

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice
H. G. Smith

1936
July 31

DEOKI NANDAN AND OTHERS (PLAINTIFFS-APPELLANTS) v.
MUSAMMAT SUKHWANTI AND ANOTHER (DEFENDANTS-
RESPONDENTS)*

Hindu Law of Inheritance (Amendment) Act (II of 1929), scope and application of—Act, whether applies to last male Hindu owner dying prior to 1929—Mother succeeding to property of deceased and executing a gift in her daughter's favour, effect of—Gift, whether void.

The Hindu Law of Inheritance (Amendment) Act of 1929, applies even to cases where the last male Hindu owner of the property had died prior to the coming of that Act into force. After the passing of the Act the sister has a reversionary right to the estate, so that if mother succeeding to the property of her deceased son, who has died prior to 1929, executes a gift of it in favour of her daughter, the deed of gift has the effect of acceleration of the interest in her favour and the reversionary heirs of the deceased are not entitled to have the deed set aside. *Shib Das v. Nand Lal* (1), *Chulhan Barai v. Akli Baraini* (2), and *Bandhan Singh v. Daulata Kuar* (3), referred to. *Sattan v. Janki* (4), *Shakuntla Devi v. Kaushalya Devi* (5), and *Rajdeo Singh v. Janak Raj Kuari* (6), relied on. *Rajpali Kunwar v. Surju Rai* (7) applied. *Janki v. Sattan* (8), and *Gavarammal v. Manikammal* (9), disapproved.

Mr. Radha Krishna Srivastava, for the appellants.

Messrs. Hyder Husain and H. H. Zaidi, for the respondents.

NANAVUTTY and SMITH, JJ.:—This is a plaintiffs' appeal against a judgment and decree of the Court of the learned Subordinate Judge of Partabgarh upholding the judgment and decree of the Court of the Munsif of Kunda, dismissing the plaintiffs' suit with costs.

*Second Civil Appeal No. 186 of 1934, against the decree of Thakur Surendra Vikram Singh, Subordinate Judge of Partabgarh, dated the 9th of March, 1934, upholding the decree of S. Abid Raza, Munsif of Kunda at Partabgarh, dated the 21st of December, 1933.

(1) (1931) I.L.R., 13 Lah., 178.

(2) (1934) A.I.R., Pat., 324.

(3) (1932) A.L.J., 384.

(4) (1936) A.I.R., Lah., 139.

(5) (1936) A.I.R., Lah., 124.

(6) (1936) A.L.J.R., 64.

(7) (1936) A.L.J.R., 659.

(8) (1933) A.I.R., Lah., 777.

(9) (1933) I.L.R., 57 Mad., 718.

The facts out of which this appeal arises are briefly as follows:

One Basdeo was the last male holder of the property in suit. He died in 1923, leaving behind him his mother, Musammat Lakhpati (defendant No. 2), and his sister, Musammat Sukhwanti, (defendant No. 1). On the death of Basdeo in 1923, his mother, Musammat Lakhpati, inherited his property and remained in possession of it till 1933, when she executed a deed of gift on the 20th of February, 1933, giving the entire property of her son to her daughter, Musammat Sukhwanti. The plaintiffs, Deokinandan, Raghunandan, Ram Deo and Raj Deo, are the reversionary heirs of Basdeo, in accordance with the pedigree set forth in the plaint which is admitted by the defendants. The present suit has been filed for a declaration to the effect that the deed of gift executed by Musammat Lakhpati, defendant No. 2, in favour of Musammat Sukhwanti, defendant No. 1, is void and ineffectual as against the reversionary rights of the plaintiffs and is not binding on them.

The defence of the defendants is that, under the Hindu Law of Inheritance (Amendment) Act II of 1929, Musammat Sukhwanti, defendant No. 1, was entitled to succeed to the property on the death of Musammat Lakhpati, defendant No. 2, who was a limited owner, and that the latter was, therefore, entitled to surrender her rights in favour of the next reversioner, defendant No. 1, Musammat Sukhwanti, and that the deed of gift of the 20th of February, 1933, had the effect in law of such a surrender, and that the plaintiffs, not being the reversioners of Basdeo in the presence of Basdeo's sister, were not entitled to bring the suit.

On the pleadings of the parties, the learned Munsif framed the following issues:

- (1) Are plaintiffs the next reversioners of Basdeo and entitled to inherit his property after the death of Musammat Lakhpati, defendant No. 2?

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(2) Is defendant No. 1 entitled to inherit the property of Basdeo under Act II of 1929?

