SUPREME COURT OF INDIA

Bhagat Ram (Dead) By Lrs.

Vs.

Teja Singh (Dead) By Lrs.

C.A.No.3663 of 1984

(U.C. Banerjee and K.G. Balakrishnan JJ.)

06.11.2001

JUDGMENT

K.G. Balakrishnan, J.

1. I.A. No. 1 is allowed.

2. This appeal was finally heard and allowed on 31.3.1999 by a Bench consisting of one of us (Hon. U.C. Banerjee, J.) and another learned Judge of this Court. hat decision is reported in *Bhagat Ram(Dead) Versus Teja Singh*[1]. The only respondent in the appeal was Teja Singh. He was served with the notice issued from this Court but he did not choose to appear and defend the appeal. Teja Singh died on 1.12.1986. But no steps were taken to implead the legal heirs of Teja Singh. The original appellant Bhagat Ram also died and his legal heirs/representatives were brought on record on 20.11.1985. When the appeal was heard by this Court on 31.3.1999, it was not brought to the notice of this Court that Teja Singh had already passed away on 1.12.1986. After the appeal was disposed of, the legal heirs of Teja Singh filed an application to get themselves impleaded in this appeal for an opportunity of hearing.

3. This Court, however, thought it expedient to offer an opportunity of hearing by reason of the factum of the original respondent being not heard at the time of the disposal of the appeal and it is on this score that we permitted Mr. Jaspal Singh, learned senior counsel appearing for the newly added respondents to put forth the submissions and address arguments before this Court. We did also allow Mr. Rakesh Dwivedi, the learned senior counsel appearing in support of the appeal to address the Court. After hearing both sides, we, however, find that there is no reason to take a different view as reflected in the earlier Order of this Court dated 31st March, 1999.

4. The short facts necessary for proper understanding of the case are thus:-

5. One Kehar Singh was the owner of the land admeasuring 280 kanals and 18 marlas in the village Antowali (now in Pakistan). He died prior to partition of India. His widow, Smt. Kirpo and two daughters Smt. Santi and Smt. Indro migrated to India. In lieu of the property

owned by Kehar Singh in Pakistan, his widow, Kirpo was allotted some land in India. Kirpo died on 25.12.1951 leaving behind her two daughters Smt. Santi and Smt. Indro. They inherited the property equally. Smt. Santi died in 1960. The property left by her was thereafter mutated in the name of her surviving sister, Smt. Indro. The original appellant, Bhagat Ram (deceased) who had entered into an agreement with Smt. Indro on 12.3.1963, filed a suit for specific performance, which was decreed in his favour. The original respondent in the appeal, Shri Teja Singh (deceased) is the brother of Smt. Santis pre-deceased husband. He filed a suit alleging that, on the death of Smt. Santi in 1960, the property in question devolved on him by virtue of clause (b) of Sub-section (1) of Section 15 of the *Hindu Succession Act, 1956*. The Trial Court decreed the suit filed by Teja Singh. The appeal filed against the said decree was dismissed. Bhagat Ram (deceased) then preferred the second appeal before the High Court, which was also dismissed. The High Court held that the property held by Smt. Santi on her death devolved on Teja Singh who was the brother of the pre-deceased husband of Smt. Santi. However, on appeal, this Court by its Judgment dated 31.3.1999 held that the property held by Smt. Santi was the property inherited by her from her mother; therefore, clause (a) of sub-Section (2) of Section 15 is the relevant provision which governed the succession and Teja Singh had no right in the property left by Smt. Santi and that it would only devolve on her sister Smt. Indro. The relevant Section in the Hindu Succesion Act, 1956 reads as follows:-

> "15. General rules of succession in the case of female Hindus. -- (1) The property of a female hindu dying intestate shall devolve according to the rules set out in Section 16, - (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the husband (c) thirdly, upon the mother and father, (d) fourthly, upon the heirs of the father; and (e) lastly, upon the heirs of the mother.
>
> (2) Notwithstanding anything contained in sub-Section (1), -(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-Section (1) in the order specified therein but upon the heirs of the father; and (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub- section (1), in the order specified therein, but upon the heirs of the husband."

6. The learned senior Counsel for the respondents Mr. Jaspal Singh contended that Smt. Santi acquired property from her mother Smt. Kirpo who died on 25.12.1951 and at that time Smt. Santi had only a limited right over this property, but by virtue of Section 14(1) of the Hindu Succession Act, she became the full owner of the property and, therefore, on her death, the property held by her would be inherited by her legal heirs as per the rule set out in Section 15 (1) of the Act. The learned Senior Counsel further contended that prior to the Hindu Succession Act, Smt. Santi had only a limited right, but for Section 14(1) of the Act, it would have reverted to the reversioners and such a limited right became a full right and, therefore,

the property is to be treated as her own property. He also contended that Section 15 of the Hindu Succession Act will have only prospective operation and, therefore, the words used in Section 15(2)(a) viz. any property inherited by a female Hindu are to be construed as property inherited by a female Hindu after the commencement of the Act.

