

Ram Singari Devi and ors. Vs. Govind Thakur and ors.

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Court : Patna

Decided On : May-02-2006

Judge : Navaniti Prasad Singh, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 4, 8, 12, 15, 15(1), 15(2), 16 and 18;
Code of Civil Procedure (CPC) - Order 22, Rules 1, 2, 3 and 4; Hindu Law

Appeal No. : Civil Revision No. 538 of 2003

Appellant : Ram Singari Devi and ors.

Respondent : Govind Thakur and ors.

Advocate for Def. : Md. Wasi Akhtar, Sr. Adv., Md. Rashid Alam and Md. Anis Akhtar, Adv.

Advocate for Pet/Ap. : Pushkar Narain Shahi, Partha Sarthy, Ritesh Kumar No. 1, Kumar Vikram, Onkar Nath, Ved Prakash Roy and Pankaj Kumar Singh, Adv.

Disposition : Application allowed

Judgement :

Navaniti Prasad Singh, J.

1. This civil revision application raises an interesting issue arising out of a matter relating to substitution of legal representatives of deceased-plaintiff under Order

22 Rule 3 of Code of Civil Procedure (In short 'CPC'). Heirs of plaintiff by half blood have moved this Court in civil revision against the impugned order by which heirs of full blood of the plaintiff have been substituted. The petitioners before this Court are asserting that even though they are heirs of half blood, they have to be preferred to heirs of full blood which on the first flash seems to be quite a preposterous proposition. Both sets are represented before this Court. Shri Pushkar Narain Shahi, Advocate appears on behalf of petitioners and Shri Wasi Akhtar, Senior Advocate appeared on behalf of the contesting opposite parties. Heard the parties.

2. Before coming to grips with the legal Issue, It is necessary to give out the salient facts appropriate for the decision of this Court. The plaintiff Banarsi Devi, who died on 04.12.2002 and the matter in relation to substitution of her legal representatives is the question, instituted the present suit being Title Suit No. 142 of 1996 and pending before Sub Judge I, Sitamarhi alleging that her widow mother Gulbadan Devi being wife of Ram Pragas Thakur had dedicated some land to deities and after her death, her daughter-in-law Ramphal Devi, wife of Brajraj, the son of Ram Pragas Thakur acted as Sewait till her death (Ramphal Devi) on 01.12.1995 and, thereafter, the plaintiff claiming to be the sister of Brajraj and the successor-in-interest of that branch of the family claimed that she had inherited both dedicated and personal properties of the branch of Ram Pragas Thakur. It was further asserted that the sole defendant Alok Ranjan, who was the natural son of Shyam Nandan Thakur, was claiming to have gone in adoption to Ramphal Devi by deed of adoption dated 17.06.1994, the said document was forged and fabricated and should be declared to be such. The plaintiff, accordingly, prayed for declaration and confirmation of possession and title over the scheduled lands. The defendant Alok Ranjan appeared, filed a written statement asserting that he was the legally adopted son of Ramphal Devi and, as such, was entitled to succeed to the properties of Brajraj and Ramphal Devi and that he had the title and possession over the scheduled lands. To appreciate the relationship, now accepted, genealogical table of the family is given hereunder:

SHEO THAKUR

died 1916

/

//

01 st wife=Jagtaran 02nd wife=ful Kumari

dead dead

//

----- /

// Triveni Thakur

Ram Pragash Thakur Ram Angya Thakur dead 1968

dead 1943 dead /

wife Gulbadan Devi-dead / -----

///

----- Shyam Nandan Thakur Ram

Petitioner No Singari

Devi

//// Petitioner No 1

Brajraj Banarsi Devi Raj Mangal Jai Mangal /

dead 1970 Plaintiff dead dead -----

=wife Ramphal diad on ////

Devi 04.12.2002 /Chitranjan Thakur Manoj Alok

died 01.12.1995 /Substituted as heir Thakur Ranjan

Govind Thakur of plaintiff (Defendant)

substituted as (OP 2) (In adoption

heir of plaintiff to Ramphal Devi

(OP 1) -17.06.1994)

