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result therefore is that we allow the appeal and modify the decree of the lower court by giving the plaintiff a decree for Rs.400 in addition to the amount decreed by the lower appellate court. The parties shall receive and pay costs in proportion to their success and failure in all the courts.

Srivastava, C.J. and Smith, J.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas and Mr. Justice Ziaul Hasan

1937 *April*, 20

BINDESHARI SINGH AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* BAIJ NATH SINGH AND OTHERS (DEFENDANTS-RESPONDENTS)*

Hindu Law of Inheritance (Amendment) Act (II of 1929), section 2—Succession—Sister's position in regard to succession—Last male owner dying prior to amending Act of 1929 coming in force—Mother succeeding to property—Gift by mother in favour of deceased's sister, effect of.

The Hindu Law of Inheritance (Amendment) Act, II of 1929, is designed not only to give a sister a higher position in the order of succession than she previously held in provinces where she was already an heir, but also to constitute her an heir in provinces where she was not previously an heir according to the prevailing view of the Hindu Law. The Act applies even to cases where the last male Hindu owner of the property had died prior to the coming of that Act into force. Therefore, after the passing of the Act the sister has a reversionary right to the estate, so that if a mother succeeding to the property of her deecased 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

*Second Civil Appeal No 379 of 1935, against the decree of Syed Yaqub Ali Rizvi, Additional Civil Judge of Sultanpur, dated the 16th of September, 1935, confirming the decree of Babu Kamta Nath Gupta, Munsif, Sadar, Sultanpur, dated the 11th of February, 1935.

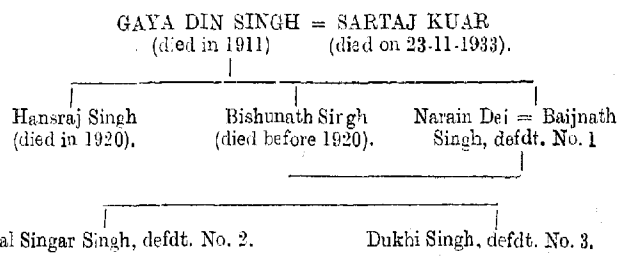
aside. *Mahabir Singh* v. *Radha* (1), *Deoki Nandan* v. *Sukhwanti* (2), and *Rajpali Kunwar* v. *Surju Rai* (3), relied on. *Chulhan Barai* v. *Akli Baraini* (4), *Raj Deo Singh* v. *Janak Raj Kuari* (5), *Shakuntala Devi* v. *Kaushalya Devi* (6), and *Sattan* v. *Janki* (7), referred to.

Mr. *B. K. Dhaon,* for the appellants.

Mr. *Uma Shankar Srivastava,* for the respondents.

THOMAS and ZIAUL HASAN, JJ.:—This is a plaintiffs' second appeal against a decree of the learned Additional Civil Judge of Sultanpur who affirmed a decree of the learned Munsif of that place.

The dispute in this case relates to the property of one Gaya Din Singh whose pedigree is as follows:



On Gaya Din Singh's death in 1911, his two sons Bishunath Singh and Hansraj Singh succeeded to his property and on Bishunath Singh's death his surviving brother Hansraj Singh became owner of the property. He died in 1920 and then the property came into the possession of his mother Sartaj Kuar. On the 15th of January, 1921, Sartaj Kuar sold plot No. 704 of village Samnabhar to Sarju Shukul, defendant respondent No. 4, and on the 23rd of July, 1928, and 3rd November, 1930, respectively, she executed two deeds of gift (exhibits A1 and A2) in favour of her son-in-law Baijnath Singh and her daughter's sons, Dal Singar Singh and Dukhi Singh, defendants 2 and 3. Sartaj Kuar died on the 23rd November, 1933, and thereupon the present appellants, Bindeshuri Singh and Ram Harakh Singh, insti-

(1) (1933) 10 O.W.N., 424.
(2) (1936) I.L.R., 12 Luck., 324.
(3) (1936) A.W.R., 580.
(4) (1934) Pat., 324.
(5) (1936) A.W.R., 56.
(6) (1936) Lah., 124.
(7) (1936) Lah., 139.

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tuted the suit from which this appeal has arisen for possession of Gaya Din Singh's property on the allegations that they were the nearest reversioners of Hansraj Singh, the last male owner, and that among Bachgoti Thakurs to which caste Gaya Din Singh belonged there was a tribal custom of the exclusion of females and their issue from inheritance and that the defendants were in possession of the property in suit without any right.

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The defendants denied the alleged relationship of the plaintiffs to Gaya Din Singh and also the alleged custom of exclusion of daughters and sisters from inheritance. Sarju Shukul who was purchaser of land from Sartaj Kuar also pleaded legal necessity for the sale. The other defendants pleaded that on the death of Sartaj Kuar the only heir of Hansraj Singh, the last male holder, was his sister Narain Dei under Act II of 1929 and that even if she be not held to be an heir then her sons, defendants 2 and 3 were his heirs.

The learned Munsif held the pedigree set up by the plaintiffs proved but held on the question of custom that though the custom of the exclusion of daughters was proved, it was not proved that sisters were also excluded and dismissed the plaintiffs' suit on the ground that they were not entitled to the property in the presence of Musammat Narain Dei, the sister of Hansraj Singh. The plaintiffs appealed but in appeal the learned Additional Civil Judge concurred with the findings of the trial court and dismissed the appeal.

