

## Kailash Chandra And Ors. vs Mt. Shri Devi on 27 February, 1951

**Equivalent citations: AIR1951ALL636, AIR 1951 ALLAHABAD 636**

### JUDGMENT

Malik, C.J.

1. The pltf. Sri Devi is the widow of Dr. Parshottam Das who died on 29-6-1940. On 5-10-1940, the pltf. & Ch. Prag Das executed a lease in favour of Hirdey Ram & Hanuman Prasad for constructing certain building & factoriea. A nazrana of Rs. 600 was received & the annual rent reserved was Rs. 165. Ch. Prag Das, however, did not pay to the pltf. her share of the annual rent & the pltf. filed a suit on 11-9-1944, for recovery of three year, rent at the rate of Rs. 82-8-0 per year, payable in October 1941, October 1942, October 1943. The total claim was for Rs. 270.

2. The suit was contested on the ground that the property included in the lease was the joint family property on which the name of the pltf. was entered merely for her consolation & her name was entered in the lease also for the same reason. It was further pleaded that the pltf. had no right to bring the suit for profits for one item only & the suit was, therefore, not maintainable. The first Ct. came to the conclusion that Dr. Parshottam Das & Prag Das were members of a joint Hindu family, but under the Hindu Women's Rights to Property Act, XVIII [18] of 1937, read with the U. P. Act xi [11] of 1942, the widow had the same interest in the property as her husband had. The trial Ct. however, held that the pltf. should have filed a suit for partition of the entire property & dismissed the suit. The lower appellate Ct. did not go into the question whether Dr. Parshottam Das & Prag Das were members of a joint Hindu family or were separate. It affirmed the decision of the learned Munsif that the widow had the same interest in the property as Dr. Parshottam Das had by reason of the Acts mentioned above. The lower appellate Ct., then went on to hold that whether Dr. Parshottam Das was or was not joint with Prag Das, the widow had separated from Prag Das & that it was, therefore, no longer necessary for her to bring a suit for partition of the entire property. The result was that the suit was decreed.

3. In second appeal learned counsel for the deft, raised only two points. His first contention was that the pltf. had no interest as the Hindu Women's Rights to Property Act, XVIII [18] of 1937, did not apply to agricultural land. He relied on the opinion of the P. C. on a reference made by His Excellency the Governor General Under Section 213, Govt. of India Act (In re the Hindu Women's Rights to Property Act, 1937), A. I. R. (28) 1941 F. C. B. 72 : (I.L.R. (1941) Kar. P. C. 148); The only other point raised by learned counsel was that the pltf. had no right to claim her share only in a single item of the family property. Both these contentions were repelled by a learned single Judge of this Ct. & the appeal failed.

4. In this appeal before us the same two points have been raised by the learned counsel & a third point which will be mentioned presently was also raised.

5. As regards the first point, after the U. P. Act, XI [11] of 1942, which is clearly retrospective in effect, it is not possible to argue that the Hindu Women's Rights to Property Act, 1937, does not refer to agricultural land.

6. As regards the second point raised before the learned Single Judge, the argument is that a Hindu woman, who gets interest in her husband's estate in accordance with the provisions of the Hindu Women's Rights to Property Act, becomes a coparcener like her husband & she has no right to file a suit for her share of profits in a single item of family property & that she must file a suit for partition of the entire joint family property. Sub-sections (2) & (3) of Section 2, Hindu Women's Rights to Property Act are as follows :

"Section 2 (2)--When a Hindu governed by any school of Hindu law .... dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of Sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner." Whether it was intended that a Hindu widow getting the same interest as her husband had should be a coparcener like the other coparceners is a proposition of law which might require careful consideration & on which we would not like to express an opinion in this case, as, in our opinion it is wholly unnecessary. The finding of the lower appellate Ct. is that she had separated from the rest of the family after her husband's death & that, therefore, she was entitled to maintain the suit. It cannot be doubted that her husband had a right to break up the joint status & if she was a coparcener like her husband, she must have the same right. There is nothing in Sub-section (3) which would not entitle her to break up the joint family status if she so desired if she was a coparcener. If, on the other hand, she was not a coparcener but had merely a Hindu woman's estate in the share of the property which would have fallen to her husband on partition on the date of his death, then there can be no question of her being debarred from filing a suit for her share of the rent reserved under the lease dated 5-10-1940. In either view, therefore, the decision on this point must be in favour of the pltf.

7. The third point, which learned counsel wanted to raise before us & which he did not raise in any of the Cts. below, was that the pltf. was not entitled to claim her share of the profits for the period before the Act came into force on 4-7-1942. He has relied on the first proviso to Section 2, U. P. Act xi [11] of 1942 which is as follows: "Provided that where any person who, but for this Act, would have been entitled to any property has been in possession or has made a transfer thereof, his possession till the commencement of this Act shall be deemed to be as lawful, & the transfer made by him shall be deemed to be as valid as if this Act had not been passed." It has been argued by learned counsel that ch. Prag Das was in possession of this property on 4-7-1942, when the Act came into force, that up to that date his possession must be deemed to be lawful & that he was, therefore, not liable to pay

half share of the rent reserved under the lease to the pltf. As this point was not raised in any of the Cts below, & as it is a mixed question of law & fact, we do not think we would be justified in allowing it to be raised now by learned counsel. We may point out that in the lease in question it was admitted that the pltf. was a co sharer with the deft. Prag Das & the lease purports to be on behalf of both of them.

8. The result, therefore is that his appeal fails & is dismissed with costs.