

Mt. Phulia vs Narpat Singh And Ors. on 16 September, 1953

Equivalent citations: AIR1954ALL307, AIR 1954 ALLAHABAD 307

JUDGMENT

Kidwai, J.

1. The property in suit belonged to one Kandhai Lodh who died on the 21-10-1926, leaving a widow Srimati Thakura, the widow of a pre-deceased son Srimati Jasodra and a daughter of that son Mst. Phulia. Thakura died in 1938 and Srimati Jasodra entered into possession and transferred the property by sale on the 6th of June, 1940 to Chandrabhal, defendant No. 2. A suit for pre-emption was instituted by Narpat Singh and a decree was passed in his favour on the 7th of July, 1941. He paid the money and obtained possession of the property on the 26th of February, 1942.

2. In the meanwhile on the 4th of June, 1941 Mst. Phulia instituted a suit against Srimati Jasodra and Chandrabhal claiming to be the owner of the property as a reversionary heir of her deceased grand-father. This suit was compromised. A decree was passed in favour of Mst. Phulia on the 6th of August, 1941. She obtained possession under it on the 25th of February, 1942 but she was dispossessed when possession was delivered to the pre-emptor. She brought the suit out of which this appeal arises claiming that Srimati Jasodra had no interest in the property and could not sell it in her life-time to anyone.

3. The trial Court decreed the suit but the lower appellate Court allowed the appeal of the pre-emptor against that decree and dismissed the suit. The learned Civil Judge purported to proceed on the basis of -- 'Duni Chand v. Mst. Anar Kali', AIR 1946 PC 173 (A), and he did not accept the decision of -- 'Nand Kumari Devi v. Mst. Bulkan Devi', AIR 1945 Pat 87 (B). The lower appellate Court seems not to have understood the point that it had to decide.

4. The right which was conferred upon a pre-deceased son's widow to inherit was conferred by the Hindu Women's Rights to Property Act of 1937 and Section 4 of that Act provides in clear terms that "nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act". In the present case the claim is made by Srimati Jasodra to the property of Kandhai Lodh who undoubtedly died before the Act came into force. The learned Civil Judge has ignored the clear provisions of this section by reason of the fact that their Lordships of the Privy Council in -- 'AIR 1946 PC 173 (A)' have held that succession under the Hindu Law in a case where the widow has succeeded opens on the death of the widow. We are not concerned in the present case as to when succession opened and no provision similar to Section 4 exists in the Hindu Law Amendment Act of 1941 which the Judicial Committee was interpreting.

5. In the present case no matter when succession opened, the condition for the application of the Hindu Women's Rights to Property Act is that the Hindu to whose property the claim is made must

have 'died after the commencement of the Act'. That condition is not fulfilled. No claim can, therefore, be made on the basis of it. Srimati Jasodra was not an heir under the Hindu Law as applied in this province but for the provisions of that Act and since that Act does not apply, Srimati Jasodra had no right to succeed.

6. Mst. Phulia, the daughter of the predeceased son, had acquired the right to succeed by reason of the Hindu Law of Inheritance (Amendment) Act and the fact that Kandhai died before that Act came into force is immaterial since in the case of succession on the death of Srimati Thakura we have to see, as laid down by their Lordships of the Privy Council case to which I have already referred, when succession opened and not when the Hindu male died. Undoubtedly succession opened on the death of Srimati Thakura. Mst. Phulia was, therefore, entitled as the pre-deceased's son's daughter to succeed under Section 2 of the Hindu Law of Inheritance (Amendment) Act, 1929 whose suit should have been decreed.

7. The result is that I allow the appeal, set aside the judgment and decree of the lower appellate Court and restore that of the trial Court. The appellant will be entitled to her costs throughout from the respondent No. 1.