Shamlal And Ors. Etc. vs Amarnath And Ors. on 17 September, 1969

Equivalent citations: AIR1970SC1643, (1970)1SCC33, [1970]2SCR489

Bench: K.S. Hegde, V. Bhargava

JUDGMENT

1. The question of law that arises for decision in these appeals by certificate is whether the daughters of a pre-deceased son of a Hindu Woman are entitled to succeed to her stridhana ? The trial court answered the question in the affirmative but the High Court in appeal came to the conclusion that they are not entitled to succeed to the estate in question.

2. The material facts of this case are few. For a proper understanding of the facts of the case, it will be convenient to have before us the admitted pedigree of the family.It is as follows :

Shri Bool Chand |

---------- | | | | Tulsi Ram Patu Ram Behari Lal Hira Lal | Mst. Barji | | |

---------- | ---------- | | | | | | | | Amar Nath Parhlad Rai | Mool Chand Mohan Lal Bindraban Nathu Ram | (Plaintiff) | | (died issue less | (died issue less) | | | | | Sri Kishan | | Ram Sarup Sham lal | (defendant No. 7)| (adopted son (defendant 9 | widow Champadevi | defendant 10) adopted) | (defendant 4) |

---------- | | | | Jugal Kishore Radha Kishan | Mst. Bindri Widow Mst. Dakhan | dead. (defendant 6) | | | | |

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| | | Kidar Nath Ram Chander Sheo Parshad | | | | | | Murari Lal ---------- | (defendant No. 11 | | | Nand Kishore adopted) Basant Lal Rameshwar Dass Jagdish | | (defendant (defendant No. 17) | Raghbir Singh No. 16 | (adopted son | (defendant No 15) | |

| | | Maman Chand Manphul Singh Sher Singh (defendant No. 14) (defendant No.12) (defendant No. 13)

3. The finding of the trial court that the suit properties are the stridhana properties of Barji was not contested before the High Court. In this Court at one stage a feeble attempt was made on behalf of the appellants to contest that finding. We did not permit that finding to be challenged as the same had not been challenged before the High Court. Therefore we proceed on the basis of that finding. Barji died in September 1950. Her husband Patu Ram had predeceased her. It appears that he died sometime in 1904. Patu Ram's father Bool Chand as well as Patu Ram's brothers Tulsi Ram, Behari Lal and Hira Lal had predeceased Barji. Patu Ram and Barji had a son by name Jugal Kishore who had predeceased Patu Ram leaving behind him his widow Bindri who died in 1931. They had no children. Radha Kishan, the adopted son of Patu Ram and Barji died at out 20 years before the death of Barji leaving behind him his widow, defendant No. 6. Radha Kishan had five children including defendants Nos. 1 to 3 through another wife. His son Roshanlal had died a few months before the death of Barji. His daughter Balwanti had predeceased Barji leaving behind her children defendants 4 and 5. Tulsi Rani's son Prahlad Rai had also predeceased Barji leaving behind his widow defendant No. 8 and son defendant No. 7. By the time succession to the estate of Barji opened all the children of Behari Lal and Hiralal had died but some of them had children and grand children, as seen from the pedigree. After the death of Barji; her properties came to the possession of defendant No. 6. Defendant No. 1 sued for the possession of those properties on the ground that she and her sisters are preferential heirs to the deceased Barji. To that suit she did not make Amar Nath, the plaintiff in the present suit, a party. Amar Nath's application for being impleaded as a party in that suit was opposed by the 1st defendant and the said application was ultimately rejected by the court. The dispute in that suit was referred to arbitration. The arbitrators upheld the claim of defendants Nos. 1 to 3. Thereafter the present suit was brought. In the High Court as well as in the trial court there was a triangular contest. The plaintiff claimed that he was exclusively entitled to the suit properties, defendants Nos. 1 to 3 claimed that they are the nearest heirs to Barji; some of the other defendants contended that they succeeded to the suit properties as co-tenants with the plaintiff. In this Court all the contesting defendants sail together. As mentioned earlier, the trial court accepted the claim of defendants Nos. 1 to 3 but the High Court held that the plaintiff was exclusively entitled to the suit properties, he being the nearest heir to the deceased. That finding is contested both by defendants Nos. 1 to 3 as. well as by the other contesting defendants. That is how the aforementioned two appeals came to be filed.

