Supreme Court of India
Lachman Singh vs Kirpa Singh & Others on 14 April, 1987
Equivalent citations: 1987 AIR 1616, 1987 SCR (2) 933
Author: E Venkataramiah
Bench: Venkataramiah, E.S. (J)

PETITIONER:
LACHMAN SINGH

Vs.

RESPONDENT:
KIRPA SINGH & OTHERS

DATE OF JUDGMENT14/04/1987

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
SINGH, K.N. (J)

CITATION:
1987 AIR 1616 1987 SCR (2) 933
1987 SCC (2) 547 JT 1987 (2) 175
1987 SCALE (1)808

ACT:
Hindu Succession Act, 1956--ss. 3(j) & 15(1)--Hindu female-Dying intestate--Whether her 'step-son' entitled to claim share in her property simultaneously with her 'son'.
Words & Phrases--
'Son--'Step-son'--Meaning of.

HEADNOTE:
Battan Singh had two wives, namely, Mahan Kaur and Khem Kaur. Mahan Kaur died during his lifetime after giving birth to two sons, Lachman Singh (petitioner) and Gurdas Singh. Gurdas Singh pre-deceased Battan Singh leaving behind his widow Gurbax Kaur and his son Amarjit Singh. Respondent No. 1, Kirpa Singh is the son of the Battan Singh and Khem Kaur. Battan Singh died intestate after the Hindu Succession Act 1956 came into force and his property devolved on his heirs including his second wife Khem Kaur. On her death, Kirpa Singh claimed her entire property on the ground that he was her only son. Lachman Singh, Amarjit Singh and Gurbax Kaur claimed that Kirpa Singh was entitled to only 1/3rd share in the property of Khem Kaur, Lachman Singh was entitled to 1/3rd share and Amarjit Singh was entitled to the remaining 1/3rd share.

Kirpa Singh filed a suit for declaration that he was entitled to the entire property belonging to Khem Kaur against Lachman Singh, Amarjit Singh and Gurbax Kaur. The trial Court decreed the suit. The appeals filed by Lachman Singh before the Additional District Judge and in the High Court were dismissed.

Dismissing the Special Leave Petition,

HELD: 1. Ordinarily laws of succession to property follow the natural inclinations of men and women. [938C-D]

2. The list of heirs in s. 15(1) of the Hindu Succession Act, 1956 is enumerated having regard to the current notions about the propinquity

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or nearness of relationship. The words 'son' and 'step-son' are not defined in the Act. [938C-D]

3. Under the Act, a son of a female by her first marriage will not succeed to the estate of her 'second husband' on his dying intestate. In the case of a woman it is natural that a step son, that is, the son of her husband by his another wife is a step away from the son who has come out of her own womb. But under the Act a step-son of a female dying intestate is an heir and that is so because the family headed by a male is considered as a social unit. If a step-son does not fail within the scope of the expression 'sons' in cl. (a) of s. 15(1) of the Act, he is sure to fail under cl. (b) thereof being an heir of the husband. [938D-F]

4. The word 'sons' in cl. (a) of s. 15(1) of the Act includes: (i) sons born out of the womb of a female by same husband or by different husbands including illegitimate sons too in view of s. 3(j) of the Act, and (ii) adopted sons who are deemed to be sons for purposes of inheritance. [938F-G]

5. Under the Hindu law as it stood prior to the coming into force of the Act, a step-son, i.e. a son of the husband of a female by another wife did not simultaneously succeed to the stridhana of the female on her dying intestate. In that case the the son born out of her womb had precedence over a step-son. Parliament would have made express provision in the Act if it intended that there should be such a radical departure from the past. [938G-H; 939A]

6. The word 'sons' in cl. (a) of s. 15(1) of Act does not include 'step-sons' and that step-sons fail in the category of the heirs of the husband referred to in cl. (b) thereof. [939A-B]

Mallappa Fakirappa Sanna Nagashetti and Others v. Shivappa and another, A.I.R. 1962 Mysore 140; Rama Ananda Patii v. Appa Bhima Redekar and Others, A.I.R. 1969 Bombay 205; Gumam Singh v. Smt. Ass Kaur and Others, A.I.R. 1977 P & H 103 and Smt. Kishori Bala Mondal v. Tribhanga Mondal & Others, A.I.R. 1980 Calcutta 334 approved.

Ram Katori v. Prakash Nati L.L.R., [1968] 1 Allahabad 697, overruled.

