A

MRS. MARY ROY ETC. ETC.

v.

STATE OF KERALA & ORS.

FEBRUARY 26, 1986

B

[P.N. BHAGWATI, C.J. AND R.S. PATHAK, J.]

Intestate Succession to the property of a member of the Indian Christian Community in the territories originally forming part of the erstwhile State of Travancore - Merger of State of Travancore with State of Cochin in July 1949 and enactment of Part B States (Laws) Act, 1951 providing for C extension of certain Parliamentary statutes to Part B States - Consequential effect of the extension of Indian Succession Act, 1925 - Whether the Indian Succession Act, 1925 or the old Travancore Cochin Succession Act 1092 (Kollan Era) will govern the intestate succession from the date of extension - Indian Succession Act, section 29(2), scope of - Legislative device D of incorporation by reference, explained.

Prior to July 1949, the State of Travancore was a princely State and the law in force in the territories of that State in regard to intestate succession to the property of the members of the Indian Christian Community was the Travancore E Christian Succession Act, 1092 (Kollan Era). Under the said Act, a widow or mother becoming entitled under sections 16, 17, 21 & 22 shall have only life interest terminable at death or on remarriage and a daughter shall not be entitled to succeed to the property of the intestate in the same share as the son but she will be entitled to one-fourth the value of F the share of the son or Rs. 5000 whichever is less and even this amount she will not be entitled on intestacy, if Streedhanom was provided or promised to her by the intestate or in the life time of the intestate, either by his wife or husband or after the death of such wife or husband by her or his heirs. G

In or about July 1949, the former State of Travancore merged with the former State of Cochin to form Part B State of Travancore-Cochin. With a view to bringing about uniformity of legislation in the whole of India, including Part-B States, Parliament enacted Part B States (Laws) Act, 1951 providing H

for extension to Part B States certain Parliamentary Statutes prevailing in rest of India, including the Indian Succession Act, 1925. As to the impact of the extension of the Indian Succession Act, 1925, that is to say, whether it impliedly repealed the Travancore-Christian Succession Act, 1092, divergent judicial opinions were handed over one by a Single Judge of the Madras High Court and the contrary one by the Division Bench of the Madras High Court and the former Travancore-Cochin High Court. The petitioners therefore, have now challenged, under Article 32 of the Constitution, Sections 24, 28 and 29 of the Travancore Christian Act, 1092 as unconstitutional and void.

Allowing the petitions, the Court,

HELD: 1.1 On the coming into force of Part-B States (Laws) Act, 1951 the Travancore Succession Act, 1092 stood repealed and Chapter II of Part V of the Indian Succession Act, 1925 became applicable and intestate succession to the property of members of the Indian Christian community in the territories of the erstwhile State of Travancore was thereafter governed by Chapter II of Part V of the Indian Succession Act, 1925. [382 D-E]

1.2 The Indian Succession Act, 1925 was enacted by Parliament with a view to consolidating the law applicable to intestate and testamentary succession. This Act being a consolidating Act replaced many enactments which were in force at that time dealing with intestate and testant succession including the Indian Succession Act, 1865. So far as Indian Christians are concerned, Chapter II of Part V contains rules relating to intestate succession and a fortiori on the extension of the Indian Succession Act, 1925 to Part B State of Travancore Cochin, the rules relating to intestate succession enacted in Chapter II of Part V would be applicable equally to Indian Christians in the territories of the former State of Travancore. [377 H, 378 A-B, F-G]

1.3 Sub-section 2 of section 29 of the Indian Succession Act, 1925 did not save the provisions of the Travancore Christian Succession Act, 1092 and therefore, it cannot be said that despite the extension of the Indian Succession Act, 1925 to Part B State of Travancore-Cochin, the Travancore Christian Succession Act, 1092 continued to apply to Indian

A

Christians in the territories of the erstwhile State of Travancore. [378 H; 379 A-B]

When the Indian Succession Act, 1925 was extended to Part-B State of Travancore-Cochin every Part of that Act was so extended including Chapter II of Part V and the Travancore B Christian Succession Act, 1092 was a law corresponding to Chapter II of Part V, since both dealt with the same subject matter, namely, intestate succession among Indian Christians and covered the same field. The fact that Travancore Christian Succession Act, 1092 confined only to laying down rules of intestate succession among the Indian Christians while Indian Succession Act had a much wide coverage cannot lead to the C conclusion that the Travancore Christian Succession Act, 1092 was not a law corresponding to the Indian Succession Act. Further by Section 6 of Part B States (Laws) Act, 1951 the Travancore Christian Succession Act, 1092 stood repealed in its entirety. When section 6 of Part B States (Laws) Act, 1951 provided in clear and unequivocal terms that the Travancore D Christian Succession Act, 1092 which was a law in force in part B States of Travancore-Cochin corresponding to Chapter II of Part V of the Indian Succession Act, 1925 shall stand repealed, it would be nothing short of subversion of the legislative intent to hold that the Travancore Christian Succession Act, 1092 did not stand repealed but was saved by E section 29 sub-section (2) of the Indian Succession Act, 1925. [380 A-H; 381 A-B]

