DAYA SINGH (dead) THROUGH L.RS. & ANR.

v.

DHAN KAUR

March 5, 1974

[K. K. MATHEW AND A. ALAGIRISWAMI, JJ.]

Hindu Succession Act, 1956, sec. 8—Whether effects change in old Hindu Law—Death of female limited owner who succeeds last male holder—Customary Law of Punjab whether applicable—Held, succession opens on death of limited owner and would be governed by law then in force—Interpretation of statutes.

The respondent's father, W, who owned the suit property died in 1933. His widow, who succeeded to the estate, gifted the property to her daughter, the respondent. The appellants filed a suit as reversioners of W questioning the gift. The suit was decreed and the decree was confirmed on appeal. After coming into force of the Hindu Succession Act on 17-6-1956, the widow again made a gift of the same lands to the respondent. She died in 1963. The appellants then filed the suit, out of which this appeal arose, for possession of the lands alleging that the second gift was void. The trial court decreed their suit but on appeal the respondent succeeded in the first Appellate Court as well as in the High Court on second appeal.

On appeal by special leave to this Court,

Dismissing the appeal,

HELD - (i) Following the decisions of the Privy Council in *Moniram Kolita* v. *Keri Kolitani*, I.L.R. 5 Calcutta 776 at 789 and *Duni Chand* v. *Anar Kali*, A.I.R. 1946 P.C. 173, (infra) the words "dying intestate" in Sec. 8 of the Act must be interpreted as merely meaning "in the case of intestacy of a Hindu male" and to place this interpretation on the Act is not to give retrospective effect to its provisions. The reference is only to the fact of intestacy. The material point of time is the date when the succession opens, namely, the death of the widow. Thus this propositions follow (i) Succession opens on the death of the limited owner, and (ii) the law then in force would govern the succession. [532D-G]

Moniram Kolita v. *Keri Kolitani*, I.L.R. 5, Calcutta 776 789 and *Duni Chand* v. *Anar Kali*, A.I.R. 1946 P.C. 173, followed.

Eramma v. *Verrupanna*, (1966) 2 S.C.R. 626, explained and distinguished.

Banso v. *Charan Singh*, A.I.R. 1961, Punjab 45 and *Kuldip Sing* v. *Karnail Singh*, A.I.R. 1961, Punjab, 573, approved.

Kempiah v. *Girigamma*, A.I.R. 1966, Mysore 189, overruled.

Renuka Bala v. *Aswini Kumar* A.I.R. 1961, Patna 498 and *Sam pathkumari* v. *Lakshmi Ammal*, A.I.R. 1963 Madras, 50, distinguished.

(ii) Succession to W's estate in the present case opened when his widow died and it would have to be decided on the basis that W died in 1963 when his widow died. In that case succession to his estate would have to be decided on the basis of s. 8 of the Hindu Succession Act. The accepted position under the Hindu law is that where a limited owner succeeds to an estate the succession to the estate on her death will have to be decided on the basis that the last full owner died on that day. If, therefore, succession opens and is to be decided on the basis of the last full owner dying on the date of the death of the limited owner it is only the law in force at the time of the death of the limited owner that should govern the case. To hold that the old Hindu law applies to such a case is to allow your imagination to boggle. [533A-C, G-H]

Eastend Dwellings Co. Ltd. v. *Finsbury Borough Council*, 1952 *A.C.* 109, 132, per *Lord Acsquit* and *Venka tachalam* v. *Bombay Dyeing & Mfg. Co. Ltd.*, (1959) S.C.R. 703, referred to.

The reversioners' right being a mere *spes successionis* there is no question of impairing existing rights by adopting the interpretation we place on s. 8 apart from

A the fact that it does not amount to giving retrospective operation to s. 8. Of course, if the property had already vested in a person under the old Hindu Law, it cannot be divested. We can see no reason either in principle or on authority why the principle consistently followed under the earlier Hindu law that on the death of the limited owner succession opens and would be decided on the basis that the last male owner died on that day, should not apply even after coming into force of the Act. In the view we have taken it is s. 8 of the Act that applies and not the Customary Law.

