

PRIVY COUNCIL

Lala Duni Chand

Vs.

Mt. Anar Kali

P.C.A No.26 of 1945

(Lord Macmillan, Mr. M.R.Jayakar and Sir John Beaumont JJ.)

09.07.1946

JUDGMENT

MR. M. R. JAYAKAR J.

1. This is an appeal from a judgment and decree of the High Court of Judicature at Allahabad, dated the 29th August 1941, which affirmed the judgment and decree of the Court of the First Civil Judge of Saharanpur, District Saharanpur, dated the 10th January 1938. The parties are Hindus subject to the Mitakshara Law of the Benares School, and this appeal involves the construction of the Hindu Law of Inheritance (Amendment) Act, 1929 (Act No. 2 of 1929) which is hereinafter referred to as "the Act". The Act is not expressed to come into operation on a particular day. It received the assent of the Governor-General on the 21st February 1929, and under the provisions of Section 5 of the General Clauses Act, 1897 (Act No. 10 of 1897) it came into operation immediately on the expiration of 20th February 1929. The description and preamble of the Act make it clear that the object of the Act is to alter the order of succession of certain persons therein mentioned, namely, a son's daughter, daughter's daughter, sister, and sister's son, and to rank them as heirs in the specified order of succession next after a father's father and before a father's brother.

2. The Act thus amends the old order of succession in Hindu Law by introducing certain persons as heirs, who had no such place according to the ordinary interpretation of Mitakshara Law. The Act is one of the several measures enacted during recent times, in a reformatory spirit, with a view to bringing the ancient rules of Hindu succession into conformity with what are regarded as the changing conditions and sentiments of present day Hindu society. It therefore selects certain relatives and

gives them a preferential place in the order of succession, irrespective of their sex, over more remote relatives, on the ground that, judged by the pure test of blood relationship to the deceased owner, they are nearer heirs than those superseded by the provisions of the Act.

3. The question for determination in this appeal is whether, on a true construction of the Act, it applies only to the case of a Hindu male dying intestate on or after the 21st February 1929 (the date of its operation), or whether it also applies; to the case of such a male dying intestate before that date, if he was succeeded by a female heir who died after that date. The genealogical table relating to the parties in the case is as follows :

Proceedings; her representatives are appellants

4. The facts giving rise to this litigation are as follows. There was a partition by means of an arbitration award between Shambhu Nath, Ganpat Rai, Shankar Lal and Dwarka Pass. At that time Kanhiya Lal and Sant Lal appear to have been dead. Under the award, Shambhu Nath received as his share a certain set of property and a half share in another set of property. On Shambhu Nath's death, his only surviving son, Dharam Das, succeeded to his properties, Sumer Chand having predeceased Shambhu Nath. Dharam Das died in 1922, before the date of the Act, leaving neither a widow nor descendants. His mother, Mt. Chaman Devi, succeeded him as his heir, taking a Hindu widow's estate, He also left four sisters, Mts. Sabz Kali, Raj Kali, Anarkali and Lilavati. Chaman Devi died in July, 1936 (after the date of the Act), when the succession to the estate of Dharam Das opened.

5. Anar Kali, respondent No.1, one of Dharam Das's sisters, instituted the present suit in the Court of the Civil Judge of Saharanpur, against her sisters (respondents 2, 3 and 4) and the present appellants and Ugger Sen (Respondent No. 5), her brother's collaterals, together with Mt. Raji, the widow of one of such collaterals. In her plaint she alleged that Dharam Das was the last full owner of the plaint properties and that on his death his mother, Chaman Devi, took a widow's estate, and that on her death in July 1936, her daughters (respondents 1.4), as sisters of Dharam Das became heirs to his estate under the provisions of the Act and entered into proprietary possession of the properties in the plaint. She claimed that she had a one-fourth share in the first set of properties and a one eighth share in the other set of properties on the ground that, in those properties, she and her sisters were the owners only of one-half, defendants Nos. 4-8 being owners of the other half. She also claimed partition of her share in both the sets of properties.

6. The plaintiff's sisters (defendants 1, 2 and 3) filed separate written statements admitting the claims of the plaintiff and praying that their respective shares might also be partitioned on payment of Court fees. The contesting defendants Nos. 4-8 filed a joint written statement denying that the plaintiff or her sisters were the heirs and stating that they themselves were the owners of the property. They claimed that they had succeeded to the property as the heirs for Dharam Das, who had died before the Act came into force, and the Act having no retrospective effect did not apply to the parties to the suit.