3. The original plaintiff Banarsi Devi died on 04.12.2002 issueless. On 09.12.2002, Govind Thakur and Chitranjan Thakur, who are the grandsons of the paternal uncle of Banarsi Devi, filed a joint petition for their substitution as plaintiffs in place of the original plaintiff Banarsi Devi. By order dated 25.01.2003, the trial Court substituted Govind Thakur and Chitranjan Thakur as plaintiffs in the suit in place of original plaintiff Banarsi Devi (since dead). The said Govind Thakur and Chitranjan Thakur are opposite parties No. 1 and 2 in the instant revision application. On 01.02.2003, that is within the period of ninety days from the death of original plaintiff Banarsi Devi, Shyam Nandan Thakur filed a petition for substitution in place of original plaintiff. Similar petition was then filed on 04.02.2003 by Ram Singari Devi for her substitution as plaintiff in place of original plaintiff Banarsi Devi. These two, that is Shyam Nandan Thakur and Ram Singari Devi, are brother and sister being children of Triveni Thakur. Both these applications being of Shyam Nandan Thakur and Ram Singari Devi were rejected by the impugned order dated 08.04.2003 primarily on two grounds. Firstly, that Govind Thakur and Chitranjan Thakur having substituted, other persons cannot be substituted now. Secondly, Govind Thakur and Chitranjan Thakur were full blood relations of Banarsi Devi whereas Shyam Nandan Thakur and Ram Singari Devi were half blood relations and, therefore, distant as compared to the full blood relations.

It may be relevant to mention here that the genealogy given above, as now accepted by both the parties, is the genealogy given by the original plaintiff herself though in course of trial, some of the defendants' witnesses tried to dispute the parentage of the original plaintiff. Unfortunately the trial Court, while allowing the

substitution of Govind Thakur and Chitranjan Thakur (now under challenge), considered and proceeded on the case as being sought to be set up by defendant rather than the genealogy as put forward by the original plaintiff herself. Now the petitioners before this Court rely on the genealogy as propounded by the original plaintiff herself.

There is no dispute that as per the provisions of [Hindu Succession Act, 1956](#), Govind Thakur and Chitranjan are heirs related to the original plaintiff by full blood and Shyam Nandan Thakur and Ram Singari Devi, the petitioners before this Court are heirs related to the original plaintiff by half blood only as they are descendants from two wives of Sheo Thakur, the common ancestor. All are agnates.

In order to appreciate the rival contentions, it is appropriate to refer to relevant statutory provisions of the [Hindu Succession Act, 1956](#) (In short 'the Act'):

3. Definitions and Interpretation.-(1) In this Act, unless the context otherwise requires,-

(a) 'agnate'-one person is said to be an 'agnate' of another if the two are related by blood or adoption wholly through males;

(e) 'full blood', 'half blood' and 'uterine blood'-

(i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but; by different wives;

(ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.-In this clause 'ancestor' includes the father and 'ancestress' the mother;

(f) 'heir' means any person, male or female, who is entitled to succeed to the property of any intestate under this Act;

(2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

4. Over-riding effect of Act.-(1) Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

8. General rules of succession in the case of males.-The property of a male Hindu dying intestate shall devolve according to the provisions of the Chapter-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule.-Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. Distribution of property among heirs in class I of the Schedule.-The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:

Rule 1.-The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.-The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.-The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.-The distribution of the share referred to in Rule 3-

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

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.

16. Order of succession and manner of distribution among heirs of a female Hindu.- The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:

Rule 1.-Among the heirs specified in Sub-section (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously.

Rule 2.-If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.-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) to 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.

18. Full blood preferred to half blood.-Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

THE SCHEDULE(See Section 8)HEIRS IN CLASS I AND CLASS II

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son; (son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son).

