

MST. MOHINDERO
v.
KARTAR SINGH AND ORS.

OCTOBER 30, 1990

[KULDIP SINGH AND S.C. AGRAWAL JJ.]

Hindu Succession Act, 1956—Section 15(1)(a)—Succession to estate of Hindu widow—Daughter of the deceased son—Preferential heir—Entitled to succession.

Santi married Kisso and gave birth to a son, the father of the appellant. On the death of Kisso, Santi married his brother, Ditto, who died issueless.

On the death of Ditto, the mutation of his estate was sanctioned in Santi's name, being his widow. She was in possession of the same as life—Estate holder. She executed a gift-deed in favour of her grand daughter, the appellant on December 27, 1955 and she died on October 6, 1956, after the commencement of the Hindu Succession Act.

Kissi, the sister of Santi's husbands filed a suit for possession contending that she was a preferential heir of the suit property, and that the property had been illegally mutated in the name of the appellant.

The trial Court dismissed the suit holding that without challenging the gift deed, the suit for possession was not competent.

Meanwhile Kissi, the plaintiff, having died, her heirs the respondents preferred an appeal before the District Judge. An application to amend the plaint, so as to challenge the validity of the gift was also filed. The District Judge allowed the application and the appeal, and remanded the case for fresh trial.

Holding the gift to be invalid, the Trial Court dismissed the suit on the ground of limitation, which was affirmed by the District Judge, in appeal.

The Respondents' Second Appeal to the High Court, was allowed by a Single Judge who reversed the findings of the Courts below on the issue of limitation.

A The Letters Patent Appeal against the aforesaid judgment was dismissed.

B The appellant in this Court has contended that the gift being invalid, Santi, the grandmother of the appellant continued to be a limited owner till the date of the commencement of the Hindu Succession Act, 1956, and thereafter by virtue of the provisions of the Act, she became full owner of the suit-property and the appellant being the daughter of a predeceased son of Santi was the preferential heir under section 15(1)(a) of the Act and was entitled to succeed to the property. The respondents contended the appeal contending that unless it was factually proved that appellant's father was the son of Santi, the appellant could not get the benefit of section 15 of the Act.

C Allowing the appeal, this Court.

HELD: 1. The appellant being daughter of a predeceased son was entitled to succeed to the property of Santi in preference to the respondents-plaintiffs. [479D]

D 2. Santi held the property as limited owner till the coming into force of the Act. She became full owner thereafter. When she died on October 6, 1956 succession to her property was to be governed by the Act. Santi having died intestate, succession to her property was to be governed by Section 15 read with Section 16 of the Act. Appellant being the daughter of a predeceased son of Santi she had the first preference to succeed under Section 15(1)(a) of the Act. [479B-C]

E This Court found sufficient material on the record to prove that the appellant's father was the son of Santi. [479B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 790 of 1981.

F From the Judgment and Order dated 5.9.1980 of the Punjab & Haryana High Court in Review Application No. 52 of 1980.

M.R. Sharma and Prem Malhotra for the Appellant.

G R.S. Sodhi for the Respondents.

The Judgment of the Court was delivered by

H **KULDIP SINGH, J.** Kissi was the sister of two brothers named Kisso and Ditto. Santi married these two brothers one after the other. She first married Kisso from whom she gave birth to a son named

Buta. After the death of Kisso she remarried the other brother Ditto. Ditto also died issueless. Buta who was born out of the wedlock of Kisso and Santi also died leaving a daughter named Mohindero.

On the death of Ditto the mutation of his estate was sanctioned in the name of the Santi being his widow. She was, thus, in possession of the land-holding of Ditto as a life-estate. Santi executed a gift-deed dated December 27, 1955, of the said land, in favour of Mohindero daughter of her son Buta. The Hindu Succession Act, 1956 (hereinafter called 'the Act') came into force with effect from June 17, 1956. Santi died on October 6, 1956.

