

(1942) 08 BOM CK 0014
In the Bombay High Court
Case No : Second Appeal No. 965 of 1940

Bai Mahalaxmi

APPELLANT

Vs

The Deputy Nazir, District Court

RESPONDENT

Date of Decision : 14-08-1942

Acts Referred:

Hindu Law of Inheritance (Amendment) Act, 1929 — Section 2

Citation : AIR 1943 Bom 213 : (1943) 45 BOMLR 434

Hon'ble Judges : Macklin, J;Broomfield, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Broomfield, J.—The question in this second appeal is whether in the Broach District of the Bombay Province, which is governed by the law of the Mitakshara and the Mayukha, a full sister is a preferential heir to a half sister. The question arises in an administration suit relating to the estate of Bhikhabhai Ranchhod, who died on October 11, 1935. He was succeeded by his mother Laxmi, the second wife of Ranchhod. She died on April 10, 1927. Plaintiff is Ranchhod's daughter by his first wife who predeceased him and is therefore the half sister of Bhikhabhai, the last male holder. Defendant No. 1 is Laxmi's daughter and therefore Bhikhabhai's full sister. The plaintiff's claim to share equally with defendant No. 1 is based on the Hindu Law of Inheritance Amendment Act II of 1929. The suit has been dismissed by the lower Courts on the ground that the plaintiff as half sister is excluded by the full sister.

2. Apart from Act II of 1929 it is conceded that the plaintiff has no case. The preferential right of the full sister is settled by the judgment of Sir Lallubhai Shah in *Jana v. Rakhma* ILR (1918) 43 Bom. 461 and the authorities there referred to. Act II of 1929 was enacted, according to the preamble, "to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate." Section 2 provides :

A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother.

3. This would give the sister in Bombay a position inferior to that which she holds according to an express text of the Mayukha and the construction of texts of the Mitakshara based on a long series of decisions. Her place as so fixed is after the father's mother and before the father's father. Section 3 of the Act provides in Clause (a) that the Act is not to affect any special family or local custom having the force of law. The Act extends to the whole of British India but applies only to persons who, but for the passing of the Act, would have been subject to the law of Mitakshara.

4. Three questions arise in connection with this Act : (1) Does it apply to the Province of Bombay at all ? (2) If it does, does sister include half sister ? and (3) if so, do sister and half sister stand on the same footing ?

5. Shidramappa Nilappa v. Neelawabai ILR (1932) 57 Bom. 377 is an authority binding on us to the effect that the Act does not apply to Bombay. learned Counsel for the appellant-plaintiff has criticised the reasoning in this case, and, with all deference to the learned Judges who decided it, the reasoning does certainly appear open to criticism in several respects. Mr. Justice Rangnekar evidently felt some hesitation about the matter. He said (p. 357) :

Undoubtedly there is force in Mr. Dharap's argument that a literal rendering of the proviso or of the Act would show that the sister's position as heir is affected. If it was the intention of the legislature to leave the order of succession prevailing in Bombay before father's father unaffected, as I think it was, it is unfortunate that more apt language has not been employed in this respect.

6. We agree with learned Counsel for the appellant that there is great difficulty in giving effect to an intention which has been so inadequately expressed.

7. On the other hand, it must be admitted that the Act is badly drafted. The objection to the literal interpretation is not merely that it would relegate the sister to an inferior place but that it would save local custom having the force of law, while abrogating the local law itself (which is based on the original texts and a long course of decisions), and that not expressly but by mere implication. There is not even any reference to the Mayukha. We are left to assume that the reference to the Mitakshara, in which the sister is not mentioned in the line of heirs, covers also the Mayukha, which does refer expressly to the sister as an heir with a definite place in the order of succession. The view taken in Shidramappa's case as to the non-applicability of the Act to Bombay is in accordance with the opinion of Sir Dinshah Mulla. Although, as I say, we find the reasoning in this case by no means convincing, nevertheless we are not satisfied that there is any sufficient reason for referring it to a full bench. The plaintiff's case would fail in our opinion in any event and we also take note of the fact that the Hindu law is in process of being codified and in all probability the Act of 1929

will shortly become obsolete.