Class II

I. Father.

- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.
- III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.
- IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) -sister's daughter.
- V. Father's father; father's mother.
- VI. Father's widow; brother's widow.
- VII. Father's brother; father's sister.
- VIII. Mother's father; mother's mother.
- IX. Mother's brother; mother's sister.

Explanation.-In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

4. From the aforesaid provisions, it would be clear that Govind Thakur and Chitranjan Thakur and original plaintiff Banarsi Devi were descendants from the first wife of Sheo Thakur. They are related in full blood amongst themselves. So far as Shyam Nandan Thakur and Ram Singari Devi are concerned, the two being children of Triveni Thakur are related to Banarsi Devi, plaintiff in half blood as contemplated under the said Act. Horizontally, Shyam Nandan Thakur and Ram Singari Devi are cousins of the original plaintiff whereas Govind Thakur and Chitranjan Thakur are nephew of original plaintiff. The question, thus, is whether nephew by full blood as substituted by the trial Court have to be preferred to cousins of half blood in matter of substitution.

5. Shri Pushkar Narain Shahi appearing for the petitioners, who are cousins by half blood, relied on AIR 1915 Privy Council 81 Ganga Sahai v. Kesri and Ors. in which it has been held thus:

This argument, in their Lordships' opinion, would apply with equal force to the case of half brothers and the sons of brothers of the whole blood. But is conceded that

the author of the Mitakshara has expressly declared that brothers of the half blood, come before nephews of the whole blood, and in principle they see no reason to differentiate between the brothers of the propositus and the brothers of his father. Having regard to the geneal scheme of the Mitakshara, their Lordships think that the preference of the whole blood to the half blood is confined to members of the same class, or, to use the language of the judges of the High Court in *Suba Singh v. Sarfarz Kunwar* to 'sapindas of the same degrees of descent from the common ancestor,'

6. He also then referred to the provisions of Section 15(1)(d) of the Act and then to Section 8 read with Schedule. He then referred to the illustration 5 as given in *Mulla Hindu Law 19th Edition* by S.A. Desai. With reference to Section 18, his submission was that in its application, it applies only to conflicting claims by two heirs of the same seniority/relationship with the deceased, one of whom is half blood who gets excluded in preference to full blood relation. It has no application where the relationship is at different levels. On the other hand, the learned Senior Counsel appearing for the contesting opposite parties submits that first Section 18 has to be applied and all heirs of whatever degree falling in half blood have to be excluded and then from amongst full blood heirs, an appropriate heir has to be selected with reference to the schedule to the Act. Learned Senior Counsel appearing for the opposite party has placed reliance on a Full Bench decision of the Bombay High Court in the case of *Waman Govind Shindore and Ors. v. Gopal Baburao Chakradeo and Ors.* : AIR1984 Bom208 in regard to the interpretation and applicability of Section 18 of the Act. Both parties do not dispute that original plaintiff Banarsi Devi died issueless and without husband. The matter of succession would be dealt with in terms of Section 15(1)(d) of the Act where the property would devolve on the heirs of her father as if on the date of her death, the property belong to her father who died simultaneously.

7. So far as the decision of the Privy Council (*supra*), as cited by Shri Pushkar Narain Shahi is concerned, it squarely comes to his aid and even on facts, the case is most appropriate for his cause. But as Privy Council itself noted that this is a rule of Mitakshara law and, therefore, in terms of Section 4 of this Act, it will have no application if it is found that the provisions and implementation of the Act leads

to a different conclusion. It is well settled that once the law with regard to succession amongst Hindus have been codified making drastic changes in otherwise well established norms of succession, the codified law will have to be given effect to as against the pre-existing practices or rules.

8. As noted above, the preliminary question is what is the scope and ambit of Section 18 of the Act. Is it as asserted by Shri Shahi to come in operation only if the contesting parties are related in the same degree to the deceased and has no application in other circumstances or is it that it is first to be applied to exclude half blood relations in all contingencies in preference to full blood relations irrespective of their degrees.

