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FATEH BIBI ETC.

v.

CHARAN DASS

March 10, 1970

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[S. M. SIKRI, V. BHARGAVA AND C. A. VAIDIALINGAM, JJ.]

Hindu Law of Inheritance (Amendment) Act, 1929 (Act 2 of 1929)—Act whether applies in case of Hindu male dying in-estate before the Act came into operation and succeeded by female heir dying after that date—Succession to estate of last male owner when opens.

C

K's son C died in 1925 and was succeeded in the ownership of his properties (inherited from K) by his mother B. B continued in possession till her death in 1946. Her daughter M took possession of the properties as heir. M died in 1950. The respondent-plaintiff was the son of M. In 1955 he filed a suit alleging that the defendant, after the death of B claiming to be entitled to the properties as a collateral and revisioner of K, had got mutation of the aforesaid properties effected in his name. As daughter's son of K the respondent—plaintiff prayed for declaration of his

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title to the suit properties; he also prayed for recovery of possession thereof from the defendant. The defendant contended that he was a collateral of K and was entitled to succeed to the properties after the termination of the life-estate of his widow B on her death in 1946. The trial court held that in view of the provisions of the Hindu Law of Inheritance (Amendment) Act 1929 (Act 2 of 1929) the plaintiff as sisters' son of C the last male holder, had a preferential claim to that of the defendant who was only a paternal uncle of C. The first appellate Court upheld

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the decree of the trial Court. In second appeal by the defendant before the High Court the learned Single Judge held that as C the last male owner had died in 1925 his heirs must be found on that date. On that date according to the learned Judge the heir of C was the defendant. The fact that the life-estate of the mother and sister of C intervened after his death would not affect the rights of the defendant as the Act of 1929 had no retrospective operation. In Letters Patent Appeal the Division Bench

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reversed the judgment of the Single Judge. The legal representatives of the defendant appealed to this Court by certificate. The question of law that fell for consideration was whether the Act applies only to the case of a Hindu male dying intestate on or after February 21, 1929 when the Act came into force or whether it also applies to the case of a Hindu male dying intestate before the Act came into operation and succeeded by a female heir who died after that date. It was not disputed that C held the property absolutely and he died intestate.

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HELD: Applying the rule laid down by the Judicial Committee of the Privy Council in *Lala Duni Chand's* case the appeal must be dismissed.

The point of time for the applicability of the Act is when the succession opens *viz.* when the life estate terminates. In consequence the question as to who is the nearest reversionary heir, or what is the class of reversionary heirs will fall to be settled at the date of the expiry of the ownership for life or lives. The death of a Hindu female life-estate

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owner opens the inheritance to the reversioners and the one most nearly related at the time to the last full owner becomes entitled to the estate. [961 E]

The Act accordingly must be held to apply to the case of a Hindu male dying intestate before the Act came into operation and succeeded by a female heir who died after that date. In this case as decided by all the Courts the last female heir died only on March 25, 1950 and, under the Act, the plaintiff as the sister's son of C, was entitled to succeed to his estate, in preference to the defendant who was only a paternal uncle. Under the Act the paternal uncle is postponed to the four relations referred to in the Act, the last of whom is the sister's son. [961 G]

It may also be stated, though the question was not raised by the parties, that in this case the succession can be considered to have opened even in 1946 on the termination of the life-estate of C's mother and accordingly C's sister must be considered to have succeeded to the property of her brother, in her own right as a preferential heir under the Act, though the estate taken by her was also under s. 3(b) only a life estate. [961 H]

Lala Duni Chand v. *Musammat Anar Kali*, L.R. 73 I.A. 187, followed and applied.

Krishnan Chettiar v. *Manikammal*, I.L.R. 57 Mad. 718, *Kanhaiya Lal* v. *Mst. Champa Devi* A.I.R. 1935 All. 203, *Lakshmi* v. *Anantharama*, I.L.R. 1937 Mad. 948 (F.B.) *Rajpali Kunwar* v. *Sarju Rai*, I.L.R. 58 All. 1041 (F.B.) *Annagouda Nathgouda Patil* v. *Court of Wards*. [1952] S.C.R. 208, 215, *Shrimati Shakuntala Devi* v. *Kaushalya Devi*, I.L.R. 17 Lah. 356, *Pokhan Dusadh* v. *Mst. Manoa*, I.L.R. 16 Pat. 215 (F.B.) and *Bindeshari Singh* v. *Baij Nath Singh*, I.L.R. 13 Luck 380, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 364 of 1967.

