A STATE OF PUNJAB

v.

BALWANT SINGH & ORS.

OCTOBER 9, 1991

B [K. JAGANNATHA SHETTY AND YOGESHWAR DAYAL, JJ.]

Hindu Succession Act, 1956:

Section 15(1) and (2)—Hindu female dying intestate leaving behind property derived from her husband—Devolution of—Object of sub-section C *(2)(h)—Not to eliminate the other heirs under sub-section (1) and not to exclude them from inheritance altogether.*

*Section 29—Property escheated to Government on failure of heirs—Only when there is total absence of heirs—Availability of heirs under sub-*D *section (1) or (2) of Section 15—Whether precludes escheat.*

One Smt. 'M' inherited from her husband certain agricultural lands. Some of the lands were under mortgage and in the possession of defendants 2 to 6. She died intestate after the Hindu Succession Act, 1956 came into force. As there was no heir entitled to succeed to her property, E **mutation was sanctioned in favour of the State. The grandson of her brother claiming to be her legal heir filed a suit for possession of the property and for a declaration that he was entitled to redeem the mortgaged property from defendants 2 to 6. The suit was resisted by the First Defendant, viz., the State on the ground that the intestate had left no heir to succeed and the mutation effected in favour of the State was valid.** F **Defendants 2 to 6 contended that the right to redeem the mortgage had extinguished, and they have become the owners of the property as they were in possession for more than sixty years.**

The Trial Court dismissed the suit holding that the plaintiff was not entitled to succeed to the property of the deceased since the property was G **inherited from her husband. As regards the mortgage, it was left open to be decided later as agreed to by the parties.**

Plaintiff preferred an appeal and the District Judge dismissed the same. On a second appeal preferred by him, the High Court decreed the

H

suit for possession even against defendants 2 to 6. The State as well as the defendants 2 to 6 have preferred the present appeals by special leave. A

The appellant-State contended that the plaintiff-Respondent was not a qualified heir under the Hindu Succession Act and hence it was a case of failure of heirs resulting in the devolution of estate on the Government. The other appellants (Defendants 2 to 6) contended that the High Court ought not have decreed the suit against them since the plaintiff-Respondent's right to redeem the mortgage was not adjudged by the trial court and by agreement the question was expressly left open. B

Dismissing the appeal preferred by the State and allowing the appeal of defendants 2 to 6, this Court, C

HELD: 1. The property is escheated to the Government when an intestate has left no heir qualified to succeed to his or her property. The property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities of the property. It is only in the event of the deceased leaving behind no heir to succeed, the State steps in to take the property. The State does not take the property as a rival or preferential heir of the deceased but as the Lord paramount of the whole soil of the country. [464 B,C] D

2. Section 29 of the Hindu Succession Act, 1956 shall not operate in favour of the State if there is any other heir of the intestate. Indeed, Section 29 itself indicates that there must be failure of heirs. 'Failure' of heirs means the total absence of heirs to the intestate. A female Hindu being the full owner of the property becomes a fresh stock of descend. If she leaves behind any heir either under sub-section (1) or under sub-section (2) of Section 15, her property cannot be escheated. [464 E,F] E F

Halsbury's Laws of England, 4th Edn. Vol. 17 para 1439; referred to.

3.1. Sub-Section (2) of Section 15, intended only to change the order of succession specified under sub-section (1) and not to eliminate the other classes of heirs. Section 15(2) came to be incorporated on the recommendations of the Joint Committee of the two Houses of Parliament. The report of the Joint Committee which was accepted by Parliament indicates that this sub-section was intended to revise the order of succession among the heirs to a Hindu female and to prevent the properties from passing into the hands to persons to whom justice would G H

demand that they should not pass. That means the property should go in the first instance to the heirs of the husband or to the source from where it came. [464 F, H, 465 C]

3.2. Sub-section (2)(b) of Section 15 emphasises that the property of the intestate shall not devolve upon the heirs referred to in sub-section (1) *in the order specified thereunder* but upon heirs of the husband. The object is not to eliminate the other heirs under sub-section (1) and not to exclude them from inheritance altogether. There is no justice in such a construction of Section 15. The Parliament could not have intended that result. [465 F-G.]

Bhajya v. *Gopikabai and Anr.*, **[1978] 3 SCR 561, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 851 & 4125 of 1991.

From the Judgment and Order dated 15.12.1982 of the Punjab & Haryana High Court in R.S. A. No. 754 of 1974.

