

Satya Charan Dutta vs Urmilla Sundari Dassi & Ors on 9 September, 1969

Equivalent citations: 1970 AIR 1714, 1970 SCR (2) 294, AIR 1970 SUPREME COURT 1714

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

PETITIONER:
SATYA CHARAN DUTTA

Vs.

RESPONDENT:
URMILLA SUNDARI DASSI & ORS.

DATE OF JUDGMENT:
09/09/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1970 AIR 1714 1970 SCR (2) 294
1970 SCC (2) 868

ACT:
Hindu Succession Act (30 of 1956), ss. 8, 9, 11, 15 and
Hindu widow dying intestate--Husband's brothers and a
sister only heirs --Property, that of husband--If brothers
take in preference to sister or all take equally.

HEADNOTE:
Under ss. 15 and 16 of the Hindu Succession Act, 1956, which deal with rules regarding succession to the property of a female Hindu, where the property is that of her husband, the heirs would be those set out in s. 8. Under s. 8, there are two classes of heirs mentioned in the Schedule to the Act. In Class I there are IX entries and only in entries 11, 111 and IV the heirs are mentioned as against

arabic numerals. 'Brother' and 'sister' are mentioned as items (3) and (4) in entry-II of Class 11. Section 9 lays down that among the heirs specified in the Schedule those in Class I shall take simultaneously and to the exclusion of all other heirs and those in the entry-I in Class II shall be preferred to those in entry-II and so on.

A Hindu widow, in possession of her deceased husband's properties, died in 1964-. She left no lineal descendants, but her husband had three brothers and a sister surviving. On the question whether the three brothers were entitled to succeed to the property in preference to the sister, on the ground that 'brother' is mentioned as item (3) of entry-II of Class 11, whereas 'sister' is mentioned as item (4), HELD: If the intention was to give preference among the heirs in Class 11 according to Arabic numerals treating such numerical item as a separate entry, some provision to that effect would have been made in s. 11. Section 11 states that the property of an intestate shall be divided among the heirs specified in any one entry in Class II so that they share equally, and the language in ss. 9 and 11 is not consistent with the view that Arabic numerals constitute entries within the meaning of s. 11. Further, the scheme of the Act is that male and female heirs should get equal treatment, and, in Class 1, male and female heirs have been treated as equal. There is no reason why any distinction should have been made among the heirs in Class 11 on the ground of sex. Therefore, it is not possible, in the absence of any indication in the sections or in the Schedule itself, to attribute such a radical departure from the general scheme of classification that, in case of three entries only in Class 11. (entries II, III and IV), the Legislature intended to create an order of preference and lay down the same by the use of Arabic numerals. [299 C-D, H; 300 B--H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1356 of 1956. Appeal from the judgment and decree dated December 3, 1965 of the Calcutta High Court in Appeal from Original Decree No. 85 of 1965.

D.N. Mukherjee, for the appellant.

M.C. Bhandare, Pratap Singh and K. Rajendra Chaudhuri, for respondent No. 1.

The Judgment of the Court was delivered by Grover, J. This is an appeal by certificate from a judgment of the Calcutta High Court.

The facts may be briefly stated. One Ratanamala Dassi who was governed by the Bengal School of Hindu Law as modified by the Hindu Succession Act 1956, hereinafter called the Act, died intestate in January 1964 leaving no issue or lineal descendants. Her husband Monmotha Nath Dutt had predeceased her. The said Ratnamala Dassi left her surviving the appellant and respondents 2 and 3, the brothers of her husband and respondent 1, Urmilla Sundari Dassi her husband's sister. In 1964 respondent No. 1 instituted a suit for a declaration that as an heiress of Ratnamala Dassi she had 1/4 share in the movable and immovable property left by her and that she be allotted her share by partition of those properties. The appellant entered appearance and took up the plea in his written statement that under the Act he and respondents 2 and 3 being the brothers of the husband of the deceased Ratnamala Dassi were the heirs in preference: to respondent 1 who. was the sister of the deceased's husband. The suit was tried on the original side by a learned Single Judge of the Calcutta High Court who granted a preliminary decree on December 23, 1964 in favour of respondent 1 holding that she had 1/4 share in the estate left by Ratnamala Dassi. The appellant preferred an appeal to a division bench which was dismissed.

The sole point which-has to be considered is whether, according to the order of succession as laid down in Class II of the Schedule to s. 8 of the Act, brother would succeed in preference to the sister or whether the brother and sister would succeed jointly having equal shares ? According to s. 15(1) when a female Hindu dies intestate her property devolves according to the Rules set out in s.