4. In arriving at its finding the High Court relied on the rules of succession found in paragraph 147 of Mulla's Principles of Hindu A Law (13th Edn.)- It came to the conclusion that those rules are exhaustive. On the basis of those rules, it ruled that defendants Nos. 1 to 3 were not entitled to succeed to the estate of Barji. So far as the other defendants are concerned it rejected their claim on the ground that as between the plaintiff and themselves the former is a preferential heir as he is the nearest in degree to Barji.

5. It is the admitted case of the parties that the properties in question are not shulka and that Barji was married in one of the approved forms. Therefore while pronouncing on the competing claims made in this case, we must be guided by the order of succession prescribed in paragraph 147, if the same is correct and exhaustive. Paragraph 147 says:

> Stridhana other than shulka passes in the following order :
>
> (1) unmarried daughter; (2) married daughter who is unprovided for; (3) married daughter who is provided for; (4) daughter's daughter; (5) daughter's son;
>
> (6) son;
>
> (7) son's son.

If there be none of these, in other words, if the woman dies without leaving any issue, her stridhana, if she was married in an approved form, goes to her husband, and after him, to the husband's heirs in order of their succession to him; on failure of the husband's heirs, it goes to her blood relations in preference to the Government. But if she was married in an unapproved form, it goes to her mother, then to her father, and then to the father's heirs and then to the husband's heirs in preference to the Government", The legal position is stated in identical terms in Mayne's treatise on Hindu Law (Eleventh Edn. paragraph 623, pages 744 to 746) as well as in the other text books on Hindu Law referred to at the time of the hearing. At this stage it may be mentioned that the correctness of the order of succession mentioned in paragraph 147 till we come to item No. 7 (son's son) was not challenged. The same is well settled by decided cases. It is not necessary to refer to those cases. The only contention advanced on behalf of some of the defendants is that after son's sons come sons' daughters. Alternatively it was contended that the expression "son's son" includes "son's daughter". We have to see whether these contentions are well founded.

6. The rules relating to succession to stridhana enunciated in the text books are based on Yajnyawalcya's text "her kinsmen take it, if she die without issue". This statement is elaborated by Vijnyaneswara in Mitakshara. The relevant portions thereof as translated by H. T. Colebrooke are found in placita 8, 9, 10 and 11 in Section XI of his book "Mitacshara". They read as follows :

> 8. A woman's property has been thus described. The author next propounds the distribution of it : 'Her kinsmen take it, if she die without issue'.
>
> 9. If a woman die 'without issue' that is leaving no progeny; in other words, having no daughter nor daughter's daughter nor daughter's son, nor son, nor son's son; the woman's property, as above described, shall be taken by her kinsmen; namely her husband and the rest, as will be (forthwith) explained.
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> 10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. The property of a childless woman, married in

> the form denominated Brahma, or in any of the four (unblamed modes of marriage), goes to her husband: but, if she have progeny, it will go to her (daughter's) daughters: and, in other forms of marriage (as the Asura & c), it goes to her father (and mother, on failure of her own issue).
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> 11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Brahma, Daiva, Arsha and Prajapatya, the (whole) property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen (sapindas) allied by funeral oblations. But, in the other forms of marriage called Asura, Gandharba, Racshasa and Paisacha; the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained) on the mother, who is virtually (exhibited (first) in the elliptical pitrigami implying 'goes (gachhati) to both parents (pitarau;), that is to the mother and to the father'. On failure of them, their next of kin take the succession.

