[2025] 8 S.C.R. 272 : 2025 INSC 865

Ram Charan & Ors.
v.
Sukhram & Ors.

(Civil Appeal No. 9537 of 2025)

17 July 2025

[Sanjay Karol* and Joymalya Bagchi, JJ.]

Issue for Consideration

Issue arose whether a tribal woman or her legal heirs would be entitled to an equal share in her ancestral property or not.

Headnotes†

Succession – Right of inheritance of tribal woman to ancestral property – Legal heirs of a woman belonging to a Scheduled Tribe, sought declaration of title and partition of a property, belonging to their maternal grandfather – Suit dismissed by the courts below holding that the legal heirs failed to establish their right over such property by way of custom, showing that female heir entitled thereto – Correctness:

Held: Keeping with the principles of justice, equity and good conscience, read along with the overarching effect of Art.14, the legal heirs of the deceased mother belonging to a Scheduled Tribe entitled to their equal share in the property – Denying the female heir a right in the property only exacerbates gender division and discrimination, which the law should ensure to weed out – No such custom of female succession could be established by the legal heirs, but nonetheless a custom to the contrary also could not be shown in the slightest, much less proved – Denying legal heirs deceased mother her share in her father's property, when the custom is silent, would violate her right to equality *vis-à-vis* her brothers or those of her legal heirs *vis-à-vis* their cousin – Also, Hindu Succession Act, 1956, which excludes the Scheduled Tribes from its application, not applicable – Neither any particular law of a community nor custom could be brought into application by either side – Customs too, like the law, cannot remain stuck in time and others cannot be allowed to take refuge in customs to deprive others of their right – Furthermore, the principle of

* Author

justice, equity, and good conscience find statutory recognition in the Central Provinces Laws Act, 1875, the High Court held that the same has been repealed and, thus, cannot be applied, is a mistaken position – Effect of s. 4 of the Repealed Act, is clear that no right having been accrued prior to the repeal of the Act shall be affected thereby – Parties to the instant *lis* are neither governed by Hindu nor Muslim laws and, thus, would be covered by s.6 of the 1875 Act – Rights of the mother had crystallized upon the death of her father, 30 years before the filing of the plaint, would not be affected by the fact that the Act was no longer in the statute book – Furthermore, there appears to be no rational nexus or reasonable classification for only males to be granted succession over the property of their forebears and not women, more so in the case where no prohibition to such effect can be shown to be prevalent as per law – Thus, the impugned judgment set aside – Central Provinces Laws Act, 1875 – ss.4, 6 – Constitution of India – Art.14. [Paras 12, 13, 15-20, 27-29]

Doctrines/Principles – Principles of 'justice, equity and good conscience – Meaning of:

Held: Principle of 'justice, equity and good conscience can be applied only when there is a void or, in other words, in the absence of any law governing that aspect – Since no custom to the effect that women were entitled to the property, the application thereof would be consistent with this position – When applying the principle of justice, equity and good conscience, the Courts have to be mindful. [Paras 18, 19]

Case Law Cited

Salekh Chand v. Satya Gupta and Ors. **[2008] 3 SCR 833 : (2008) 13 SCC 119;** *Ratanlal v. Sundarabai Govardhandas Samsuka* **[2017] 11 SCR 28 : (2018) 11 SCC 119;** *Aliyathammuda Beethathebiyyappura Pookoya v. Pattakal Cheriyakoya* **[2019] 10 SCR 961 : (2019) 16 SCC 1;** *Daduram and Others v. Bhuri Bai & Ors.,* **SA No.270 of 2023;** *Tirith Kumar v. Daduram* **[2024] 12 SCR 665 : 2024 SCC OnLine SC 3810;** *Niemla Textile Finishing Mills Ltd. v. 2nd Punjab Tribunal* **[1957] 1 SCR 335 : 1957 SCC OnLine SC 64;** *Superintendent and Remembrancer of Legal Affairs v. Corpn. of Calcutta* **[1967] SCR 170 : 1966 SCC OnLine SC 42;** *M. Siddiq v. Suresh Das* **[2019] 18 SCR 1 : (2020) 1 SCC 1;**

