

Narayanan Vs. Pushparajini and ors.

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Court : Kerala

Decided On : Jul-13-1990

Reported in : AIR1991Ker10

Judge : P. Krishnamoorthy, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 8 and 18; Hindu Law

Appeal No. : S.A. No. 952 of 1983-E

Appellant : Narayanan

Respondent : Pushparajini and ors.

Advocate for Def. : K.K. Usha and; V.P. Seemanthini, Advs.

Advocate for Pet/Ap. : K.R. Kurup and; M. Rajagopalan, Advs.

Disposition : Appeal dismissed

Judgement :

P. Krishnamoorthy, J.

Plaintiff is the appellant. The suit is for partition and recovery of 5/ 32 shares of the plaintiff in plaint schedule properties. The properties belonged to one Sri. Madhavan, who was the son of Ayyappan. Ayyappan had two wives namely, Kunhimalu alias (sic) Madhavi and Kalyani. Plaintiff is the son and defendants 4

and 5 daughters of Ayyappan through his first wife Kunhimalu. Madhavan is a son and defendants 1 to 3 daughters of Ayyappan through his second wife Kalyani. In 1964, the legal heirs executed a registered partition in respect of the joint properties and the plaint schedule properties were allotted to Sri. Madhavan and his mother Madhavi. Madhavi died in 1970. After her death, her half share also devolved on Madhavan and defendants 1 to 3. Madhavan died in 1975 leaving no wife or children to inherit his properties. The plaintiff, who is a half brother of Sri. Madhavan, has filed this suit for partition and recovery of 5/32 shares in the plaint schedule property. The defendants who are the sisters of Madhavan contended that the plaintiff is not entitled to any share and they alone are heirs of Madhavan under Section 8 read with Section 18 of the [Hindu Succession Act, 1956](#). Both the courts below accepted the defence contention and dismissed the suit and hence the appeal by the plaintiff.

2. The only question that arises for consideration in this appeal is the interpretation of Section 18 of the Hindu Succession Act. From the facts it is clear that defendants 1 to 3 are the direct sisters (sisters by full blood of Madhavan) the plaintiff and defendants 4 and 5 are the brother and sisters of Madhavan by half blood, their mother being different. Under Section 8 of the Hindu Succession Act, the property of a Male Hindu dying intestate shall devolve firstly upon the heirs mentioned in Class I of the schedule. Section 8 further provides that if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the schedule. Madhavan has not left any heir mentioned in Class I of the schedule. Item No. 3 in Class II is brother and 4 is sister. The question is as to whether the plaintiff, who is a brother by half blood of Madhavan is entitled to inherit the property or defendants 1 to 3 alone are the heirs of Madhavan, they being direct sisters. The contention of defendants 1 to 3 is that under Section 18 of the Hindu Succession Act, an heir related to an intestate by full blood shall be preferred to heirs related by half blood. Section 18 of the Hindu Succession Act is to the following effect:--

'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.'

3. Counsel for the appellant-plaintiff contended that Section 18 will apply only if the nature of the relationship is the same in every other respect between the heirs made mention of in Section 18. On the other hand, the contention of the counsel for defendants 1 to 3 is that the plaintiff being a half brother will be excluded by virtue of the provision contained in Section 18 as the nature of the relationship between him and defendants 1 to 3 who are sisters is the same in every respect. In other words, the contention of the counsel for the plaintiff is that the nature of the relationship to be the same even the sex of the parties has to be the same. On a reading of Section 18 of the Hindu Succession Act, I am not inclined to agree with the contention raised by the appellant-plaintiff. On a plain reading of the Section it is clear that the words used therein are 'nature of the relationship is the same in every other respect' and not that the relationship should be of the same nature. From the above wording of the Section, it is clear that the relationship of a brother and sister is the same irrespective of the difference in sex among them. To find out whether a person is excluded under Section 18 or not, the relationship is to be reckoned in terms of the degrees of ascent or descent or both. If the argument of the counsel for the appellant-plaintiff is to be accepted, the plaintiff, a half brother alone will be entitled to a share whereas defendants 4 and 5 who are half sisters of deceased Madhavan will not be entitled to the share in the property. That could not have been the intention of the legislature. It makes a distinction between a brother and sister solely on the basis of sex. The Hindu Succession Act was enacted for the purpose of giving an equal right to a son and a daughter whereby taking away the distinction between them which existed under the Hindu law. From the wording of Section 18 and from the object of the Hindu Succession Act, it is abundantly clear that the Act never intended to make any difference between a man or woman in case of succession of the properties of a male or female. The expression used in Section 18 being nature of the relation, I have no hesitation to hold that it is the same so far as defendants 1 to 3 on the one hand and the plaintiff on the other in spite of the fact that plaintiff is a brother. If that be so, by virtue of Section 18 of the Hindu Succession Act, full brothers and sisters have to be preferred and the plaintiff will stand excluded notwithstanding the fact that he will be an heir coming under Class III of the Schedule. As defendants 1 to 3 who are sisters by full blood are available as heirs of Madhavan, certainly the

plaintiff who is only a brother by half blood will be excluded from inheritance by virtue of the provisions contained in Section 18 of the Act.

