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Case Comment: Omprakash and Ors. v Radhacharan and Ors.

Avni Bansal[a] Srishti Rungta[b]

[a]OP Jindal Global University, Sonipat, India [b]OP Jindal Global University, Sonipat, India

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FACTS

In 1955, Smt. Narayani Devi married Dindayal Sharma. Her husband died of a snake bite within three months of marriage, and she was kicked out of the matrimonial house. She returned to her parent's home and lived with them. With parental support, she educated herself and got work. For the 42 years, she resided at her parent's house, her in-laws never cared to enquire about her, let alone look after her, and their relationship was completely severed. She died intestate on July 11, 1996, leaving behind large sums in several bank accounts, as well as a sizable property and her provident fund. Ironically, the Supreme Court dismissed her mother's claim in favour of her late husband's brothers, i.e., the same in-laws who had kicked her out and taken the time out of her becoming a widow, because under the Hindu Succession Act, 1956[1], it is the husband's heirs who have the legal right to inherit the property of an issueless married Hindu woman, and her parents cannot inherit in her presence.

[1] Hindu Succession Act 1956

Ramkishori, Narayani's mother, applied for a grant of succession certificate under Section 372[2] of the Indian Succession Act, and the Respondents filed a similar case. Omprakash, the deceased's brother, has filed a petition in the Supreme Court against Radhacharan, the husband's heir, seeking a claim on the deceased's self-acquired property, Smt. Narayani Devi. A two-judge bench, consisting of Hon'ble Judges S.B. Sinha and Mukundakam Sharma, JJ., resolved the matter.

ISSUE

The issue for consideration before the lower courts, as well as the Supreme court, is whether Section 15(1)[3] of the Hindu Succession Act would be applicable in the facts and circumstances of this case or not.

- Yes, the court concluded that section 15(1) of the Act would be followed as the section is silent about the devolution of self-acquired property by a female intestate.

Another legal issue presented was whether Sec.15(2)[4] would apply to the case at hand or not.

- No, Sec. 15(2) will not be applicable as it clearly states that it deals with property inherited from parents and not self-acquired property.

RULE

Section 15[5](1)(b), i.e., devolution of properties upon the heirs of the husband was applied by the Court.

Ratio Decidendi:

"*Self-acquired properties of Hindu female dying intestate shall devolve on legal heirs of her pre-deceased husband as per Section 15 (1) of the Act and not as per Section 15(2).*"

[2] Indian Succession Act 1925, s 372
[3] Indian Succession Act 2005, s 15(1)
[4] Indian Succession Act 2005, s 15(2)
[5] Hindu Succession Act 2005, s 15(1)(b)

ANALYSIS

The Apex Court in its decision established that the property of the deceased would devolve by the rules stated in Sec.15(1)(b) of the Act. Sec. 15 of the Act lays down the fundamentals whereby an intestate Hindu's property will devolve:

- 15(1) offers general procedures by when such a person's property will devolve and lays the classes of heirs for said intent of this kind of inheritance.
- 15(2)(a) is a notwithstanding clause which offers for the devolution of an issueless and intestate Hindu female's property gathered from her natal family.
- 15(2)(b) is a notwithstanding clause that defines principles for the devolution of an issueless and intestate Hindu female's property gathered from her matrimonial family.

As a result, it is clear that now the mode of devolution is determined by that the source of the property. Further to that, Sec. 15 is silent on the approach of devolution of a Hindu female's self-acquired property[6]. The arguments made by both sides were –

On the one hand, counsel for the deceased's mother asserted that because no member of the deceased's nuptial family, along with her husband's heirs, had made any contribution whatsoever to her education and subsequent employment, the property acquired by the deceased must devolve in line with the regulations outlined in Section 15(2) of the Act, 1956. The counsel for said deceased's husband's heirs alleged that the Act, does not set down special regulations for said devolution of a female Hindu's self-acquired property, hence, must devolve in a manner consistent with 15(1), which lays down the general rules of succession. The Court's Line of Reasoning was:

- After deliberating on the matter, the Court noted that it was a hard one. It stated that *"only because a case appears to be hard would not lead us to invoke a different interpretation of a statutory provision which is otherwise impermissible."*

[6] The term 'Property' being used in the section refers to "the property of the deceased inheritable under the Act and includes both movable and immovable property acquired by her by inheritance"

- The Court further observed that *"it is now a well-settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous"*[7].
- It furthermore relied on the principle established in ***Bhagat Ram (Dead) v Teja Singh***[8], stating that the statute is silent on the transfer of self-acquired property of a Hindu female, and the general guidelines of succession recognized in 15(1) will apply.

