relied on.**


**262 B.M. Gandhi, Hindu Law 1999 P 312**

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Succession. Section 15 runs as follows: 263

"Section 15(1), the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16-

(a) Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) Secondly, upon the heirs of the husband;

(c) Thirdly, upon the mother and father;

(d) Fourthly, upon the heirs of the father; and

(e) Lastly, upon the heirs of the mother.

Section 15(2), Notwithstanding anything contained in sub-section (1):

(a) Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (I) in the order specified therein, but upon the heirs of the father; and

(b) Any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any person or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (I) in the order specified therein, but upon the heirs of the husband."

Section 15 does not apply to that property which is held by a Hindu female

with restricted rights [in view of sub-section (2) of section 14] at the time of her death. It applies to cases where the Hindu female has become a fresh stock of descent.

The words 'son' and 'daughter' of the deceased in Section 15(2)(b) of the Act can only mean a son or daughter of the female, dying intestate, born to her of any husband, former or later. The definition includes even illegitimate children. But does not include step-children, who will not be able to inherit their step mother. In Keshri Lodhi vs. Harprasad the Court laid down that from the language of sub-sections (1) and (2) of Section 15, it is clear that the intention of the Legislature was to allow the succession of the property of the Hindu female to her sons and daughters. Only in the absence of such heirs the property would go to husband's heirs. Consequently the female's property would devolve on her sons and daughters even where the sons and daughters are born of the first husband and the property left by the female was inherited by her from the second husband.

In Gurnam Singh vs. Smt. Asa Kaur the Punjab High Court held that the plain and natural implication of the words "son or daughter of the deceased" in sub-section (2) of Section 15, is that the son or the daughter should be heirs, even though she might have married once or more than once and may have, thus given birth to children from these marriages, because these off-springs are capable of establishing their blood relation to the female Hindu as son or a daughter.

In Lachman Singh vs. Kirpa Singh, the Supreme Court held that in absence of heirs mentioned in Section 15 (1) (a) the heirs mentioned in clause (b) of Section 15(1) succeed. Among the heirs of clause (b) will come the step-

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266 AIR 1971 MP 129
267 AIR 1977 Punj 104.
268 1987 SC 1616.
son of the Hindu female as her husband's heir. It is obvious that in presence of a son, step-son cannot inherit.

The word 'son' includes natural and adopted children of a woman, those born to her after her re-marriage and even her illegitimate children. Whereas succession to the property of a female Hindu generally is given under Section 15(I), an exception has been engrafted under sub-section (2) recognising a different mode of devolution in respect of property which the woman acquired by inheritance, in a way to a very limited extent recognising the old Hindu Law in the matter, which restricted a woman's estate in inherited property and provided for its devolution as from the last full owner. Prima facie, the exception engrafted seeks to retain in her father's family property inherited by the deceased lady from her parents and similarly seeks to retain in the husband's family property inherited from her husband or father-in-law. The word 'inherit' means to receive as heir, i.e. succession by descent.\(^{269}\)

In Bhagat Ram vs. Teja Singh,\(^ {270}\) the Supreme Court held that if property held by a female was inherited from her father or mother, in the absence of any son or daughter of the deceased including the children of any pre-deceased son or daughter, it would only devolve upon the heirs of the father, son or daughter, who was the only legal heir of her/his father. The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female should go to the legal heirs of the father. Under clause (b) of sub-section (2) of Section 15, the property inherited by a female Hindu from her husband or father-in-law shall also under similar circumstances, devolve upon the heirs of the husband. It is the source from which the property was inherited by the female which is more important for the purpose of devolution of property. The fact that a female Hindu originally had a limited right and later, acquired the full right, in any way, would not alter the rules of succession given in sub-section (2) of Section.

\(^{270}\) AIR 2002 SC 1:State of Punjab vs. balwant singh AIR 1991 SC 2301
15. Even if the female Hindu who is having a limited ownership becomes full owner by virtue of Section 14 (I) of the Act, the rules of succession given under sub-section (2) of Section 15 can be applied.

In case Ayi Ammal vs. Asari, \(^{271}\) K died intestate in July 1960. She was childless widow of P. K’s father had gifted away some property to K. She sold jewels and lent amount for interest. Upon her death there were some outstanding dues on some promissory notes and in the proceedings for succession certificate, K’s sister claimed that K got the property from her father by way of gift and that she was entitled to the same under Section 15(2) (a).

Held, that the property could not be said to have been "inherited" by K and the exemption could not be availed of. The rules of devolution provided under Section 15(1) would, therefore apply and the heirs of K’s husband would take the property. The sister of K could not claim the property as the father’s heir to K.

