CHOCKALINGA SETHURAYAR & ORS.

v.

ARUMANAYAKAM

August 28, 1968

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Hindu Law Inheritance Amendment Act (2 *of* 1929) *Succession to trusteeship.*

Hindu Law—Will—Vamsathar—Scope.

A Hindu governed by the Mitakshara law died leaving behind his wife K, and a foster son D. He had executed a will constituting a private trust. Under the will, K and D were constituted as trustees after the testator's death and after the death of K and D the sons of D were to be trustees, and in their absence the 'Vamsathar' of D were to the trustees. D predeceased K. After K's death R became the trustee. R died issueless, and the respondent (who was the sister of R) claimed the trusteeship; on the other hand the appellants (who were the grand-sons of paternal uncle of R) pressed their claim for trusteeship on the ground that they belonged to the 'vamsa' of R. The trial court accepted the appellant's claim, but in appeal the High Court held that the trusteeship devolved on the respondent. Dismissing the appeal, this Court;

HELD : The respondent was entitled to succeed to the trusteeship previously held by her brother R.

A true reading of the will, shows that the testator had prescribed a line of succession for the devolution of the trusteeship only upto a point and not beyond it. According to the will after the death of the testator his wife and foster son were to be the trustees and after their life-time the sons of D, if any, should succeed to the trusteeship and in their absence the 'vamsathar' of D should take over the trusteeship. The direction contained in the will as to the line of succession exhausted itself as soon as R became the trustee. He remained as the trustee till his death. Therefore there was no question of the 'vamsathar' of R succeeding to the trusteeship. As soon as R took over the trusteeship, the mode of succession prescribed in the will came to an end. R became a fresh stock of descent. Thereafter the succession was regulated by the ordinary rule of Mitakshara law. [877 G-878 B]

Under the Hindu Law Inheritance Amendment Act, 1929 (2 of 1929), the sister is given a higher place in the line of succession than what she had under the customary law in respect of properties of her brother not held by him in coparcenary and not disposed of by him by will. In view of that Act, as regards the individual properties of D, the respondent was a nearer heir than the appellants. Even if the expression 'property' used in Act 2 of 1929 does not include a trusteeship right, still it is a well established proposition of law that succession to trusteeship similar to the one in this case is governed by the ordinary rules of inheritance under the Hindu law. Act 2 of 1929 has amended the general law of inheritance in certain respects and the same alteration must be recognised in regard to succession to trusteeship as well. [877 C-D; 878 D]

Sethuramaswamiar v. *Meruswamiar*, L.R. 45 I.A. 1, applied.

A *Ramanathan Chetty* v. *Murugappa Chetty*, I.L.R. 27 Mad. 192 and *Angurbala Mullick* v. *Debabrata Mullick*, [1951] S.C.R. 1125, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1162 of 1965.

Appeal by special leave from the judgment and order dated
B November 3, 1959 of the Madras High Court in Appeal No. 276 of 1955.

G. L. Sanghi for the appellants.

R. Thiagarajan, for the respondent.

The Judgment of the Court was delivered by

C **Hegde, J.** This appeal by certificate is directed against the decision of the High Court of Madras in A.S. No. 276 of 1955. The question that arises for decision herein is whether the appellants or the respondent should be held to be the trustees of the suit trust. The Trial Court upheld the claim of the appellants whereas the High Court in appeal came to the conclusion that
D the trusteeship has devolved on the respondent.

For the purpose of deciding the controversy before us it is not necessary to refer to the various facts that were placed before the Trial Court or the High Court. The facts material for our present purpose are these :