Solomon v. Muthiah [1974] 1 M.L.J. Page 53; **D. Chelliah v. G. Lalita Bai**, A.I.R. 1978 (Madras) 66 (DB) referred to.

F

2. The legislative device of incorporation by reference is a well known device where the legislature instead of repeating the provisions of a particular statute in another statute incorporates such provisions in the latter statute by reference to the earlier statute. It is a legislative device adopted for the sake of convenience in order to avoid verbatim G reproduction of the provisions of an earlier statute in a later statute. But when the legislature intends to adopt this legislative device the language used by it is entirely distinct and different from the one employed in section 29 sub-section (2) of the Indian Succession Act, 1925. The opening part of section 29 sub-section (2) is intended to be a H qualificatory or excepting provision and not a provision for incorporation by reference. [381 H; 382 A-C]

A

Kurian Augusty v. Devassy Aley, A.I.R. 1957 Travancore Cochin Page 1 distinguished.

ORIGINAL JURISDICTION : Writ Petition (Civil) No.8260 of 1983 etc.

B (Under Article 32 of the Constitution of India.)

Ms. Indira Jai Singh, Ms. Kamini Jaiswal for the Petitioners.

G. Viswanath Iyer, G.P. Pai, V.J. Francis, S. C Sukumaran, D.N. Misra, P.K. Pillai, C.S. Vaidyanathan, O.P. Sharma, Hemant Sharma, R.N. Poddar and Madhu Moolchandani for the Respondents.

Mandita Pandey, Mrs. K. Hingorani and Mrs. Rekha Pandey for the Intervener.

D

The Judgment of the Court was delivered by

BHAGWATI, C.J. These Writ Petitions raise an interesting question as to whether after the coming into force of the Part B States (Laws) Act 1951, the Travancore Christian Succession E Act 1092 continues to govern intestate succession to the property of a member of the Indian Christian Community in the territories originally forming part of the erstwhile state of Travancore or is such intestate succession governed by the Indian Succession Act 1925 and if it continues to be governed by the Tranvacore Christian Succession Act 1092, whether F sections 24, 28 and 29 of that Act are unconstitutional and void as being violative of article 14 of the Constitution. This question is of great importance because it affects the property rights of women belonging to the Indian Christian Community in the territories of the former State of Travancore. It is not necessary for the purpose of deciding this G question to refer to the facts of any particular Writ Petition. It will be sufficient to trace the history of the legislation in regard to intestate succession to the property of members of the Indian Christian Community in the territories forming part of the erstwhile State of Travancore.

H Prior to July 1949 the State of Travancore was a princely state and the law in force in the territories of that state in regard to intestate succession to the property of members of the Indian Christian community was the Travancore

Christian Succession Act 1092. This Act was promulgated by His Highness the Maharaja of Travancore with a view to consolidating and amending the rules of law applicable to intestate succession among Indian Christians in Travancore. The statement of objects and reasons for enactment of this Act provided that "the usages of the various sections of the Christian community do not agree in all respects. Separate legislation for the various sections of Christians is neither desirable nor practicable and is likely to lead to much litigation and trouble. It is therefore thought necessary to enact a common law for all the various sections of Indian Christians." Section 2 of the Act accordingly provided:

> "Except as provided in this Act, or by any other law for the time being in force, the rules herein contained shall constitute the law of Travancore applicable to all cases of intestate succession among the members of the Indian Christian community".

