

Partap Singh

Vs

Union of India and Others

Special Leave Petition (Civil) No. 4934 with Writ Petition No. 3947 of 1985

(E. S. Venkataramiah, R.B. Misra JJ)

06.09.1985

JUDGMENT

VENKATARAMIAH, J. -

1. The above petition for special leave is filed by the petitioner under Article 136 of the Constitution requesting the Court to grant leave to him to prefer an appeal against the judgment and order of the High Court of Punjab and Haryana in R.S.A. No. 1254 of 19775. He has also filed a write petition under Article 32 of the Constitution questing the constitutionality of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act'). Since the two petitions are connected they are disposed of by his common judgment.

2. One Amar Singh was the owner of certain agricultural lands measuring in all 33 Bighas 5 Biswas in the village Fatuhi Khera, Tehsil Muktsar in the state of Punjab. He died in or about the year 1932 leaving behind him two widows by the name Jagir Kaur and Har Kaur. The petitioner was his adopted son. Under an arrangement each of two widows had been given one-third share in the lands belonging to their husband in lieu of their right of maintenance. In November 1942 Har Kaur surrendered her one-third share in the lands in favour of the petitioner and it was mutated in his name on March 23, 1943. In 1945 the petitioner filed a suit against Jagir Kaur, the other widow of Amar Singh for obtaining a declaration that she had no right, title or interest of any sort in the lands belonging to Amar Singh. During the pendency of the said suit a compromise was effected on July 18, 1945 under which the parties agreed that Jagir Kaur could retain the one-third share in the lands in question in lieu of her maintenance and on her death the petitioner should get the possession of the same. Accordingly a decree was passed. Later on Jagir Kaur, who was in the possession of said one-third of the lands, bequeathed the said share in favour of Hardam Singh the respondent in the special leave petition, under a Will on January 25, 1971 and died within a few days thereafter. Thereafter on April 2, 1971 the petitioner filed the present suit, out of which this appeal arises claiming that Jagir Kaur had acquired one-third share in the lands of Amar Singh for the first time under the compromise decree which conferred in her only a limited estate and that on her death he should get possession of the same. He urged that in the circumstances the interest of Jagir Kaur in the lands allotted to her for maintenance under the compromise decree did not become an absolute estate in her hands under Section 14(1) of the Act. Since it could not be disputed that Jagir Kaur had a pre-existing right to claim maintenance from the estate of Amar Singh the trial court held that the interest of Jagir Kaur in the lands allotted to her become enlarged into an absolute estate on the coming into force of the Act and therefore the petitioner could not claim the lands the question after her death on the basis of the compromise decree. Accordingly the suit was dismissed. Against the said judgment and decree of the trial court the petitioner filed an appeal before the Additional District Judge Faridkot. In the course of the said appeal the petitioner in the course of said appeal the

petitioner conceded that the will was a genuine and valid one, but it was contended that Section 14(1) of the Act was not applicable to the case but it was governed by Section 14(2) of the Act. The appeal was however dismissed. The second appeal filed by the petitioner before the High Court of Punjab and Haryana against the judgment and decree of the District Judge was also dismissed. The special leave petition referred to above is filed against the judgment and decree passed by the High Court. Realising that it is not possible for him to succeed in his suit in the presence of Section 14(1) of the act the petitioner has filed the above writ petition questioning its constitutional validity.

3. Two contentions are urged by the learned counsel for the petitioner in support of his plea that Section 14(1) of the Act is unconstitutional : (1) that the provision contained in Section 14(1) of the Act is vague and uncertain; and (2) that it is violative of Articles 14 and 15(1) of the Constitution as it has attempted to favour only the section of the community, i.e., Hindu women on the ground of sex to the prejudice of the male members of that community. In support of his first limb of attack he relied on the following observations made by this Court in *V. Tulasamma v. V. Sessa Reddi (dead)* by LRs ((1977) 3 SCR 261 : (1977) 3 SCC 99) at pages 266-267 : (SCC p : 137 para 67)

It is indeed unfortunate that though it became evident as far back as 1967 that sub-sections (1) and (2) of Section 14 were presenting serious difficulties of construction, in cases where property was received by a Hindu female in lieu of maintenance and the instrument granting such property prescribed a restricted estate for her in the property and divergence of judicial opinion was creating a situation which might well be described as chaotic, robbing the law of that modicum of certainty which it must always possess in order to guide the affairs of men, the Legislature, for all these years, did not care to step in to remove the constructional dilemma facing the courts and adopted an attitude of indifference and inaction, untroubled and unmoved by the large number of cases on this point encumbering the files of different courts in the country, when by the simple expedient of an amendment, it could have silenced judicial conflict and put an end to needless litigation. This is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and proved a paradise for lawyers. It illustrates forcibly the need of an authority or body to be set up by the Government or the Legislature which would constantly keep in touch with the adjudicatory authorities in the country as also with the legal profession and immediately respond by making recommendations for suitable amendments whenever it is found that a particular statutory provision is, by reason of inapt language or unhappy draftsmanship, creating difficulty of construction or is otherwise inadequate or defective or is not well conceived and is consequently counterproductive of the result it was intended to achieve. If there is a close inter-action between the adjudicatory wing of the State and a dynamic and ever alert authority or body which responds swiftly to the drawback and deficiencies in the law in action, much of the time and money, which is at present expended in fruitless litigation, would be saved and law would achieve a certain amount of clarity, certainty and simplicity which alone can make it easily intelligible to the people.

4. It is contended by the learned counsel for the petitioner quite ingeniously that since Parliament had not amended Section 14 after the above judgment of this Court as indicated by the Court, the said section could not be relied upon any longer.

5. We do not find any substance in the contention that Section 14(1) of the Act is vague and is not capable of implementation because this Court gave effect to that sub-section in the very judgment on which the petitioner relies notwithstanding the observations extracted above. Those observations were made by this Court only with a view to bringing to the notice of Parliament that the provisions

of Section 14 required to be recast in order to avoid any possible litigation arising on account of the clumsy language used in Section 14 of the Act. The Court, however, did not find any difficulty in construing and applying Section 14(1) of the Act to the case of appellant 1 in that case and in declaring that the property which had been allotted to her under compromise in lieu or satisfaction of right of maintenance became her absolute property on the coming into force of the Act. The doubt, if any, about the meaning of that section was set at rest by the above decision. In the instant case the position of Jagir Kaur was in no way different from the position of appellant 1 in Tulasamma case((1977) 3 SCR 261 : (1977) 3 SCC 99). The first ground, therefore, should fail.

6. There is very little substance in the second contention raised by the petitioner also. The submission made on behalf of the petitioner in this case overlooks the benign constitutional provision in clause (3) of Article 15 of the Constitution which provides that nothing in Article 15 shall prevent the State from making any special provision for women and children. The said provision overrides clause (1) of Article of 15 of the Constitution which provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Section 14(1) of the Act was enacted to remedy to some extent the plight of a Hindu woman who could not claim absolute interest in the properties inherited by her from her husband but who could only enjoy them with all the restrictions attached to a widow's estate under the Hindu law. There is now hardly any justification for the males belonging to the Hindu community to raise any objection to the beneficent provisions contained in Section 14(1) of the Act on the ground of hostile discrimination. The above provision is further protected by the express provision contained in clause (3) of Article 15, since it is a special provision enacted for the benefit of Hindu women. We do not find any merit in the write petition. The write petition is dismissed. Consequently, the special leave petition also has to be dismissed. It is accordingly dismissed.

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