4. The very same question has come up for consideration before other High Courts also. In *Sarwan Singh v. Dhan Kaur*, AIR 1971 Punj & Har 323 an identical question came up for consideration before a Division Bench of that court and their Lordships held as follows (at p. 324 of AIR) :--

'The nature of the relationship of the heirs with the intestate is to be taken into consideration. For the purpose of preference this Act makes no distinction between a son and a daughter and the nature of the relationship of the both with the father or the mother is that of a child. Thus the nature of relationship of brothers and sisters, being the children of the father of the intestate, is the same. The nature of relationship is to be reckoned in terms of degrees of ascent or descent or both. This section speaks of the nature of relationship being the same, and not the relationship being the same. The meaning of the words 'nature of relationship' must be found in the sense in which they best harmonise with the scheme. For applying the rule of preference given in this section, the nature of the relationship must be the same in every other respect, for example, it would not be applicable if an heir is preferred under any other provision of this Act.'

5. The very same question came up for consideration before the Madras High Court in *Yellava Gounder v. Lakshmi* AIR 1975 Madras 253. The Head Note of that case correctly gives the dictum laid down by the above decision:

'The section uses the words 'if the nature of the relationship is the same in every other respect'. The nature of relationship of a sister and a brother (in respect of the deceased) is one and the same in every other respect (sex has no relevance) for there is no difference either in respect of ascent or descent or in any other way.'

6. A different view was taken on the interpretation of Section 18 of the Hindu Succession Act by a Division Bench of the Bombay High Court in *Purshottam v. Shripad*, AIR 1976 Bom 375. But later a Full Bench of the very same court considered the matter over and again in *Waman Govind v. Gopal Babu-rao*, AIR 1984 Bom 208 wherein the decision in AIR 1976 Bom 375 was over-ruled. In the

Full Bench decision of the Bombay High Court referred to above, Their Lordships observed as follows (at p. 214 of AIR 1984 Bom 208) :--

'The effect of all these provisions is that the distinction between male and female heirs in the matter of succession has been removed and male and female heirs have been treated equally in the matter of succession under the Hindu Succession Act. The provisions of Section 18 of the Hindu Succession Act will have to be considered in the light of the avowed object with which the said Act was enacted. Now, on a plain reading of the provisions of Section 18 of the Hindu Succession Act, it appears to be clear that it is nothing but a substantial reproduction of the prevalent rule of Hindu Law under which relations of the whole blood were preferred to those of the half-blood if their degree of relationship to the deceased was the same. Section 18 provides for a preference of one category of heirs to another. Under Section 3(f) 'heir' is defined as meaning any person, male or female who is entitled to succeed to the property of an intestate under the Hindu Succession Act. When Section 18, therefore, refers to heirs related to intestate by full blood shall be preferred to heirs related by half-blood, these heirs may be males or females or both. Now, so far as the Entry No. 4 in Class II is concerned the female heir will be a brother's daughter or sister's daughter and the male heir will be a brother's son or a sister's son. In each one of these categories there may be heirs who are related to the deceased by full blood or by half-blood, according as whether the heir is a full blood brother's son or daughter or full blood sister's son or daughter. If at the time when the succession open there are male and female heirs of full blood and male and female heirs of half blood then all the heirs male and female of the full blood will exclude the male and female heirs of the half-blood, provided of course the condition in Section 18 that the nature of relationship is the same in every other respect is satisfied.'

From the above statement it can be seen that the other High Courts have also taken the view that the nature of the relationship of a sister and brother is one and the same in every other respect and that sex has no relevancy in deciding that question. There is no difference either in respect of ascent or descent or in other way. In the light of the above principles it is clear that defendants 1 to 3 who are the direct sisters of deceased Madhavan will be the only heirs of Madhavan under

the Hindu Succession Act and the plaintiff is not entitled to any right over the plaint schedule property and the decrees of the courts below dismissing the suit is correct.

In the result, I dismiss the Second Appeal; but in the circumstances without any order as to costs.

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