Also, Narayani's lawyer reasoned that since the intent of the Parliament in putting into place Section 15 was to revert property to its source but rather a stranger, the logical extension, in this case, would be to allow her parents to inherit the property because it had been earned with money that was spent on her. The court dismissed this argument. The Supreme Court also cautioned that every interpretation centred on sympathy would indeed be completely contradictory to the intended meaning of parliament, which has conferred equal property rights to married and unmarried Hindu women.

The law is silent on a woman's self-acquired property. Section 15(1) fails to distinguish between self-acquired property and property inherited by that the woman. A female's self-acquired property would be her absolute property, not the property she acquired from her parents. In light of the circumstances, the Court concluded that Section 15(1) of the Act, rather than Subsection (2), would hold. In such a particular instance, the statute's standard rule of succession must prevail.

The appeal was denied.

SOCIO-LEGAL ANALYSIS OF THE JUDGMENT

Evolution of the Law for Women: Since antiquity, scriptures and laws have been used to assert a hierarchy of asset control. The denial of ancestral property leads to women's oppression, subservience, and inferiority. Previously, a woman was considered a burden to be borne by her

[7] To endorse its position, the Supreme court upheld several precedents, which include M.D., H.S.I.D.C. & Ors. v Hari Om Enterprises and Anr., Subha B. Nair and Ors. v State of Kerala and Ors., and Ganga Devi v District Judge, Nainital and Ors

[8] *Bhagat Ram (Dead) v Teja Singh* AIR (1999) SC 1944

matrimonial family. As a result, she was not permitted to inherit her property to secure the property of the ancestral lineage.

Women have been considered inferior to men in Hinduism since the Vedic period, and they have been refuted in political and inheritance rights. Ancient texts, such as the law, Manusmriti, and various others, blatantly promote patriarchy, treating women as non-autonomous creatures because ***"a woman is not entitled to independence; her father protects her in her childhood, her husband in her youth, and her son in her old age."***

The Mitakshara school's concept of the Hindu joint family is a significant factor in suppressing gender equality. Legal ownership was with accomplices, which meant that women were reduced to owning only maintenance and marriage rights. Although, the concept of *stridhan* was an unusual way for women to relish exclusive ownership rights. Typically, this consisted of the father distributing property as a "gift" at the time of the daughter's marriage.

The Hindu Women's Right to Property Act, of 1937 was the first step towards gender-equal practices. The widow of a deceased coparcener was allowed to step into his shoes and claim ownership rights he possessed by weakening the doctrine of survivorship[9]. However, these rights were not absolute and were restricted. She was allowed to own, use, and enjoy the property, but not to alienate it, and the right itself expired upon her remarriage or death. This Act was replaced in 1956 by the Hindu Succession Act, Section 14 which granted women full ownership of the estate. The concept of notional partition[10] was another reform that investigated women's inferior status. In terms of enhancing equality, the Act was amended in 2005 to include daughters as coparceners, fetching them on equivalence with sons in the family.

Explanation of Section 15: The peculiarity of HSA is that it presents differing succession schemes based on the intestate's sex. The reason is connected to property conservation and protection for a male Hindu. Section 15 of the Act not only provides for a separate succession

[9] The doctrine of survivorship meant that upon the death of a coparcener, his share was inherited by the rest of the male coparceners even in the presence of the deceased's female descendants or widow

[10] This legal fiction meant that a deceased coparcener's undivided share would be considered his separate property and distributed in accordance with general succession laws rather than the classical doctrine of survivorship

scheme, but for additional disclosure related to the source of acquisition of the property, factors of her marital status, and whether she dies with children or is issueless. Regarding the classification of heirs, in the case of a married woman, her kinship is ranked very low compared to her husband's entire heir category. Section 15 of the HSA suffers from structural oppression, where the structure reflects the idea that a woman does not have a family of her own - she lives in either her husband's or her father's. So, while marriage does not make any difference in how property is transferred when a man dies intestate, a woman's marriage changes how her property is inherited. Women are seen as the essence of their husbands who cannot transfer their property to their blood relatives.