E One Rangayya Sethurayar (who will hereinafter be referred to as Rangayya I) was a well to do person. He died in the year 1886 leaving behind him his wife Karuthammal. He had no issues but he was bringing up his brother's son Dharmalinga Sethurayar as his foster son. He executed a will on June 25, 1884 (Exh. A-1) under which he constituted a trust in respect
F of some of his properties for the purpose of carrying on the water supply charity and Dwadesi Kattalai charity in the choultry built by him. Under the said will he constituted Dharmalinga Sethurayar and his wife Karuthammal as the trustees of the trust in question after his death. The will also provides that after the life time of the aforementioned two persons the sons of Dharmalinga Sethurayar should be the trustees and in
G their absence the 'vamsathar' of Dharmalinga Sethurayar should continue to conduct the said charities. Dharmalinga Sethurayar died in 1907 but Karuthammal continued to live till 1932. After the death of Dharmalinga Sethurayar, Karuthammal continued as the sole trustee of the trust in question till her death. Thereafter Rangayya Sethurayar (to be hereinafter referred to as
H Rangayya II) took over the trusteeship and continued to manage the trust till his death on 9-5-1953. The said Rangayya died issueless. The respondent claims to be the sister of said Rangayya and as such claims to be trustee of the suit trust. On

the other hand the appellants who are the grand-sons of the paternal uncle of Rangayya II are pressing their claim for the trusteeship on the ground that they belong to the 'Vamsa' of Rangayya II.

The respondent's claim that she is the sister of Rangayya II is contested by the appellants as mentioned earlier. The Trial Court held that the respondent has failed to prove that she is the sister of Rangayya II but the High Court upheld her claim. We agree with the High Court in its finding that there is satisfactory evidence to show that the respondent is the sister of Rangayya II. That fact was specifically admitted by the first appellant in the counter affidavit filed by him in I.A. No. 171 of 1954. It may be noted that this admission was made after the dispute between the parties had commenced. At that stage the only plea advanced by the appellants was that though the respondent was the sister of Rangayya II, she was not entitled to succeed to the trusteeship under law. The High Court has rightly discarded the subsequent version put forward by the appellants to the effect that the admission in question was made under a wrong impression and the same was based on the information supplied by one Subbanna Nattar. The said Subbanna Nattar has not been examined as witness in the case. That apart the appellants and the respondent are near relations and hence the plea of the appellants that they did not know the exact relationship between the respondent and Rangayya II is unacceptable. Further if they did not know the relationship they would not have admitted that she was the sister of Rangayya II. This admission is a very important piece of evidence. It cannot be brushed aside lightly as the learned Trial Judge has done. That admission is further supported by the witnesses examined on behalf of the respondent, whose evidence has been believed by the High Court. The contrary evidence given by D.W. 10 has not been believed by the High Court for very good reasons. There was convincing proof before the Trial Court to support the respondent's claim. The reasons given by the Trial Court for not accepting that evidence are far from convincing. In addition to the evidence adduced in the Trial Court, certain additional documentary evidence was adduced before the High Court. The deposition of Rangayya II in a criminal case was placed before the High Court wherein he had clearly admitted that the respondent was his sister. Mr. Sanghi learned Counsel for the appellants contended that the High Court was not justified in receiving additional evidence as no case was made out under Order 41, rule 27, Code of Civil Procedure. We are unable to examine the correctness of that contention as the order impugned was neither printed nor made available to us. Even if we exclude that piece of evidence from consideration still the

A remaining evidence conclusively establishes that the respondent is the sister of Rangayya II.

This takes us to the next question whether she is entitled to succeed to the trusteeship. It was not disputed before us that the trusteeship in question is hereditary trusteeship and it relates to a private charity. The trustee is the legal owner of the trust
B properties though the entire income of the trust properties has to be utilized for charity. It was conceded before us that succession to trusteeship of properties similar to the one before us follows the ordinary rule of Hindu Law, if there is no special custom to the contrary. In the instant case no special custom was either pleaded or proved. Therefore all that we have to as-
C certain is the mode of succession to the same in accordance with the ordinary rule of Hindu Law. The parties are governed by Mitakshra Law under which a sister is one of the heirs of a male person. In view of Hindu Law of Inheritance Amendment Act 1929 (Act II of 1929), the sister is given a higher place in the line of succession than what she had under the customary law in
D respect of properties of her brother not held by him in coparcenary and not disposed of by him by will. It is true that Act II of 1929 applies only to properties of males not held in coparcenary and not disposed of by will but in view of that Act, as regards the individual properties of Rangayya II, the respondent is a nearer heir of his than the appellants.