In case Jessa Kachwa vs. Maurani Jayani Lakhman, \(^{272}\) plaintiff was sister of A, and the defendant was son-in-law of A. A died, and his widow R inherited a widow’s estate in 1933. Therefore the will executed by her was ineffective. R died in 1945 leaving behind a daughter, M, whose husband was the defendant. Who will succeed to the property left by M?

The will of R being ineffective M succeeded to the estate of her father, not by virtue of the will of R but as on intestacy and took absolute interest therein. She died in 1969, after the commencement of the Hindu Succession Act, 1956. Section 15 of this Act lays down rules of succession in case of female Hindus since M inherited from her father, in sub-section (2) not sub-section (1). In accordance therewith estate inherited from her father by a female Hindu will devolve on the heirs of the father. So in the absence of heirs of Class I of the father, the heirs of Class II will succeed as laid down in Section 8. And there

\(^{271}\) AIR 1966 Mad. 369
\(^{272}\) AIR 1979 Guj. 45.
being no other heir of Class II except the father’s sister, she will succeed to the estate of M. So the suit of the plaintiff was decreed. The factual situation of the case has been explained in the diagram, given below:  

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Sister

A = R (widow)

M = husband (defendant) (daughter)
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In O.M. Meyappa Chettiar vs. Kanappa Chettiar, the Madras High Court has said that where a female Hindu, after obtaining money decree in respect of the amount which was gifted to her by father at the time of her marriage (and therefore represented her Stridhan property), dies intestate leaving behind her husband and brothers, the property represented by the decree would devolve not upon her brother according to rule of succession laid down in Section 15(2) but upon her husband according to the rule contained in Section 15(1).

In Raghubir v, Janki Prasad the court held that the husband will not inherit in the property left behind his wife, where she acquired that property in inheritance from her parents. Such property reverts back to parents only or in their absence to the heirs of the parent. In this case the wife brought a suit for claiming the property which she was entitled to get by way of inheritance from her father. During the pendency of the suit she died and her husband applied for the substitution of his name. The application by the husband was rejected on the ground that he had no right to get the property in inheritance from his deceased wife as the property in the absence of her children would revert back to the parents or in their absence to the heirs of parent.

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274 AIR 1976 Mad 154.
275 AIR 1981 MP 39
"Son", "stepson", "sons and daughters"

A son means a male offspring and "stepson" means a son of one's husband or wife by a former union. The word "sons" in clause (a) of Section 15(1) includes:

(i) Sons born out of the womb of a female by the same husband or by different husbands including illegitimate sons too in view of Section 3(j) of the Act. and

(ii) Adopted sons who are deemed to be sons for the purposes of inheritance. Children of any predeceased son or adopted son fall within the meaning of the expression "sons". In the case of a woman, a stepson, that is the son of her husband by his other wife is a step away from the son who has come out of her own womb. But under the Act a stepson of a female dying intestate falls in the category of the heirs of the husband referred to in clause (b) of Section 15(1) because the family headed by a male is considered as a social unit.

The words "sons and daughters ... and the husband" in clause (a) of sub-section I of Section 15 only mean "sons and daughters ... and the husband of the deceased and not of anybody else". The words "son or daughter of the deceased (including the children of any pre-deceased son or daughter)" in clauses (a) and (b) of sub-section (2) refer to the entire body of heirs falling under clause (a) or sub-section (1) except the husband. What clauses (a) and (b) of sub-section (2) do is that they make a distinction between devolution of property inherited by a female Hindu dying intestate from her father or mother on the one hand and the property inherited by her from her husband and from her father-in-law on the

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276 Lachhman Singh vs. Kirpa singh (1987) 2 SCC 547
277 B.M. Gandhi, Hindu Law 1999 P 313
Stepsons and stepdaughters

A question may arise whether the property inherited by a Hindu female interstate form her stepsons or stepdaughters fall under Section 15(1) or Section 15(2). The question was considered in Lachhman Singh vs. Kirpa Singh235 and it was held that the stepsons and/or stepdaughters will come in as heirs only under clause (b) of section 15(1) or under clause (b) of section 15(2). Thus they are excluded from clause (a) of Section 15(1). This exclusion is not unfair. Consequently, the property inherited by a female dying intestate, form her stepson or stepdaughter come under group (iii) above-stated.279

EXCEPTIONS TO SECTION 15 (1):

Section 15(1) lays down the order of succession to property of a female Hindu dying interstate and in doing so tit enumerates five groups who inherit one after another. Section 15(2) engrafts two exceptions to Section 15(1). These exceptions state that:

a) if a female Hindu dies without leaving any issue, then in respect of property inherited by her from her parents, the property shall devolve, not in accordance with the order laid down by Section 15(1)(i.e., in five categories), but it shall go to the heirs of the father.(Section 15(2)(a))

b) similarly, if a female Hindu dies without leaving any issue, then- in regard to property inherited by her from her husband or father-in –law, the property shall devolve, not in accordance with the order laid down by Section 15(1) (i.e., in five categories), but it shall go to the heirs of the husband.