Sections 16 to 19 laid down the rules of law applicable to intestate succession among Indian Christians. The contention of the petitioners was that these rules discriminated against women by providing inter-alia that so far as succession to the immovable property of the intestate is concerned, a widow or mother becoming entitled under secs. 16, 17, 21 and 22 shall have only life interest terminable at death or on remarriage and that a daughter shall not be entitled to succeed to the property of the intestate in the same share as the son but that she will be entitled to one-fourth the value of the share of the son or Rs.5,000 whichever is less and even to this amount she will not be entitled on intestacy, if Streedhanom was provided or promised to her by the intestate or in the life time of the intestate, either by his wife or husband or after the death of such wife or husband, by his or her heirs and on account of such discrimination these rules were unconstitutional and void as being violative of article 14 of the Constitution. On the view we are taking as regards the consequential effect of the extension of the Indian Succession Act, 1925 to the territories of the former State of Travancore by virtue of Part-B States (Laws) Act, 1951, it is not necessary to examine this challenge to the constitutional validity of the rules laid down in the Travancore Christian

A

Succession Act, 1092 and we do not therefore propose to refer to them in detail, as that would be a futile exercise and would unnecessarily burden the judgment. But it is relevant to point out that sec. 30 of the Travancore Christian Succession Act, 1092 specifically excluded the applicability of the rules laid down in secs. 24, 28 and 29 to certain classes of Roman B Catholic Christians of the Latin Rite and also to certain Protestant Christians living in certain specified Taluks, according to the customary usage among whom, the male and female heirs of an intestate share equally in the property of the intestate and proceeded to add ex majori cautela that so far as these Christians are concerned, nothing in secs. 24, 28 C and 29 shall be deemed to affect the said custom obtaining among them. This was the law which governed intestate succession to the property of members of the Indian Christian community in the territories of the former State of Travancore.

D In or about July 1949 the former State of Travancore merged with the former State of Cochin to form Part-B State of Travancore - Cochin. There were also other Part-B States formed out of erstwhile princely States and they were Hyderabad, Jammu & Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan and Saurashtra. With a view to bringing about E uniformity of legislation in the whole of India including Part-B States, Parliament enacted Part-B States (Laws) Act, 1951 providing for extension to Part-B States of certain Parliamentary Statutes prevailing in rest of India. Two sections of this Act are material, namely, sec.3 and 6 and they provide inter-alia as follows :

F

> "3. **Extension and amendment of certain Acts and Ordinances**
>
> The Acts and Ordinances specified in the Schedule shall be amended in the manner and to the extent G therein specified, and the territorial extent of each of the said Acts and Ordinances shall, as from the appointed day and in so far as any of the said Acts or Ordinances or any of the provisions contained therein relates to matters with respect to which Parliament has power to make laws, be as H stated in the extent clause thereof as so amended.

A

xx xx xx

6. Repeals and savings

If immediately before the appointed day, there is in force in any Part B State any law corresponding B to any of the Acts or Ordinances now extended to that State, that law shall, save as otherwise expressly provided in the Act, stand repealed:"

The Schedule to this Act referred to several statutes and one of these statutes was the Indian Succession Act, 1925. The expression "the States", whereever occurring in the Indian C Succession Act, 1925 was substituted by the word 'India" and a new definition was introduced in clause (cc) of sec. 2 of that Act defining "India" to mean "the territory of India excluding the State of Jammu & Kashmir". The effect of sec. 3 read with the Schedule was to extend the provisions of the Indian Succession Act, 1925 to all Part-B States including the D State of Travancore-Cochin with effect from 1st April, 1951 which was the appointed date under the Part-B States (Laws) Act, 1951. The question is as to what was the impact of the extension of the Indian Succession Act, 1925 to the territories of the State of Travancore - Cochin on the continuance of the Travancore Christian Succession Act, 1092 in the territories forming part of the erstwhile State of Travancore. Did the introduction of the Indian Succession Act, 1925 have the effect of repealing the Travancore Christian Succession Act, 1092 so that from and after 1st April, 1951, intestate succession to the property of a member of the Indian Christian community in the territories of the former State of Travancore F was governed by the Indian Succession Act, 1925 or did the Travancore Christian Succession Act, 1092 continue to govern such intestate succession despite the introduction of the Indian Succession Act, 1925? This question has evoked divergence of judicial opinion, a single Judge of the Madras High Court taking one view while a Division Bench of the Madras G High Court as also the former Travancore Cochin High Court taking other view. We shall proceed to consider which view is correct.

The Indian Succession Act, 1925 was enacted by Parliament with a view to consolidating the law applicable to intestate H

A

and testamentory succession. This Act being a consolidating act replaced many enactments which were in force at that time dealing with intestate and testant succession including the Indian succession Act, 1865. Part V of the Act relates to intestate succession and it consists of a fasciculus of sections beginning with sec. 29 and going upto sec.56. The rules
B relating to testate succession are to be found in Part VI of the Act which comprised 23 Chapters commencing from sec. 57 and ending with sec. 191. We are concerned here only with intestate succession and hence we shall confine our attention to Part V of the Act. Sec. 29 which is the first section in Chapter I of Part V deals with the applicability of the rules
C contained in that Part. This section is material and hence it would be desirable to set it out in extenso :

> "29. **Application of Part**
>
> (1) This part shall not apply to any intestacy
D occurring before the first day of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.
>
> (2) Save as provided in sub-section (1) or by any other law for the time being in force, the
E provisions of this Part shall constitute the law of India in all cases of intestacy.