Western U.P. Electric Power and Supply Co. Ltd. v. State of U.P. **[1968] 3 SCR 312 : (1969) 1 SCC 817;** *Air India v. Nergesh Meerza* **[1982] 1 SCR 438 : (1981) 4 SCC 335;** *Maneka Gandhi v. Union of India* **[1978] 2 SCR 621 : (1978) 1 SCC 248;** *State of J&K v. Triloki Nath Khosa* **[1974] 1 SCR 771 : (1974) 1 SCC 19;** *Vijay Lakshmi v. Punjab University* **[2003] Supp. 3 SCR 1034 : (2003) 8 SCC 440;** *Shayara Bano v. Union of India* **[2017] 9 SCR 797 : (2017) 9 SCC 1 – referred to.**

Mst. Sarwango and others v. Mst. Urchamahin and Others, **2013 SCC OnLine Chh 5 – referred to.**

List of Acts

Central Provinces Laws Act, 1875; Constitution of India; Hindu Succession Act, 1956; Hindu Succession (Amendment) Act, 2005.

List of Keywords

Tribal women right in ancestral property; Constitutional goal of equality; Equality between successors of common ancestor; Female heir entitled to property; Customs; Absence of custom; Principles of justice, equity and good conscience; Exclusionary custom; Patriarchal pre-disposition; Inheritance in custom; Reasonable classification; Article 14; Gender equality; Gender division and discrimination; Right to equality; Succession; Legal heirs of woman belonging to Scheduled Tribe; Establish right over such property by way of custom.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9537 of 2025

From the Judgment and Order dated 01.07.2022 of the High Court of Chhatisgarh at Bilaspur in SA No. 465 of 2009

Appearances for Parties

Advs. for the Appellants:
Padmesh Mishra, Ms. Vastvikta Bhardwaj, Nikunj Goyal, Aditya, Vijant, Ms. Neelam Singh.

Advs. for the Respondents:
Bipin Bihari Singh, Ashok Anand, Anand Kumar Singh, Ajay Gupta, Mukul Dev Mishra, Sumeer Sodhi.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave Granted

2. The instant appeal is preferred against the judgment dated 1st July 2022 passed by the High Court of Chhattisgarh, Bilaspur, in Second Appeal No.465 of 2009, whereby it affirmed the judgment and decree dated 21st April 2009 passed by the Second Additional District Judge (FTC)[1], Surajpur, District Sarguja (C.G.) in Civil Appeal No.1A/08 and the judgment and decree dated 29th February 2008 passed by the Second Civil Judge, Class-2, Surajpur, Sarguja (C.G.)[2] in Civil Suit No.21A/08, dismissing the suit of partition filed by the appellant-plaintiffs.

3. The short question involved in this appeal is whether a tribal woman (or her legal heirs) would be entitled to an equal share in her ancestral property or not. One would think that in this day and age, where great strides have been made in realizing the constitutional goal of equality, this Court would not need to intervene for equality between the successors of a common ancestor and the same should be a given, irrespective of their biological differences, but it is not so.

4. The facts lie in a narrow compass. The appellants-plaintiffs are the legal heirs of one Dhaiya, a woman belonging to a Scheduled Tribe. They sought partition of a property belonging to their maternal grandfather, Bhajju alias Bhanjan Gond. Their mother was one of the six children - five sons and one daughter, stating that their mother is entitled to an equal share in the scheduled property. The cause of action arose in October 1992 when defendant Nos.6 to 16 refused to make a partition. The appellant-plaintiffs approached the Trial Court seeking a declaration of title and partition of the suit property.