U.R. Lalit, M.R. Sharma, A.S. Sohal, G.K. Bansal, Anil Nauriya, K.L. Hathi, Ms. Anjna Sharma, N.A. Siddiqui and Mrs. Hemantika Wahi for the appearing parties.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. These are defendants' appeal and special leave petition arising out of a suit for possession brought by Balwant Singh – the plaintiff. In the Special Leave Petition, we condone the delay and grant leave. The suit was dismissed by the Court of first instance and the dismissal was affirmed by the appellate court but decreed by the High Court in the second appeal.

The issue raised in the appeal is of considerable importance and it relates to the construction of Section 15 of the Hindu Succession Act, 1956 ('the Act'). One Smt. Mahan Kaur, wife of Jaimal Singh inherited from her husband certain agricultural land measuring 110 kanals 12 marlas situate in village Hamhal, Jakhe-Pal in Sangrur District. Some of the lands were under mortgage and are in possession of defendants 2 to 6. After coming into force of the Act, Mahan Kaur died intestate. On being informed that there was no heir entitled to succeed to her property, the Revenue Assistant Collector sanctioned mutation in favour of the State. Balwant Singh claiming to be a legal heir of Mahan Kaur brought the suit out of which the present appeal arise. The suit was for possession of the

property of the deceased and also for a declaration decree that he was entitled to redeem the mortgaged property from defendants 2 to 6. The suit was resisted by the State on the ground that the intestate has left behind no heir to succeed and the mutation effected in favour of the State was valid. Defendants 2 to 6 contended that the right to redeem the mortgage has been extinguished and they have become the owners of the property by being in possession for more than sixty years.

The trial court held that the plaintiff was not entitled to succeed to the property of the deceased since the property was inherited from her husband. The issue relating to subsistance or otherwise of the mortgage was left open to be decided later as agreed upon by counsel for both the parties. The suit was accordingly dismissed by the trial court. The plaintiff's appeal against the decree was dismissed by the District Judge, Sangrur. The second appeal preferred by the plaintiff was, however, accepted by the High Court. The High Court decreed the suit for possession even against defendants 2 to 6. That part of the decree has been challenged by defendants 2 to 6 in S.L.P. (Civil) No. 13923 of 1985. Their grievance is that the High Court ought not to have decreed the suit against them since the plaintiff's right to redeem the mortgage was not adjudicated by the trial court and by agreement, the question was expressly left open. The submission of the defendants 2 to 6 appears to be correct and the decree against them made by the High Court is plainly untenable. There is indeed no controversy on that aspect of the matter.

It is not in dispute that Mahan Kaur inherited the suit property from her husband. She had no issue and she died intestate. It is also not in dispute that there is no heir from her husband side entitled to succeed to the property. The plaintiff is grandson of the brother of Mahan Kaur. According to him he is entitled to get the property of the deceased. The case of the State is that the plaintiff is not her qualified heir under the Act and it is a case of failure of heirs resulting in the devolution of the estate on the Government.

The issue raised in the case turns on the rules of succession to a property of a female dying intestate. The mode of succession has been prescribed under Section 15 of the Act. Section 15 has to be read alongwith Section 16. They in turn have to be read alongwith the provisions of Section 8. The property devolving upon the State has been provided under Section 29 of the Act.

Section 15 is important and it may be read in full:

"15. General rules of succession in the case of female Hindus– (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 –

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1) –

(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 pre-deceased 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

(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 pre-deceased 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 husband."

Sub-section (1) of Section 15 groups the heirs of a female intestate into five categories and they are specified under clauses (a) to (e). As per Sections 16 Rule 1 those in one clause shall be preferred to those in the succeeding clauses and those included in the same clause shall take simultaneously. Sub- section (2) of Section 15 begins with a non-obstante clause providing that the order of succession is not that prescribed under sub-section (1) of Section 15. It carves out two exceptions to the general order of succession provided under sub-section (1). The first exception relates to the property inherited by a female Hindu from her father or mother. That property shall devolve, in the absence of any son or daughter of the deceased (including the children of the pre-deceased 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. The second exception is in relation to the property inherited by a female Hindu from her husband or from her father-in-law. That property shall devolve, in the absence of any son or daughter of the deceased (including the children of the pre-deceased son or daughter) not upon the other heirs referred to under sub-section (1) in the order specified thereunder but upon the heirs of the husband.

The process of identifying the heirs of the intestate under sub-section (2) of Section 15 has been explained in *Bhajya* v. *Gopikabai and anr.* [1978] 3 SCR 561. There this Court observed that the rule under which the property of the intestate would devolve is regulated by Rule 3 of Section 16 of the Act. Rule 3 of Section 16 provides that "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". This rule creates a fiction for the purpose of ascertaining the order of devolution. It has to be assumed that the husband had died intestate immediately after the female intestate's death. Bearing in mind this fiction, one has to go to the Schedule under Section 8 of the Act to find out the heirs of the husband who are entitled to succeed to the property of the intestate.

