BOMBAY HIGH COURT

Rama Ananda Patil

Vs.

Appa Bhima Redekar

Special Civil Appln. No. 35 of 1965

(Tarkunde and Deshpande, JJ.)

04.07.1968

JUDGMENT

Deshpande, J.

1. The short question that falls for determination in this case is as to whether, a son by the first husband of a female Hindu is entitled to succeed to the property on her death inherited by her from her second husband, under Section 15 of the Hindu Succession Act of 1956.

2. Facts in this case are not in dispute. One Durgappa Banoji Redekar was the owner of survey Nos. 48/1, 48/7 and 125/4 situate in village Manwad in Kolhapur district. Durgappa died leaving behind him no issues, male or female, but his widow Yamunabai. Yamunabai succeeded to the property on the death of Durgappa and enjoyed the property till her death on 6-8-1961. Yamunabai was thus alive on 17th June 1956, when the Hindu Succession Act of 1956 (hereinafter referred to as "the Act") came into force, and was in possession of the said property, and she thus became absolute owner of the same in view of Section 14 of the Act. Yamunabai left behind her the petitioner Rama, who is admittedly her son born to her from her first husband, after whose death she was married to Durgappa. The Circle Officer held inquiry in mutation proceedings under the Bombay Land Revenue Code to decide whose name should be mutated in the Revenue records as the occupants of the lands in place of Yamunabai. The petitioner claimed title to the property as the son of Yamunabai, while the respondents, nephews and grand-nephews of Durgappa claimed title to the property urging that they were entitled to succeed to the property by excluding the petitioner under Section 15 sub-section (2)(b) of the Act. By an order dated 17-3-1962, the Circle Officer upheld the claim of the respondents. On appeal by the petitioner to the District Deputy Collector, the order of the Circle Officer was set aside and the petitioner's claim to succeed to the property of Yamunabai was upheld. The respondents then challenged this order in revision before the Commissioner of Poona Division. The Commissioner set aside the order of the Deputy Collector and accepted the claim of the respondents to succeed to the property in

dispute left by Yamunabai. The petitioner challenges this order of the Commissioner dated 24-9-1964 in this Special Civil Application.

3. It is not in dispute that Yamunabai held the disputed property as absolute owner. Therefore, the claim to the succession to her property is to be governed by the provisions of Section 15 of the Act. General law in regard to the succession to the property left by female dying intestate is laid down in sub-section (1) of Section 15. According to this sub-section, property of a female dying intestate devolved firstly upon the sons and daughters of the deceased female Hindu, (including the children of any pre-deceased son or daughter), and the husband, and in their absence upon other heirs enumerated in clauses (b) to (e) of the said sub-section. Two exceptions have, however, been engrafted to this general law, and the said exceptions have been incorporated in clauses (a) and (b) of sub-section (2) of Section 15. One exception is in regard to the property inherited by such female Hindu from her father or mother and the rule of succession laid down in this behalf is that such property, inherited by a female Hindu from father or mother, is to devolve on the heirs of her father. This rule, however, is to operate only "in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter)". The second exception is in regard to the property inherited by such female Hindu from her husband or from her father-in-law and the rule of succession laid down in that behalf is that the property so inherited by the female Hindu and left by her dying intestate shall devolve upon the heirs of her husband. This again is to happen "in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter)". Thus the general law in regard to the succession to the property of a female Hindu dying intestate laid down in Section 15(1) (a) is slightly altered by the exceptions engrafted in clauses (a) and (b) of sub-section (2) of the said section. Comparing the phraseology employed by the Legislature in clause (a) of sub-section (1) of Section 15 and clauses (a) and (b) of sub-section (2) of Section 15, the only departure in sub-section (2), is that the general law laid down in Section 15(1) (a), is that the words "and the husband" do not find place immediately after the words "in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter)", in clauses (a) and (b) of sub-section (2). Apparently, therefore, the property of a female Hindu dying intestate shall devolve firstly upon "the sons and daughters (including the children of any pre-deceased son or daughter)" without regard to the source of the property held by such a female Hindu dying intestate. The only departure in the event of the source of such property being the inheritance from her father or mother in clause (a) of Section 15(2) and from her husband or father-in-law in clause (b) of Section 15(2), is that the husband is excluded and is disentitled to succeed to the property left by a female Hindu dying intestate if such property is inherited from her father or mother. In fact, the contingency contemplated in Section 15 (2) (b) can arise only after the death of her husband and, therefore, he cannot appear in the picture amongst the heirs who can claim to succeed in that event. Thus the exception contemplated in sub-section (2) of Section 15 prima facie cannot come into operation as long as "the sons and daughters of the deceased female Hindu (including the children of any pre-deceased son or daughter)" are in existence. Petitioner admittedly is her son, though not from the husband from whom she had inherited the property.