E Before examining the respondent's claim to succeed to the trusteeship we have to first dispose of another contention of the appellants. According to them under the will of Rangayya I whenever a trustee dies leaving behind him no sons the trusteeship should go to the 'vamsathar' of the last trustee; the respondent cannot be held to be a 'vamsathar' of Rangayya II as she had
F been married into a different family and consequently had become a 'vamsathar' of her husband's family; but they being the nephews of Rangayya II must be considered as his 'vamsathar' and consequently they are entitled to succeed to the trusteeship after the death of Rangayya II. There was considerable debate before us as to what is meant by that expression 'vamsathar'. We do not think that question is relevant for our present purpose. On a
G true reading of the will of Rangayya I, it is seen that the testator had prescribed a line of succession for the devolution of the trusteeship only upto a point and not beyond it. According to the will after the death of the testator his foster son and his wife should continue to be the trustees and after their life time the sons of Dharmalinga Sethurayar, if any, should succeed to the trustee-
H ship and in their absence the "vamsathar' of Dharmalinga Sethuravar should take over the trusteeship. The direction contained in the will as to the line of succession exhausted itself as soon as Rangayya II became the trustee. He remained as the trustee till

his death in 1953. Therefore there is no question of the 'vamsathar' of Dharmalinga Sethurayar succeeding to the trusteeship. As soon as Rangayya II took over the trusteeship, the mode of succession prescribed in the will came to an end. Rangayya II became a fresh stock of descent. Thereafter the succession is regulated by the ordinary rule of Mitakshara Law. As observed by the *Privy Council in Sethuramaswamiar* v. *Meruswamiar*(1) :

> "With regard to what are called private charities such as endowments for the support of the family idol, the law as laid down by various decisions in India and apparent accepted in one case by the Privy Council (*Ramanathan Chetty* v. *Murugappa Chettry*(2)) is that if there is no contrary provision in original grant the right of management passes to the natural heirs of the original grantee."

Assuming without deciding that the expression 'property' used in Act II of 1929 does not include a trusteeship right still it is a well established proposition of law that succession to trusteeship similar to the one before us is governed by the ordinary rules of inheritance under the Hindu Law. Act II of 1929 has amended the general law of inheritance in certain respects and the same alteration must be recognised in regard to succession to trusteeship as well. This view finds support from the decision of this Court in *Angurbala Mullick* v. *Debabrata Mullick*(3). Therein this Court was concerned with the claim of a Hindu wife to the shebaitship of a temple which was originally held by her deceased husband. She advanced her claim on the basis of s. 3(1) of the Hindu Women's Rights to Property Act (XVIII of 1937). That claim was rejected both by the Trial Court as well as by the High Court in appeal on the ground that the Hindu Women's right to Property Act was inapplicable to devolution of shebaitship rights. This Court overruled that conclusion. In so doing it observed thus :

> "Assuming that the word "property" in Act XVIII of 1937 is to be interpreted to mean property in its common and ordinarily accepted sense and is not to be extended to any special or peculiar type of property even then we think that the other contention of Mr. Tek Chand is perfectly sound. Succession to shebaitship, even though there is an ingredient of office in it follows succession to ordinary or secular property. It is the general law of succession that governs succession to shebaitship as well. While the general law has now been changed by reason of Act XVIII of 1937 there

(1) L.R. 45 I.A. 1. (2) I.L.R. 27 Mad. 192.
(3) [1951] S.C.R. 1125.

A does not appear to be any cogent reason why the law as it stands at present should not be made applicable in the case of devolution of shebaitship."

The same reasoning applies with full force to the facts of the present case. For the said reasons we hold that the respondent is entitled to succeed to the trusteeship previously held by her B brother.

In view of our above conclusion, it is not necessary for us to consider whether a hereditary trusteeship is "property" within the meaning of Act II of 1929 and if so, succession to the same is governed by the provisions of that Act.

C In the result this appeal fails and the same is dismissed with costs.

Y.P. *Appeal dismissed.*