[534C-D,E-F.535G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1825 of 1967.

Appeal by special leave from the judgment and order dated the 18th May, 1967 of the Punjab and Haryana High Court in L.P.A. No. 158 of 1967.

Naunit Lal and *Lalit Kohli*, for the appellant.

C *O.P. Verma*, for the respondent

The Judgment of the Court was delivered by

ALAGIRISWAMI, J.—The property in dispute in this appeal belonged to Wadhawa Singh, the father of the respondent. After his death in the year 1933 his widow, who succeeded to the estate, made a gift of the property in favour of her daughter, the respondent, in April, D 1933. The appellants filed a suit as reversioners to the estate of Wadhawa Singh questioning the gift. The suit was decreed and the decree was confirmed on appeal. After coming into force of the Hindu Succession Act on 17-6-1956 the widow again made a gift of the same lands to the respondent. She died in 1963. The appellants then filed the suit, out of which this appeal arises, for possession of the lands alleging that the second gift was void. The Trial Court E decreed their suit but on appeal the respondent succeeded in the first Appellate Court as well as the High Court on second appeal.

There is no doubt that Wadhawa Singh's widow had no right to make a gift of the property which she inherited from her husband in 1933 and the decree obtained by the appellants, who were reversioners to her husband's estate would bind the respondent who was also a party F to that suit. The question then is whether the coming into force of the Hindu succession Act and the subsequent gift made by the widow in favour of the respondent make any difference. Had not the widow made the gift to the respondent in 1933, she would have become an absolute owner of the property as a result of s. 14 of the Hindu Succession Act and the gift made by her subsequently in favour of the respondent could not have been questioned. But having made G the gift in 1933 she was not in possession of the property inherited by her from her husband and, therefore, did not become a full owner with the result that the subsequent gift made by her in favour of the respondent was of no effect. This point that unless the limited owner is in possession of the property section 14 does not apply has now been settled by decisions of this Court beyond dispute.

H What then is the effect of the provision of s. 8 of the Hindu Succession Act in the circumstances of this case. The Punjab High Court in its decisions in *Banso* v. *Charan Singh* (AIR 1961 Punjab 45), and *Kuldip Singh* v. *Karnail Singh* (AIR 1961 Punjab 573), where the facts

were similar to the present case, has taken the view that when a widow dies after the coming into force of the Hindu Succession Act the next heir to her husband is to be determined in accordance with the law prevailing on the date of the death of the widow and not in accordance with the law prevailing at the time of the death of her husband and held that the daughter succeeded in preference to the reversioners. The Mysore High Court on the other hand in *Kempiah* v. *Girigamma* (AIR 1966 Mysore 189) has held that on the death of the widow succession would be governed by the Hindu Law which was in force when the last male holder actually died. The Patna High Court in *Renuka Bala* v. *Aswini Kumar* (AIR 1961 Patna 498) was disposed to take a similar view though the case before it was concerned with succession to the property of a female under s.15. The Madras High Court in *Sampathkumari* v. *Lakshmi Ammal* (AIR 1963 Madras 50) also took the view that in such circumstances s. 8 of the Hindu Succession Act would not apply. But the case before that Court was one where two widows who had succeeded to the estate of their husband were in possession, and therefore, s. 14 was applicable. Lastly, we have the decision of this Court in *Eramma* v. *Verrupanna* (1966 2 SCR 626). In that case this Court after setting out the provisions of s. 6 of the Hindu Succession Act observed:

> "It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of s. 8 must be construed in the context of s. 6 of the Act. We accordingly hold that the provisions of s. 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i. e., where succession opened before the Act, s. 8 of the Act will have no application."

