CALCUTTA HIGH COURT

Smt. Kishori Bala Mondal

Vs.

Tribhanga Mondal

Appeal from Appellate Decree No. 561 of 1973

(Dhires Chandra Chakravorti, J.)

19.08.1980

JUDGMENT

D.C. Chakravorti, J.

1. This appeal is from the judgment and decree passed by the learned Subordinate Judge at Asansol whereby the judgment and decree passed by the learned Munsif, 1st Court at Asansol were modified.

2. Sm. Kishori Bala Mondal, the appellant, instituted against the respondents a title suit praying for a declaration of her title to the suit property and for an order of perpetual injunction restraining the respondents from interfering with her possession.

3. The facts relevant for purpose of this appeal are as follows:

> The suit land originally belonged to one Krishna Majhi who died about 42/43 years ago leaving his second wife Rati Bala as his sole heiress. The plaintiff Sm, Kishori Bala is the daughter of said Krishna Majhi by his second wife said Rati Bala. The first wife of Krishna Majhi pre-deceased him. On the death of Rati Bala, according to the plaintiff, the latter as the sole heiress inherited the suit property and has since then been possessing the same. Krishna Majhi had another daughter named Sasthibala by his first wife. Krishna Majhi dated before the Hindu Succession Act came into force and Rati Bala died after the said Act came into force. On the death of Rati Bala her interest in the suit property devolved on her only daughter Kishori Bala, the plaintiff. The said Sasthibala or her sons and daughter? who are defendants had neither any title to nor possession in the suit property or any part thereof. As the defendants were threatening the plaintiff with dispossession, the present suit had to be brought

4. The defendants' case is that both Rati Bala and Sasthibala used to possess all the properties left by Krishna Majhi and from after the death of Sasthibala the defendants have been possessing

almost half of the suit property as her heirs.

5. The learned Munsif declared plaintiff's title to the suit land and restrained the defendants permanently from interfering with her possession of suit land excepting the suit tank recorded in plot No. 925/1101. He, however, dismissed the plaintiff's prayer for permanent injunction in respect of the said tank.

6. On appeal the learned Subordinate Judge modified the judgment and decree of the learned Munsiff. The learned Subordinate Judge declared plaintiffs eight anna share and not 16 anna share as declared by the learned Munsif. The learned Subordinate Judge also disallowed the plaintiff's prayer for permanent injunction.

7. The only question that came up for determination before the learned Subordinate Judge is whether on the death of Ratibala the plaintiff alone or the plaintiff along with the defendants became entitled to the property left by Ratibala which she in her turn got from her husband as his sole heiress. Admittedly, the legal position is that when Krishna Majhi died his property devolved on Ratibala who was his sole heiress under the Hindu Law which was in force at the time of the death of Krishna Majhi. Further, there is no dispute regarding the fact that when Ratibala died the Hindu Succession Act, 1956 already came into operation. There is further no dispute regarding the legal position that in view of the provisions of Section 14 of the Hindu Succession Act, 1956, Ratibala came to have absolute ownership in the suit property in which, before the Hindu Succession Act came into force, she had, according to old Hindu Law, a limited interest or in other words widow's estate. On whom the property left by Ratibala would devolve is the question before me. In determining that question the provisions of Sections 15 and 16 of the Hindu Succession Act have to be applied. Section 15 of the said Act is as follows:

> "15 (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 predeceased 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."

8. As a reference to the provisions of Section 16 would also be necessary. I consider it proper to set out the provisions of Section 16 of the said Act here-under:

> "16. The order of succession among the 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, namely:--
> 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-- If any son or daughter of the intestate had predeceased the intestate leaving his or her own children alive at the time of the inter state's deaths the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the inter state's death.
> 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 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 inter state's death."