7. We do not find any merit in the contention raised by the Counsel for the respondents. Admittedly, Smt. Santi inherited the property in question from her mother. If the property held by a female was inherited from her father or mother, in the absence of any son or daughter of the deceased, including the children of any pre-deceased son or daughter, it would only devolve upon the heirs of the father and, in this case, her sister Smt. Indro was the only legal heir of her father. Deceased Smt. Santi admittedly inherited the property in question from her mother. It is not necessary that such inheritance should have been after the commencement of the Act. The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female, should go to the legal heirs of the father. So also under clause (b) of sub-Section 2 of Section 15, the property inherited by a female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband. It is the source from which the property was inherited by the female, which is more important for the purpose of devolution of her property. We do not think that the fact that a female Hindu originally had a limited right and later, acquired the full right, in any way, would alter the rules of succession given in sub-section 2 of Section 15.

8. A question of similar nature was considered by this Court in *Bajya vs. Smt. Gopikabai and another*[2]. In that case, the suit land originally belonged to G, son of D. G died before the settlement of 1918 and thereafter, his land was held by his son, P who died in the year 1936. On Ps death, the holding devolved on Ps widow, S. S died on November 6, 1956, and thereupon dispute about the inheritance to the land left behind by S arose between the parties. The plaintiff claimed that she being the daughter of T, a sister of the last male holder, P was an heir under Section 15 read with Section 2(II)(4)(iv) of the Schedule referred to in Section 8 of the Hindu Succession Act, 1956, whereas the defendants claimed as sapindas of the last male holder under Mitakshara Law. Speaking for the Bench, Hon. R.S. Sarkaria, J. held that the case would fall under clause (b) of sub-Section 2 of Section 15 because S died issueless and intestate and the interest in the suit property was inherited by her from her husband and the property would go to the heirs of the husband.

9. In *State of Punjab vs. Balwant Singh and others and Chand Singh and others vs. Balwant Singh and another*[3] also, a question of similar nature was considered. In that case, the female Hindu inherited the property from her husband prior to Hindu Succession Act and she died after the Act. On being informed that there was no heir entitled to succeed to her property, the Revenue authorities effected mutation in favour of the State. There was no heir from her husbands side entitled to succeed to the property. Plaintiff, who was the grandson of the brother of the female Hindu claimed right over the property of the deceased. The High Court held that the property inherited by female Hindu from her husband became her absolute property in view of Section 14 and the property would devolve upon the heirs specified under Section 15(1). The above view was held to be faulty and this Court did not accept that.

It was held that it is important to remember that female Hindu being the full owner of the property becomes a fresh stock of descent. If she leaves behind any heir either under sub-section (1) orunder sub-section (2) of Section 15, her property cannot be escheated.

10. In *Smt. Amar Kaur vs. Smt. Raman Kumari and others*[4], a contra view was taken by High Court of Punjab and Haryana. In this case, a widow inherited property from her husband in 1956. She had two daughters and the widow gifted the entire property in favour of her two daughters. One of the daughters named Shankri died without leaving husband or descendent in 1972. Her property was mutated in favour of her other sister. At the time of death of Shankri, her husband had already died leaving behind another wife and a son. They claimed right over the property left by the deceased female Hindu. In paragraph 4 of the said judgment, it was held as under:

11. Smt. Shankari succeeded to life estate, which stood enlarged in her full ownership under Section 14(1) of the Act. Since smaller estate merged into larger one, the lesser estate ceases to exist and a new estate of full ownership by fiction of law came to be held for the first time by Smt. Shankari. The estate, which she held under Section 14(1) of the Act, cannot be considered to be by virtue of inheritance from her mother or father. In law it would be deemed that she became full owner of this property by virtue of the Act. On these facts it is to be seen whether Section 15(1) of the Act will apply or Section 15(2) of the Act will apply. Section 15(2) of the Act will apply only when inheritance is to the estate left by father or mother, in the absence of which Section 15(1) of the Act would apply.

12. We do not think that the law laid down by the learned Single Judge in the above said decision is correct. Even if the female Hindu who is having a limited ownership becomes full owner by virtue of Section 14(1) of the Act, the rules of succession given under sub-Section 2 of Section 15 can be applied. In fact, the Hindu Succession Bill 1954 as originally introduced in the Rajya Sabha did not contain any clause corresponding to sub-Section (2) of Section 15. It came to be incorporated on the recommendations of the Joint Committee of the two Houses of Parliament. The reason given by the Joint Committee is found in Clause 17 of the Bill, which reads as follows:

> "While revising the order of succession among the heirs to a Hindu female, the Joint Committee have provided that, properties inherited by her from her father reverts to the family of the father in the absence of issue and similarly property inherited from her husband or father-in-law reverts to the heirs of the husband in the absence of issue. In the opinion of the Joint Committee such a provision would prevent properties passing into the hands of persons to whom justice would demand they should not pass."

13. The source from which she inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. That would defeat the intent and purpose of sub-Section 2 of Section 15, which gives a special pattern of succession.

14. This Court in its Judgment dated 31.3.1999 held that clause (a) of sub-section (2) of Section 15 is the appropriate rule to be applied for succession of the property left by the deceased Smt. Santi and we find no reasons to take a different view. Thus, the appeal is allowed. Parties to bear their respective costs. Revised decree be drafted showing the newly added respondents on the party array.

[1]*1999(4) SCC 86*
[2]*AIR 1978 SC 793*
[3]*AIR 1991 SC 2301*
[4]*AIR 1985 Punjab and Haryana, 86*