Chapter II of Part V lays down the rules governing intestate succession in case of persons other than Parsis and that is made clear by sec. 31 which delcares that nothing in Chapter
F II shall apply to Parsis. Chapter III enacts special rules for Parsi intestates and lays down what shall be the principles relating to intestate succession among them. It will thus be seen that so far as Indian Christians are concerned, Chapter II of Part V contains rules relating to intesate succession and a fortiori on the extension of the Indian Succession Act,
G 1925 to Part B State of Travancore Cochin, the rules relating to intestate succession enacted in Chapter II of Part V would be applicable equally to Indian Christians in the territories of the former State of Travancore. But the respondents sought to resist the applicability of these rules on the ground that sec. 29 sub-sec.(2) of the Indian Succession Act, 1925 saved
H the provisions of the Travancore Christian Succession Act,

A

1092 and therefore despite the extension of the Indian Succession Act, 1925 to Part B State of Travancore Cochin, the Travancore Christian Succession Act, 1092 continued to apply to Indian Christians in the territories of the erstwhile State of Travancore. This contention urged on behalf of the respondents is plainly unsustainable and cannot be accepted. B

The principal infirmity affecting this contention is that it overlooks the repealing provision enacted in sec. 6 of the Part B State (Laws) Act, 1951. This section provides that if immediately before the appointed day, that is, 1st April, 1951, there was in force in any Part B State any law corresponding to any of the Acts or Ordinances extended to that C State, that law shall, save as otherwise expressly provided in Part B State (Laws) Act, 1951 stand repealed. Now the Indian Succession Act, 1925 was extended to Part B State of Travancore-Cochin by virtue of sec. 3 of Part B State (Laws) Act, 1951 and if therefore, there was in force in part B State of Travancore-Cochin any law corresponding to the Indian D Succession Act, 1925 immediately prior to 1st April, 1951, such law would stand wholly repealed. The petitioners contended that the Travancore Christian Succession Act, 1092 which was admittedly in force in Part B State of Travancore-Cochin immediately prior to 1st April, 1951, was a law corresponding to Chapter II of Part V of the Indian Succession E Act, 1925 and this law, namely, the Travancore Christian Succession Act, 1092 must consequently be held to have been repealed in its entirety on the extension of the provisions of Chapter II of Part V to the Indian Succession Act, 1925 to the territories of the former State of Travancore and if that be so, the continuance of the Travancore Christian Succession F Act, 1092 could not possibly be regarded as saved by sec.29 sub-sec.(2) of the Indian Succession Act, 1925. The respondents made a faint attempt to combat this argument by urging that the Travancore Christian Succession Act, 1092 was not a law corresponding to the Indian Succession Act, 1925 since the latter Act had a much wider coverage in that it dealt not only G with rules relating to intestate succession among Indian Christian but also laid down rules of intestate succession among Parsis as also rules relating to testate succession, while the Travancore Christian Succession Act, 1092 was confined only to laying down rules of intestate succession among Indian Christians. This plea urged on behalf of the respon- H

A

dents is wholly fallacious. It ignores the basic fact that when the Indian Succession Act, 1925 was extended to Part-B State of Travancore-Cochin every Part of that Act was so extended including Chapter II of Part V and the Travancore Christian Succession Act, 1092 was a law corresponding to Chapter II of Part V, since both dealt with the same subject
B matter, namely, intestate succession among Indian Christians and covered the same field. We may point out that Mr. Justice Ismail of the Madras High Court sitting as a Single Judge of the Madras High Court recognised the validity of this position in **Solomon v. Muthiah**; [1974] 1 Madras Law Journal 53 and held that "the conclusion is irresistible that the Travancore
C Christian Succession Regulation II of 1902 is a law corresponding to the provisions contained in Part V of the Indian Succession Act, 1925 so far as christians are concerned". The learned Judge following upon this view held that the Travancore Christian Succession Act, 1092 was wholly repealed by virtue of sec.6 of Part B States (Laws) Act, 1951 and it could
D not be held to have been saved by sec.29 sub-sec. (2) of the Indian Succession Act, 1925. This conclusion reached by the learned Single Jugde was overruled by the Division Bench of the Madras High Court in **D. Chelliah v. G. Lalita Bai**, A.I.R. 1978 (Mad.) 66, but even this decision of the Division Bench while disagreeing with the conclusion reached by the learned
E Single Judge accepted the position that the Travancore Christian Succession Act, 1092 was a law corresponding to Part V of the Indian Succession Act, 1925. And if that be so, it is difficult to resist the conclusion that by sec. 6 of Part B States (Laws) Act, 1951 the Travancore Christian Succession Act, 1092 stood repealed in its entirety. When sec.6 of Part B
F States (Laws) Act, 1951 provided in clear and unequivocal terms that the Travancore Christian Succession Act, 1092 which was a law force in Part B States of Travancore-Cochin corresponding to Chapter II of Part V of the Indian Succession Act, 1925 shall stand repealed, it would be nothing short of subversion of the legislative intent to hold that the
G Travancore Christian Succession Act, 1092 did not stand repealed but was saved by sec.29 sub-sec.(2) of the Indian Succession Act, 1925. Of course, if there were any provision in Part B States (Laws) Act 1951 expressly providing that the Travancore Christian Succession Act, 1092 shall not stand repealed despite the extension of Chapter II of Part V of the
H Indian Succession Act, 1925 to the territories of the former