Interpreted literally this dicision would seem to accord with the decisions of all the other High Courts except the Punjab High Court. But it should be noticed that the problem that we are faced within the present appeal and in the cases before the Punjab and Mysore High Courts did not arise before this Court on the earlier occasion. The decisions of the Madras High Court and the Patna High Court are not directly in point.

In the case before this Court the two women were in possession of property whose last male holder, who had died before coming into force of the Hindu Succession Act, was their step son. They were not, therefore in legal possession of the properties of the last male holder. The question that had to be decided was whether because of the coming into force of the Hindu Succession Act they were entitled to succeed under s. 8, and the further question whether s. 14 would be attracted as they were actually in possession. It was held that as they were not legally in possession s. 14 would not apply. It was in that context that it was said that where a male Hindu died before the Act came into force i.e., where succession opened before the Act, s. 8 of the Act will have no application. The point that succession

might open not only when the male Hindu died but also subsequently again when a limited owner who succeeds him dies was not taken into account. There was no need and no occasion to consider such a contingency in that case. There was the further fact that the last male holder was succeeded on his death by persons who were then his nearest heirs and the property vested in them could not be divested by the Hindu Succession Act coming into force subsequently though this fact was not adverted to in the udgment. This Court had, therefore also no occasion to consider the effect of the earlier decisions on the question as to what happens when a female limited owner, whether she is a widow, mother or daughter who succeeds the last male holder dies.

That position may now be considered. It was authoritatively laid down by the Privy Council in its decision in *Moniram Kolita* v. *Keri Kaliteni* (ILR 5 Calcutta 776 at 789) that :

> "According to the Hindu Law, a widow who succeeds to the estate of her husband in default of male issue, whether she succeeds by inheritance or survivorship—as to which see the *Shivagunga case* (1)—does not take a mere life-estate in the property. The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her estate is an anomalous one, and has been compared to that of a tenant-in-tail. It would perhaps be more correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But whatever her estate is, it is clear that, *until the termination of it, it is impossible to say who are the persons who will be entitled to succeed as heirs of the husband* (2). The succession does not open to the heirs of the husband until the termination of the widow's estate. *Upon the termination of that estate the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death* (3)."

In the subsequent decision in *Duni Chand* v. *Anar Kali* (AIR 1946 PC 173) the Privy Council observed :

> "....during the lifetime of the widow, the reversioners in Hindu Law have no vested interest in the estate but have a mere *spes successionis* or chance of succession, which is a purely contingent right which may or may not accrue, that *the succession would not open out until the widow died*, and that the person who would be the next reversioner at that time would succeed to the estate and the alteration in the rule of the Hindu Law brought about by the Act would then be in full force.

(1) 9 Moore's I.A., 604.
(2) *Id.*, 604
(3) *Id.*, 601.

In the argument before their Lordships, reliance was placed upon the words "dying intestate" in the Act as connoting the future tense, but their Lordships agree with the view of the Lahore High Court in 17 Lah 356(1) at p. 367, that the words are a description of the status of the deceased and have no reference and are not intended to have any reference to the time of the death of a Hindu male. *The expression merely means "in the case of intestacy of a Hindu male".* To place this interpretation on the Act is not to give a retrospective effect to its provisions, *the materials point of time being the date when the succession opens, namely, the death of the widow.*

On the position of reversioners in Hindu Law, opinions have been expressed by this Board from time to time with which the views of the learned Chief Justice in 58 All. 1041(2) mentioned above, are in agreement. It was said, for instance, that until the termination of the widow's estate, it is impossible to say who are the persons who will be entitled to succeed as heirs to her husband; 9 M.I.A. 539 (3) at p. 604. *The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon its termination, the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death* 7 *I. A.* 115 (4) *at* p. 154."