The learned counsel for the appellants has argued two points before us, namely,—

(1) Whether under Act II of 1929 Narain Dei, the sister of Hansraj Singh, was entitled to succeed to the property in dispute, and

(2) whether the provisions of Act II of 1929 were applicable to the inheritance of Hansraj Singh who died in 1920.

We are of opinion that both the above points are concluded by authority of our own Court.

In *Mahabir Singh* v. *Radha* (1) a Bench of this Court held that the Hindu Law of Inheritance (Amendment) Act, II of 1929, is designed not only to give a sister a higher position in the order of succession than she previously held in provinces where she was already an heir, but also to constitute her an heir where, as in these provinces, she was not previously an heir according to the prevailing view of the Hindu Law, and further that the only possible interpretation to be put upon the words "but for the passing of this Act" in section 1(2) of the Act is that the law of Mitakshara is superseded by the provisions of the Act both as regards the position and succession of sisters where they were already heirs and as regards their right to inheritance where they were not previously heirs at all. Similarly in *Deoki Nandan* v. *Sukhwanti* (2) another Bench of this Court held that after the passing of the Act the sister has a reversionary right to the estate so that if a 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. This is a case which is on all fours with that now before us and in it the question of the so-called retrospective effect of Act II of 1929 was also considered and it was held that the Act applies even to cases where the last male Hindu owner of the property had died prior to the coming of that Act into force. In the Full Bench case of the Allahabad High Court in *Rajpati Kunwar* v. *Surju Rai* (3) also it was held that where a Hindu died before the Hindu Law of Inheritance (Amendment) Act of 1929 came into force but the succession to the estate opened on the death of his widow after the passing of the Act, a sister of the last male owner is entitled to rank as an heir in the order mentioned in section 2. There can therefore be no doubt

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(1) (1933) 10 O.W.N., 424. (2) (1936) O.W.N., 712.
(3) (1936) A.W.R., 580.

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that in these provinces a sister of a Hindu dying intestate has been made an heir by Act II of 1929.

It was argued by the learned counsel for the appellants that the preamble of the Act showed that what was intended was not to confer a right of succession on persons who were not heirs previously but only to alter the order in which certain heirs of Hindu males dying intestate are entitled to succeed and that therefore in these provinces a sister who was not an heir previously to the passing of the Act cannot be regarded as an heir under the Act. The same argument was put forward in the Full Bench case of the Allahabad High Court already referred to but the Hon'ble the Chief Justice remarked that such an argument would nullify the whole object of the Act. He further said:

> "The Act as a matter of fact applies only to persons who but for the passing of this Act would have been subject to the law of Mitakshara. It does not apply to persons subject to other laws. If we were to hold that inasmuch as a sister was not an heir under the Mitakshara Law the Act does not apply to her, the result would be that the Act would be wholly inapplicable to a son's daughter, daughter's daughter, sister and sister's son who are mentioned in section 2 and who were not previously heirs under the Mitakshara Law. Such a contention therefore cannot possibly be accepted."

We are in entire agreement with these remarks, if we may respectfully say so.

On the other question arising before us the view adopted in *Deoki Nandan* v. *Sukhwanti* (1) is further supported by the decisions of the Patna High Court in *Chulhan Bardi* v. *Musammat Akli Baraini* (2), of the Allahabad High Court in *Raj Deo Singh* v. *Musammat Janak Raj Kuari* (3) and of the Lahore High Court in *Shakuntala Devi* v. *Kaushalya Devi* (4) and *Musammat Sattan* v. *Janki* (5). It was pointed out by the learned Chief Justice of the Allahabad High Court in *Rajpali Kunwar* v. *Surju Rai* (6) that one is

(1) (1936) I.L.R., 12 Luck., 324.
(2) (1934) Pat., 324.
(3) (1936) A.W.R., 56.
(4) (1936) Lah., 124.
(5) (1936) Lah., 139.
(6) (1936) A.W.R., 580.

not giving the Act retrospective effect if a sister is held to be an heir when the succession opens out after the coming into force of the Act.

On this question also the learned counsel for the appellants referred to the preamble of the Act and argued that the use of the word "dying" shows that the Act was to be applied to the inheritance of those Hindus who were to die intestate in future and not to those who had died before the Act came into force. This argument was also considered by the Full Bench in *Rajpali Kunwar* v. *Surju Rai* (1) and it was said:

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> "The word 'dying' by no means connotes a future tense nor for the matter of that a past tense exclusively. Taking it literally it would rather connote a present tense. But as pointed out by the learned Judges of the Lahore High Court in *Shakuntala Devi's* case (2) the word is a mere description of the status of the deceased and has no reference and is not intended to have any reference to the time of the death of a Hindu male. The expression merely means 'in the case of intestacy of a Hindu male'."

It was further remarked:

> "No doubt a preamble can be looked at when the section is ambiguous and it supplies a key to the mind of the Legislature and indicates what its intention was but where the language of the section is clear, a preamble cannot control its provisions. So far as section 2 is concerned, it clearly lays down that a sister shall be entitled to rank in order of succession next after certain heirs. There are no limitations or conditions contained in that section. At the time when the succession opens, it is therefore open to the sister to say that she is entitled as of right to rank as an heir to the estate of her brother after the other heirs named therein."

The result is that we are of opinion that the learned Judges of the courts below were perfectly right in their finding that the plaintiffs are not entitled to the propery in the presence of Musammat Narain Dei. The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

(1) (1936) A.W.R., 580. (2) (1936) Lah., 124.