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ATMA SINGH

v.

GURMEJ KAUR (D) & ORS.

(Civil Appeal No. 11094 of 2017)

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SEPTEMBER 13, 2107

[A.K. SIKRI AND ASHOK BHUSHAN, JJ.]

Hindu Succession Act, 1956:

s.8 – Intestate succession – By the mother – To the estate of

C *her deceased son born out of her first marriage – Permissibility – Held: The mother being the sole class I heir u/s. 8, would naturally succeed to the estate of her deceased son through first marriage – Succession u/s. 8 is not controlled by s.2 of Hindu Widow's Remarriage Act, 1856 – s.4 of 1956 Act also gives an overriding effect to the 1956 Act – Hence s.2 would not disentitle the mother (on account of her re-marriage) to inherit the estate of her son – Hindu Widow's Remarriage Act, 1856 – s.2*

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Dismissing the appeal, the Court

HELD: 1. The son of defendant No. 1 died intestate and

E *succession is to be governed by Section 8 of the Hindu Succession Act, 1956. The mother i.e. defendant No. 1 being Class I heir under Section 8 and there being no other class I heir available to succeed mother, she naturally succeeded the estate of her son by virtue of Section 8 read with the Schedule, Class I. [Paras 9 and 10] [908-G-H; 909-C]*

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2. The consequence of Section 2 of Hindu Widow's Remarriage Act, 1856, provides that all rights and interests, which any widow may have in her deceased husband's property or to his lineal successors shall upon her re-marriage cease and determine as if she had then died. Thus, on re-marriage, the

G *widow is divested with any right which she may have in the husband's property or property of husband's lineal successors. In the present case, re-marriage took place in the year 1952. Thus, the widow has lost right in the property of her husband or any lineal descendants on re-marriage. Section 2 further provides*

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that on cessation and determination of rights of widow, the next heirs of her deceased husband or other persons entitled to the property shall succeed the same. The effect of Section 2 was thus confined to rights which the widow was possessing at the time of re-marriage. [Para 11] [909-E-G] A

3. In the present case, the succession opened in the year 1972 when the son of defendant No. 1 died. Succession of estate of deceased son of defendant No. 1 shall be governed by Section 8 of the Hindu Succession Act, 1956. By Section 8, the mother i.e. defendant No.1 being described in Class I of the Schedule, shall inherit the property excluding other heirs. Even after re-marriage of defendant No.1, the defendant No.1 shall continue to be the mother of 'P', who was born to her from her first husband. Succession under Section 8 to the estate of 'P' by defendant No.1 shall not be controlled or prohibited by Section 2 of the Hindu Widow's Re-Marriage Act, 1856. It is true that all rights in her husband's property or property of lineal successors of her husband were lost by a widow on her re-marriage. But Section 2 shall not govern or regulate any future succession to which she may be entitled under law. The Hindu Widow's Re-Marriage Act, 1856 has been subsequently repealed by the Hindu Widow's Re-Marriage (Repeal) Act, 1983. Even though, in the year 1972, the 1856 Act was in force, but the said provision shall not control the succession as ordained by Section 8 of the 1956 Act. [Para 12] [909-H; 910-A-D] B

4. In Section 4 of the 1956 Act, an overriding effect has been given to the 1956 Act to any other law in force immediately before the commencement of the 1956 Act in so far as it is inconsistent with any of the provisions contained in the 1956 Act. Even for the arguments sake, if it is accepted that Section 2 of the 1856 Act have any cascading effect on the right of widow, the same shall be treated to have overridden by virtue of Section 8 read with Schedule to the 1956 Act. [Para 13] [910-E] C

5. Section 2 of the 1856 Act in no manner affects the right of defendant No.1 to succeed the estate of her son and after the death of her son, she was rightly held to succeed his properties. [Para 15] [912-D] D

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A *Smt. Kasturi Devi v. Deputy Director of Consolidation and Ors.* (1976) 4 SCC 674 : [1977] 2 SCR 25 – relied on.