As long as he is alive, there cannot arise any occasion for respondents to succeed under Section 15 (2) (b) of the Act.

4. However, according to the Commissioner, the object of the Legislature in providing the two exceptions contained in clauses (a) and (b) of sub-section (2) of Section 15 of the Act is to retain the property in the family of the husband from whom the female Hindu had inherited. He, therefore, says in his judgment:

> "Taking into consideration the above intention of the Legislature, it will mean that the son or daughter including children of such pre-deceased son or daughter of the deceased referred to in clause (b) of sub-section (2) of Section 15 should be the son or daughter of a female Hindu by her husband from whom such female Hindu inherited the property".

According to the Commissioner, this intention of the Legislature will be frustrated if it is held that a son or daughter born to such female Hindu from her first husband is also included in the words "son or daughter" used in clause (b) of sub-section (2) of Section 15.

5. Mr. Wale, the learned Advocate appearing for the petitioner, contends that this view of the Commissioner is not warranted either by the plain language of clause (b) of sub-section (2) of Section 15, or by anything in the said section of the Act. Mr. Desai, the learned Advocate appearing for the respondents, supports the view of the Commissioner contending that the very object of engrafting the subsection was to allow the reversion of the property to the family of the husband from whom the property was inherited by such female Hindu and consistently with this object of the Legislature, son or daughter born to such female Hindu from other husband and having no blood connection with the second husband from whom the property was inherited by the female Hindu, cannot be deemed to have been included as her successors in this sub-section.

6. The question, therefore, that requires consideration is: what precisely is the meaning and the import of the words "son or daughter of the deceased" (including the children of any pre-deceased son or daughter) used in sub-clause (b) of sub-section (2) of Section 15? According to Mr. Wale, son or daughter means the son or daughter of the female Hindu, succession to whose property is opened, without regard to whether he or she was born of the husband from whom the female Hindu had inherited the property in dispute while Mr. Desai urges that son or daughter contemplated in Section 15 (2) (b) can only be the son or daughter born to her from the second husband who was the source of inheritance of the property which is the subject matter of the succession.

7. Now, the cardinal rule of construction of a statute is to read the statute literally, that is by giving to the words used by the Legislature their ordinary and natural and grammatical meaning. The question of considering some other possible meaning can arise only if the former method results in absurdity. Son or daughter of the deceased referred to in clause (b) of sub-section (2) of Section 15 has a reference on the face of it to the son or daughter of the female Hindu dying

intestate whose succession is in dispute. The plain and natural implication of the words, is that son should be hers and the daughter should also be hers. A female Hindu might have married once or she might have married more than once. Her sons and daughters may have been born to her from more than one husband. The question as to from which husband he or she was born is absolutely irrelevant and immaterial to decide as to whether he or she happens to be her son or daughter or not. Prima facie the relationship of son or daughter with such female Hindu has nothing to do with the person from whom the female Hindu dying intestate had inherited the said property. If the claimant is capable of establishing his blood relation to the female Hindu as that of a son or a daughter, the conclusion must flow that he or she is the son or daughter of the said female Hindu within the meaning of this clause. Where as here, the words or phraseology used is plain and unambiguous, the reference to the object and the intention of the legislature is irrelevant and immaterial, to find out what precisely these words, or the phraseology, may mean. Thus the son or daughter of the deceased can only mean a son or a daughter of the female dying intestate without regard as to from which husband they were born to her.