16. Section 15 divides the groups of heirs of a female dying intestate into five categories described as Entries

(a) to (e). We are concerned, in the present case, with Entry (b) which is "secondly, upon the heirs of the husband". Section 16 provides that the order of succession among heirs referred to in s. 15 shall be and the distribution of the intestate's property among those heirs shall take place according to the following Rules:

Rule 1:--"Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2 Rule 3. The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death." As the property in the present case was of the husband of Ratnamala Dassi we have to turn to s. 8 to find out who would have been his heirs. Section 8 reads:

Section 8 "The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :-

- (a) firstly, upon the heirs, being the relatives specified in class 1 of the Schedule.
- (b) secondly, if there is no heir of class 1, then upon the heirs, being the relatives specified in class 1I 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."

The Schedule mentioned in s. 8 to the extent it is material is reproduced below :--

CLASS 1 "Son; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son.

CLASS 1I I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister. III
.....

VII

VIII

Explanation "

Section 9 lays down that among the heirs specified in the Schedule those in class 1 shall take simultaneously and to the exclusion of all other heirs and those in the first entry in class II shall be preferred to those in the second entry and so on. Section 11 is to the effect that the property of an intestate shall be divided in any one entry in class II of the Schedule so that they share equally. Before the High Court the contention raised on behalf of the appellant was that "brother" being prefixed by arabic numeral 3 came before "sister" which word had the numeral (4) before it and that the object of using the numerals within a particular group was to prescribe the order of precedence or preference. It was also argued that the use of the arabic numerals in groups II, III and IV of Class II must have some meaning; otherwise the legislature would have used such numerals in respect of the heirs not only in class II but in class I as well. The learned judges of the division bench felt that the use of the arabic numerals appeared to be redundant but "the combined effect of this section read with the others seems to be that the legislature intended that the heirs named after numerals II, III IV composed three entries only".

We are unable to accede to the argument that the use of arabic numerals is decisive of the point whether or not the heirs specified in entry II of class II succeed simultaneously and equally. It is inconceivable that a matter of such importance should have been left to the employment of numerals alone. If the intention of the legislature was that each class of relatives shown against the arabic numerals constituted an entry express and specific provisions to that effect would have been made in the substantive sections of the Act. Indeed s. 11 says quite clearly that the property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally. That language would not be consistent with the view that the heirs shown against the arabic numerals constitute an entry within the meaning of s. 11. The Act was meant to lay down a comprehensive and uniform system of inheritance and its scheme is to prescribe a set of rules for succession to the property of male and female Hindus dying intestate. Sections 8 to 13 contain the general rules relating to succession to the property of a male Hindu including the matter of ascertainment of shares. Sections 15 and 16 contain the general rules affecting succession to the property of a female Hindu. The rules relating to preferential heirs are given in s.10. If the intention was to give preference among the heirs in Class II according to arabic numerals treating the same as a separate entry some provision would undoubtedly have been made in s.11 for that purpose. As noticed before it is that section which deals with the distribution of property among heirs in class II of the Schedule. Indeed s.11 would be wholly unnecessary if each one of the heirs mentioned in each entry of class II were to take preference to the next one in the same entry. It is also significant that in class I male and female heirs have been treated as equal. There is no reason why any distinction should have been made among the heirs in class II on the ground of the heir being male or female. For instance in entry II in class II a brother would have preference over the sister and in his presence the latter would succeed if the submission on behalf of the appellant is to be accepted. No reason or justification has been suggested for making such a distinction. Similarly on the appellant's argument the son's daughter's son should have preference over the son's daughter's daughter. That again would run counter to the whole scheme of the Act that male and female heirs should get equal treatment. It must be remembered that the Act incorporated one of the principal reforms which had become a pressing necessity owing to the changed social and economic conditions in Hindu society that in succession there should be equal distribution between male and female heirs. It is true that the draftsmen while employing the arabic numerals in entries II to IV of class II only are likely to have something in mind but on the whole and in view of the reasons which have been given above no particular significance can be given to the use of the arabic numerals. Generally speaking numbers or numerals are employed in a statute for the sake of convenient and easy reference but their use cannot override the statutory provisions. Nor is it possible in the absence of any indication in the sections or in the Schedule itself to attribute such a radical departure from the general scheme of classification of heirs, as has been suggested, namely, that in case of three entries only in class II the legislature intended to create an order of preference and lay down the same by the use of arabic numerals. There is no merit in this appeal which fails and it is dismissed with costs.

V.P.S. Appeal dismissed.