5. By judgment dated 29th February 2008, the suit was dismissed holding as follows :

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1 Hereinafter referred to as 'First Appellate Court'

2 Hereinafter referred to as 'Trial Court'

> "11. From the contentions of the above three Plaintiff Witness it is clear that they have stated the fact of the right of the Bua and her sons i.e. the rights of the daughters on the land of the father. The judicial review Heera Lal Gond Vs Sukhbariya Bai M.P. V. No.1993 (Part-2) 143 has been presented on behalf of the plaintiffs, wherein it has held that as per the custom of parties of the Gond Caste that on proving the succession of the widow and daughter they shall get the succession. This Judicial Review is not applied in this case, because the plaintiffs have not certified their caste customs. They have only stated to be claimed the rights of the daughters to get into the properties of their father, but who can say that in their knowledge such right has been given to any specific person. In this regard a judicial review Bihari Vs. Yashwantin 1973 R.N.. 64 has been presented on behalf of the defendants, wherein the Hon'ble High Court has opined that the peoples of the Gond Caste are not governed by the Hindu custom, but they shall be governed by their specific tradition in their all cases including succession. In regard to the certification of tradition, the opinion of the Hon'ble Court is that the statement being tradition is not sufficient, they should be presented the real events.
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> 12. Thus, from the analysis of the above evidence it is made clear that the plaintiff has not made the statement of even any witness for providing their custom. Apart from this, they have also not made the claim of the fact of governing their custom from the caste tradition in their contentions. They are telling themselves Hindu and claiming that they are governed under the Hindu Succession Act, which is a specific provision in sub-section 2 of section 2 of the Hindu Succession Act, 1956 that the member of the Scheduled Tribe shall not be governed by this Act. Accordingly, the plaintiffs have failed to prove suit issues No.1 to 3 in their favor. Resultantly, their conclusion is made in the 'not certified'."
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> (Emphasis supplied)

6. The First Appellate Court, by its judgment dated 21st April 2009 concurred with the findings of the Trial Court that the mother of the

appellant-plaintiffs had no right in the property of her father. It is held so for the reason that no evidence had been led to show that children of a female heir are also entitled to property.

7. An appeal under Section 100 Code of Civil Procedure, 1908[3] has been admitted on the following substantial question of law :

> "(I) Whether both the Courts below were justified in dismissing the suit of the plaintiffs by recording a finding which is perverse and contrary to the record?"

8. The High Court, having considered the contentions of the parties *qua* the first argument of custom, held that the finding of the Trial Court is in consonance with the judgments of this Court in ***Salekh Chand v. Satya Gupta and Ors.***[4]; ***Ratanlal v. Sundarabai Govardhandas Samsuka***[5]; and ***Aliyathammuda Beethathebiyyappura Pookoya v. Pattakal Cheriyakoya***[6]. It was held that the appellant-plaintiffs seeking partition of property had failed to establish their right over such property by way of custom, showing that a female heir is also entitled thereto.

9. The second argument of the counsel for the appellant-plaintiffs is that in the absence of custom, justice, equity and good conscience must prevail, in accordance with ***Daduram and Others v. Bhuri Bai & Ors.***[7], the judgment of a coordinate Bench of the said Court. This argument was rejected on the ground that the coordinate Bench of the High Court was not informed that the 1875 Act stood repealed on 30th March 2018. It is the latter order from which the judgment of this Court in ***Tirith Kumar v. Daduram***[8] arose.

10. In so far as the argument of the appellant-plaintiffs that they had adopted Hindu traditions, it was held that since there was no evidence to that effect brought on record, the Trial Court as well as the First Appellate Court had rightly rejected this contention. In terms of the above, the substantial question of law was answered in the negative.

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3 Hereinafter 'CPC'

4 (2008) 13 SCC 119

5 (2018) 11 SCC 119

6 (2019) 16 SCC 1

7 SA No.270 of 2023

8 2024 SCC OnLine SC 3810

11. In that view of the matter, the appellant-plaintiffs are before us. We have heard the learned counsel for the parties at length and perused their written submissions.

12. At the outset of our consideration, it is clarified that the question of the parties having adopted Hindu customs and way of life is no longer in play. That apart, we may also notice Section 2(2) of the Hindu Succession Act, 1956, which unequivocally excludes from its application, Scheduled Tribes. It reads :

> "**Section 2(2)**: Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs."