It would be noticed that the Privy Council interpreted the words "dying intestate" as merely meaning "in the case of intestacy of a Hindu male" and said that to place this interpretation on the Act is not to give retrospective effect to its provisions. Those are the very words found in s. 8. These may be contrasted with the words of s. 6 "where a male Hindu dies after the commencement of this Act." Here the reference is clearly to the time of the death. In section 8 it is only to the fact of intestacy. The material point of time, as pointed out by the Privy Council, is the date when the succession opens, namely, the death of the widow. It is interesting to note that the Privy Council was interpreting the provisions of the Hindu Law of Inheritance (Amendment) Act, 1929 where the two contrasting expressions found in the Hindu Succession Act, 1956 are not found. The case for the interpretation of the words "dying intestate" under the Hindu Succession Act is stronger. The words "where a male Hindu dies after the commencement of this Act" in section 6 and their absence in section 8, are extremely significant. Thus two propositions follow: (1) Succession opens on the death of the limited owner. and (2) the law then in force would govern the succession.

Now if this proposition is correct, as we hold it is, that wnere a female heir succeeds to an estate, the person entitled to succeed on the basis as if the last male holder had lived up to and died at the

(1) *Mt. Rajpali Kunwer* v. *Surju Rai* (58 All. 1041).

(2) *Shakuntala Devi* v. *Kauhsalya Devi* (17 Lah 356).

(3) *Katama Natchiar* v. *Rajah of Shiva Gunga* (9 MIA 539).

(4) *Moniram Kolita* v. *Kerry Kolitang* (7 IA 115: 5 Cal 776).

A death of the limited owner, succession to Wadhawa Singh's estate in the present case opened when his widow died and it would have to be decided on the basis that Wadhawa Singh had died in 1963 when his widow died. In that case the succession to his estate would have to be decided on the basis of s.8 of the Hindu Succession Act. The various High Courts which have held otherwise seem to have been oppressed by the feeling that this amounted to giving retrospective effect B to s. 8 of the Hindu Succession Act whereas it is only prospective. As the Privy Council pointed out it means no such thing. The accepted position under the Hindu Law is that where a limited owner succeeds to an estate the succession to the estate on her death will have to be decided on the basis that the last full owner died on that day. It would be un-reasonable to hold that in such a circumstance the law as it existed at the time when the last male holder C actually died should be given effect to. If the person who is likely to succeed at the time of the limited owner's death is not, as happens very often, likely to be the person who would have succeeded if the limited owner had not intervened, there is nothing unreasonable in holding that the law as to the person who is entitled to succeed on the limited owner's death should be the law then in force and not the law in force at the time of the last full owner's death.

D

The Madras High Court thought that the decision of the Privy Council in *Duni Chand* v. *Anar Kali* (supra) was based upon a legal fiction and that fiction cannot be given effect to except for a limited purpose. The Mysore High Court also thought that the death E referred to in section is actual death and not fictional death. In *East end Dwellings Co., Ltd.* v. *Finsbury Borough Council* (1952 A.C. 109 132) Lord Asquith of Bishopstone observed :

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the F putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

G

This observation was cited with approval by this Court in *Venkatachalam v. Bombay Dyeing & Mfg. Co., Ltd.* (1959 S.C.R. 703) If, therefore, succession opens and is to be decided on the basis of the last full owner dying on the date of death of the limited owner the inevitable corollary is that it is only the law in force at the time of the death of the limited owner that should govern the case. To hold that H the old Hindu Law applies to such a case is to allow your imagination to boggle. In the case decided by the Privy Council in *Duni Chand* v. *Anar Kali* (supra) if this principle had been applied the new heirs

introduced by the Hindu Law of inheritance (Amendment) Act, 1929 could not have then come in. We are not impressed with the reasoning of the Patna High Court that because the change brought about by that Act is different from the change brought about by the Hindu Succession Act a different conclusion follows. We should consider that if even the limited change in the area of succession effected by the Hindu Law of Inheritance (Amendment) Act, 1929 is to be given effect to as the law applicable on the date of the death of the limited owner, it is all the more reason why the Hindu Succession Act which makes a much more radical change in the Hindu Law should have similar application. The Mysore High Court thought that the Hindu Succession Act not being a mere declaratory Act, retrospective effect should not be given to it so as to impair existing rights and obligations. But the reversioners' right being a mere *spes successionis* there is no question of impairing existing rights by adopting the interpretation we place on section 8 apart from the fact that, as earlir pointed out, the interpretation does not amount to giving retrospective effect to section 8. Of course, if the property had already vested in a person under the old Hindu Law it cannot be divested.