Kissi filed a suit for possession on the ground that under the law she was a preferential heir and the suit property had been illegally mutated in the name of Mohindero. The suit was dismissed by the trial court on May 27, 1963. It was held that without challenging the gift in favour of Mohindero, the suit for possession was not competent. Meanwhile Kissi died and her heirs went-up in appeal before the District Judge. An application for permission to amend the plaint, so as to challenge the validity of the gift, was also filed before the District Judge. The appeal was allowed and the judgment of the trial Court was set aside. The District Judge also allowed amendment of the plaint and remanded the case for fresh trial. While holding the gift to be invalid, the Trial Court dismissed the suit on the ground of Limitation. The District Judge affirmed the finding of the trial Court on the issue of limitation and dismissed the appeal. The plaintiffs, thereafter, filed Regular Second Appeal before the High Court. A Learned Single Judge of the High Court reversed the findings of the Courts below on the issue of Limitation, set aside the judgment and decree of the Lower Courts and decreed the suit. The Letters Patent Appeal against the judgment of the learned Single Judge was dismissed by the Division Bench of the High Court on May 6, 1980. This appeal by the defendant Mohindero via special leave petition is against the judgment of the High Court.

Mr. M.R. Sharma, Learned Senior Advocate appearing for the appellant has not challenged before us the correctness of the findings reached by the High Court. He proceeds on the assumption that the suit was within Limitation and the gift in favour of Mohindero was invalid. He, however, contends that on October 6, 1956 when Santi died she had become absolute owner of the property and Mohindero being the daughter of a pre-deceased son was the preferential heir to Santi.

A The Act came into force on June 17, 1956 and thereafter on
October 6, 1956 Santi died. If the gift in favour of Mohindero was
invalid as has been held by the High Court then Santi continued to be
limited owner upto June 17, 1956 when the Act came into force and
thereafter by virtue of the provisions of the said Act she became full
owner of the property. Mr. Sharma contends that on October 6, 1956
B when Santi died succession to her property was to be governed by
Section 15 of the Act and the appellant Mohindero being daughter of a
pre-deceased son of Santi was the preferential heir under Section
15(1)(a) of the Act and was entitled to succeed to the property owned
by Santi.

C Mr. R.S. Sodhi, learned counsel appearing for the respondents
does not challenge the legal position as argued by Mr. Sharma but he
contends that there is no material on the record to show that Santi gave
birth to Buta. Mr. Sodhi contends that unless it is factually proved that
Buta was the son of Santi the appellant Mohindero cannot get the
benefit of the provisions of Section 15 of the Act We do not agree with
D Mr. Sodhi. We find sufficient material on the record to show that Buta
was born out of the wedlock of Kisso and Santi. Written Statement
dated December 20, 1963 filed by Mohindero is on the record of this
appeal. Para 2 of the written statement is as under:

E "2. That, in reply to para no. 2 it is submitted that it is not
denied that Kissi is the sister of Ditto. After the death of
Ditto the estate left by him was inherited by Mst. Santi (her
widow) as full and absolute owner. *The said Mst. Santi was
previously the widow of Kisso and Buta Singh (father of
Defendant No. 1 and husband of defendant No. 3) was the
son of Kisso through Mst. Santi.* The rest of this para is
F denied. It is incorrect that Mst. Santi has a limited estate."
(emphasis supplied)

The gift deed dated December 27, 1955 which was admittedly
part of the trial Court record and copy of which was placed before us
recites as under:

G "I, Santi widow of late Sri Ditto r/o village Ghasi Nangal,
Nangal, Tehsil Batala, Distt. Gurdaspur, Punjab whose
thumb impression is marked below have no sons and
daughters neither next to kin *because my only son Buta
Singh had expired 8 years earlier. Buta Singh had no sons
but he had one daughter named Mohindero w/o Sardar*
H

Shangara Singh r/o village Tehhore Tehsil Batala Dist. Gurdaspur."

A

(emphasis supplied)

The above averments remained uncontroverted. Buta was, therefore, son of Santi born out of the wedlock of Kisso and Santi. There is no dispute that appellant Mohindero is the daughter of Buta.

B

Santi held the property as limited owner till the coming into force of the Act. She became full owner thereafter. When she died on October 6, 1956 succession to her property was to be governed by the Act. Santi having died intestate, succession to her property was to be governed by Section 15 read with Section 16 of the Act. Mohindero being daughter of a predeceased son of Santi she had the first preference to succeed under Section 15(1)(a) of the Act. We, therefore, agree with the precise-point raised by Mr. Sharma.

C

We accept the appeal and set aside the judgment of the High Court and dismiss the suit filed by the respondent-plaintiffs. We hold that the appellant Mohindero was entitled to succeed to the property of Santi in preference to the respondents-plaintiffs. There shall be no order as to costs.

D

V.P.R.

Appeal allowed.