8. There are conflicting decisions on the question whether sister in the Act includes half sister. *Amrut v. Mst. Thagan* [1938] Nag. 115 is in favour of the plaintiff's contention. It was there held to be contrary to the underlying ideas of the Mitakshara and of the society whose laws were there expressed to attach any particular importance, legally, to the fact that one daughter was born of one wife and another of another. On the other hand in *Ram Adhar v. Sudesra* ILR (1933) All. 725 a full bench of the Allahabad High Court has held that the Act must be construed strictly and that as in plain English "sister" does not include half sister, the Act does not benefit the latter. The first proposition, that the Act must be construed strictly, may be accepted without hesitation. The second seems to be a matter of opinion and it may well be that in this respect usage may vary in different parts of the world. But it is certainly true that when language is being used with definiteness and precision "sister" means a female born of the same parents. That was conceded by the Nagpur High Court in the case to which I have just referred. In a statute, especially a statute dealing with inheritance, precision of language might be expected.

9. The correctness of the decision in *Ram Adhar v. Sudesra* was doubted in *Rameshwar v. Mst. Ganpati Devi* ILR (1936) Lah. 525 though the point did not arise for decision in that case. On the other hand the Madras High Court in *Angamuthu Muthirian and Another Vs. Sinnapennammal and Others*, and a Judge of the Chief Court of Lucknow in *Kabootra Musammat v. Ram Padarath* ILR (1935) Luck. 148 have agreed with the view that sister does not include half sister in the Act.

10. Brother and sister have been held to include half brother and half sister under the Workmen's Compensation Act by Mr. Justice Tapp in *In re Dependents of Kartar Singh*. AIR [1931] Lah. 752 contrary view has been taken in *In the matter of Maung Kyan*. ILR (1930) Ran. 46 In any case these decisions are not of much assistance. We think that the reasoning in the Nagpur case in favour of the view that half sister is included is preferable to the reasoning in the other cases, but in our view it is not really necessary to decide the question.

11. Assuming that sister includes half sister in the statute and that a half sister would be entitled to the place of a sister in competition with some other heir, we find it impossible to make the further assumption that the whole and half blood are on the same footing and take equally. According to the law in Bombay, apart from Act II of 1929, sister includes half sister no doubt, but the full blood is preferred to the half blood.

12. In the course of the argument some reference was made to Section 27 of the Indian Succession Act, which says :-

For the purpose of succession, there is no distinction between those who are related to a person deceased by the full blood, and those who are related to him by the half blood.

But this provision in Chapter IV of the Act has no application; to Hindus, Muhammadans, Buddhists, Sikhs, Jains or Parsis, and it is perfectly obvious that it could have no reference to such persons, because it is also provided in Section 27 that for the purpose of succession there is no distinction between those who are related to a person deceased through his father, and those who are related to him through his mother. The section of the Succession Act therefore cannot be said to have any bearing whatever on the question which we have to decide.

13. It seems to us to be practically impossible to believe that in a special Act dealing with succession amongst Hindus the settled law in this respect, viz. as to the preference of the sister to the half sister, would be changed merely by implication. It is true that the purpose of the Act stated in the preamble was to alter the order in which certain heirs are entitled to succeed, but that would not cover an alteration in the order of those included in the same category in the list of heirs. Admittedly there is no authority in support of the view that Act II of 1929 puts the sister and the half sister on the same footing. On the contrary the cases relied upon by Mr. Thakor, *Amrut v. Mst. Thagan* and *Rameshwar v. Mst. Ganpati Devi*, would rather indicate a view opposed to that, although the question did not actually arise. If it were necessary to hold that the inclusion of the half sister in the term "sister" in the Act required as a corollary that they should inherit together on equal terms, we should feel compelled to agree with the majority of the High Courts that sister in the Act does not include half sister. We are not satisfied, however, that that would be a necessary corollary.

14. In view of these findings we think the suit has been properly dismissed by the Courts below and this appeal must be dismissed with costs.

15. By inadvertance a first appeal was filed in this Court from the judgment of the original Court. This appeal must be dismissed with costs as incompetent.

16. There must be two sets of costs in each case.