

PETITIONER:
SMT. RADHIKA

Vs.

RESPONDENT:
AGHNU RAM MAHTO

DATE OF JUDGMENT 07/09/1994

BENCH:
K. RAMASWAMY & N. VENKATACHALA, JJ.

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. The appellant is the daughter of the respondent through second wife. Admittedly, her mother inherited the properties of her maternal grandfather. The appellant is the only issue to her mother. When her mother died intestate, the respondent-husband filed the partition suit No.39 of 1979 in the Court of Special Sub-Judge, Ranchi claiming half the share as class-I heir of his wife. The trial court dismissed the Suit on the ground that during the life time of the mother of the appellant, she had bequeathed the properties to the appellant under a gift deed and that therefore, the decree cannot be granted as she died after she was divested of her possession. On appeal, the District Judge reversed the decree and held that the gift is not valid and that the appellant and respondent are class-I heirs and decreed the suit for partition in equal moiety. In Second Appeal No. 17182, by Judgment of Decree dated 9.11.1983 the High Court dismissed the same. Thus this appeal by special leave.

2. The facts are not in dispute, namely, the mother of the appellant inherited the suit property from her father. Section 15 of the Hindu Succession Act, 1956 regulates the succession to the estate of female Hindus. Sub-Section (1) provides that "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; and so on in the order specified.

But sub-section (2) with non-obstante clause excludes the applicability of Subsection (1). Clause (a) of Sub-Section (2) provides that;

"(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the

order specified therein, but upon the heirs of the father;"

(clause (b) is not relevant, hence omitted).

3. A reading thereof clearly indicates that for the property inherited by a female Hindu from her father or mother, in other words female's paternal side, in the absence of her son, daughter or children of the pre-deceased son or daughter, the succession opens to the heirs of the father or mother and not to class-I heirs in the order specified in sub-section (1) of Section 15 and in the order of Section 16. In other words, the children and the children of the pre-deceased son or daughter of the Hindu female alone are entitled to get such property. Thus, husband stands excluded from the succession to the property inherited by female Hindu from her father's side. Accordingly, we hold that since the mother of the appellant had inherited the suit property from her grandfather, her husband-respondent stood excluded from intestate succession to the estate left by her. The courts below obviously had overlooked

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the provision in Section 15, in particular Sub-Section (2) thereof, and illegally granted a decree.

4. The appeal is accordingly allowed. The decree of the High Court in the Second Appeal and that the appellate court in the First Appeal are set aside. Though for different reasons, the decree of the trial court stands confirmed, but in the circumstances, without costs.

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