9. Section 18 of the Act came for detailed consideration before the Full Bench of Bombay High Court (*supra*). The question was the correctness of decision of a Division Bench judgment of that Court : AIR1976 Bom375 wherein the Division Bench had held that Section of the Act, in its application, would apply in between male members and female members so as to exclude female members. The Full Bench, after noticing the facts and decision of the Division Bench, held that the effect of the decision in the Division Bench gives was that if there are female heirs of full blood and male heirs of half blood, the heirs of full blood would not exclude male heirs of half blood. This would obviously result in inferior treatment of female heirs of full blood in comparison with male heirs of full blood, a result which is incompatible with the object of treating female heirs and male heirs equally. Accordingly, the Division Bench judgment was held to be not correct and overruled. While interpreting provisions of Section 18 of the Act, as quoted above, their Lordships have held (in paragraph-13) that on a plain reading of the provisions of Section 18 of Hindu Succession Act, it appears to be clear that it is nothing but a substantial reproduction of the prevalent rule of Hindu Law in which relations of the whole blood were preferred to those of half blood if their degree of relationship to the deceased was the same. Further, in paragraph-14, they deal with the expression 'if the nature of relationship is the same' as used in Section 18 of the Act and point out that it is not 'the relationship is the same'. Their Lordships then held that in view of the rules of preferences as laid down in Section 12 of the Act which is based on degree of assent or dissent, it is obvious that when the

Parliament referred the 'nature of relationship is the same in every other respect.' It was intended to restrict the preferences only in case heirs stood in the same degree of relationship with the deceased. Their Lordships held that these words were clearly intended to codify the rule of law that the rule of preference of heirs of full blood and heirs of half blood applied only when there was a conflict between the heirs of the same degree or proximity of the relationship to the deceased and the rule did not apply if claimants of full blood or half blood were of different degrees in relationship to the deceased. In paragraph-15, it has been very aptly stated 'it appears to us that the qualifying clause in Section 18 of the Act means nothing more than that other things being equal as between heirs of equal relationship and degree entitled to succeed together those of full blood will exclude those of half blood. To my mind that is the correct exposition of law and I follow the same. It would thus be seen that rather than of being help to the opposite parties, it only buttresses and promotes the case of petitioners before this Court.

10. Now it is clear that Section 18 of the Act would not have an application to the facts of the present case. The half blood relations, the petitioners are not excluded by virtue of Section 18 of the Act in preference to full blood relations, the contesting opposite parties for the simple reason that they are not related to the same degree of assent or dissent. Petitioners are cousins where contesting opposite parties nephews that is lower in dissent. Section 18 of the Act, thus, has no application.

11. Having crossed this major issue, one has to see as to who are the heirs. It is not in dispute that original plaintiff Banarsi Devi died issueless and as such by operation of the provisions of Section 15(1)(d) of the Act, her property would devolve on the heirs of her father as if the devolution is in respect of properties of deceased father, a male member. Now applying Section 8 and the Schedule to the Act, it would be seen that the petitioners are the son and daughter of Triveni Thakur, the half brother of father of original plaintiff as, as such, would fall under entry 4 of class 2 heirs as per the Schedule whereas contesting opposite parties, being the grandson of another brother of Ram Pragdas Thakur, do not figure in preference to them. I may mention that in terms of explanation appended to the Schedule with reference to Section 8 of the Act, reference of brother and sister

would include half brother and half sister but exclude brother or sister by uterine blood. It would, thus, be seen that on basis of the genealogy above, the contesting opposite parties could not claim preference to be substituted in place of petitioners before this Court.

12. It would, thus, be seen that on an application of the provisions of the Act, the result is the same as has been laid down by the Privy Council decision (*supra*) and is supported by the illustration contained in Mulla's Hindu Law as referred to by Shri Shahi as above.

13. In the result, the submission which was apparently preposterous in the beginning must succeed. Consequently, this civil revision application is allowed. It is held that the learned Sub Judge failed to exercise the jurisdiction vested in him and, accordingly, the order impugned is set aside. The trial Court is directed to proceed on basis of the judgment of this Court given hereinabove.

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