7. Six issues were framed, of which the following alone is now material: Whether the plaintiff and defendants 1-3 or defendants 4-6 are the heirs of Dharam Das.

8. Before the Trial Judge it was admitted that succession to the properties in question opened on the death of Chaman Devi. On the 10th January 1938, the learned Trial Judge delivered judgment, holding that Dharam Das was the last owner of the properties in suit and that the Full Bench decision, in 58 All 10411 applied to the case, consequently the Act applied and the sisters of Dharam Das were the owners of the property in preference to the contesting defendants. He decreed the plaintiff's claim for partition, and ordered that the three sisters of the plaintiff, defendants 1-3, should also get their respective shares on the payment of the necessary court fees. The suit was thus decreed with costs.

9. A decree dated the 10th January 1938 was accordingly drawn up. From the said decree, defendants 4, 5 and 6 (the present appellants) appealed to the High Court at Allahabad. Pending the disposal of the appeal, Mt. Raji died and on the 15th October 1939, the present appellate were brought on the record as her legal heirs. The only point raised in that appeal related to the application of the Act to the present case. On the 29th August 1941, the High Court delivered judgment holding that the suit was covered by the Full Bench decision, *Mt. Rajpali Kunwer v. Suria Rai* ¹ and that there were Full Bench decisions of several of the other High Court's to the same effect. The appeal was accordingly dismissed with costs. A decree followed on the 29th August 1941. From this decree the appellants have appealed to His Majesty in council.

10. On the question at issue in this case relating to the application of the Act to the present case, there is as the High Court Judgment observe, a series of Full Bench decisions of Indian High Courts covering this exact point. These have been reviewed in the Judgment of the learned Chief Justice of the Allahabad High Court in 58 All 1041 (ibid. pp. 1046-1048). It is therefore unnecessary for their Lordships to go over

the same ground again. It will be sufficient to observe that their Lordships are in complete agreement with the views of the learned Chief Justice in that case, that, during the lifetime of the widow, the reversioner's in Hindu Law have no vested interest in the estate but have a mere spes successions or a 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,

11. 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 *Shakuntala Devi v. Kaushalya Devi*.² at p. 357, 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 material point of time being the date when the succession opens, namely, the death of the widow.

12. On the position of reversioner's in Hindu Law, opinions have been expressed by this Board from time to time with which the views of the learned Chief Justice in 23 AIR Mt. *Rajpali Kunwer v. Suria Rai*³ 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 persona who will be entitled to succeed as heirs to her husband; 9 MIA 583 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 *Moniram Kolita v. Kerry Kolutany*⁴ at p. 154.

13. There is no vesting as at the date the husband's death, and it follows that the questions of who is the nearest reversionary heir or what is the class of reversionary heirs, fall to be settled at the date of the expiry of the ownership for life or lives. *Janaki Ammal v. Narayanaswami Aiyar*⁵ at p. 209), The death of a Hindu female owner opens the inheritance to the reversioner's, and the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime, however, the reversionary right is a mere possibility, or spes successions, but this possibility is common to them all for, it cannot be predicated who would be the nearest reversioner at the time of her death. The Indian Law, however, permits the institution of suits in

the lifetime of the female owner to remove a common apprehended injury to the interests of all the reversioner's, presumptive and contingent alike; *Venkatanarayana Pillai v. Subbammal* ⁶. at; pp. 128, 129. The reversioner's rights during the lifetime of the female heir are merely of a protective character and nothing more, and whenever action is taken by the presumptive reversioner it is in a representative capacity and on behalf of all the reversioner's, and not on the footing that the person taking the action is in fact the next reversioner at the date of the suit. The decisions of Indian High Courts, on which the High Court has relied in this case proceed on these principles and cover the precise point raised in this appeal.

14. For these reasons, their Lordships are of opinion that the judgment appealed from is right and ought to be affirmed and this appeal ought to be dismissed with costs, and they will humbly advise His Majesty accordingly.

Appeal dismissed.

Cases Referred.

1. AIR 1936 Allahabad 507 : 58 All 1041 : 163 IC 756 (FB)
2. AIR 1936 Lahore 124: 17 Lah 356: 16 IC 718,
3. 1936 Allahabad 507 : 58 All 1041 : 163 IC 756 (FB),
4. 5 Cal 776: 7 IA 115: 4 Sar 103: 3 Suthi 765 (PC),
5. (AIR 1916 PC 117: 39 Mad 634 : 43 IA 207 : 37 IC 161 (PC),
6. AIR 1315 PC 124: 38 Mad 406 : 42 IA 125 : 29 IC 298 (PC),