One of the ramifications of The Act, is that it provides for the mode of devolution of self-acquired property of an intestate Hindu male in Sec.8[11]. However, legislators failed to address the devolution of an intestate Hindu female's self-acquired property[12]. Furthermore, Section 8 of the Act, prioritizes blood relatives over marriage-based relationships. This subjective scheme of the Act infringes the constitutional rules for men and women to differ simply by gender, which is prohibited under Article 15(1) of the Indian Constitution.

The impracticality of Section 15(1)(b): Inheritance rules are based on principles of closeness, love, and affection in a relationship. The legislative assumption that the entire class of the husband's heirs is close about a childless widow in comparison to her parents and siblings is impractical. The entire succession scheme and role of preference is unnatural and heavily patriarchal and orthodox in essence. It is against the practical reality for the following reasons:

- It prevents her great-grandchildren from inheriting her property from her prior marriage.
- A married lady inherits only from her husband's blood relatives. She must be a widow and not have remarried on the date of the succession's opening to be eligible for inheritance. A married woman inherits from her husband's fourth connection, his son (Stepson of the woman), and she inherits as his father's widow (class 2). She does not

[11] Hindu Succession Act 2005, s 8

[12] It is noteworthy that, while the intention of sub-section (2) of the Section – which is to ensure that property left behind does not lose its real origin from where intestate woman inherited is although admirable, does not help that same intention is contrary to the principle of succession to an intestate Hindu male's property

inherit from the husband's heirs, but if she dies, the entire group of "heirs of the husband" would be able to inherit a property, preferred to even her parents.

- This section also does not appear to be in line with the actual situation. A childless widow may find her late husband's home uninhabitable and may return to her parent's home. This fact was also recognized by the legislature, as they created an exception in section 23 (now deleted) for the case of a widow, who has the right to live in the house of her deceased father, which she can even inherit despite her brothers' occupations. Also, no matter the income she has, when she perishes, it goes to her husband's heirs, not to blood relatives who are more closely related to her. For example, a distant relative is a husband's fourth or fifth cousin and is more prevalent than a woman's parents or siblings.
- In none of the other Indian succession laws, blood relatives are given a lower priority than marriage connections, and an issueless widow with property is made vulnerable by declaring her husband's whole group of heirs her favoured heirs, a provision that is a unique element of Hindu law.

Whether the Court's Judgment was Appropriate?

Both the case and the verdict are unsuccessful for two reasons: the law itself and its application in the present case. In this case, the Court examined the fact-based structure that surrounded the situation with an extremely strict interpretation of the Act which obscured the family dynamics at play. As a result, the Court was unable to interpret the actual essence of the issue at hand and thus, failed to reconcile the issue and the statute. Hence, the Court followed protocol and read 15(1) and 15(2) in a highly positivistic manner. This legal interpretation resulted in the devolution of the deceased's self-acquired property to her husband's heirs rather than her natal family heirs, even though her husband's heirs were nothing but unsupportive.

The Court thus restricted itself to legislature despite having other Constitutional provisions at its clearance, such as Article 142[13] that could have assisted it in attaining a legally rational verdict by applying the **'complete justice'** test. No inheritance laws within the world provide for

[13] Constitution of India 1950, art. 142

inheritance laws in favour of relatives of the spouse of any female intestate. This unique aspect of Hindu laws, giving priority to in-laws over blood relatives of departed women, is lacking rationality or lucidity, instead of questioning it, the Judiciary's affirmation of the same is truly tragic.