The High Court has stated that the property inherited by Mahan Kaur from her husband became her absolute property in view of the provisions of Section 14 and the property would devolve upon the heirs specified under Section 15(1). It has also observed that the plaintiff would be entitled to succeed to the estate of Mahan Kaur even under Section 15 (2) being an heir of her father under Entry (d) of sub-section (1) of Section 15 of the Act. In our opinion, both these reasons are basically faulty and cannot be accepted.

Counsel for the State argued that the property of the intestate has to be dealt with only under sub-section (2) of Section 15, and since there is no heir in that category the property shall devolve on the Government under Section 29.

"Section 29 provides as follows:

"ESCHEAT

A "Failure of heirs– If an intestate has no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government: and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject."

B The property is escheated to the Government when an intestate has left no heir qualified to succeed to his or her property. The property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities of the property. It is only in the event of the deceased leaving behind no heir to succeed, the State steps in C to take the property.

The State does not take the property as a rival or preferential heir of the deceased but as the Lord paramount of the whole soil of the country. In *Halsbury's Laws of England*, 4th ed. Vol. 17 para 1439 it is stated as follows:

D "To whom land escheated – Escheat in the case of death intestate before 1926 was to the mesne lord is he could be found but, as since 1290 sub-infeudation has been forbidden, in the great majority of cases there was no record of the mesne tenure, and the escheat was to the Crown as the lord paramount of the whole soil of the country."

E Section 29, in our opinion, shall not operate in favour of the State if there is any other heir of the intestate. Indeed, Section 29 itself indicates that there must be failure of heirs. 'Failure' of heirs means the total absence of heirs to the intestate. It is important to remember that female Hindu being the full owner of the property becomes a fresh stock of des- F cend. If she leaves behind any heir either under sub-section (1) or under sub-section (2) of Section 15, her property cannot be escheated.

Sub-section (2) of Section 15, in our opinion, was intended only to change the order of succession specified under sub-section (1) and not to eliminate the other classes of heirs. This view finds support from the G recommendations of the Joint Committee of two Houses of Parliament which went into the question of the Hindu Succession Bill. The Hindu Succession Bill 1954 as originally introduced in the Rajya Sabha did not contain any clause corresponding to sub-section (2) of Section 15. It came to be incorporated on the recommendations of the Joint Committee of the two Houses of Parliament. The reason given by the Joint Committee is H found in Clause 17 of the Bill which reads as follows:

"While revising the order of succession among the heirs to a Hindu female, the Joint Committee have provided that properties inherited by her from her father reverts to the family of the father in the absence of issue and similarly property inherited from her husband or father-in-law reverts to the heirs of the husband in the absence of issue. In the opinion of the Joint Committee such a provision would prevent properties passing into the hands of persons to whom justice would demand they should not pass."

The report of the Joint Committee which was accepted by Parliament indicates that sub-section (2) of section 15 was intended to revise the order of succession among the heirs to a Hindu female and to prevent the properties from passing into the hands of persons to whom justice would demand that they should not pass. That means the property should go in the first instance to the heirs of the husband or to the source from where it came.

In support of the contrary submission, attention was drawn to a passage from Hindu Law by S.V. Gupte in which it is stated "that the heirs of the husband will take where the property was inherited from the husband or from the father-in-law. The object is to eliminate the father and the mother, the heirs of the father, and the heirs of the mother altogether from succession where the property inherited was from the husband or the father-in-law and the deceased has left no son or daughter or any grandchild. The effect of the clause is not only to eliminate the three classes of the heirs, being those mentioned in clauses (c), (d) and (e) to sub-section (1), but to change the order of succession." (1981 Ed. Vol. 2 p. 522). We however, find it difficult to share this view. It does not get support from the terms of sub-section (2) of Section 15. Sub-section (2)(b) emphasises that the property of the intestate shall not devolve upon the heirs referred to in sub-section (1) *in the order specified thereunder* but upon heirs of the husband. The object seems to be not to eliminate the other heirs under sub-section (1) and not to exclude them from inheritance altogether. There is no justice in such a construction of Section 15. The Parliament could not have intended that result.

In this view of the matter, we dismiss the Civil Appeal No. 851 of 1991 preferred by the State but not for the reasons stated by the High Court. We allow the appeal arising out of SLP (Civil) No. 13923 of 1985

A and set aside that portion of the decree made by the High Court as against the defendants 2 to 6. The suit filed by the plaintiff as against defendants 2 to 6 stands dismissed. The parties may adjudicate elsewhere the subsistence or otherwise of the mortgage in question.

B In the circumstances of the case, there will be no order as to costs.

G.N. CA No. 851/91 dismissed and
CA No. 4125/91 allowed.