278 Supra Note 271
279 Supra Note 272
ORDER OF SUCCESSION AND MANNER OF DISTRIBUTION AMONG HEIRS OF A FEMALE HINDU:

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:

Rule 1 among the heirs specified in sub-section (1) of section 15 those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2 if any son or daughter of the intestate had predeceased the intestate leaving his or her own children alive at the time of the intestate's death the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3 the devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be and such person had died interstate in respect thereof immediately after the intestate's death.

This section read with s 15 may be said to constitute the statute of distribution applicable to heirs of female intestate. The Section lays down rules relating to the order of succession and the mode or manner of computation of shares of the various heirs of a female intestate.

Rules 1 and 2

Rule 1 contains the explicit declaration of the law that among the heirs

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enumerated in Entries (a) to (e) of sub-s (1) of s 15 those heirs referred to in a prior Entry are to be preferred to those in any subsequent Entry and those included in the same Entry are to succeed simultaneously. Entry (a) includes sons, daughters, children of predeceased son or predeceased daughter, and husband. These heirs, therefore, take the property simultaneously. The case of children of a predeceased son or daughter is, however, further governed by R 2 so that the children of a predeceased son or a predeceased daughter will not take per capita with the son or daughter or husband of the intestate, but will take between them the share which their father or mother, as the case may be, would have taken if alive at the time of the death of the intestate, that is to say they will take per stirpes. Entry (c) includes mother and father who, in case of absence of heirs of the intestate in Entries (a) and (b), will take simultaneously.  

In a case a dies leaving her surviving S a son by her first husband H; and S1 and D son and daughter respectively by her second husband H2. A had inherited property from H. All her property including the property inherited form H will devolve upon S, S1 D and H2 simultaneously and they will each take a one-fourth share, the case will not be governed by d (b) of s 15 (2) because A dies leaving issues.  

**Rule 3**

The application of this rule in case of devolution of the property of intestate under sub s(1) of s 15 on the heirs of her husband, heirs of her father and heirs of her mother referred to respectively in Entries (b), (d) and (e) of the same has already been pointed out. The rule also applies as has also been pointed out to the devolution of the property of the intestate on the heirs referred in the two clauses of sub-s(2) of s 15, namely, the heirs of the father where she dies without leaving any issue and has left property inherited by her from her father or mother; and the heirs of the husband, where she dies without leaving any issue and has

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282 Ram Kali vs. Sohan Lal AIR 1972 P&H 419
left property inherited by her from her husband or father-in-law.

In all the above cases the terminus a quo is the husband or father or mother as if the husband or father or mother were the porositus and the ascertainment of the heirs will once again commence from the husband or father, father or mother, as the case may be. 283

SUCCESSION OF FEMALE’S PROPERTY:

When a female Hindu dies intestate, any property inherited by her will devolve on her own heirs as specified in section 15 of the Act. Thus, where property was inherited by a female Hindu from her second husband as absolute owner thereof it was held that her son from the first husband was entitled to inherit the same in preference to heirs of her second husband. 284

A property inherited by a female from her husband devolves, in the absence of any son or daughter (including children of predeceased son or daughter), on the heirs of her husband. Thus, where a widow’s limited interest ripened into, her absolute right on the commencement of the Act, property inherited from her husband would devolve on the heirs of her husband. The husband's sister being his heir she was held to be entitled to the property of the female dying intestate in Mahesh Kumar Pate vs. Mahesh Kumar Vyas. 285

Under section 15(2)(a) of the Act, any property inherited by a female Hindu from her father or mother devolves, in the absence of any son or daughter (including children of predeceased son or daughter), upon the heirs of the father. In Bhagat Ram vs. Teja Singh 286 two sisters S & I inherited properly from their widowed mother. On the death of ‘S’ the property left by her was mutated in the name of T. The appellant Bhagat Singh who had entered into agreement with I

