

## **Mst. Karmi vs Amru And Ors. on 5 January, 1971**

**Equivalent citations: AIR1971SC745, (1972)4SCC86, 1971(III)UJ140(SC), AIR 1971 SUPREME COURT 745, 1972 4 SCC 86, 1971 SCD 274, 1971 U J (SC) 140**

**Author: K.S. Hegde**

**Bench: J.C. Shah, A.N. Grover, K.S. Hegde**

### **JUDGMENT**

K.S. Hegde, J.

1. One Jaimal was the owner of the suit properties. He died in 1938 leaving behind him his wife Nihali. His son stock-in-trade had predeceased him. The appellant is the daughter of stock-in-trade. The respondent are collaterals of Jaimal. The family genealogy is found at p. 125 of the paper-book. During the life time of Jaimal, he appears to have executed two wills. The first will was executed on December 18, 1935 and the second will on November 13, 1937. Both of them are registered wills. By the second will he revoked the first will. By that will he directed that on his death, his entire estate will devolve on his widow, Nihali during her life and thereafter the same would devolve on Bhagtu and Amru, his collaterals. On the death of Jaimal, the properties were mutated in the name of Nihali. Nihali died sometime in 1960 or 1961. On her death Bhagtu and Amru claimed the properties on the basis of the will of November 13, 1937 but the appellant claimed the properties as the sole legatee from Nihali under her will of April 25, 1958. This dispute led to the present proceedings.

2. The respondents sued the appellant for the possession of the suit properties on the strength of the will dated November 13, 1937. The appellant denied the genuineness as well as the validity of that will. The sole question for decision was whether Nihali got the properties on the strength of the will dated November 13, 1937 or in her own right as the heir to her husband. The trial Court dismissed the suit holding that Nihali got possession of the properties not on the strength of the will but as the widow of Jaimal. The trial judge thought that the will executed by Jaimal in 1937 had been revoked as it was not invoked after the death of Jaimal for a long period. In appeal the Additional District Judge, set aside the order of the trial Court and decreed the plaintiffs claim holding that the will executed by Jaimal was true and genuine and that it was the last will executed by him. The High Court has affirmed that decision. The concurrent finding of the 1st appellate Court as well as the High Court that the will executed by Jaimal on November 13, 1937, is genuine is a finding of fact and the same cannot be assailed in this Court. Nihali having succeeded to the properties of Jaimal on the strength of that will cannot claim any rights in those properties over and above that given to her under that will. The life estate given to her under the will cannot become an absolute estate under the provisions of the Hindu Succession Act. Therefore the appellant cannot claim any title to the suit properties on basis of the will executed by Nihali in her favour.

3. In the result this appeal fails and the same is dismissed. But in the circumstances of the case we make no order as to costs.