

Pauline Luca Vs. Jerome Pascal

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Court : Chennai

Decided On : Aug-23-1976

Reported in : AIR1977Mad270

Judge : Ramaprasada Rao and ;Ratnavel Pandian, JJ.

Acts : [Hindu Succession Act, 1956](#) - Sections 2(1), 4 and 4(1)

Appeal No. : Appeal No. 177 of 1972

Appellant : Pauline Luca

Respondent : Jerome Pascal

Judgement :

1. The short question in this appeal is whether the [Hindu Succession Act, 1956](#), which was extended to the State of Pondicherry has to prevail in the matter of succession to the estate of a Christian which is claimed by the heirs who are still Christians.

2. The plaintiff is the son of Pascal Theodore and the defendant is one of his daughters. The plaintiff filed the present suit for a declaration that he is entitled to succeed as the sole heir of Pascal Theodore to the exclusion of his sister and prayed for the necessary reliefs. The defendant, however, on the prima facie assumption that after the induction of the Hindu Succession Act 1956 into the State of Pondicherry, she would also be entitled as one of the class I heirs, resisted the claim. The following issues were framed:

1. What is the successoral law applicable to the parties?

2. Whether according to that law the plaintiff is the sole heir of his deceased father Theodore Pascal; and

3. What relief the parties are entitled to? The learned Judge found that under provisions of the Hindu Succession Act itself the law of succession applicable to the parties to the litigation is the Hindu Customary law prevalent in Pondicherry and accordingly declared that the plaintiff as the sole son of the ancestor, is entitled to succeed and allowed the suit. It is as against this that the defendant has come up in appeal.

3. It is no doubt true that the Parliament when it passed the Hindu Succession Act of 1956 provided for an overriding clause which out of necessity gave the go by to the Customary Law in force immediately before the commencement of this Act and as was adopted by the community of Hindus. s. 4 of the Hindu Succession Act states as follows--

"4.(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.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings".

This overriding effect prima facie would help the appellant. But there is an overriding clause to this overriding provision in so far as the Christian's are concerned. S. 2(1)(c) of the same Act provides--

Then the Act shall apply--

"2.(1)(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu Law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed."

The Hindu succession Act of 1956 would not apply to a Christian amongst others mentioned expressly in the above said sub-clause. By a logical reasoning, therefore, it follows that the customary law which was in force and which has become ineffective by reason of the statute law as is provided for in S. 4(1) of the Act would not be in operation in so far as Hindus are concerned. But as under S. 2(1)(c), the Act is not made applicable to Christians, it is for consideration whether the state of law as it prevailed prior to the application of the Hindu Succession Act in the State of Pondicherry could be availed of by the Christians residing therein. It is common ground that prior to the introduction of the Hindu Succession Act into this State, the Christians were governed by the customary law which was by then applicable to the Hindus. When this proposition is therefore unassailable it follows that the laws of succession applicable to Christians in the State of Pondicherry is not the Succession Act as envisaged in the Hindu Succession Act of 1956, but it is the customary law amongst Hindus, which was prevalent in that State prior to the change of the law of succession. As it is not in dispute that in so far as the Christians in the State of Pondicherry are concerned, they are governed by the Hindu Customary Law and as the Hindu Succession Act does not apply to the Christians in that State, the learned Judge was right when he concluded that the succession law applicable to the parties in this litigation before us is the Hindu customary law prevalent in Pondicherry prior to the induction of the Hindu Succession Act into that State. The appeal therefore fails and it is dismissed. But in the circumstances, there will be no order as to costs.

4. Appeal dismissed.

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