We must also point out that the classes of cases where such a question is likely to arise is very limited. Where a widow, mother or daughter was in possession of the estate on the coming into force of the Hindu Succession Act she would become full owner under the provisions of the s. 14 of the Act. Even if a widow was in possession of the share belonging to her in the joint family estate under the provisions of the Hindu Women's Right to property Act, 1937, she would become a full owner under s. 14. In both those cases s. 8 would have no operation. It is only in rare cases, like the present, that the question is likely to arise at all and we can see no reason either in principle or on authority why the principle consistently followed under the earlier Hindu Law that on the death of the limited owner succession opens and would be decided on the basis that the last male owner died on that day, should not apply even after coming into force of the Hindu Succession Act.

Mr. Naunit Lal appearing for the appellant argued that the result of the decision of this Court in *Eramma* v. *Verrupanna* (supra) is that on the death of Wadhawa Singh's widow it is the old Hindu Law that applied and therefore under the custom in force in Punjab under which a daughter was not entitled to succeed to the ancestral property of the father in preference to the reversioners should apply and the appellants are entitled to succeed. There is no doubt about the position under the Customary Law of Punjab before coming into force of the Hindu Succession Act. In Rattigan's Digest of the Customary Law' published by the University Book Agency (14th Ed.), paragraph 23 at page 132 it is stated :

> "23.(1) A daughter only succeeds to the ancestral landed property of her father, if an agriculturist, in default :—
>
> (1) Of the heirs mentioned in the preceding paragraph; and

A

(2) Of near male collaterals of her father, provided that a married daughter sometimes excludes near male collaterals, especially amongst Muhammadan tribes :

(a) where she has married a near collateral descendant from the same common ancestor as her father; or

B

(b) where she has, with her husband continuously lived with her father since her marriage; looking after his domestic wants, and assisting him in the management of his estate; or

(c) where being married to a collateral of the father's family, she has been appointed by her father as his heir.

C

(2) But in regard to the acquired property of her father, the daughter is preferred to collaterals."

It is on the basis of this Customary Law that the reversioners succeeded in the suit filed by them questioning the gift made by the respondent's mother to her. There is no doubt that Rattigan's work is an authoritative one on the subject of Customary Law in Punjab. This Court in *Mahant Salig Ram* v. *Musammat Maya Devi* (1955) SCR 1191 at 1196) said :

D

"Customary rights of succession of daughters as against the collaterals of the father with reference to ancestral and non-ancestral lands are stated in paragraph 23 of Rattigan's Digest of Customary Law. It is categorically stated in sub-paragraph (2) of that paragraph that the daughter succeeds to the self-acquired property of the father in preference to the collaterals even though they are within the fourth degree. Rattigan's work has been accepted by the Privy Council as "a book of unquestioned authority in the Punjab". Indeed the correctness of this paragraph was not disputed before this Court in *Gopal Singh* v. *Ujagar Singh* (1).

E

F

It is not now open to the respondent to show whether any of the circumstances mentioned in sub-paragraph (2) of paragraph 23 of Rattigan's Digest of Customary Law is present here as the previous decision is *res judicata* between the parties and in any case it has not been attempted to be shown in this case. But in the view we have taken that it is s. 8 of the Hindu Succession Act that applies and not the Customary Law the appellants cannot succeed in this appeal.

G

In the result the appeal is dismissed. The appellants will pay the respondant's costs.

H

S. B. W. *Appeal dismissed.*

(1) 1955 S.C.R. 86.