Appeal from the judgment and decree dated October 30, 1961 of the Punjab High Court in Letters Patent Appeal No. 42 of 1959.

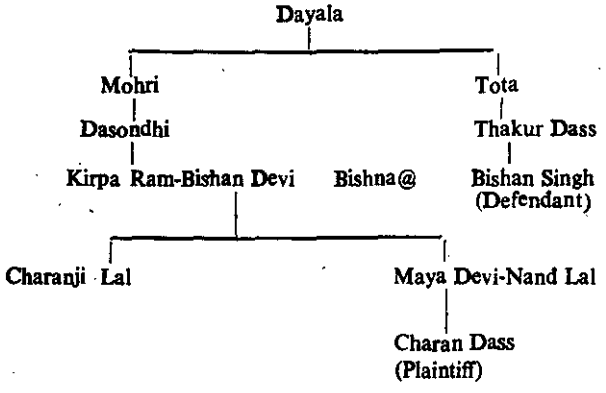
G. S. Vohra and *Harbans Singh*, for the appellants.

Bishan Narain, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the respondent.

The Judgment of the Court was delivered by

Vaidialingam, J.—The short question that arises for consideration in this appeal, filed by the legal representatives of the deceased defendant, on certificate, is whether on a true construction of the Hindu Law of Inheritance (Amendment) Act, 1929 (Act II of 1929) (hereinafter referred to as the Act), it applies only to the case of a Hindu male dying intestate on or after February 21, 1929 (when the Act came into force) or whether it applies in the case of a Hindu male dying intestate before the Act came into operation and succeeded by a female heir who died after that date.

A The following pedigree will be useful in appreciating the relationship of the parties as well as the basis of the claim made regarding the title to the properties by the parties.



D The respondent-plaintiff instituted Suit No. 41 of 1955 in the Subordinate Judge's Court, Jagraon, against the original defendant for recovery of possession of the suit properties. According to the plaintiff Kirpa Ram was the last owner of the properties. Even during his life-time his only son Charanji Lal had died. On the death of Kirpa Ram, his widow Bishan Devi became the owner of E the properties and was in possession of the properties for her life-time. After the death of Bishan Devi, her daughter Maya Devi (daughter of Kirpa Ram and Bishan Devi) became her heir and remained in possession of the property till her death. After Maya Devi's death, according to Dharma Shastras the plaintiff, as the daughter's son of Kirpa Ram, was entitled to succeed to the proper-F ties which were in the possession of Bishan Devi and later on of Maya Devi, his mother. It was alleged by the plaintiff that the defendant, after the death of Bishan Devi, claiming to be entitled to the properties of Kirpa Ram, got mutation in the Revenue Registers effected in his name on or about January 6, 1947. Therefore, according to the plaintiff, the defendant had G no right, title or interest to the properties of Kirpa Ram and the mutation obtained by him could not affect the rights of the plaintiff as the daughter's son of Kirpa Ram. On these allegations the plaintiff prayed for a declaration regarding his title to the property and for recovery of possession of the same from the defendant.

H The defendant contested the claim of the plaintiff on various grounds. He alleged that Charanji Lal did not pre-decease Kirpa Ram but, on the other hand, after the death of Kirpa Ram,

Charanji Lal, his son, became heir and was in possession of the properties left by his father. Charanji Lal died long afterwards, in or about 1926 and, after his death, his mother Bishan Devi became heir to the property left by Charanji Lal, for her life-time. After the death of Bishan Devi, the defendant claimed that he, as a collateral of Kirpa Ram, became entitled to the properties of the latter and, as such, got mutation effected in his favour, according to law. He further averred that Maya Devi did not at all come into possession of the estate after the death of Bishan Devi. In fact the defendant even disputed the fact that Maya Devi was the daughter of Bishan Devi. Even if Maya Devi was the daughter of Bishan Devi, the defendant alleged that according to the custom governing the parties, Maya Devi had no right to the properties left by Bishan Devi. On these allegations, the defendant maintained that he was rightly entitled to the properties of Kirpa Ram and that the plaintiff has no cause of action for having the mutation effected in the Revenue Registers in his favour cancelled.