13. Since the Hindu Law has no application, the next possibility to be considered is that of the application of the custom. For the application of a custom to be shown, it has to be proved, but it was not in the present case. In fact, the Courts below proceeded, in our view, with an assumption in mind and that assumption was misplaced. The point of inception regarding the discussion of customs was at the exclusion stage, meaning thereby that they assumed there to be an exclusionary custom in a place where the daughters would not be entitled to any inheritance and expected the appellant-plaintiffs to prove otherwise. An alternate scenario was also possible where not exclusion, but inclusion could have been presumed and the defendants then could have been asked to show that women were not entitled to inherit property. This patriarchal predisposition appears to be an inference from Hindu law, which has no place in the present case.

14. The Chhattisgarh High Court in ***Mst. Sarwango and others v. Mst. Urchamahin and others***[9] has observed :

> "10. In the present case, both the parties have failed to prove any law of inheritance or custom prevailing in their Gond caste i.e. member of Scheduled Caste whom Hindu law or other law governing inheritance is not applicable. In absence of any law of inheritance or custom prevailing

9 2013 SCC OnLine Chh 5

> in their caste governing the inheritance the Courts are required to decide the rights according to justice, equity and good conscience in term of Section 6 of the Act. Plaintiffs Sawango and Jaituniya are daughters of Jhangal, nearest relative rather the respondents, who were daughter-in-law of brother of Jhangal and legitimate or illegitimate son of Balam Singh, son of Dakhal.
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> 11. In these circumstances, plaintiffs Sawango and Jaituniya would be the persons' best entitlement to inherit the property left by their father. The Courts below ought to have decreed the suit for partition to the extent of share of Jhangal, but the Court below i.e. the lower appellate Court has allowed the appeal and dismissed the suit in absence of any law or custom for inheritance for a member of Schedule Tribe. The Courts below are required to decide their rights of inheritance in accordance with the provisions of Section 6 of the Act applicable to the State of Chhattisgarh and undivided State of Madhya Pradesh"
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> (Emphasis supplied)

15. Given the above situation that neither any particular law of a community nor custom could be brought into application by either side, we now proceed to examine the argument advanced before the High Court that is the principle of justice, equity, and good conscience. These principles find statutory recognition in the Central Provinces Laws Act, 1875, Section 6 whereof is extracted herein below :

> "6. In cases not provided for by section five, or by Rule in cases any other law for the time being in force, the Courts shall act according to justice, equity and good conscience."

16. At the outset, it is observed that regarding the 1875 law, the impugned judgment notes that the same has been repealed as of March 2018 and, therefore, cannot be applied. We find this position to be mistaken. The Repeal Act No.4 of 2018 provides for a saving clause, which reads as under :

> "**4. Savings**.— The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

> and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;
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> nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;
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> nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force."
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> (Emphasis supplied)

17. The effect of Section 4 is clear that no right having been accrued prior to the repeal of the Act shall be affected thereby. As we have already observed, the parties to the instant *lis* are neither governed by Hindu nor Muslim laws and, therefore, would be covered by Section 6 of the 1875 Act. So, the right having been accrued in favour of the appellant-plaintiffs' mother upon the death of her father, which was approximately 30 years before the filing of the plaint became crystallized and would not be affected by the fact that the Act was no longer in the statute book. This Act, therefore, necessarily had to be applied by the High Court. At this juncture, it is pertinent to consider the meaning of 'justice, equity and good conscience'.

18. It is trite in law that this principle can be applied only when there is a void or, in other words, in the absence of any law governing that aspect. Since no custom to the effect that women were entitled to the property, the application thereof would be consistent with this position. What exactly this phrase 'justice, equity and good conscience' entails has been considered by this Court on a few occasions. We may refer to certain instances :

(a) In ***Niemla Textile Finishing Mills Ltd. v. 2nd Punjab Tribunal***[10], it was held by a Constitution Bench of this Court that this principle can be applied even in the context of labour disputes, so long as the law on the question in consideration is not codified for there are many situations that arise in everyday function, which, it is not possible for a legislature to foresee and account for in the principal legislation.

(b) The principle of 'justice, equity and good conscience' is not of recent application. As J.C. Shah, J. demonstrated the Courts, which functioned in the former British Indian territory, were also equipped to apply the said principle. See ***Superintendent and Remembrancer of Legal Affairs v. Corpn. of Calcutta***[11].