(3) What is the effect of the deed of gift in suit?

(4) To what relief are the plaintiffs entitled?

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The learned Munsif gave no finding on issue No. 1. He decided issue No. 2 in favour of Musammat Sukhwanti, defendant No. 1, and held that she was entitled to inherit the property of her brother Basdeo under Act No. II of 1929. His finding on issue No. 3 was also in favour of Musammat Sukhwanti, defendant No. 1. He held that, under the deed of gift, defendant No. 1, Musammat Sukhwanti, was entitled to remain in possession of the property as long as the law allowed her to do so, and that the deed of gift of the 20th of February, 1933, by one limited owner in favour of the other, who is also recognized as an heir under Hindu Law, would have the effect of acceleration of the interest in her favour. His finding on issue No. 4 was that the plaintiffs were entitled to no relief, and he accordingly dismissed the plaintiffs' suit. In appeal the learned Subordinate Judge of Partabgarh upheld the findings of the trial Court and dismissed the plaintiffs' appeal. The plaintiffs have come up in second appeal to this Court.

We have heard the learned Counsel of both parties at some length. At the commencement of his argument, the learned Counsel for the plaintiffs-appellants verbally requested the permission of the Court to withdraw the suit of the plaintiffs with liberty to bring a fresh suit under Order XXIII, rule 1 of the Code of Civil Procedure, inasmuch as there was an omission in the plaint as regards the plea of the exclusion of sisters from inheritance by family custom. We do not see our way to allow the plaintiffs to withdraw their suit with liberty to bring a fresh suit after they had fought it out in two Courts. The learned Counsel for the plaintiffs-appellants, therefore, did not think it proper to press grounds Nos. 3, 4 and 5 taken in the memorandum of

appeal as there was absolutely no evidence on the record to support the contentions contained in those grounds.

The sole point of law argued before us by the learned Counsel for the plaintiffs-appellants, therefore, was whether Act No. II of 1929 applied to the facts of the present case, although Basdeo had died prior to the passing of the Hindu Law of Inheritance (Amendment) Act No. II of 1929. In the course of his argument, the learned Counsel for the plaintiffs-appellants referred to a ruling of the Lahore High Court reported in *Shib Das v. Nand Lal and others (plaintiffs) and Musammat Radhi (defendant)* (1). In this case, one Musammat Radhi had succeeded to the property of her deceased son and had executed a deed of gift in respect of the same in favour of her daughter's son. The reversioners of Musammat Radhi's husband were granted in April, 1925, a decree declaring that the gift would not affect their rights after the death of Musammat Radhi, but while the appeal from this decision was pending, and while Musammat Radhi was still alive, the Hindu Law of Inheritance (Amendment) Act II of 1929 came into force. This altered the order of succession so as to make the donee, who was the son of the sister of the deceased, rank before the plaintiffs-reversioners. It was held that inasmuch as Musammat Radhi was still alive at the date of the coming into force of the new Act (Act No. II of 1929), the appeal must be accepted and the suit must be dismissed. The decision does not support the appellants' contention. Reliance was, however, placed upon a single Judge decision of the Lahore High Court reported in *Musammat Janki v. Musammat Sattan* (2), in which it was held that Act No. II of 1929 was not retrospective, and that a sister was not an heir where the Hindu male, through whom she claimed, died before the passing of the Act. The same view of the law was taken in a case decided by the Madras High Court

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(1) (1931) L.L.R., 18 Lah., 178.

(2) (1933) A.I.R., Lah., 777(1).

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reported in *Krishnan Chettiar (died), Gavarammal (minor), legal representative by guardian N. Kandasami Chettiar v. Manikammal and another* (1). In this case it was held that the Hindu Law of Inheritance (Amendment) Act No. II of 1929 did not apply to the case of a Hindu male who died intestate before its coming into force, and that in determining the order of succession to the estate of such a person, the Hindu Law as it stood before the Act should be applied, and that the mere circumstance of the succession opening after the passing of the Act by the death of a limited owner was not enough to attract the provisions of the Act, and that it must also be shown that the opening of the succession was in respect of the estate of a Hindu male dying intestate after the passing of the Act. The learned Counsel for both parties referred us to a ruling of the Patna High Court reported in *Chulhan Barai and others v. Musammat Akli Baraini* (2). In this case it was held that where a widow was in possession of her husband's estate as a limited owner, the question whether certain persons were heirs under Act No. II of 1929 depended on the date of the death of the widow and not on the date of the death of the last male holder, and that there was no question of Act No. II of 1929 having any retrospective effect.