7. These passages have received interpretation at the hands of the Judicial Committee as well as the High Courts in India and the law is now settled as to the mode of succession to stridhana under Mitakshara until we reach son's son. The controversy now is as to who should succeed to such an estate if none of the heirs mentioned in items Nos. 1 to 7 in paragraph 147 of Mulla's Hindu Law is in existence at the time of the death of the woman concerned.

8. Mr. A. K. Sen, learned Counsel for some of the defendants contested the correctness of Colebrooke's translation in certain respects. He wanted us to examine the original text to find out whether the translation found in placita 9 is correct ? The parties did not place before us either an admitted translation of the original text or even an official translation. Colebrooke is a distinguished oriental scholar. The Judicial Committee as well as the various High Courts in this country have relied on his translation of Mitakshara in dealing with the question of inheritance. Jogendra Nath Bhattacharya in his commentary on Hindu Law (2nd Edn.) deals with the order of succession under Mitakshara to stridhana property in Chapter VI of that book. His translation of the relevant commentaries accords with those made by Colebrooke. To the same effect is the opinion expressed by Justice Chandavarkar in Bhimacharya Bin Venkappacharya v. Ramcharya Bin Bhimacharya, I.L.R 33 Bom. 452. Hence we are unable to agree with Mr. Sen that Colebrooke's translation does not bring out accurately the meaning of the relevant passages in Mitakshara. Colebrooke in his book 'Mitakshara' published in 1869 sets out the order of succession to a woman's stridhana properties at page 158 thus :

> Maiden daughter . . 1 Unendowed married daughter . . 2 Endowed married daughter . . 3 Daughter's daughter . . 4 Daughter's son . . 5 Son . . 6 Grandson . . 7 Husband . . 8
> If the contention of defendants is correct then son's daughter and not husband should have come after the grandson. But that is not the case.

9. Mr. Bishan Narain, learned Counsel for defendants Nos. 1 to 3 contended that the list given in Mitakshra is only illustrative and not exhaustive. He urged that Yajnyawalcya had stated that "a

woman's property would devolve on her kinsmen if she died without issue" which means that it would devolve on her progeny which expression includes son's daughter as well. In this connection he also relied on Vijnyaneswara's commentary stating that the expression 'without issue' found in Yajnyawalcya text means "leaving no progeny". On the basis of these statements he contended that even according to Vijnyaneswara, the deceased woman's progeny would take her stridhana in preference to her kinsmen including her husband. On the basis of this premise he proceeded to argue that the other words used in placita 9 viz. :"having no daughter nor daughter's daughter nor daughter's son nor son nor son's son" should be understood as merely being illustrations of the word "progeny". This contention is opposed to the commentaries by Narada, Gautama and the later commentatOrs. More than that it runs counter to the decisions rendered by the Judicial Committee and the various High Courts during the last over a century. It is now well settled that stridhana of a Hindu woman governed by Mitakshra passes in the order mentioned in Mitakshra and the children of the deceased woman do not take the same as a body either jointly or as tenants in common. Only the heirs belonging to a class take the properties as tenants in common.

10. Mr. Bishan Narain next contended that under Mitakshra propinquity is the test of inheritance. Therefore there is no reason why the deceased woman's husband's brother's son should take the properties in preference to her son's daughters. We do not think that in the matter of succession to stridhana propinquity was considered by the law givers as the sole or even the principal test, otherwise there is no justification for a daughter's daughter or a daughter's son to succeed to the estate of a woman in preference to her son. It is true that it is not easy to find out the reason behind the rules relating to succession to stridhana But that is equally true of many other branches of our family laws. These contradictions are inevitable in .socio-religious matters particularly when our social laws were controlled by our religious beliefs and our law givers were our religious preceptOrs. It is for the legislature to step in and bring about harmony between the society and the laws governing it. That is why our Parliament enacted several statutes in 1955 to amend the Hindu Law in various respects.