(c) This principle found an extensive discussion in the decision of a Constitution Bench of this Court in ***M. Siddiq v. Suresh Das***[12] ***(Ram Janmabhoomi Temple),*** relevant extracts whereof are as follows :

> ***"Justice, Equity and Good Conscience today***
>
> **1019.** With the development of statutory law and judicial precedent, including the progressive codification of customs in the Hindu Code and in the Shariat Act, 1937, the need to place reliance on justice, equity and good conscience gradually reduced. There is (at least in theory) a reduced scope for the application of justice, equity and good conscience when doctrinal positions established under a statute cover factual situations or where the principles underlying the system of personal law in question can be definitively ascertained. But even then, it would do disservice to judicial craft to adopt a theory which excludes the application of justice, equity and good conscience to areas of law governed by statute. For the law develops interstitially, as Judges work themselves in tandem with statute law to arrive

10 1957 SCC OnLine SC 64

11 1966 SCC OnLine SC 42

12 (2020) 1 SCC 1

at just outcomes. Where the rights of the parties are not governed by a particular personal law, or where the personal law is silent or incapable of being ascertained by a court, where a code has a lacuna, or where the source of law fails or requires to be supplemented, justice, equity and good conscience may properly be referred to.

…

1022. The common underlying thread is that justice, good conscience and equity plays a supplementary role in enabling courts to mould the relief to suit the circumstances that present themselves before courts with the principal purpose of ensuring a just outcome. Where the existing statutory framework is inadequate for courts to adjudicate upon the dispute before them, or no settled judicial doctrine or custom can be availed of, courts may legitimately take recourse to the principles of justice, equity and good conscience to effectively and fairly dispose of the case. A court cannot abdicate its responsibility to decide a dispute over legal rights merely because the facts of a case do not readily submit themselves to the application of the letter of the existing law. Courts in India have long availed of the principles of justice, good conscience and equity to supplement the incompleteness or inapplicability of the letter of the law with the ground realities of legal disputes to do justice between the parties. Equity, as an essential component of justice, formed the final step in the just adjudication of disputes. After taking recourse to legal principles from varied legal systems, scholarly written work on the subject, and the experience of the Bar and Bench, if no decisive or just outcome could be reached, a Judge may apply the principles of equity between the parties to ensure that justice is done. This has often found form in the power of the court to craft reliefs that are both legally sustainable and just."

(Emphasis supplied)

(d) In ***Tirith Kumar*** (supra), which was also an appeal arising from a judgment of the High Court of Chhattisgarh, this Court speaking through one of us (Sanjay Karol J.) had the occasion to consider the application of this principle and in accordance with it, the order of the High Court granting right over the property to the female heirs was confirmed.

19. When applying the principle of justice, equity and good conscience, the Courts have to be mindful of the above and apply this otherwise open-ended principle contextually. In the present case, a woman or her successors, if the views of the lower Court are upheld, would be denied a right to property on the basis of the absence of a positive assertion to such inheritance in custom. However, customs too, like the law, cannot remain stuck in time and others cannot be allowed to take refuge in customs or hide behind them to deprive others of their right.

20. Apart from the application of this general principle, we also find this to be a question of violation of Article 14 of the Constitution of India. There appears to be no rational nexus or reasonable classification for only males to be granted succession over the property of their forebears and not women, more so in the case where no prohibition to such effect can be shown to be prevalent as per law. Article 15(1) states that the State shall not discriminate against any person on grounds of religion, race, caste, sex or place of birth. This, along with Articles 38 and 46, points to the collective ethos of the Constitution in ensuring that there is no discrimination against women.

21. In ***Western U.P. Electric Power and Supply Co. Ltd. v. State of U.P.***[13], it was observed :

> **"7.** Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not, however, operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law..."