8. The above interpretation is further reinforced by reference to the definition of the word "related" given in Section 3 (1) (j) of the Act As stated above, it is not in dispute that the petitioner is related to Yamunabai as her son. This definition of the word "related " can also furnish a key to correctly construe the words "son or daughter of the deceased" employed by the Legislature in clause (b) of sub-section (2) of Section 15. "Related" means, according to definition in Section 3 (1) (j) of the Act, "related by legitimate kinship." It is not suggested,nor is it anybody's case that petitioner's relationship with the deceased female Hindu is anything but legitimate. But the proviso added to this definition makes it clear beyond possibility of any doubt that even illegitimate children are to be deemed to be "related" to their mother and to one another for the purposes of the Act. The proviso further says that any word expressing relationship or denoting a relative shall be construed accordingly. This special rule of construction seems to have been engrafted in this Act to resolve the controversy as to whether illegitimate son or daughter could claim succession to the property as son and daughter of a deceased Hindu. Effect of this definition is that the phraseology "son or daughter of the deceased" is to be construed to mean not only the sons and daughters of the female Hindu from any of her husbands, but even sons or daughters born to her in an illegitimate manner. If, therefore, by virtue of this definition, illegitimate son or illegitimate daughter is to be included in the phraseology of "son or daughter of the deceased" in Section 15 (2) (b), there is no warrant to assume that the Legislature intended to exclude the son or daughter of the deceased female Hindu, from inheritance, born to her from any other husband than the husband from whom the female Hindu had inherited the property.

9. The same conclusion will flow if we look at this question from yet a different angle. It is pertinent to note that the words "the sons and daughters (including the children of any pre-deceased son or daughter)" occur in Section 15(l)(a) as well as in Section 15 (2) (a) and 15 (2) (b). The son or daughter born to a female Hindu from her first husband is sought to be excluded from inheriting her property, which was inherited by her from her second husband only on the

ground that the Legislature could not have intended to allow son or daughter of the female Hindu by some other husband to inherit the property when the exception in sub-section (2) (b) of Section 15 was engrafted with the sole object of reverting the property to the heirs of the husband from whom the property was inherited by the female Hindu. This argument, though plausible and attractive at first sight, cannot stand scrutiny if the same phraseology is examined in the context of the two different clauses referred to above. As stated above, the general law as to succession to a female Hindu dying intestate is laid down in sub-section (1) of section 15. The property contemplated in this sub-section (1) is all property held by a female Hindu at the time of her death without reference to the source whether acquired by her either by her own earnings and exertions or by a gift or under a will or by inheritance from some relatives other than those referred to in clauses (a) and (b) of sub-section (2) of Section 15. Now, the words "sons and daughters" occurring in clause (a) of sub-section (1) of Section 15 cannot be confined to the sons and daughters born to the said female Hindu from a particular husband. There does not exist any reason whatsoever for such assumption, nor the plain language of the sub-section warrants any such suggestion. The sources of the acquisition of the property by such a female Hindu could be diverse and any of her husbands may not have any connection even directly or indirectly with such acquisitions. The sons and daughters referred to in clause (a) of sub-section (1) of Section 15, therefore, can mean her sons and daughters born to her from any of her husbands. In fact, having regard to the definition of the word "related" in Section 3(l) (j), even illegitimate sons and daughters also can be said to have been included, though we are not called upon to decide such question in this case. Then coming to the same phraseology employed by the Legislature in sub-clause (a) of sub-section (2) of Section 15, dealing with the property inherited by a female Hindu by her father or mother, it is also not possible to suggest that the words "son or daughter" referred to in the sub-clause required to be confined to the "sons and daughters" of any particular husband. Her all sons and daughters, whether from one husband or the other, are equally related by blood to her father and mother from whom such a female Hindu had inherited the property. It is a matter of little significance from such father or mother's point of view, as to from which of her husbands the particular son or daughter was born to her. The conclusion, therefore, is that having regard to the plain language of the phraseology and having regard to the set up in which this phraseology is employed by the Legislature in Section 15(1) (a) and Section 15 (2) (a), it cannot even be suggested that the words "son or daughter" can be construed to mean her son or daughter by any particular husband. Now, it is true that prima facie the object of enacting clause (b) of sub-section (2) of Section 15 appears to be to allow the reversion of the property inherited by a female Hindu from her husband, to the heirs of her husband and it is also true that normally the son or daughter born to such a female Hindu by some other husband cannot be said to be the heir of the other husband by any stretch of imagination from whom the property is inherited by her. But it is not possible to conceive that the Legislature could have intended to give a different meaning to the same phraseology in different clauses of the same section. If the Legislature had intended to give a different meaning to the word "son or daughter" in clause (b) of sub-section (2) from its natural and plain meaning and from the meaning which seems to have been given to the same in two other clauses of the same section, the Legislature would have expressed its