The learned Counsel for the defendants-respondents has invited our attention to a ruling of the Allahabad High Court reported in *Bandhan Singh v. Daulata Kuar and another* (3) in which it was held that by operation of Act II of 1929, sisters and sister's sons obtained precedence in the order of succession over distant collaterals, and therefore a remote reversioner was not entitled to sue for an injunction restraining the mother of the last male holder and her transferee from committing acts of waste unless he satisfied the Court that the nearest reversioner had colluded with the life-

(1) (1933) I.L.R., 57 Mad., 718.

(2) (1934) A.I.R., Pat., 324.

(3) (1932) A.L.J., 384.

tenant, or had otherwise done acts precluding him from maintaining an action. He further relied upon a ruling of the same High Court in a case reported in *Ram Tawakal Tewari v. Musammatt Dulari and others* (1). In this case it was held that a sister was an heir under Act II of 1929, and was entitled to succeed to the estate inherited by her mother after the latter's death. He further pointed out that the ruling of the Lahore High Court reported in *Musammatt Janki v. Musammatt Sattan* (2), which was relied upon by the learned Counsel for the plaintiffs-appellants, had been overruled by the same High Court in a later ruling reported in *Musammatt Sattan v. Musammatt Janki* (3) and reliance was placed on another Bench ruling of the Lahore High Court reported in *Sm. Shakuntla Devi v. Kaushalya Devi and others* (4), in which it was held that the Hindu Law of Inheritance (Amendment) Act II of 1929 applied to the case of a person who died before it came into force, if his widow, who inherited the estate, was alive at the time of its enforcement. The same view was taken by a ruling of the Allahabad High Court reported in *Rajdeo Singh and others v. Musammatt Janak Raj Kuari* (5), in which it was held that the Hindu Law of Inheritance (Amendment) Act II of 1929 applied even to cases where the Hindu owner had died prior to the coming of the Act into force. Finally the learned Counsel for the defendants-respondents relied upon a Full Bench ruling of the Allahabad High Court reported in *Rajpali Kunwar v. Surju Rai and others* (6), in which the learned Chief Justice of the Allahabad High Court reviewed all the case-law on the subject, and held that after the passing of the Hindu Law of Inheritance (Amendment) Act II of 1929, the sister had a reversionary right to the estate, and the view of the law laid down in *Rajdeo Singh and others v. Janak Raj*

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(1) (1934) A.I.R., All., 469.

(2) (1933) A.I.R., Lah., 777(1).

(3) (1936) A.I.R., Lah. 139.

(4) (1936) A.I.R., Lah., 124.

(5) (1936) A.L.J.R., 64 A.I.R., 1936, (6) (1936) A.L.J.R., 659.

All., 154.

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Kuari (1) and in *Sm. Shakuntla Devi v. Kaushalya Devi and others* (2) was affirmed. The contrary view expressed by the Madras High Court in *Krishnan Chettiar (died), Gavarammal (minor), legal representative by guardian N. Kandasami Chettiar v. Manikammal and another* (3) was fully discussed and was not approved of.

We have carefully considered the rulings cited by the learned Counsel of both parties, and, in our opinion, the preponderance of authorities is certainly in favour of the view urged before us by the learned Counsel for the defendants-respondents. We may note that Sir Dinshah Mulla in his well-known Commentary on Hindu Law (8th Edition of 1936, page 43) has expressed the opinion that the view of the Allahabad, Lahore and Patna High Courts on this point appears to be sound, and that the case in the Madras High Court reported in *Krishnan Chettiar (died), Gavarammal (minor), legal representative by guardian N. Kandasami Chettiar v. Manikammal and another* (3) was erroneously decided. It is unnecessary for us, in view of the recent Full Bench decision of the Allahabad High Court mentioned above, to give at length our reasons for holding the view that the Hindu Law of Inheritance (Amendment) Act No. II of 1929 applies even to cases where the last male Hindu owner of the property in suit had died prior to the coming of that Act into force.

This was the sole point that was discussed before us, and we hold, for the reasons given above, that Act No. II of 1929 does apply to the present case, although Basdeo died prior to 1929. We accordingly uphold the finding of the lower Courts, and dismiss this appeal with costs.

Appeal dismissed.

(1) (1936) A.I.J.R., 64.

(2) (1936) A.I.R., Lah., 124.

(3) (1934) A.I.R., Mad., 138.