Case Law Reference

B	[1977] 2 SCR 25	relied on	Para 14
<p>CIVIL APPELLATE JURISDICTION : Civil Appeal No.11094 of 2017.</p> <p>From the final Judgment and Order dated 14.07.2009 passed by the High Court of Punjab and Haryana at Chandigarh in R.S.A. No.2929 of 2006.</p>			
<p>Ambreesh Kumar Aggarwal, Ms. Surabhi Aggarwal, Advs. for the Appellant.</p> <p>Pallav Mongia, Pankaj Singh, Ms. Jasmine Damkewala, Ms. Nidhi, Advs. for the Respondents.</p>			
D	<p>The Judgment of the Court was delivered by</p> <p>ASHOK BHUSHAN, J. 1. This appeal has been filed against the judgment of the Punjab & Haryana High Court dated 14.07.2009 by which the High Court has dismissed the Regular Second Appeal filed by the appellant.</p>		
E	<p>2. The facts of the case are not in dispute and lie in a very narrow compass. The appellant has filed Civil Suit No. 220 of 2001 for a declaration that the plaintiff is the owner and in joint possession of the half share of the land owned by Pal Singh deceased son of Narain Singh. Narain Singh had three sons namely Atma Singh, the appellant, Mohan Singh, respondent No.5 and Pal Singh. The defendant No.1, Gurmej Kaur was wife of Narain Singh. Narain Singh, who was the owner of land in dispute died in the year 1952 intestate. He left behind his above three sons and wife Gurmej Kaur. Gurmej Kaur immediately after death of Narain Singh remarried with one Inder Singh. Pal Singh, son of Narain Singh died in the year 1972 intestate. He was not married and so had no children. Estate of Pal Singh was mutated in favour of Gurmej Kaur, his mother. Thereafter, Suit No. 220 of 2001 was filed by the appellant. The Trial Court dismissed the suit holding that defendant No. 1, Gurmej Kaur being the real mother of deceased Pal Singh and she being Class I</p>		
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heir shall succeed to Pal Singh after his death. The appeal was filed by the appellant, which too was dismissed on 07.02.2006, against which second appeal was filed. The High Court in its judgment reaffirmed the decision of Court below. The High Court held that although after death of Narain Singh, Gurmej Kaur, on account of her re-marriage will loose right in estate of Narain Singh but have every right to inherit the estate of her son, Pal Singh in terms of Section 8 of the Hindu Succession Act, 1956. The plaintiff appellant aggrieved by the judgment of the High Court have come up in this appeal.

3. Learned counsel for the appellant in support of the appeal contends that after re-marriage, Gurmej Kaur loses her right to inherit the property of Narain Singh as well as his lineal descendants. Hence she was not entitled to inherit the estate of Pal Singh. It is submitted that Courts below did not advert to The Hindu Widow's Re-Marriage Act, 1856, which clearly dis-entitle the defendant No.1 to inherit the estate of Pal Singh. It is submitted that in the year 1972 when Pal Singh died, the Hindu Widow's Re-Marriage Act, 1856 was in force and defendant No.1 was not entitled to inherit the property of Narain Singh i.e. property of father of the deceased but was entitled to inherit the estate of Pal Singh.

4. Learned counsel for the respondent refuted the submission of the counsel for the appellant and contended that the provisions of the Hindu Widow's Re-Marriage Act, 1856 are no longer applicable in view of the overriding effect given to the Hindu Succession Act, 1956 under Section 4 of the 1956 Act. He submits that the defendant No.1 being natural mother of Pal Singh has rightly been held to inherit his estate under the 1956 Act.

5. We have considered the submissions made by the learned counsel for the parties and perused the records.

6. The issue to be considered in the present appeal is as to whether the Hindu Widow's Re-Marriage Act, 1856 dis-entitles the defendant No.1 to inherit the estate of Pal Singh. For answering the aforesaid issue, we need to examine the provisions of the Hindu Widow's Re-Marriage Act, 1856.

7. The Hindu Widow's Re-Marriage Act, 1856 was enacted to remove all legal obstacles to the marriage of the Hindu Widows. The

A Act was enacted to render re-marriage valid to legalize the legitimacy of the children. It conferred a benefit on those who could not marry but at the same time imposes a restriction on them. Section 2 of the Act on which reliance have been placed is as follows:-

"2 Rights of widow in deceased husband's property to cease on her re-marriage.-All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same."

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"2 Rights of widow in deceased husband's property to cease on her re-marriage.-All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same."

8. The Hindu Succession Act, 1956 was enacted to amend and codify the law relating to intestate succession among Hindus. Section 4 of the Act gave the enactment an overriding effect. Section 4 is quoted as below:-

"4. Overriding effect of Act.-

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(1) Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

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9. In the present case, we have to decide the right of inheritance of the estate, which was left by Pal Singh, who died in the year 1972. Pal Singh died intestate and succession is to be governed by Section 8 of the Hindu Succession Act, 1956, which is as follows:-

"8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve

according to the provisions of this Chapter—

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(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

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(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

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10. The mother being Class I heir under Section 8 and there being no other class I heir available to succeed mother, she naturally succeed the estate of Pal Singh by virtue of Section 8 read with the Schedule, Class I. Whether provision of Section 2 of the 1856 Act dis-entitles the defendant No.1 to succeed the estate of Pal Singh, is the submission forcefully put up by learned counsel for the appellant. It is submitted that on re-marriage, the widow ceases to have any right of maintenance or inheritance to her husband or his lineal successors. It is submitted that Pal Singh being lineal successor of husband of defendant No.1, she is also dis-entitled to succeed the estate of Pal Singh.

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11. The consequence of Section 2 on the right of widow, who remarries has been clearly enumerated. Section 2 provides that all rights and interests, which any widow may have in her deceased husband's property or to his lineal successors shall upon her re-marriage cease and determine as if she had then died. Thus, on re-marriage, the widow is divested with any right which she may have in the husband's property or property of husband's lineal successors. In the present case, re-marriage took place in the year 1952. Thus, the widow has lost any right in the property of her husband or any lineal descendants on re-marriage. Section 2 further provides that on cessation and determination of rights of widow, the next heirs of her deceased husband or other persons entitled to the property shall succeed the same. The effect of Section 2 was thus confined to rights which the widow was possessing at the time of re-marriage.

