

Satya Charan Dutta

Vs

Urmilla Sundari Dassi and Others

Civil Appeal No. 1356 of 1966

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

09.09.1969

JUDGMENT

GROVER, J. –

1. This is an appeal by certificate from a judgment of the Calcutta High Court.

2. The facts may be briefly stated. One Ratnamala Dassi who was governed by the Bengal School of Hindu Law as modified by the Hindu Succession Act, 1956, hereinafter called the Act, died intestate in January, 1964, leaving no issue or lineal descendants. Her husband Monmotha Nath Dutt had pre-deceased her. The said Ratnamala Dassi left her surviving the appellant and respondents 2 and 3, the brothers of her husband and respondent 1, Urmilla Sundari Dassi her husband's sister. In 1964 respondent No. 1 instituted a suit for declaration that as an heiress of Ratnamala Dassi she had 1/4 share in the movable and immovable property left by her and that she be allotted her share by partition of those properties. The appellant entered appearance and took up the plea in his written statement that under the Act he and Respondent 2 and 3 being the brothers of the husband of the deceased Ratnamala Dassi were the heirs in preference to Respondent 1 who was the sister of the deceased's husband. The suit was tried on the original side by a learned Single Judge of the Calcutta High Court who granted a preliminary decree on December 23, 1964, in favour of Respondent 1 holding that she had 1/4 share in the estate left by Ratnamala Dassi. The appellant preferred an appeal to a division bench which was dismissed.

3. The sole point which has to be considered is whether, according to the order of succession as laid down in Class II of the Schedule to Section 8 of the Act, brother would succeed in preference to the sister or whether the brother and sister would succeed jointly having equal shares ? According to Section 15(1) when a female Hindu dies intestate her property devolves according to the rules set out in Section 16. Section 15 divides the groups of heirs of a female dying intestate into five categories described as Entries (a) to (e). We are concerned, in the present case, with Entry (b) which is "secondly, upon the heirs of the husband". Section 16 provides that the order of succession among 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 :

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. - X X X X##

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 intestate in respect thereof immediately after the intestate's death."

As the property in the present case was of the husband of Ratnamala Dassi we have to turn to Section 8 to find out who would have been his heirs. Section 8 reads :

Section 8. - "The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter -

- (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;
- (b) secondly, if there is no heirs 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."

The Schedule mentioned in Section 8 to the extent it is material is reproduced below :

# Class I"Son; daughter; widow; mother; son of a predeceased son; daughterof a predeceased son; son of a predeceased daughter; daughter of apredeceased daughter; widow of a predeceased son; son of apredeceased son of a predeceased son; daughter of a predeceased sonof a predeceased son; widow of a predeceased son of a predeceasedson. Class III. Father.II. (1) Sons's daughters's son, (2) sons's daughter's daughter,(3) brother, (4) sister.III. X X X XIV. X X X XV. X X X XVI. X X X XVII. X X X XVIII. X X X XIX. X X X XExplanation. - X X X X"###

Section 9 lays down that among the heirs specified in the Schedule those in Class I shall take simultaneously and to the exclusion of all other heirs and those in the first entry in Class II shall be preferred to those in the second entry and so on. Section 11 is to the effect that the property of an intestate shall be divided in any one entry in Class II of the Schedule so that they share equally.

4. Before the High Court the contention raised on behalf of the appellant was that "brother" being prefixed by arabic numeral 3 came before "sister" which word had the numeral (4) before it and that the object of using the numerals within a particular group was to prescribe the order of preference. It was also argued that the use of the arabic numerals in Groups II, III and IV of Class II must have same meaning; otherwise the Legislature would have used such numerals in respect of the heirs not only in Class II but in Class I as well. The learned Judges of the division bench felt that the use of the arabic numerals appeared to be redundant but "the combined effect of this section read with the others seems to be that the Legislature intended that the heirs named after Numerals II, III and IV composed three entries only".

5. We are unable to accede to the argument that the use of arabic numerals is decisive of the point whether or not the heirs specified in Entry II of Class II succeed simultaneously and equally. It is inconceivable that a matter of such importance should have been left to the employment of numerals alone. If the intention of the Legislature was that each class of relatives shown against the arabic numerals constituted an entry express and specific provisions to that effect would have been made in

the substantive sections of the Act. Indeed Section 11 says quite clearly that the property of an intestate shall be divided between the heirs specified in any one entry in Class II of the Schedule so that they share equally. That language would not be consistent with the view that the heirs shown against the arabic numerals constitute an entry within the meaning of Section 11. The Act was meant to lay down a comprehensive and uniform system of inheritance and its scheme is to prescribe a set of rules for succession to the property of male and female Hindus dying intestate. Sections 8 to 13 contain the general rules relating to succession to the property of a male Hindu including the matter of ascertainment of shares. Section 15 and 16 contain the general rules affecting succession to the property of a female Hindu. The rules relating to preferential heirs are given in Section 10. If the intention was to give preference among the heirs in Class II according to arabic numerals treating the same as a separate entry some provision would undoubtedly have been made in Section II for that purpose. As noticed before it is that section which deals with the distribution of property among heirs in Class II of the Schedule. Indeed Section 11 would be wholly unnecessary if each one of the heirs mentioned in each entry of Class II were to take preference to the next one in the same entry. It is also significant that in Class I male and female heirs have been treated as equal. There is no reason why any distinction should have been made among the heirs in Class II on the ground of the heirs being male or female. For instance in Entry II in Class II a brother would have preference over the sister and in his presence the later would succeed if the submission on behalf of the appellant is to be accepted. No reason or justification has been suggested for making such a distinction. Similarly on the appellant's argument the son's daughter's son should have preference over the son's daughter's daughter. That again would run counter to the whole scheme of the Act that male and female heirs should get equal treatment. It must be remembered that the Act incorporated one of the principal reforms which had become a pressing necessity owing to the changed social and economic conditions in Hindu society that in succession there should be equal distribution between male and female heirs.

6. It is true that the draftsmen while employing the arabic numerals in Entries II to IV of Class II only are likely to have something in mind but on whole and in view of the reasons which have been given above no particular significance can be given to the use of the arabic numerals. Generally speaking numbers or numerals are employed in a statute for the sake of convenience and easy reference, but their use cannot override the statutory provisions. Nor is it possible in the absence of any indication in the sections or in the Schedule itself to attribute such a radical departure from the general scheme of classification of heirs, as has been suggested, namely, that in case of three entries only in Class II the Legislature intended to create an order of preference and lay down the same by the use of arabic numerals.

7. There is no merit in this appeal which fails and it is dismissed with costs.

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