

RAJASTHAN HIGH COURT

Gulab

Vs.

Board of Revenue

Civil Writ Petn. No. 4363 of 1997

(K. S. Rathore, J.)

01.02.2006

ORDER

K. S. Rathore, J.

1. The substantial question of law involved in this writ petition is whether the provisions of Hindu Succession Act, 1956 is applicable to the member of the Scheduled Tribes.
2. Brief facts of the case are that non-petitioners Smt. Shanti Devi and Ramdhani filed a suit for declaration of Khatedari rights and cancellation of mutation entries and declaration of gift deed dated 6-5-1978 executed by Smt. Itbai in favor of the petitioner Gulab as null and ineffective and also for correction of entries in revenue record with regard to agriculture land in question against the petitioner and one Smt. Itbai, in the Court of SD Gangapur City.
3. The petitioner also filed a cross suit for declaration of tenancy right, injunction and correction of revenue entries against the non-petitioner Nos. 2 to 5 with regard to the same agriculture land in question.
4. Both the suits were consolidated and transferred to the Court of Assistant Collector, Sapotra, Gangapur City.
5. The Assistant Collector, Sapotra allowed the suit of the petitioner and dismissed the suit of the respondents-Shanti Devi and Ram Dhani vide judgment dated 12-11-1987.
6. The respondents filed an appeal before the Revenue Appellate Authority. The Revenue Appellate Authority vide judgment dated 25-3-1989 upheld the judgment passed by the Assistant Collector, Sapotra.
7. Aggrieved and dissatisfied with the judgment dated 25-3-1989, the respondents

preferred an appeal before the Board of Revenue. The Board of Revenue vide judgment dated 18-10-1995 allowed the appeal filed by the respondents and held that as per the provisions of Hindu Succession Act, 1956, the petitioner-Gulab is only entitled No. 1/3 share in the agriculture land in question and the respondents-Smt. Shanti Devi and Ramdhani were also held entitled for 1/3 share in the land in question.

8. The present writ petition is filed by the petitioner challenging the judgment dated 18-10-1995 passed by the Board of Revenue on the ground that provisions of Hindu Succession Act, 1956 are not applicable to the members of the Scheduled Tribes in view of Section, which reads as under :-

2. Application of Act.- (1) This Act applies-

(a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;

(b) to any person who is a Buddhist, Jaina or Sikh by religion; and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of Clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

9. The Hon'ble Supreme Court while dealing with this provision in the case of *Kasturi Devi v. Dy. Director, Commission, reported in ¹* has held as under (Para3) :-

"A Mother cannot be divested of her interest in the property on the ground of remarriage. The application of bar of inheritance to the Hindu widow is based on the special and peculiar, sacred and spiritual relationship of the wife and the husband. After the marriage, the wife becomes an absolute partner and an integral part of her husband and the principle on which she is excluded from inheritance on remarriage is that when she relinquishes her link with her husband even though he is dead and enters a new family, she is not entitled to retain the property inherited by her. The same, however, cannot be said of a mother. The mother is in an absolutely different position and that is why the

Hindu Law did not provide that even the mother would be disinherited if she remarried.

10. Similarly, the widow after remarriage is not having and right over the land belonging to the husband and the married daughter is also not having any right over the ancestral property of the father. In view of provisions of Section 2 of Hindu Succession Act and ratio decided by Hon'ble Supreme Court, the judgment passed by the Board of Revenue is *per se* illegal and contrary to the provisions of law. The judgment dated 18-10-1995 passed by the Board of Revenue and order dated 25-4-1997 passed on review application are hereby quashed and set aside. The order dated 12-11-1987 passed by the Assistant Collector and order dated 25-3-1989 passed by the Revenue Appellate Authority are upheld.

11. The writ petition stands allowed as indicated hereinabove.

Petition allowed.

Cases Referred.

1. AIR 1976 SC 2595