285 2000 AIHC 485(MP)
on 12.3.1963 filed a suit for specific performance which was decreed; Teja Singh, the brother of pre-deceased husband of 'S' filed a suit alleging that on her death, property devolved on him by virtue of clause (b) of section 15(1) of the Act as heir of 'S's husband. The trial court decreed his suit. On appeal, the high court also held that on the death of 'S', property devolved on him. On Bhagat Singh's further appeal to the apex court, however, the court held that property held by 'S' was property inherited by her from her mother so clause (a) of section 15(2) applied and Teja Singh had no right in the property left by 'S' and that it would devolve only on her sister I. It held.287

The source from which she (the female) inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. That would defeat the intent and purpose of sub-section (2) of section 15 which gives a special pattern of succession.288

On the death of a Hindu female, the heirs that are grouped in five categories take the property in order of their priority. In a case from Chhattisgarh,289 a Hindu male died as a member of a Hindu joint family living behind two of his sons. One of the sons was S, who had a wife W and a son SS. S died in 1945, living behind W and SW who was the widow of his pre-deceased son SS. Upon the death of S, his wife W, succeeded to his share as a limited owner but became an absolute owner in 1956. She died in 1961, and was survived by the widow of her pre-deceased son SW. The issue was who would succeed to her properties? In accordance with the scheme of succession under The Hindu Succession Act, as she had died issueless, the property would revert

287 Id. At 4-5.
288 Sabzwar, Hindu law (ancient & Codified) 2nd Ed. 2007, p. 1194
289 Onkar Prashad vs. Bhoodhar Prashad, AIR 2007 (NOC) 524 (Chh)
to the heirs of her husband and the widow of a pre-deceased son would inherit the property as the class I heir of her deceased husband.\textsuperscript{290}

1. **Succession to the estate of Hindu female dying intestate**

The custom pleaded and set up had not been proved, in the manner allowed by law and that even otherwise, subsequent to the commencement of the Hindu Succession Act, 1956 even if there was any custom existing, as regards the devolution of the estate left by Hindu female, such a custom ceased to operate, by reason of the salient and salutary provisions, adumbrated under section 4, coupled with Sections 15 and 16 thereof. Section 15 and 16 provide succession to the estate of the Hindu female dying intestate. The effect of such specific provisions made therein is that by operation of section 4 such a custom ceases to operate on and from the day of the commencement of the said Act.\textsuperscript{291}

Widow held the property as limited owner till the coming in to force of the Act. She became full owner thereafter. When she died on October 6, 1956 succession to her property was to be governed by the Act widow having died intestate, succession to her property was to be governed by sec. 15 read with sec. 16 of the Act. Appellant being daughter of J predeceased son of widow she had the first preference to succeed under sec. 15 (1) (a) of the Act\textsuperscript{292}

Inheritance to a female will be governed by sections 15 and 16 of the Act, which enact certain rules relating thereto and prescribe the order in which the heirs would become entitled to the property. Succession to C1 childless female, who died leaving properties obtained from her father's Thus the statute creates fiction for

\textsuperscript{290} Annual Survey of Indian Law Institute, 2007 vol. XLIII page 369.
\textsuperscript{291} Kalianmal vs. Sathiah and others, 1995 AIIIC 1687 Mad
\textsuperscript{292} Mst. Mohindero vs. Kartar Singh and others, AIR 1991 SC 257; 1991 Supp (2) SCC 605
ascertaining her heirs by treating it as her father's property; but that cannot make the property her father's; so to threat it, will amount to an unwarranted extension of the fiction. The property being that of the female, on question of any coparcenary can at all arise. Section 6 cannot therefore apply to case at all. 293

2. **Exclusion of half blooded heir by full blooded heir**

   The correct interpretation of the relevant provisions of the Hindu Succession Act would necessarily require that the full-blooded heir excludes the half-blooded heir. 294

3. **Alienation by a Co-heir-Cancellation of**

   Death of Hindu female leaving behind two heirs who took the property in equal proportion-One of the heir sold the entire property- Other heir sued to set aside the alienation and for possession - Other heir was entitled to only half of the property and the alienation could be cancelled only with respect to his share. 295

4. **'Women's estate' and 'widow's estate' - Distinction between**

   The definitive expression of women estate and 'widow's estate' is the result of the Shastric law codified through judicial precedents. Thus the term 'women's estate' in its larger connotation means: "All property which has given to a woman by any means and from any source whatsoever and includes both properties in which she has absolute estate stridhana and property in which she has only a limited interest and the term is used in the context only later sense of property in which she takes only a limited or qualified interest. Such

294 Venkntaraman Rao vs., P Ramchundra Rao and others, 1998 Al HC 2342 Kant
property is either property inherited by woman, or property which has been allotted to her in a partition in her husband's family.\textsuperscript{296}