The Trial Court, by its judgment and decree dated February 22, 1956 decreed the plaintiff's claim. It found that Maya Devi was the daughter of Kirpa Ram ands Bishan Devi and that the plaintiff was the son of Maya Devi. The Trial Court further found that Charanji Lal did not pre-decease his father Kirpa Ram but, on the other hand, after the death of Kirpa Ram, Charanji Lal was the last male holder of the entire property and was in possession, as such, till his death. It was also further found that the parties were governed by their personal law and not by custom in matters of succession. It has been found that Charanji Lal died issueless on August 22, 1925 and, after his death, his mother Bishan Devi was in possession of the property as a life-estate holder. After her death on November 26, 1946 Maya Devi was in possession of the property, again as a life-estate holder, till her death on March 25, 1950. Though no claim was made by the plaintiff to succeed to Charanji Lal as his sister's son, and though his claim was to succeed to the property of Kirpa Ram as the latter's daughter's son, the Trial Court held that on the findings that Charanji Lal was the last male holder, the claim of the plaintiff had really to be decided on the basis of the Act under which the plaintiff, as the sister's son of Charanji Lal, has got a preferential claim. The contention of the defendant that the Act did not apply inasmuch as Charanji Lal had died long before the date when the Act came into force (February 21, 1929), was not accepted and the Court took the view that succession opened in favour of the plaintiff only after the death of Maya Devi in 1950. In this view the trial Court held that the plaintiff, being the sister's son of the last male holder (Charanji Lal) was to be preferred to the defendant who

A was only a paternal uncle of Charanji Lal and as such, decreed the suit.

The defendant carried the matter in appeal before the learned District Judge, Ludhiana, in C.A.53 of 1956. The learned Judge, in the judgment dated March 14, 1957, has B stated that the defendant only attacked the finding of the trial Court that the plaintiff was the daughter's son of Kirpa Ram and the findings on the other issues were not challenged. The learned Judge, on this point, agreed with the finding of the trial Court that Maya Devi was the daughter of Kirpa Ram and Bishan Devi and that the plaintiff was the son of Maya Devi. The decree C of the trial Court was cofirmed.

The defendant again challenged the decrees of both the Subordinate Courts before the Punjab High Court in Regular Second Appeal No. 359 of 1957. Before the learned Single Judge the appelant raised two contentions: (1) That the plaintiff never set up any claim as a preferential heir under the Act D being the sister's on of the last male holder and, as such, his title should not have been recognised by the Subordinate Courts; and (2) In any event, the Act does not apply inasmuch as the last male holder Charanji Lal died as early as August 22. 1925, long before the coming into force of the Act on February 21, 1929.

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The learned Judge, after a reference to the pleadings, held that the first contention was well-founded as the plaintiff claimed title to the properties only as the daughter's son of Kirpa Ram and had even alleged that Charanji Lal had predeceased his father and no claim as the sister's son of Charanji Lal was over made. But, in view of the findings recorded by the F two Subordinate Courts that the plaintiff was the sister's son of Charanji Lal who had also been held to be the last male holder, the learned Single Judge held that the applicability of the Act did arise for consideration.

The learned Judge agreed with the findings of the two G Courts that Charanji Lal was the last male holder of the properties in question and that he was the absolute owner of those properties and there was no question of the property in his hands being coparcenary property. But, regarding the applicability of the Act, the learned Judge held that as Charanji Lal died on August 22, 1925 the succession to his estated must be con- H sidered to have opened on the date of his death and, as the Act came into force only on February 21, 1929 the heirs of Charanji Lal must be found on the date the succession opened, *viz.*, August 22, 1925; and the heir to Charanji Lal on that date was

his paternal uncle, the defendant. According to the learned Judge the fact that the life estate of the mother and sister of Charanji Lal intervened after his death, will not affect the rights of the defendant as the Act has no retrospective operation. For this view, the learned Judge relied on two earlier decisions, one of the Madras High Court in *Krishnan Chettiar* v. *Manikammal*(1) and the other of the Allahabad High Court in *Kanhaiya Lal* v. *Mst. Champa Devi*(2) holding that the Act applied only to the case of a Hindu Male dying intestate on or after February 21, 1929. In this view the learned Judge, by his judgment dated November 18, 1958 held that the rightful heir to the estate of Charanji Lal was the defendant and reversed the decrees of the two Subordinate Courts and dismissed the plaintiff's suit with costs throughout.