9. A perusal of the provisions of Section 16 would show that according to the provisions of Rule 1 of Section 16, 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. When this law is applied to the facts of the present case there is no escape from the conclusion that the property left by Ratibala would devolve on her daughter who is the plaintiff Kishori Bala because the daughter is included in the first entry, namely, Clause (a) of Sub-section (1) of Section 15. Thus, she will exclude those who were mentioned in all succeeding entries namely, (b), (c), (d) and (e) of subsection (1) of Section 15. Clause (a) of Sub-section (2) of Section 15 provides that property inherited by a female heir from her father or mother shall devolve on the death of such female Hindu and in the absence of any son or daughter of the deceased, not upon the other heirs referred to in Sub-section (1) of Section 15 in the order specified therein but on the heirs of the father. This has to application to the present case inasmuch as the property which Ratibala got she got from her husband by way of inheritance. On another ground also this has no application as Ratibala died leaving a daughter. According to the provisions of Clause (b) of Sub-section (2) of Section 15 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, not upon the other heirs referred to in Sub-section (1) in the order specified therein but on the heirs of the husband. This provision has no application to the facts of the present case inasmuch as Ratibala died leaving a daughter and that daughter according to the provisions of Clause (a) of Sub-section (1) of Section 15 will inherit the property left by her mother Ratibala. In this view of the matter the defendants would be wholly excluded from inheritance by the plaintiff. The Court of Appeal below to my mind took a wrong view of the law in this regard.

10. Mr. Tarun Chatterjee the learned lawyer appearing for the respondents contended that in view of the fact that the words "of the deceased" appear in both clauses (a) and (b) of Sub-section (2)

of Section 15 but are omitted from the provisions of Clause (a) of Sub-section (1) of Section 15, the words "sons and daughters" appearing in Clause (a) of Sub-section (1) of Section 15 would of necessity mean the sons and daughters of the husband of Ratibala and not sons or daughters of Ratibala alone. In support of this view Mr. Chatterjee relies on the decision in *Ram Katori v. Prakashwati* which was rendered by a Division Bench of the Allahabad High Court and reported in 1968 ALJ 484 : ILR (1968) 1 All 697. The same question as is awaiting determination in the present appeal arose in that case and the learned single Judge before whom the matter came up referred the matter to a larger Bench in view of the importance of the question involved. Accordingly, that case was heard by Gupta and Katju JJ. As no one appeared on behalf of the respondent before the learned Judges, on being requested by their Lordships Mr. Jagdish Swarup, a senior Advocate of the said Court appeared as amicus curiae. According to the learned Judges as the expression "in the absence of any son or daughter of the deceased" occurs in both the clauses of Section 15(2), it is manifest that the expression "any son or daughter" as used in the two clauses refers to the son or daughter of the deceased Hindu female and not to the children of the deceased female's husband by a pre-deceased wife. The learned Judges took the view that the expression "the sons and daughters" appearing in Clause fa) of Sub-section (1) of Section 15 would include sons and daughters of the husband of the deceased female Hindu and not of the deceased female Hindu alone. The following passage quoted from that decision would clearly indicate the reasons advanced by the learned Judges for so holding :

> "The words used in Section 15(1)(a) are 'sons and daughters' and not 'son or daughter of the deceased'. The legislature has obviously made this distinction to bring all the children of the deceased husband of the female Hindu within the ambit of the rule laid down in Section 15(1)(a). It could be said that the expression 'sons and daughters' as used in Section 15(1)(a) does not refer only to the sons and daughters of a female Hindu dying intestate but also includes the sons and daughters of her deceased husband. The legislature by deleting the words 'of the deceased' in Section 15(1)(a) has protected the interest of the children of the husband of a Hindu female dying intestate, particularly, in those cases where the female had inherited the property from her husband and not from her father or mother. If that had not been so, the rule would have been patently unfair to the children of the husband of the Hindu female from his pre-deceased wife or even a co-wife. Construing the expression 'sons and daughters' in Section 15(1)(a) in view of the corresponding words used in Section 15(2) clauses (a) and (b), the conclusion is irresistible that the sons and daughters as indicated in Section 15(1)(a) would also include the children of the husband of pre-deceased wife."