7. The rule of devolution in s. 15 of the Act applies to all kinds of properties left behind by a female Hindu except

those dealt with by cls. (a) and (b) of s. 15(2) which make a distinction as regards the property
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inherited by her from her parents and the property inherited from her husband or father-in-law and that too when she leaves no sons and daughters (including children of prede- ceased sons and daughters). [941B-C]

8. When once a property becomes the absolute property of a female Hindu it shall devolve first on her children (including children of the predeceased sons and daughter) as provided in s. 15(1)(a) of the Act and then on other heirs subject only to the limited change introduced in s. 15(2) of the Act. The step-sons or step-daughters will come in as heirs only under cl. (b) ors. 15(1) or under cl. (b) or s. 15(2) of the Act. [941E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 2730 of 1987.

From the Judgment and Order dated 8.12.1986 of the Punjab and Haryana High Court in R.S.A No. 1773 of 1986 (o & M).

K.G. Bhagat and Sunil K. Jain for the Appellants. The Judgment of the Court was delivered by VENKATARAMIAH, J. The short question which arises for consideration in this case is whether under the provisions of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') a step-son of a female dying intestate is entitled to claim a share in her property simultaneously with her son. In other words the question involved is wheth- er the word 'sons' in clause (a) of sub-section (1) of section 15 of the Act includes 'step-sons' also. The facts involved in this Special Leave Petition are thus. One Battan Singh who was also known as Badan Singh had two wives, namely, Mahan Kaur and Khem Kaur. Mahan Kaur died during his life time after giving birth to two sons Lachman Singh (petitioner) and Gurdas Singh from the loins of Battan Singh. Respondent No. 1 Kirpa Singh is the son of Battan Singh and Khem Kaur. Gurdas Singh died during the life time of Battan Singh leaving behind his widow Gurbux Kaur and his son Amarjit Singh. Battan Singh died intestate after the Act came into force. On his death his property devolved on his heirs including his second wife Khem Kaur in accordance with the provisions of the Act. Thereafter Khem Kaur died. On her death dispute arose between her son Kirpa Singh on the one side and Lachman Singh, Amarjit Singh and Gurbux Kaur on the other. Kirpa Singh claimed the entire property left behind by Khem Kaur on the ground that he was the only son of Khem Kaur. Lachman Singh, Amar- jit Singh and Gurbux Kaur claimed that Kirpa Singh was entitled to only one-third share in the property of Khem Kaur, Lachman Singh was entitled to one-third share and Amarjit Singh, who was the son of Gurdas Singh, was entitled to the remaining one-third share. Both the parties relied upon clause (a) of section 15(1) of the Act. While Kirpa Singh contended that the word 'sons' in section 15(1)(a) of the Act meant only sons born of the body of the Hindu female dying intestate the others contended that the word 'sons' in that clause included stepsons also. In view of the above dispute Kirpa Singh

filed a suit on the file of the Sub- Judge 1st Class, Nakodar in the District of Jalandhar inter alia for a declaration that he was entitled to the entire property belonging to Khem Kaur against Lachman Singh, Amarjit Singh and Gurbux Kaur who contested the suit. The trial court vide its judgment dated February 18, 1984 de- creed the suit declaring that Kirpa Singh was entitled to the property belonging to Khem Kaur. Lachman Singh preferred an appeal against the decree of the trial court in R.C.A. No. 202 of 1985 on the file of the learned Additional Dis- trict Judge, Jalandhar. That appeal was dismissed on Febru- ary 19, 1986. The second appeal filed by him against the judgment of the Additional District Judge, Jalandhar, in R.S.A. No. 1773 of 1986 on the file of the High Court of Punjab & Haryana was also dismissed in limine on December 8, 1986. Aggrieved by the judgment of the High Court Lachman Singh has filed this petition for special leave under Arti- cle 136 of the Constitution of India.

Section 15 of the Act, which is relevant for purposes of this case, reads thus:

> "15(1). The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16--
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> (a) firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;
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> (b) secondly, upon the heirs of the husband;
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> (c) thirdly, upon the mother and father;
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> (d) fourthly, upon the heirs of the father; and
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> (e) lastly, upon the heirs of the mother.
>
> (2) Notwithstanding anything con- tained in sub-section (1),--
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> (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
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> (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daugh- ter) not upon the other heirs referred to in sub-section (1) in the order specified there- in, but upon the heirs of the husband.

Section 15 of the Act deals with the general rules of suc- cession in the case of female Hindus. Sub-section (1) of section 15 provides that the property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 of the Act firstly, upon the sons and daugh- ters

(including the children of any predeceased son or daughter) and the husband; secondly, upon the heirs of the husband; thirdly, upon the mother and father; fourthly, upon the heirs of the father; and lastly, upon the heirs of the mother. Sub-section (2) of section 15 of the Act arises for consideration only when a female Hindu dies intestate leav- ing property without leaving behind her any son or daughter (including the children of any predeceased son or daughter) and in that event any property inherited by her from her father or mother shall devolve not upon the other heirs referred to in sub-section (1) of section 15 of the Act in the order specified therein but upon the heirs of the father and any property inherited by her from her husband or from her father-in-law shall devolve not upon the other heirs referred to in sub-section (1) of section 15 in the order specified therein, but upon the heirs of the husband, Rule 1 of section 16 provides that among the heirs specified in sub-section (1) of section 15 those in one entry shah be preferred to those in the succeeding entry and those includ- ed in the same entry shall take simultaneously. It is not necessary to refer to rule (2) and Rule (3) of section 16 of the Act for purposes of this ease.