The plaintiff-respondent carried the matter in Letters Patent Appeal No. 42 of 1959 before a Division Bench of the Punjab High Court. The Division Bench noticed that the decisions relied on by the learned Single Judge had been over-ruled by Full Bench decisions of the same Courts in *Lakshmi* v. *Anantharama*(3) and *Rajpali Kunwar* v. *Sarju Rai*(4), where it had been held that under the Hindu Law it is the death of the female heir that opens inheritance to the reversioners who, till then possess only an inchoate right, generally termed a *spes successionis*. It has been further held that the Act will apply even to cases where the last male-holder dies intestate before the passing of the Act and the limited female heir is alive after the coming into force of the Act, as the succession to the deceased male member must be considered to open only after the passing of the Act and will be governed by the provisions of the Act. Following these decisions, the Division Bench reversed the judgment of the learned Single Judge and decreed the plaintiff's suit for possession holding that under the Act the plaintiff, being the sister's son of the last male holder Charanji Lal, was the preferential heir.

Mr. Vohra, learned counsel for the appellant, no doubt urged that the interpretation placed upon the Act by the Division Bench is erroneous. According to him the Act will apply only to cases of Hindu male dying intestate after the Act came into force, *i.e.*, after February 21, 1929; and, in this case as Charanji Lal died on August 25, 1925 long before the Act came into force, succession to his estate opened on the date of the death of Charanji Lal and on that date the defendant, in Hindu Law, was entitled to succeed to the estate.

(1) I.L.R. 57 Mad. 718.
(2) A.I.R. 1935 All. 203.
(3) I.L.R. [1937] Mad 948. (F.B.)
(4) I.L.R. 58 All. 1041 (F. B.)

A Mr. Bishan Narain, learned counsel for the plaintiff-respondent, pointed out that it was rather unfortunate that the later full Bench decisions of the Madras and Allahabad High Courts were not brought to the notice of the learned Single Judge who had followed the decisions of those Courts which had been subsequently over-ruled. The learned Counsel also pointed out that B according to the decisions of the various High Courts, the view taken by the Letters Patent Bench was correct.

We are of the opinion that the decision of the Letters Patent Bench is correct. No doubt, originally the view taken by some of the High Courts was that the Act applies only if the last male C holder dies after the coming into force of the Act and it will have no retrospective application to cases of Hindu males dying intestate before the date of the Act. That view has now been given the go-by as is seen from the later decisions to which we shall refer presently. But before we refer to those decisions, we shall quote the observations of this Court in *Annagouda Nathgouda Patil* v. *Court of Wards*(1) regarding the object and scope D of the Act. This Court observed :

> "The object of the Act as stated in the preamble is to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate; and section 1(2) expressly lays down that 'the Act applies only to persons who but for the passing of this Act E would have been subject to the Law of Mitakshara in respect of the provisions herein enacted, and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by will'. Thus the scope of the Act is limited. It governs sucession only to the separate property of a Hindu male who F dies intestate. It does not alter the law as regards the devolution of any other kind of property owned by a Hindu male .... It is to be noted that the Act does not make these four relations statutory heirs under the Mitakshara Law under all circumstances and for all purposes: it makes them heirs only when the propositus G is a male and the property in respect to which it is sought to be applied is his separate property."

The four relations, referred to in the above extract, are : the son's daughter, daughter's sister and sister's son. Under the Mitakshara Law, in the line of heirs, the paternal uncle came just after the paternal grandfather and his son followed him H immediately. But, by the Act, the four relations mentioned above have been introduced between the grandfather and the

(1) [1952] S.C.R. 208, 215.

paternal uncle and his son. That is, the paternal uncle and his son are postponed to these four relations by the Act.

In the case before us we have already pointed out that Charanji Lal was the absolute owner of the property and therefore there was no question of the property being held in coparcenary and there is no controversy that the property was not disposed of by will by Charanji Lal. Therefore, *prima facie* the Act will apply to the estate of Charanji Lal if it can be held that the succession to his estate opened only when his sister Maya Devi died on March 25, 1950.