intention explicitly by employing appropriate language. It will only be reasonable to presume that the Legislature intended to give the same meaning to the same expression or phraseology not only in every part of the same section but in fact in very part of the same Act. We do not find any reason or warrant whatsoever for the proposition that the phraseology employed in clause (b) could have been intended to have a different meaning than the one which the Legislature appears to have given to the same in the earlier two clauses of the same section.

10. Much is sought to be made out of the supposed object of the Legislature in carving out an exception in Section 15(2) (b). Contention is that the object in enacting this sub-clause (b) is to deprive all the heirs of the female Hindu from succession to such property inherited by her from her husband and allow the heirs of such husband to succeed to the exclusion of her heirs such as her sons from first husband, who could have no blood relation with second husband. We are frankly not impressed by these submissions and we do not find any basis for assumption that legislature intended in Section 15 (2) (b) to exclude the son or daughter of the female Hindu born to her from any other husband than the one from whom she had inherited this property in dispute. We do not find any basis for this submission either in the historical background of the enactment or in the language of the enactment itself. As is well known, the rights of female Hindus in the property suffered from several infirmities under the original text of the Hindu law. Attempts were made from time to time to remove such infirmities, limitations and restrictions on their rights, to hold, acquire and inherit the properties. Finally, Section 14 of this Act converted all properties inherited and acquired and possessed by female Hindus into properties of their absolute ownership without regard to which school of Hindu law they belonged and without regard to the source from which the said properties were acquired by them. What is provided in Section 15 is the necessary incidence and consequence of conferring such absolute rights in the property on such female Hindus. The scheme of sub-section (1) of Section 15 at once shows that the property of Hindu females dying intestate is to devolve on her own heirs. The list of such heirs is enumerated in Section 15 (1) clauses (a) to (e) who can be said to be nearer and dearer to the deceased female Hindu having regard to the current notions and conceptions about the closeness of the relationship. Sub-section (2) provided for exceptions only with regard to one source of acquisition viz., the inheritance, and then again the exception is confined to the property inherited by her either from her (1) father or mother or (2) from her husband or from her father-in-law. But in engrafting these two exceptions the Legislature has taken care to emphasize that these exceptions will operate only in the event of the female Hindu not leaving her direct heirs, viz., her son or daughter or children of the pre-deceased son or daughter. In our opinion, by making the exception to operate only in the contingency of female Hindu not leaving any son or daughter or children of the pre-deceased son, or daughter, the legislature has only acted consistently with its main object of conferring absolute title on female Hindus to the properties inherited by them. When female Hindus were made absolute owners of the property, the Legislature seems to have rightly and justly thought that the question of reversion of such properties to the source such as father or the husband should not arise so long as direct heirs of such female Hindus dying intestate were still alive and available to claim the inheritance. If female Hindu could claim

absolute rights in the said property inherited by her from her father or mother or from her husband and father-in-law, and could have disposed it of during her life time in any manner she liked without allowing it to go back to the heirs of her father or heirs of her husband from whom she had inherited this property, the legislature seems to have thought-and rightly-that in the event of property not having been disposed of by the female Hindu as absolute owner during her lifetime, the sons and daughters born to her without regard to from which husband they were born, should be enabled to have preferential rights to succeed before the same goes to the heirs of the father or heirs of the husband. We are of the opinion, therefore, that there is no warrant to assume that the Legislature intended to deprive the sons and daughters or their children from inheritance of the property left by a female Hindu dying intestate merely because they were born to her from some other husband than the one from whom the property in dispute was inherited by the female Hindu.

11. We accordingly hold that the petitioner is entitled to succeed to the property in preference to the respondents. We set aside the order passed by the Commissioner and restore the order passed by the District Deputy Collector.

12. The petitioner will get his costs of this Special Civil Application from respondents Nos. 1 to 5.
Application allowed.