The only question which is to be determined here is whether the expression 'sons' in clause (2) of section 15(1) of the Act includes step-sons also, ie., sons of the husband of the deceased by another wife. In order to decide it, it is necessary to refer to some of the provisions of the Act. Section 3(j) of the Act defines 'related' as related by legitimate kinship but the proviso thereto states that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another and that any word expressing relationship or denoting a relative shall be construed accordingly. Section 6 and section 7 of the Act respectively deal with devolution of interest in coparcenary property and devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru and illom. Sections 8 to 13 of the Act deal with rules of succession to the property of a male Hindu dying intestate. We are concerned in this case with the rules of succession to the property of a female Hindu dying intestate. Sections 15 and 16 of the Act are material for our purpose. Ordinarily laws of succession to property follow the natural inclinations of men and women. The list of heirs in section 15(1) of the Act is enumerated having regard to the current notions about propinquity or nearness of relationship. The words 'son' and 'stop-son' are not defined in the Act. According to Collins English Dic- tionary a 'son' means a male offspring and 'step son' means a son of one's husband or wife by a former union. Under the Act a son of a female by her first marriage will not succeed to the estate of her 'second husband' on his dying intes- tate. In the case of a woman it is natural that a step son, that is, the son of her husband by his another wife is a step away from the son who has come out of her own womb. But under the Act a step-son of a female dying intestate is an heir and that is so because the family headed by a male is considered as a social unit. If a step-son does not fall within the scope of the expression 'sons' in clause (a) of section 15(1) of the Act, he is sure to fall under clause

(b) thereof being an heir of the husband. The word 'sons' in clause (a) of section 15(1) of the Act includes (i) sons born out of the womb of a female by the same husband or by different husbands including illegitimate sons too in view of section 3(j) of the Act and (ii) adopted sons who are deemed to be sons for purposes of inheritance. Children of any predeceased son or adopted son also fall within the meaning of the expression 'sons'. If Parliament had felt that the word 'sons' should include 'step-sons' also it would have said so in express terms. We should remember that under the Hindu law as it stood prior to the coming into force of the Act, a step-son, i.e., a son of the husband

of a female by another wife did not simultaneously succeed to the stridhana of the female on her dying intestate. In that case the son born out of her womb had precedence over a step-son. Parliament would have made express provision in the Act if it intended that there should be such a redical departure from the past. We are of the view that the word 'sons' in clause (a) of section 15(1) of the Act does not include 'step-sons' and that step-sons fall in the category of the heirs of the husband referred to in clause (b) thereof.

The decision of the Mysore (Karnataka) High Court in Mallappa Fakirappa Sanna Nagashetti and Others v. Shivappa and another, A.I.R. 1962 Mysore 140; takes the view which we have expressed above. According to the decision of the Bombay High Court in Rama Ananda Patil v. Appa Bhima Redekar and Others, A.I.R. 1969 Bombay 205 the emphasis in clause

(a) of section 15(1) of the Act is on the aspect that the sons or the daughters are of her own body and not so much on the husband who was responsible for their birth and that therefore children of a female though by different husbands inherit her estate simultaneously. The High Court of Punjab and Haryana has in Gumam Singh v. Smt. Ass Kaur and Others, A.I.R. 1977 P & H 103 following the observations in the decisions of the Mysore and Bombay High Courts, referred to above, held that the word 'sons' in section 15(1)(a) of the Act does not include a 'step-son'. The High Court of Calcutta has also taken the same view in Smt. Kishori Bala Mondal v. Tribhanga Mondal & Others, A.I.R. 1980 Calcutta 334. It is true that the Allahabad High Court has taken a contrary view in Ram Katori v. Prakash Wati, I.L.R. 1968 (1) Allahabad 697. In that case the facts were however slightly different, but the point involved was almost the same. The facts of the case were as follows. One Chandu Lal had mar- ried a woman. She died during the life time of Chandu Lal leaving behind her a daughter by Ram Katori. Thereafter Chandu Lal married a second woman by name Ram Kali through whom he got a daughter by name Prakashwati. Chandu Lal died in 1920 and on his death Ram Kali being his widow succeeded to his estate as a limited owner. After the coming into force of the Act in 1956 her limited estate ripened into absolute estate and she became the full owner of the estate inherited by her from her husband. Ram Kali died thereafter. On her death Ram Katori, the daughter of Chandu Lal by his first wife contended that she was entitled to succeed simul- taneously with Prakashwati to the estate of Ram Kali which originally belonged to her father and claimed one-half share in it. Her claim was resisted by Prakashwati stating that the word 'daughters' in section 15(1)(a) of the Act did not include 'step-daughters' and that Ram Katori would fall under the category of the heirs of the husband and would be entitled to succeed either under clause (b) of section 15(1) or under clause (b) of section 15(2) of the Act and that too in the absence of sons and daughters of Ram kali (including children of prede- ceased sons and daughters). It was further contended by Prakashwati that the fact that the property in question had formerly belonged to the husband of Ram Kali did not matter at all because Ram Kali had left behind her who was a daughter of her own body entitled to succeed under section 15(1)(a), and that Ram Katori being a step-daughter could not claim under section 15(1)(a) of the Act. The High Court of Allahabad felt that there was a distinction between clause (a) of section 15(1) and clauses (a) and (b) of section 15(2) of the Act in that whereas in section 15(1)(a) the words 'sons and daughters' were unqualified, the words 'son or daughter' in clauses (a) and (b) of section 15(2) were qualified by the words 'of the deceased' and therefore conclusion was irresistible that the unqualified words 'sons and daughters' in section 15(1)(a) of the Act indicated that they included also the children of her husband by

another wife. The High Court also appears to have been moved by the consideration that the opposite construction would be pat- ently unfair to the children by her husband's another wife since they would be deprived of their share in the property which originally belonged to their father. We feel that neither of these reasons is correct. The words 'sons and daughters ..... and the husband' in clause (a) of section 25(1) only mean 'sons and daughters ..... and the husband' of the deceased. They cannot be 'sons and daughters ..... and the husband' of any body else. All relatives named in the different clauses in sub-section (1) of section 15 of the Act are those who are related to the deceased in the manner specified therein. They are sons, daughters, husband, heirs of the husband, mother and father, heirs of the father and heirs of the mother of the deceased. The use of the words 'of the deceased' following 'son or daughter' in clauses (a) and (b) of sub-section (2) of section 15 of the Act makes no difference. The words 'son or daughter of the deceased (including the children of any predeceased son or daughter)' in clauses (a) and (b) of section 15(2) of the Act refer to the entire body of heirs failing under clause

(a) of section 15(1) of the Act except the husband. What clauses (a) and (b) of sub-section (2) of section 15 of the Act do is that they make a distinction between devolution of the property inherited by a female Hindu dying intestate from her father or mother on the one hand and the property inherited by her from her husband and from her father-in-law on the other. In the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter), in a case failing under clause (a) of section 15(2) of the Act the property devolves upon the heirs of the father of the deceased and in a case falling under clause

(b) of section 15(2) of the Act the property devolves upon the heirs of the husband of the deceased. The distinction made by the High Court of Allaha- bad on the ground of the absence or the presence of the words 'of the deceased' in sub-section (1) and sub-section (2) of section 15 of the Act appears to be hyper-technical and the High Court has tried to make a distinction where it does not actually exist. The second reason, namely, that exclusion of 'step-sons' and 'step-daughters' from clause

(a) of section 15(1) of the Act would be unfair as they would thereby be deprived of a share in the property of their father is again not well-founded. The rule of devolu- tion in section 15 of the Act applies to all kinds of properties left behind by a female Hindu except those dealt with by clauses (a) and (b) of section 15(2) which make a distinction as regards the property inherited by her from her parents and the property inherited from her husband or father-in-law and that too when she leaves no sons and daughters (including children of predeceased sons and daugh- ters). If the construction placed by the High Court of Allahabad is accepted then the property earned by the female Hindu herself or purchased or acquired by her would devolve on step-sons and stepdaughters also along with her sons and daughters. Is it just and proper to construe that under clause (a) of section 15(1) of the Act her stepsons and step-daughters, i.e., children of the husband by another wife will be entitled to a share along with her own children when the Act does not expressly says so? We do not think that the view expressed by the High Court of Allahabad represents the true intent of the law. When once a property becomes the absolute property of a female Hindu it shall devolve first on her children (including children of the' predeceased son and daughter) as provided in section 15(1)(a) of the Act and then on other heirs subject only to the limited change introduced in section 15(2) of the Act. The step-sons or step-daughters will come in as heirs only under clause (b) of section 15(1) or

under clause (b) of section 15(2) of the Act. We do not, therefore, agree with the reasons given by the Allahabad High Court in support of its decision. We disagree with this decision. In the circumstances, we hold that the High Court of Punjab and Haryana against whose decision this petition is filed was right in affirming the decree passed in favour of Kirpal Singh, Respondent No. 1 herein.

The Special Leave Petition is, therefore, dismissed.

A.P.J. Petition dismissed.