The law of inheritance does concern entitlements, but also the disentitlement of a person who, under rules of equity, justice, a good conscience, and public policy, should not inherit the property of the interstate in a specific circumstance[14]. In this case, her in-laws relinquished her and abrogated their obligation to care for her. They were immoral and inadequate to have been allowed to satisfy their opportunism-driven greed and unjust enrichment. The impact of judicial acceptance of these laws is far-reaching because it is directly related to some Hindu preferences. If only a son's blood relatives can inherit from him, but a daughter's blood relatives can inherit from her until she marries, it is discrimination linked to Hindu female marriage. A girl's parents should have the same layer of assurance as a man's parents. The Apex Court's caution of sympathies as having no place in law is fully justified, but elements of inequity and injustice that never find a foothold in law are necessary for the application of estoppel rules.[15]

Was the justification given by the Court satisfactory?

The Court has limited to a literal interpretation of the statute and has dismissed the possibility of broadly interpreting statutes to accommodate new circumstances and dynamism that may arise. As a result, the Court's justification provides a classic legal analysis that is sound on paper but flawed in principle. However, *Mamta Dinesh Vakil v Bansi S. Wadhwa & Nirmalaben*[16] raised the question of the constitutional validity of Sec.15(1)[17].

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[14] A similar opinion has been expressed by Justice Prabha Sridevan when she stated that *"the mother's claim was not based on sympathy or sentiment, but logic and principles of fairness, equity and justice. The Supreme Court, however, found that the law is a hurdle to her claim"*

[15] As the *locus standi* to claim her property was debatable, the necessity in the case was a judicial reprimand and a firm reminder to the greedy and unethical in laws of the moral and legal duty to support a child

[16] *Mamta Dinesh Vakil v Bansi S Wadhwa* (2012) Bom CR 6

[17] The High Court of Mumbai discussed the instant case and stated that: *"The provisions in Sec.8 and Sec.15 show discrimination between Hindu males and females only on the ground of gender. The classification made is not upon family ties. Conversely a Hindu female who would otherwise hope to succeed to an estate of another Hindu female as an heir would receive a setback from the distant relatives of the husband of the deceased not even known to her or contemplated by her to be*

The High Court here ruled that Sec.15(1) was discriminatory and obstructed justice. By categorically rejecting the Appellant's claims on the grounds of judicial outplay into the sphere of the legislature, the Court has permitted the transfer of property to the party that had declined to sustain the deceased and had contributed to the deceased's education or subsequent employment.

A way forward would be to either implement the recommendations of the 207th Law Commission Report and make amendments in Sec.15 of the Act, and conform equal rights of devolution to property on the heirs of her husband and heirs from her natal family; or the recommendation by The National Commission for Women, in its 19th Report[18], to make the devolution of self-acquired property to be just and equal to both sexes:

- Making Sec. 8 gender-neutral via removal of the word 'male'.
- Repealing of Section 15.

This was all taken up in a bill[19] proposed in the legislative assembly in 2013[20], which however did not pass.

CONCLUSION

It is a landmark case[21] since it was the first time such an issue was presented before the Court. As a corollary, it is evident there was no precedent to be used to evaluate the Court's judgment and argument in the instant case. It appears to be an unpleasant judgment that may shake the poise of a regular Hindu woman who instead being treated as an autonomous person capable of transferring her property to her blood relatives than having an identity fused into her spouse with the sole goal of baring her of selfhood and judicial imposition of superiority over her

her competitors except upon claiming precedence as class II heirs under Section 8 or as preferential heirs under Sec.15(1)(b)."

[18] Report No. 19 - The Hindu Succession Act, 1956, Review of Laws and the Legislative Measures Affecting Women, National Commission for Women

[19] Hindu Succession (Amendment) Bill 2013

[20] This Bill was tabled in 2013 and sought to include Clause (k) in Sec.3 of the Act which would define *'self-acquired property'* as *'any property including both movable and immovable property acquired by a Hindu by her own skill or exertion'*

[21] *Omprakash and Ors. v Radhacharan and Ors.* 2009 (7) SCALE 51

husband's entire clan. As a result, *Omprakash v Radhacharan* establishes a rather problematic and unsound precedent.