

PETITIONER:
MST. MOHINDERO

Vs.

RESPONDENT:
KARTAR SINGH AND ORS.

DATE OF JUDGMENT 30/10/1990

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
AGRAWAL, S.C. (J)

CITATION:
1991 AIR 257 1990 SCR Supl. (2) 475
1991 SCC Supl. (2) 605 JT 1990 (4) 265
1990 SCALE (2) 853

ACT:
Hindu Succession Act, 1956--Section 15(1)(a)--Succession to estate of Hindu widow--Daughter of the deceased son--Preferential heir--Entitled to succession.

HEADNOTE:

Santi married Kisso and gave birth to a son, the father of the appellant. On the death of Kisso, Santi married his brother, Ditto, who died issueless.

On the death of Ditto, the mutation of his estate was sanctioned in Santi's name, being his widow. She was in possession of the same as life-Estate holder. She executed a gift-deed in favour of her grand daughter, the appellant on December 27, 1955 and she died on October 6, 1956, after the commencement of the Hindu Succession Act.

Kissi, the sister of Santi's husbands filed a suit for possession contending that she was a preferential heir of the suit property, and that the property had been illegally mutated in the name of the appellant.

The trial Court dismissed the suit holding that without challenging the gift deed, the suit for possession was not competent.

Meanwhile Kissi, the plaintiff, having died, her heirs the respondents preferred an appeal before the District Judge. An application to amend the plaint, so as to challenge the validity of the gift was also filed. The District Judge allowed the application and the appeal, and remanded the case for fresh trial.

Holding the gift to be invalid, the Trial Court dismissed the suit on the ground of limitation, which was affirmed by the District Judge, in appeal.

The Respondents' Second Appeal to the High Court, was allowed by a Single Judge who reversed the findings of the Courts below on the issue of limitation.

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The Letters Patent Appeal against the aforesaid judgment was dismissed.

The appellant in this Court has contended that the gift being invalid, Santi, the grandmother of the appellant continued to be a limited owner till the date of the commencement of the Hindu Succession Act, 1956, and thereafter

by virtue of the provisions of the Act, she became full owner of the suit-property and the appellant being the daughter of a predeceased son of Santi was the preferential heir under section 15(1)(a) of the Act and was entitled to succeed to the property. The respondents contended the appeal contending that unless it was factually proved that appellant's father was the son of Santi, the appellant could not get the benefit of section 15 of the Act.

Allowing the appeal, this Court.

HELD: 1. The appellant being daughter of a predeceased son was entitled to succeed to the property of Santi in preference to the respondents-plaintiffs. [479D]

2. Santi held the property as limited owner till the coming into force of the Act. She became full owner thereafter. When she died on October 6, 1956 succession to her property was to be governed by the Act. Santi having died intestate, succession to her property was to be governed by Section 15 read with Section 16 of the Act. Appellant being the daughter of a predeceased son of Santi she had the first preference to succeed under Section 15(1)(a) of the Act. [479B-C]

This Court found sufficient material on the record to prove that the appellant's father was the son of Santi. [479B]

JUDGMENT: