Supreme Court of India
Smt. Manshan And Ors. vs Tej Ram And Ors. on 24 October, 1979
Equivalent citations: AIR 1980 SC 558, 1980 Supp (1) SCC 367, 1980 (12) UJ 96 a SC
Author: N Untwalia
Bench: A Koshal, N Untwalia, P Shinghal
JUDGMENT N.L. Untwalia, J.

1. In our opinion this appeal is covered by the ratio of the decision in Gani Ram and Ors. v. Ramjl Lal and Ors. , which case was cited before the High Court but since the full report of the judgment was not available to it, it could not correctly apply the principle and decided the case against the appellants by taking an erroneous view of the law. Hence this appeal by special leave.

2. One Nritya Chaudhary indisputably governed by the general Punjab custom was the last male holder of certain agricultural land, Abadi and a house. On 9-8-1946 he gifted his property to his two daughters, Manshan and Janki. Manshan is appellant No. 1 and the heirs of Janki are the other appellants in this appeal. On the 17th December, 1947 a suit was filed by one Bhagat Ram, father of respondents 1 to 3, a collateral of Chaudhary for a declaration that the properties were ancestral in the hands of Chaudhary and the gift made by him in favour of his daughters could not enure beyond his life time. A diclaratory decree to that effect was sought for. On the 7th of March, 1950 a compromise decree was made in that suit declaring that 27/39th share of the land in dispute would go to the next reversioner of Chaudhary and the remaining 12/39th share of the land, the Abadi and the house were left out of the declaratory decree. In respect of letter property the suit was dismissed by compromise. The Hindu Succession Act, 1956, hereinafter called the Act, came into force on and from the 17th of June, 1956. Chaudhary died on the 18th of October 1957. Bhagat Ram's heirs thereafter filed the present suit giving rise to this appeal for claiming the land of Chaudhary in respect of which a declaratory decree had been made in favour of Bhagat Ram. The stand taken on behalf of the appellants was that after coming into force of the Hindu Succession Act the daughters in supersession of the custom prevalent in Punjab become the preferntial heirs of Chaudhary and hence on his death they became entitled to the property in question. They succeeded before the Trial Court as also before the first Appellate Court. They however lost in the High Court. The High Court allowed the second appeal and it is not quite clear from the judgment of the Division Bench as to on what basis the appeal was allowed.

3. The argument put forward on behalf of the respondents in the High Court with reference to Section 14 of the Hindu Succession Act was wholly misplaced. There was no question of applying either Sub-section (1) or Sub-section (2) of Section 14 of the said Act. Here the simple question which had to be answered was as to who was the heir of Chaudhary under the Hindu Succession Act on the date of his death. The property will revert to him or her. Reading Sections 4 and 8 of the Act together it is clear to us that on the date of death of Chaudhary, in supersession of the prevelent custom, his daughters became the preferntial heirs and were entitled to inherit his property. Chaudhary might have remained a life owner according to the custom. But the portion of the custom which prevented the daughters from inheriting got superseded by the provisions of the Act and hence Bhagat Ram's heirs were no longer entitled to succeed to the property of Chaudhary in the year 1957. The effect of the declaratory decree passed in the year 1950 it is plain, was merely to

declare that whosoever would be the next reversioner to the estate of Chaudhary at the time of his death would get the property in respect of which the declaratory decree was declaratory decree was passed.

4. The High Court also seems to have been influenced by the expression "dying intestate" occurring in Section 8 of the Act and appears to have taken the view that since Chaudhary had no power to bequeath his ancestral property by a will, Section 8 would not apply and the daughters would not be entitled to claim the property as his reversioners under Section 8. In our opinion this is an entirely erroneous view of the law. Section 8 would apply where a male Hindu dies intestate either not having made any will or having made any invalid will. It squarely covered the case of the respondents.

5. In Giani Ram's case (supra) it was pointed out at page 947 :

The effect of the declaratory decree in suit No. 75 of 1920 was merely to declare that by the mala interest conveyed in favour of the alliances was to enure during the life time of the alienor. The conclusion is therefore inevitable that the property alienated reverted to the estate of Jwala at the point of his death and all persons who would, but for the alienation, have taken the estate will be entitled to inherit the same. If Jwala had died before the Hindu Succession Act, 1956 was enacted the three sons would have taken the estate to the exclusion of the widow and the two daughters. After the enactment of the Hindu Succession Act the estate devolved, by virtue of Sections 2 and 4(1) of the Hindu Succession Act, 1956, upon the three sons, the widow and the two daughters. We are unable to agree with the High Court that because in the year 1920 the wife and the daughters of Jwala were incompetent to challenge the alienation of ancestral property by Jwala, they could not, after the enactment of the Hindu Succession Act, inherit his estate when succession opened after that Act came into force.

As we have said above the present appeal is squarely covered by the view of this Court expressed in the passage extracted.

6. In the result the appeal is allowed with costs, the judgment and decree of the High Court are set aside and the suit of the plaintiff-respondents is dismissed with costs throughout.