PETITIONER:
SHAKUNTALA SAWHNEY

Vs.

RESPONDENT:
KAUSHALYA SAWHNEY

DATE OF JUDGMENT04/04/1979

BENCH:

ACT:
Procedure-Duty of Subordinate Courts in dealing with family disputes.

HEADNOTE:
The purpose of law and justice (Dharma) is promotion of cohesion and not production of fission. A judgment often possesses a sublime essence and a humdrum component. The sublime element consists in the optimistic endeavour to bring parties together so that the litigation may not cut them as under, especially when they are blood relations like sisters. The present appeal in its happy conclusion, holds out the higher lesson that hate and fight are dissolved by basic human fellowship, even after bitter litigative struggle, if the Bench and the Bar pursue consensual justice and bring into play conciliatory processes and successfully persuade the parties to see reason and right beyond bare law. If the effort succeeds, the court and counsel derive spiritual fulfilment and get satisfaction. The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or union. [640 D]

The present case is not merely a just adjustment of a bitter litigation but a path-finder for the subordinate courts in dealing with family or like disputes. [643 B]

The text and the context and the application of traditional rules of statutory interpretation, in a given case, might leave the position in an unsatisfactory dilemma of dual import. Even an equitable approach may not necessarily help reach a just solution because equity shifts as the situation varies. Contradictory positions taken by different High Courts add to the difficulty and result in the deleterious uncertainty of the law. The Supreme Court may resolve the conflict by exercising its preference guided by the language and the milieu and following the customary canons of statutory interpretation. While its decision will be binding on account of Art. 141 of the Constitution it may still be fallible because the intendment of Parliament is best brought out by legislative clarification in some cases. [640 H]

The appellant and the respondent were step-sisters-daughters of a common father but of different mothers. The father who owned vast properties had died before the coming into force of the Hindu Succession Act 1956. The respondent's mother who inherited her husband's estate died after the coming into force of the 1956 Act. The High Court dismissed the appellant's claim for a half share in the properties under s. 15(1)(a) of the Act. The specific point of claim, whether a son and daughter in the setting of s. 15(1)(a) of the Act, includes step-son and step-daughter or

embraces only the son and daughter of the deceased female propositus, has escaped the Parliament's attention while passing the legislation.

[At the Court's suggestion the parties came to a compromise assisted by counsel on both sides.]

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Tulzapurkar, J.

Parliament should clarify its intention regarding s. 15(1)(a) of the Act.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 348 of 1977.

Appeal by special leave from the Judgment and Order dated 21-9-1976 of the Punjab & Haryana High Court in Letters Patent Appeal No. 89/76.

W. C. Chopra for the appellant.

M. L. Varma for respondent No. 1.

The Judgment of the Court was delivered by

KRISHNA IYER, J.-A judgment often possesses a sublime essence and a humdrum component. The appeal before us, in its happy conclusion, holds out the higher lesson that hate and fight are dissolved by basic human fellowship, even after bitter litigative struggle, if the Bench and the Bar pursue consensual justice, and bring into play conciliatory processes, and successfully persuade the parties to see reason and right beyond bare law. If the effort succeeds, as it has in this case, court and counsel derive spiritual fulfilment and get satisfaction.

Two sisters, apparently of the affluent bracket, with a common father but different mothers, became estranged when one (the appellant) claimed a half share in the estate of the father, on whose death before 1956, the respondent's mother inherited her husband's estate but died after 1956, possessed of her husband's assets and her own. When intestate succession to her opened the plaintiff-appellant claimed a half share therein, founded on s. 15(1)(a) of the Hindu Succession Act (the Act, for short). The High Court negatived the right to a share as an heir, and, in doing so, preferred the interpretation of the provision adopted by the then Mysore High Court (AIR 1962 Mysore 160) as against the meaning attached to the provision by the Allahabad High Court (1968 Allahabad Law Journal 488). In fact, a plurality of decisions has been brought to our notice indicating a plain conflict. Interpretation is sometimes a projection of judicial inclination to do justice.