11. We are unable to accept the contention of Mr. Bishan Narain that the expression son's son includes son's daughter as according to the rules of interpretation the masculine includes the feminine. That rule of interpretation is inapplicable in the present case as daughter's daughter succeeds to the stridhana in preference to daughter's son. The order of succession prescribed clearly rules out the application of that rule of interpretation.

12. Mr. Sen in support of his contention that on a true interpretation of the relevant passages in 'Mitakshra', defendants Nos. 1 to 3 are preferential heirs to deceased Barji, relied on certain passages in some of the decided cases. First he referred to the decision of the Patna High Court in Kumar Raghava Surendra Sahi v. Babui Lachmi Kuer, 1939 I.L.R. 18 Pat. Sqo. Therein the dispute related to the succession to the properties left by a maiden and not by a married A woman. The rules relating to the succession to the stridhana of a deceased maiden are wholly different from those relating to succession to the stridhana of a married woman. Therefore the observations made in regard to those rules have no relevance for our present purpose. He next invited our attention to certain passages in the decision of the Judicial Committee in Bai Kesserbai v. Hunsraj Morarji and Anr. [1952] S.C.R. 208. Therein the dispute was between Bai Kesserbai the surviving co-widow of

the deceased Bachubai's husband Koreji Haridass, Hunsraj Morarji the separated nephew of Koreji, being the son of his eldest brother, who predeceased Bachubai and Bai Monghibai, the widow of a younger brother of Koreji named Ranchordass Haridass. The question for consideration by the Judicial Committee was as to the true scope of the latter part of the placitum 9 in Colebrooke's Mitakshara which says "if a woman die without issue, that is, leaving no progeny the woman's property...shall be taken by her kinsmen namely her husband and the rest as will be forthwith explained". Their Lordships observed that there can be no reasonable doubt that according to Mitakshara definition of sapinda, husband and wife are sapindas to each other and the co-widow of the husband of the deceased was the nearest sapinda of the deceased woman's husband and hence entitled to succeed to the estate in question. This decision again does not bear on the point under consideration.

13. Lastly Mr. Sen contended that in view of the Hindu Woman's Rights to Property Act (XVIII of 1937), it must be held that defendants 1 to 3 are nearer heirs to the deceased than the plaintiff. This contention was negatived by the High Court on the basis of the rule laid down by this Court in Annagouda Nathgouda Patil v. Court of Wards and Anr. [1952] S.C.R. 208 wherein this Court dealing with Act II of 1929 observed:

> The question is whether the provisions of this Act can at all be invoked to determine the heirs of a Hindu female in respect of her stridhan property. The object of the Act as stated in the preamble is to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate; and Section 1(2) expressly lays down that 'the Act applies only to persons who but for the passing of this Act would have been subject to the Law of Mitakshara in respect of the provisions herein enacted, and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by will.' Thus the scope of the Act is limited. It governs succession only to the separate property of a Hindu male who dies intestate. It does not alter the law as regards the devolution of any other kind of property owned by a Hindu male and does not purport to regulate succession to the property of a Hindu female at all. It is to be noted that the Act does not make these four relations statutory heirs under the Mitakshara Law under all circumstances and for all purposes; it makes them heirs only when the propositus is a male and the property in respect to which it is sought to be applied is his separate property.

14. Similar would be the position under the Hindu Woman's Right to Property Act, 1937. Section 3(1) of that Act which provides for the devolution of the property reads thus :

> When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property his widow or if there is more than one widow all his widows together shall, subject to the provisions of Sub-section (3) be entitled in respect of property in respect of which he dies intestate to the same share as a son....

15. From this provision it is clear that Hindu Women's Right to Property Act, 1937 applies only to the separate property left by a Hindu male. It does not apply either to the coparcenary property or to the property of a Hindu female.

16. For the reasons mentioned above these appeals fail and they are dismissed with costs advocates' fee one set.