

Vithabai Krishnaji Patil

Vs

Banubai W/o Babu Payamal

Civil Appeal No. 396 of 1992

(CJI M.N. Venkatachaliah, R.M. Sahai JJ)

20.01.1992

### JUDGMENT

1. We have heard counsel on both sides. Special leave granted.
2. Appellant Vithabai Krishnaji Patil was the defendant in the suit. The question that arose was whether the appellant Vithabai or the respondent Banubai was the intestate heir of Bhagirathi Bai, who, it is common ground, was the owner of the suit land bearing Sy. No.231/2 admeasuring 3 acres 17 gunthas situate in village Uchegaon. Dattu, the Banubai's husband and Babu, husband of Bhagirathi Bai were brothers. After the death of Bhagirathi Bai in the year 1969, appellant Vithabai asserted her heirship to the estate of the deceased Bhagirathi Bai claiming to be her daughter. Respondent Banubai disputed the relationship. Banubai contended that her husband Babu was the nearest preferential heir of Bhagirathi Bai and that on Babu's death in the year 1972 she as Babu's widow was such heir and sought in the suit a declaration of her title accordingly.
3. On an appreciation of the evidence on record the trial court came to the conclusion that appellant did not succeed in establishing that she was the daughter of Dattu and that therefore she was not the preferential heir of Bhagirathi Bai. Accordingly, the trial court decreed the suit.
4. The first appellate court affirmed the judgment and decree of the trial court. It made certain observations which were susceptible of the meaning that appellant was an illegitimate daughter of Dattu. The first appellate court said:

"Illegitimate daughter cannot claim heirship as per Section 15 of the Hindu Succession Act, thus, it is clear that the defendant has to prove legally and technically, that she is the daughter of Savitribai who has married with Dattu. Unless and until she proves that she is the legal daughter of Dattu, she cannot claim heirship to the present suit property. Merely because she proves that she is the daughter of Dattu, does not mean that she is the legal daughter of Dattu.

As discussed above illegitimate daughter cannot claim heirship as per Section 15 of the Hindu Succession Act. Then burden is on the defendant to prove the fact positively."

It was not necessary to go so far as to say that the appellant's claim stood 'disproved', particularly when implications of the finding are far-reaching and concerned questions of legitimacy. However, the High Court has set the record straight by holding that the courts below must be held to have arrived at the conclusion that the appellant had failed to prove that she was the daughter of

Bhagirathi Bai.

5. The evidence on record with regard to appellant's relationship to Bhagirathi Bai or Dattu is sketchy and discrepant. Appellant did not examine herself as a witness. Appellant's son who was examined on her behalf deposed that his mother was the daughter of Savitribai alleged to be the second wife of Dattu, which meant, contrary to the pleadings, that appellant was the step daughter of Bhagirathi Bai and not her own daughter. A certain Sathyappa, a tenant on the land, examined for the appellant seemed to assert that appellant was Bhagirathi Bai's own daughter. The High Court dismissed the appellant's second appeal.

6. In view of the state of the evidence on record the findings of the High Court do not call for interference. But there are some human considerations which compel a sympathetic consideration for some just arrangement. We discussed with both learned counsel the need and justification for making some provision for the appellant who is in an advanced stage of life and who cannot be said to be a total stranger to Dattu's family. Both learned counsel fairly agreed that the arrangement we proposed is essentially a reasonable one. We direct that after Banubai recovers actual physical possession of the suit land from the tenant pursuant to the earlier adjudication of the Tenancy Courts, she will place the appellant in possession of twenty gunthas in an appropriate part of the suit land to be enjoyed by the appellant during her lifetime without any right of alienation or to create any encumbrance. Immediately upon the death of the appellant, the property will revert back to the possession of Banubai or her heirs, as the case may be.

7. The judgment under appeal, in all other respects, is affirmed and left undisturbed. The appeal is disposed of accordingly. No costs. Order accordingly.

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