The question of law canvassed before us turns on the meaning of "son" and "daughter" in the setting of s. 15(1)(a) of the Act. Do the expressions include step-son and step-daughter or embrace only the son and daughter of the deceased female propositus ? The text and the context and the application of traditional rules of statutory interpretation leave the position in an unsatisfactory dilemma of dual import. Even an equitable approach may not necessarily help reach a just solution, because equity shifts as the situation varies, as illustra-

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tions presented to us convinced us. Thus, the problem is a little tricky and may well arise frequently. Contradictory positions already taken by different High Courts add to the difficulty and result in the deleterious uncertainty of the law which may well incite, as it has done here, close

relations to quarrel over property. Blood may be thicker than water, but wealth breaks all relations on a word of material value sets. The Supreme Court may, when the High Courts disagree, resolve the logomachic conflict by exercising its preference guided by the language and the milieu and following the customary canons of statutory interpretation. While its decision will be binding on account of Article 141 of the Constitution, it may still be fallible because the intendment of Parliament is best brought out by legislative clarification. In the present instance, we have a hunch that the specific point of claim by stepsons and step-daughters to inherit to the estate of a deceased female has escaped Parliament's attention while fashioning the legislation. This is not surprising when we appreciate the push and pressure, hurry and worry of law-making modalities. In such a situation, when a sharp conflict has shown up in the rulings of courts, the matter should not be left in doubt or to forensic-linguistic exercises but must be settled by legislative action on the part of Parliament, making explicit its policy on this branch of the Hindu Succession Act. Inaction leads to more litigation, speculation and compulsion for judicial legislation by the Supreme Court. Drafting lapses are understandable but when differences of interpretation come into the open, delay in correctional parliamentary performance is fraught with negative litigative potential. We are hopeful that the Indian draftsmen will disprove the old English jingle:

I'am the parliamentary draftsman
I compose the country's laws
And of half the litigation
I'am undoubtedly the cause.

The sublime element which we adverted to in the beginning consists in the optimistic endeavour to bring parties together so that the litigation may not cut them asunder, especially when they are sisters. The purpose of law and justice (dharma) is promotion of cohesion and not production of fission. From this angle, as the arguments proceeded and the legal tempers flared up, we suggested that instead of escalating estrangement the parties may as well compose themselves and their quarrels and re-establish their sisterly relations making a somewhat amicable adjustment of the lis before us. Viewing the case from this perspective of tranquillity versus turbulence, but making it perfectly
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plain that suggestions from the court towards this end will not affect its unbiased adjudicatory duty in case it became necessary, we ventured tentative solutions. Counsel took up the suggestion in the proper spirit and we must record our admiration for the strenuous effort made by the young lawyer Shri M. L. Varma who did his best and successfully persuaded his client who had won in the High Court to come down to a compromise. We need hardly say that such a seasoned and senior counsel like Shri Lal Narain Sinha could be counted upon to aid in the process, and he did. The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion. In the present case, counsel today put in a joint statement(1) signed by the parties setting down the terms on which they have agreed. We consider it a success of the finer human spirit over its baser tendency for conflict.

Now we come to the humdrum part of the case. According to the compromise some landed properties are to be made over to the appellant. Some cash is also to be paid to the appellant by the respondent. The discretion to fix the sum

has been left by the parties to us. We direct that the respondent shall pay a sum of Rs. 75,000/- to the appellant within two weeks of the attachment of the moneys by the trial court being withdrawn. The plaintiff/appellant undertakes that she will get the attachment withdrawn and we direct her to do so. We make it further clear that this withdrawal of the attachment is to facilitate the making of the payment of Rs. 75,000/- from out of the sum now lying in bank deposit. We also direct that landed property worth Rs. 25,000/- will in addition be made over to the appellant from out of the suit property. The further direction must justly follow-and we make-that all the rents due from the properties allotted to the appellant under the joint statement prior to this date and subsequent to this date shall be collectible by the appellant. If they have already been deposited in court, they will be withdrawn by the appellant. The actual allocation of the lands under the joint statement will be made by Mr. Prem Nath Handa within two months from today. Both sides agree on Shri Handa being impartial and competent to make the said allotment. His allotment once made will not be challengeable. Shri Handa pursuant to this direction will make the allocation and put in a statement to that effect in the trial court and that statement will be deemed to be part of this decree.
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We need hardly mention-it is so obvious-that the land that remains will belong entirely to the respondent and there will be no more claims from the appellant on the respondent in regard to the estate of her step-mother, or in respect of its income or otherwise.

Before we part with the case we should like to emphasise that having regard to the merits of the claim, this is not merely a just adjustment of a bitter litigation but a path-finder for the subordinate courts in dealing with family or like disputes. Indeed, we have had to take the lead in giving shape to the settlement as it has finally emerged. Counsel on both sides have also, statesman-like, assisted in producing the settlement. We command this example to the judiciary and to the Bar and reinforce it with what Gandhiji has recorded in his autobiography:

> "I have leant the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. I realised that the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby-not even money, certainly not my soul."

We allow the appeal in part but entirely in terms of the compromise which we consider clearly reasonable and just. There will be no order as to costs.

TULZAPURKAR, J.-Decree in terms of compromise without costs. Parliament should clarify its intention regarding s. 15(1) (a).

P.B.R. Appeal allowed in part.
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