Supreme Court of India
Omprakash & Ors vs Radhacharan & Ors on 5 May, 2009
Author: S Sinha
Bench: S.B. Sinha, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3241 OF 2009
[Arising out of Special Leave Petition (Civil) No. 460 of 2008]

OMPRAKASH & ORS. ...APPELLANTS

VERSUS

RADHACHARAN & ORS. ... RESPONDENTS

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. One Smt. Narayani Devi was married to one Dindayal Sharma in the year 1955. She became widow within three months of her marriage. Concededly, she was driven out of her matrimonial home immediately after the death of her husband. After that she never stayed in her matrimonial home. At her parental home, she was given education. She got an employment. She died intestate on 11.7.1996. She had various bank accounts; she left a huge sum also in her provident fund account.

3. Ramkishori, mother of Narayani, filed an application for grant of succession certificate in terms of Section 372 of the Indian Succession Act. Respondents herein also filed a similar application. It now stands admitted that all her properties were self acquired.

4. The question which arose for consideration before the courts below as also before us is as to whether sub-Section (1) of Section 15 of the Hindu Succession Act, 1956 (for short, "the Act") or sub-Section (2) thereof would be applicable in the facts and circumstances of this case.

Section 15 of the Act reads as under:

> "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."

5. There is no doubt or dispute that the properties of the deceased were self-acquired ones and were not inherited from her parents' side.

Appellants before us are her brothers, the original applicant being the mother of the deceased having died. Respondents are the sons of sister of the Narayani's husband.

6. Mr. N.R. Choudhary, learned counsel appearing on behalf of the appellant would contend that in a case of this nature where the husband of the deceased or her in-laws had not made any contribution towards her education or had not lent any support during her life time, sub-Section (2) of Section 15 of the Act should be held to be applicable. It was urged that the Parliamentary intent as contained in clause (a) of sub-Section (2) of Section 15 of the Act should be the guiding factor for interpreting the said provision.

7. Mr. Arvind V. Savant, learned Senior Counsel appearing on behalf of the respondent, however, would support the impugned judgment.

8. Section 15 provides for the general rules of succession in the case of female Hindus. It lays down the mode and manner in which the devolution of interest of a female shall take place. Section 16

provides for the order of succession and manner of distribution amongst the heirs of a female Hindu, stating that the same shall be according to the rules specified therein. It reads as under:

> "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 including in the same entry shall take simultaneously.
>
> Rule 2.--If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, 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 intestate'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 in 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 intestate's death."

9. It has not been disputed that the respondents are the heirs and legal representatives of Dindayal, husband of Narayani. Sub-Section (1) of Section 15 lays down the ordinary rule of succession. Clause (a) of sub- Section (2) of Section 15 providing for a non-obstante clause, however, carves out an exception viz. when the property is devolved upon the deceased from her parents' side, on her death the same would relate back to her parents' family and not to her husband's family. Similarly, in a case where she had inherited some property from her husband or from her husband's family, on her death the same would revive to her husband's family and not to her own heirs. The law is silent with regard to self- acquired property of a woman. Sub-section (1) of Section 15, however, apart from the exceptions specified in sub-section (2) thereof does not make any distinction between a self-acquired property and the property which she had inherited. It refers to a property which has vested in the deceased absolutely or which is her own. The self-acquired property of a female would be her absolute property and not the property which she had inherited from her parents.

10. In that view of the matter, we are of the opinion that sub-Section (1) of Section 15 of the Act would apply and not the sub-Section (2) thereof.

This is a hard case. Narayani during her life time did not visit her in-laws' place. We will presume that the contentions raised by Mr. Choudhury that she had not been lent any support from her husband's family is correct and all support had come from her parents but then only because a case appears to be hard would not lead us to invoke different interpretation of a statutory provision which is otherwise impermissible. It is now a well settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous.

In M.D., H.S.I.D.C. and Ors. vs. Hari Om Enterprises and Anr [2008 (9) SCALE 241], this Court held:

> "54. This Court applied the doctrine of proportionality having regard to a large number of decisions operating in the field. This Court, however, also put a note of caution that no order should be passed only on sympathy or sentiment."

In Subha B. Nair & Ors. vs. State of Kerala & Ors. [(2008) 7 SCC 210], this Court held:

> "21. This Court furthermore cannot issue a direction only on sentiment/sympathy."

In Ganga Devi vs. District Judge, Nainital & Ors. [(2008) 7 SCC 770], this Court held:

> "22. The court would not determine a question only on the basis of sympathy or sentiment. Stricto sensu equity as such may not have any role to play."

If the contention raised by Mr. Choudhury is to be accepted, we will have to interpret sub-section (1) of Section 15 in a manner which was not contemplated by the Parliament. The Act does not put an embargo on a female to execute a will. Sub-section (1) of Section 15 would apply only in a case where a female Hindu has died intestate. In such a situation, the normal rule of succession as provided for by the statute, in our opinion, must prevail.

For the aforementioned purpose, the golden rule of interpretation must be applied.

11. This Court in Bhagat Ram (Dead) vs. Teja Singh [(1999) 4 SCC 86], held as under:

> "6. On perusal of the two Sub-sections we find that their spheres are very clearly marked out. So far Sub-section (1), it covers the properties of a female Hindu dying intestate. Sub-section (2) starts with the words 'Notwithstanding anything contained in Sub-section (1)'. In other words, what falls within the sphere of Sub-section (2), Sub- section (1) will not apply. We find that Section 15(2)(a) uses the words 'any property inherited by a female Hindu from her father or mother'. Thus property inherited by a female Hindu from her father and mother is carved-out from a female Hindu dying intestate. In order words any property of female Hindu, if inherited by her from her father or mother would not fall under Sub-section (1) of Section 15. Thus, property of a female Hindu can be classified under two heads : Every property of a female Hindu dying intestate is a general class by itself covering all the properties but Sub-section (2) excludes out of the aforesaid properties the property inherited by her from her father or mother.
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> 7. In addition, we find the language used in Section 15(1) read with Section 16 makes it clearly, the class who has to succeed of property of Hindu female dying intestate. Sub-section (1) specifically state that the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16. So, in case Sub- section (1)

applies, then after the death of Santi, Indro can not inheritance by succession but it would go to the heirs of the pre-deceased husband of Santi."

12. For the aforementioned reasons, we find no merit in this appeal. The appeal is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.

.....J.

[S.B. Sinha] .....J.

[Dr. Mukundakam Sharma] New Delhi;

May 5, 2009