11. With due deference to the learned Judges I find it difficult to accept the view expressed by them as aforesaid. I beg most respectfully to differ from the learned Judges. Regard being had to the relevant rules of interpretation of Statutes, I cannot but hold that the expression "sons and daughters" appearing in Section 15(1)(a) can only mean sons and daughters of the female Hindu dying intestate and it can not by any stretch of imagination include sons and daughters of the husband of that female Hindu. The interpretation put by the learned Judges is only possible if we import a few words into the text of Clause (a) of Section 15(1). The words "of her husband" shall have to be read after the words "sons and daughters" appearing in Clause (a) of Section 15(1), before Section 15(1)(a) may be said to include sons and daughters of the husband not by that

female Hindu but by any other wife of the husband. The learned Judges also spoke of the deletion of the words "of the deceased" from Section 15(1)(a). It is not a case of deletion of words from the original text of Section 15(1)(a). It is a case where the words "of the deceased" were absent from the text from the time when the Statute in question was initially enacted. There is therefore no meaning in saying that the legislature did intend to effect any change by deletion of those words from the original text.

12. If the language or text of the statute be clear and unambiguous, the Court has to give effect to what is conveyed by such clear and unambiguous language or text even though the legislature might not have contemplated or intended the consequences that would follow. In such cases there is no question of the application of any special rule of interpretation. In cases where the words used in the Statute admit of two meanings the question of interpretation or construction of the Statute arises. Thus, it is only in cases where there is ambiguity the Court has to resort to rules of interpretation. In such rises the acknowledged rule of interpretation is that the text of the Statute should be taken to convey the intention of the legislature as expressed in the text itself. The Courts ought not to speculate on the intention of the legislature. It ought not to take into consideration what would have been or what should have been enacted by the legislature. It should ascertain the intention of the legislature from the language or the text used. It is also an acknowledged principle of interpretation that in construing a particular provision contained in a Statute the Court should adhere to the grammatical and ordinary sense of the words used except in cases where such course would lead to some ambiguity, repugnance or inconsistency with the rest of the provisions contained in that Statute. In cases where there is absurdity or repugnance it would be open to the Court to modify the grammatical and ordinary sense of the words used but only that much of modification is permissible as would avoid absurdity, inconsistency or repugnance and no further. Regard being had to the acknowledged rules of interpretation of Statute referred to above it would be found that the text used in Section 15(1) taken in its grammatical sense would mean that the property of a female Hindu dying intestate shall devolve, according to the rules set out in Section 16, firstly on her sons and daughters (including the children of any pre-deceased son or daughter) and her husband. There is not the least ambiguity or repugnance which may call for a modification of the ordinary grammatical sense conveyed by the text of Section 15(1). What was mainly responsible for the view taken in the case of *Ram Katori v. Prakashwati, 1968 All LJ 484 : ILR (1968) 1 All 697* (supra) is the absence of the words "of the deceased" after the wards "upon the sons and daughters" in Section 15(1) and the inclusion of the words "of the deceased" after the words "any son or daughter" in Section 15(2), Clauses (a) & (b). The absence of the words "of the deceased" in Section 15(1) can in no way justify the view that what was meant to be provided by Section 15(1) is that the property of a female Hindu dying intestate shall devolve firstly upon the sons and daughters of her husband. I have already pointed out that before such a view can be taken some words which are not there in Section 15(1) are to be imported into that sub-section. That is not warranted. Further the absence of the words "of the deceased" in Section 15(1) and their inclusion in clauses (a) and (b) of Section 15(2) can be reasonably explained away. At the commencement of Section 15(1) only the person regarding devolution of whose property provision is made therein was mentioned and none else. Accordingly, while providing that the property would devolve upon the sons and daughters, it was not at all necessary to add the words "of the deceased" after the words "sons and daughters", while the provisions of Clauses (a) and (b) of Section 15(2) would show that in each of them as many as three persons are referred to before the words "any son or daughter of the deceased" occur. In Clause (a) a female Hindu, her father or mother are mentioned and in