The question is: When did succession open to the estate of Charanji Lal. Was it on the date when he died, *i.e.*, August 22, 1925; or was it when his sister Maya Devi died, *viz.*, March 25, 1950?

In this connection we may refer to the decisions in *Shrimati Shakuntala Devi* v. *Kaushalya Devi*(1); *Rajpali Kunwar* v. *Sarju Rai*(2); *Pokhan Dusadh* v. *Mst. Manoa*(3); *Lakshmi* v. *Anantharama*(4) and *Bindeshari Singh* v. *Baij Nath Singh*(5). In all these cases the last male holder had died before the date of the Act and the estate was in the possession of a life-estate holder either a widow or a mother who died after the coming into force of the Act. It has been held in all these decisions that the succession to the estate of the last male-holder must be considered to open only on the termination of the life-estate and the Act will apply in considering the heirs of the last male holder at the termination of the life estate.

It is not necessary for us to refer to any of these decisions in great detail as the matter has been considered by the Judicial Committee of the Privy Council in *Lala Duni Chand* v. *Musammat Anar Kali*(6). The Judicial Committee has held that the Act, which altered the order of succession of certain persons mentioned therein and which came into operation on February 21, 1929 applies not only to the case of a Hindu male dying intestate on or after February 21, 1929 but also to the case of such a male dying intestate before that date if he was succeeded by a female heir who died after that date. The Judicial Committee, has further held that succession in such cases to the estate of the last Hindu male who died intestate did not open until the death of the life-estate holder. It has also been held that during the life-time of the life-estate holder, the reversioners in Hindu Law have no vested interest in the estate and that they have a mere

(1) I.L.R. 17 Lah. 356.
(2) I.L.R. 58 All. 1041 F.B.
(3) I.L.R. 16 Part. 215 F.B.
(4) I.L.R. [1937] Mad. 948 F.B.
(5) I.L.R. 13 Luck. 380.
(6) L.R. 73 I.A. 187.

A *spes successionis.* It was contended before the Judicial Committee that the words 'Hindu male dying intestate' was occurring in the preamble to the Act connotes the future tense, of a Hindu male dying after the Act has come into force. This contention was rejected by the Judicial Committee, which observed as follows :

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> "In the argument before their Lordships reliance was placed on the words 'dying intestate' in the Act as connoting the future tense, but their Lordships agree with the view of the Lahore High Court in *Shrimati Shakuntala Devi* v. *Kaushalaya Devi* (ILR 17 Lah 356) that the words are a mere description of the status of the
> C deceased and have no reference, and are not intended to have any reference, to the time of the death of a Hindu male. The expression merely means "in the case of intestacy of a Hindu male". To place this interpretation on the Act is not to give a retrospective effect to its provisions, the material point of time being the
> D date when the succession opens, namely, the death of the widow."

We are in entire agreement with the above observations of the Judicial Committee and accordingly hold that the point of time for the applicability of the Act is when the succession opens, *viz.*, when the life estate terminates. In consequence, it must
E be further held that the questions as to who is the nearest reversionary heir, or what is the class of reversionary heirs will fall to be settled at the date of the expiry of the ownership for life or lives. The death of a Hindu female life-estate holder opens the inheritance to the reversioners and the one most nearly related at the time to the last full owner becomes entitled to the estate.

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We hold that the Act applies also to the case of a Hindu male dying intestate before the Act came into operation and has been succeeded by a female heir who died after that date. In this case, on the findings recorded by all the Courts, the last female heir died only on March 25, 1950 and, under the Act, the
G plaintiff, as the sister's son of Charanji Lal, is entitled to succeed to his estate, in preference to the defendant who is only a paternal uncle. We have already pointed out that the paternal uncle is postponed to the four relations referred to in the Act, the last of whom is the sister's son.

H Before we conclude, we may state that in this case the succession can be considered to have opned even on November 26, 1946 when Bishan Devi's (the mother's) life estate terminated and it must be held that even Maya Devi, the sister of Charanji

Lal, must be considered to have succeeded to the property of her brother, in her own right as a preferential heir under the Act, though the estate, taken by her under s. 3(b) will only be a life-estate. No doubt these aspects have not been raised before any of the Courts, nor even before us.

The result is that the decision of the Letters Patent Bench of the High Court is correct. In consequence the appeal fails and is dismissed with costs.

G.C. *Appeal dismissed.*