13 (1969) 1 SCC 817

22. This Court in the seminal case of ***Air India v. Nergesh Meerza***[14], laid down the following propositions, among others, in regard to Article 14 :

> "**39.** Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions emerge:
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> …
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> (2) Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Article 14 will be completely out of the way.
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> (3) Article 14 certainly applies where equals are treated differently without any reasonable basis.
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> (4) Where equals and unequals are treated differently, Article 14 would have no application.…"

23. In ***Maneka Gandhi v. Union of India***[15], it was observed :

> "**7.** Now, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire

14 (1981) 4 SCC 335

15 (1978) 1 SCC 248

> limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa* v. *State of Tamil Nadu* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348] namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it .would be no procedure at all and the requirement of Article 21 would not be satisfied…"
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> (Emphasis supplied)

24. While relying on ***State of J&K v. Triloki Nath Khosa***[16], this Court in ***Vijay Lakshmi v. Punjab University***[17], observed as follows :

> "**8.** …
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> It was also observed that discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis and it was for the respondents to establish that classification was unreasonable and bore no rational nexus with its purported object. Further, dealing with the right to equality, the Court (in paras 29 & 30) held thus: (SCC p. 33)

16 (1974) 1 SCC 19

17 (2003) 8 SCC 440

> "But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.
>
> ...."

25. A Constitution Bench in ***Shayara Bano v. Union of India***[18], while dealing with the issue of triple talaq, referred to Article 14 in the following terms :

> **"62.** Article 14 of the Constitution of India is a facet of equality of status and opportunity spoken of in the Preamble to the Constitution. The Article naturally divides itself into two parts—(1) equality before the law, and (2) the equal protection of the law. Judgments of this Court have referred to the fact that the equality before law concept has been derived from the law in the UK, and the equal protection of the laws has been borrowed from the 14th Amendment to the Constitution of the United States of America. In a revealing judgment, Subba Rao, J., dissenting, in *State of U.P.* v. *Deoman Upadhyaya* [*State of U.P.* v. *Deoman Upadhyaya*, (1961) 1 SCR 14 : AIR 1960 SC 1125 : 1960 Cri LJ 1504] , AIR p. 1134 para 26 : SCR at p. 34 further went on to state that whereas equality before law is a negative concept, the equal protection of the law has positive content. The early judgments of this Court referred to the "discrimination" aspect of Article 14, and evolved a rule by which subjects could be classified. If the classification was "intelligible" having regard to the object sought to be achieved, it would pass muster under Article 14's anti-discrimination aspect. Again, Subba Rao, J., dissenting, in *Lachhman Dass* v. *State of Punjab* [*Lachhman Dass* v. *State of Punjab*, (1963) 2 SCR 353 : AIR 1963 SC 222] , SCR at p. 395, warned that: (AIR p. 240, para 50)
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> > "*50*. ... Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification

18 (2017) 9 SCC 1

> may gradually and imperceptibly deprive the Article of its glorious content…"
>
> (Emphasis supplied)

26. This discussion on equality under Article 14, which, needless to state, includes the aspect of gender equality within its fold will be, in our view, incomplete without reference to the first and most commendable step taken under the Hindu Law by way of the Hindu Succession (Amendment) Act, 2005 which made daughters the coparceners in joint family property. The object and reasons as stated in the Bill are instructive in the general sense and we reproduce the same with profit :

> "…The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975..."
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> (Emphasis supplied)

27. Similarly, we are of the view that, unless otherwise prescribed in law, denying the female heir a right in the property only exacerbates gender division and discrimination, which the law should ensure to weed out.

28. Granted that no such custom of female succession could be established by the appellant-plaintiffs, but nonetheless it is also equally true that a custom to the contrary also could not be shown in the slightest, much less proved. That being the case, denying Dhaiya her share in her father's property, when the custom is silent, would violate her right to equality *vis-à-vis* her brothers or those of her legal heirs *vis-à-vis* their cousin.

29. In view of the above discussion, we are of the firm view that in keeping with the principles of justice, equity and good conscience,

read along with the overarching effect of Article 14 of the Constitution, the appellant-plaintiffs, being Dhaiya's legal heirs, are entitled to their equal share in the property. The judgments of the Courts below are accordingly set aside to that extent. The civil appeal is allowed accordingly.

Pending application(s), if any, shall stand disposed of.

30. No costs.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Nidhi Jain