Clause (b) a female Hindu, her husband or her father-in-law are referred to. It is because of this that it was necessary to add the words "of the deceased" after the words "any son or daughter" appearing in els. (a) and (b). When three persons are referred to it is necessary to specify on whose son or daughter the property will devolve. Further the view taken in the case of Ram Katori (supra) would lead to anomaly. Section 15(1) contains the words "upon the sons and daughters including the children of any pre-deceased son or daughter) and the husband". That being the grammatical construction if we are to read the words "of the husband" after the words "sons and daughters" we have to read the same expression namely, "of the husband" after the word "husband" appearing in Section 15(1). That leads to absurdity.

13. The learned Judges in the case of Ram Katori (supra) also support the view taken by them on the ground that unless such a view is taken "the rule would have been patently unfair to the children of the husband of the female Hindu from his predeceased wife or even a co-wife". This reasoning does not at all appeal to me. When there is no ambiguity, repugnance or inconsistency and the words used in a Statute are clear and unambiguous, the Courts of Law while applying rules contained in that Statute cannot either add to or detract from the particular text appearing in the Statute for the purpose of avoiding supposed injustice. Interpreting law is different from making law. Even if the application of a rule of law which is couched in clear and unambiguous language causes injustice a Court of Law whose function is only to interpret and not to make law cannot refrain from applying that rule and replace it by a rule of its own liking, which according to them would avoid any injustice being done. Furthermore, in the present case, it cannot be said that when according to Section 15(1)(a) the property of a female Hindu dying intestate would devolve firstly on sons and daughters of hers and on her husband, the rule is unjust because the sons and daughters of the husband by a co-wife would be deprived of any share in the property. By virtue of Section 14 the limited interest that Ratibala had in the property after her husband's death ripened into an absolute interest on the passing of the Hindu Succession Act and there is no reason why the rule in Section 15(1)(a) should be considered unjust only because the property of Ratibala on her dying intestate would devolve on her sons and daughters and not on sons and daughters by the other wife of her husband.

14. After the conclusion of the arguments when Mr. Chatterjee found it difficult to dislodge me from the view taken by me as aforesaid, he pointed out that there was a decision of a single Judge of the Pun jab and Haryana High Court which is in the line of my decision. That decision was rendered in *Gurnam Singh v. Smt. Ass Kaur*, There the learned Judge differed from the view taken in Ram Katori's case (supra) as his Lordship was of the view that the exclusion of the words "of the deceased" from Clause (a) of Section 15(1) was only a matter of convenience. They were excluded according to the learned Judge, for avoiding repetition of those words in the other clauses of Sub-section (1) of Section 15. His Lordship further pointed out that if those words had not been used in clauses (a) and (b) of Sub-section (2) of Section 15, there would have been a likelihood of confusion. Accordingly, the learned Judge dissented from the view taken in Ram Katori's case (supra).

15. In *Mallappa v. Shivappa*[1], a Division Bench of the Mysore High Court took the view that the word "son" in Section 15(1)(a) could not properly be understood to include a stepson of the deceased. In the absence of any definition or explanation to the effect that

[1] AIR 1962 Mys 140

the word "son" would also include a stepson, that word should be given its natural meaning, if so, a son of deceased female would mean a male issue of the body of that deceased female. This

decision also supports the view taken by me.

16. The decision in *Rama Ananda Patil v. Appa Bhima Redekar*[2], also in a way supports the view taken by me. According to that decision a son of a female Hindu by the first husband of a female Hindu is entitled to succeed on her death to the property inherited by her as sole heirs of her second husband in preference to the nephews and grand-nephews of her second husband under Section 15 of the Hindu Succession Act, 1956.
17. No other question is involved in this appeal.

18. In view of what is stated above, the appeal ought to he allowed. The appeal is allowed and the judgment and decree of the Court of Appeal below are set aside and those of the learned Munsif are affirmed. There will be no order for costs.

[2] AIR 1969 Bom 205