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12. In the present case, the succession has opened in the year 1972 when Pal Singh died. The question which had cropped up in the present case regarding succession of estate of Pal Singh and succession

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- A of Pal Singh's estate shall be governed by Section 8 of the Hindu Succession Act, 1956. By Section 8, the mother i.e. defendant No.1 being described in Class I of the Schedule shall inherit the property excluding other heirs. Even after re-marriage of defendant No.1, the defendant No.1 shall continue to be the mother of Pal Singh, who was born to her from her first husband Narain Singh. Succession under Section 8 to the estate of Pal Singh by defendant No.1 shall not be controlled or prohibited by Section 2 of the Hindu Widow's Re-Marriage Act, 1856. It is true that all rights in her husband's property or property of lineal successors of her husband were lost by a widow on her re-marriage. But Section 2 shall not govern or regulate any future succession to which she may be entitled under law. The Hindu Widow's Re-Marriage Act, 1856 has been subsequently repealed by the Hindu Widow's Re-Marriage (Repeal) Act. 1983. Even though, in the year 1972, the 1856 Act was in force but as noted above, the said provision shall not control the succession as ordained by Section 8 of the 1956 Act.
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13. Coming to Section 4 of the 1956 Act, where an overriding effect has been given to the 1956 Act to any other law in force immediately before the commencement of the 1956 Act in so far as it is inconsistent with any of the provisions contained in the 1956 Act. Even for the arguments sake, it is accepted that Section 2 of the 1856 Act have any cascading effect on the right of widow, the same shall be treated to have overridden by virtue of Section 8 read with Schedule to the 1956 Act.

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14. Learned counsel for the respondent has also placed reliance on the judgment of this Court in *Smt. Kasturi Devi vs. Deputy Director of Consolidation and others, (1976) 4 SCC 674*, this Court while considering the Hindu Succession Act, 1956 held that mother cannot be divested of her interest in her son's property either on the ground of unchastity or remarriage. One Madhua died in the year 1960 whose wife was Kasturi. Kasturi remarried with one Lekhraj in the year 1963. Karua who was son of Madhua and Kasturi died in the year of 1970. The question arose about the inheritance of property of Karua. The claim of Kasturi, the appellant was rejected by the High Court against which she has filed the appeal. This Court has held that Kasturi could not have been divested of her right to inherit estate of her son. In paragraph 3 of the judgment following was held:

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3. We may now examine the contentions raised by counsel for the appellant. Counsel submitted that assuming that Kasturi had remarried Lekhraj she had acquired an absolute interest in the property and no question of divestment of the property could arise in view of the provisions of the Hindu Succession Act. Secondly, it was argued that Kasturi in the instant case put forward her claim for inheritance not as widow of Madhua but as mother of Karua, because it was the property of Karua which was in dispute. In the view that we take in the present appeal, it is not necessary at all to decide as to whether or not Kasturi would be disinherited or divested of the property even after having acquired an absolute interest under the Hindu law. This is a moot question and not free from difficulty. We will, however, assume for the sake of argument that as wife of Madhua Kasturi might be divested of her interest on her remarriage with Lekhraj. It is plain, however, in this case that the dispute arises over the property of Karua and qua Karua's property, Kasturi claimed inheritance not as a widow of her husband Madhua but as the mother of Karua. The Deputy Director of Consolidation seemed to think that the bar of inheritance would apply to a mother as much as to a widow and on this ground he refused to accept the claim of the appellant. Learned counsel for the respondents supported the stand taken by the Deputy Director of Consolidation. We are, however, unable to agree with the view taken by the Deputy Director of Consolidation which appears to be contrary to the written text of the Hindu Law. Mulla in his Hindu Law, 14th Edn. while describing the incidents of a mother regarding inheritance under clause (iii) observed at p. 116 as follows:

“(iii) Unchastity and remarriage.—Unchastity of a mother is no bar to her succeeding as heir to her son, nor does remarriage constitute any such bar.”

A large number of authorities have been cited in support of this view. We find ourselves entirely in agreement with this view. Our attention has not been invited to any text of the Hindu Law under which a mother could be divested of her interest in the property either on the ground of unchastity or

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A *remarriage. We feel that the application of bar of inheritance to the Hindu widow is based on the special and peculiar, sacred and spiritual relationship of the wife and the husband. After the marriage, the wife becomes an absolute partner and an integral part of her husband and the principle on which she is excluded from inheritance on remarriage is that when she relinquishes her link with her husband even though he is dead and enters a new family, she is not entitled to retain the property inherited by her. The same, however, cannot be said of a mother. The mother is in an absolutely different position and that is why the Hindu Law did not provide that even the mother would be disinherited if she remarried.*

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15. We thus are of the view that Section 2 of the 1956 Act in no manner affect the right of defendant No.1 to succeed the estate of her son Pal Singh and after the death of Pal Singh, she was rightly held to succeed the properties of Pal Singh. The suit filed by the plaintiff has

D been correctly dismissed by all the Courts below. We thus do not find any merit in this appeal and the same is dismissed.

Kalpana K. Tripathy

Appeal dismissed.