State of Travancore, then undoubtedly the Travancore Christian Succession Act, 1092 would not have stood repealed and would have been saved. But admittedly there is nothing in Part B States (Laws) Act, 1951 expressly saving the Travancore Christian Succession Act, 1092. The only argument urged on behalf of the respondents was that sec.29 sub-sec. (2) of the Indian Succession Act, 1925 had the effect of saving the Travancore Christian Succession Act, 1092 and the latter Act therefore continued to govern Indian Christians in the territories of the former State of Travancore. Now this contention of the respondent might perhaps have required some consideration if the Travancore Christian Succession Act, 1092 had not been expressly repealed and an argument had been raised that by reason of the extension of the Indian Succession Act, 1925, there was implied repeal of the Travancore Christian Succession Act, 1092. Then perhaps an argument could have been advanced that though both Chapter II of Part V of the Indian Succession Act, 1925 and the Travancore Christian Succession Act, 1092 covered the same field and dealt with the same subject matter, namely, intestate succession among Indian Christians, there was no implied repeal of the Travancore Christian Succession Act, 1092 by the extension of Chapter II of Part V of the Indian Succession Act 1925 and the continued operation of the Travancore Christian Succession Act 1092 was saved by sec.29 sub-sec. (2) of the Indian Succession Act, 1925. We very much doubt whether such an argument would have been tenable but in any event in the present case there is no scope for such an argument, since the Travancore Christian Succession Act, 1092 stood expressly repealed by virtue of sec.6 of Part B States (Laws) Act, 1951.

It was then contended on behalf of the respondents, though faintly, that by reason of section 29 sub-sec.(2), the Indian Succession Act, 1925 must be deemed to have adopted by reference all laws for the time being in force relating to intestate succession including the Travancore Christian Succession Act, 1092 so far as Indian Christian in Travancore are concerned. This contention was sought to be supported by reference to the decision of the Travancore-Cochin High Court in **Kurian Augusty v. Devassy Aley**, A.I.R. 1957 Travancore-Cochin 1. We do not think this contention is at all sustainable. The legislative device of incorporation by reference is a well-known device where the legislature instead

A

of repeating the provisions of a particular statute in another statue incorporates such provision in the latter statute by reference to the earlier statute. It is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of an earlier statute in a latter statute. But when the legislature intends to adopt this
B legislative device the language used by it is entirely distinct and different from the one employed in section 29 sub-sec.(2) of the Indian Succession Act, 1925. The opening part of section 29 sub-sec.(2) is intended to be a qualificatory or excepting provision and not a provision for incorporation by reference. We have no hesitation in rejecting this contention
C urged on behalf of the respondents.

We are, therefore, of the view that on the coming into force of Part-B States (Laws) Act, 1951 the Travancore Cochin Succession Act, 1092 stood repealed and Chapter II of Part V of the Indian Succession Act, 1925 became applicable and
D intestate succession to the property of members of the Indian Christian community in the territories of the erstwhile State of Travancore was thereafter governed by Chapter II of Part V of the Indian Succession Act, 1925. On this view, it becomes unnecessary to consider whether sections 24, 28 and 29 of the Travancore Christian Succession Act, 1092 are unconstitutional
E and void. We, therefore, allow the writ petitions and declare that intestate succession to the property of Indian Christians in the territories of the former State of Travancore is governed by the provisions contained in Chapter II of Part V of the Indian Succession Act, 1925. There will be no order as to costs.

F

S.R. Petitions allowed.