

(1984) 08 DEL CK 0014

In the Delhi High Court

Case No : Letter Patent Appeal No. 96 of 1984

Menaka Gandhi

APPELLANT

Vs

Indira Gandhi and Another

RESPONDENT

Date of Decision : 14-08-1984

Acts Referred:

Citation : AIR 1985 Delhi 114 : (1984) 7 DRJ 238

Hon'ble Judges : Prakash Narain, C.J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Ram Jethmalani and R.K. Anand, for the Appellant;

Judgement

Prakash Narain, C.J.

(1) Yesterday morning we dismissed this appeal by a short order slating that we will give our reasons later as there were several other admission matters which had still to be taken up for consideration and it would not have been appropriate to keep the counsel and the parties waiting in those cases. We now proceed to give our reasons as to why we found no force in the appeal and dismissed it in liming.

(2) This appeal under Clause X of the letters patent of the Punjab High Court, as applicable to this court, is directed against the judgment of a learned Single Judge of this court, who dismissed the appeal filed by the appellant (F.A.O. N.) 74 of 1984) affirming the order of the District Judge, Delhi, in a petition filed by the appellant u/s 278 of the Indian Succession Act. The District Judge, Delhi had by his judgment directed that letters of Administration shall be issued to the appellant subject to certain directions. The directions issued, inter alia, indicated that the estate of late Shri Sanjay Gandhi in regard to which Letters of Administration was sought was divisible in three equal parts, one part going to the appellant, the second part to the son of the deceased and the third, though going to the deceased's mother, was to be transferred. in the name of the son of the deceased as that 1/3rd share was relinquished by the deceased's mother in

favor of her grandson. The District Judge had come to the conclusion that the deceased had died interstate and, Therefore, his estate was to devolve on his heirs in accordance with the provisions of the Hindu Succession Act. The only three heirs were held to be, as aforesaid the widow of the deceased, the son of the deceased and the mother of the deceased.

(3) Aggrieved against this judgment the appellant had preferred an appeal to this court which was disposed of by the learned Single Judge, who as noticed earlier, upheld the view taken by the District Judge. Hence the present appeal.

(4) Miss Rani Jethmalani, cleared counsel for the appellant, first urged that both the learned single judge and the District Judge, Delhi, failed to appreciate what precisely was the contention of the appellant. This contention the learned counsel formulated thus; Section 21A of the Special Marriage Act, enacted in 1976, does not and cannot affect the provisions of the Indian Succession Act inasmuch as this provision is enacted in a law pertaining to the form of marriage and, Therefore, cannot effect the vested rights guaranteed by the Indian Succession Act. If it affects those rights then it has to be only prospective in operation and not retrospective as legislation which affects vested rights cannot be retrospective in operation unless expressly stated to be so. In short, the argument was that Section 21A of the Special Marriage Act is not a law of succession.

(5) In our opinion, the argument has no force. Chapter IV of the Special Marriage Act deals "with "Consequences of marriage under this Act." Section 19 lays down that any Hindu, Buddhist, Sikh or Jain who is a member of an undivided joint Hindu family if he marries under the provisions of the Special Marriage Act shall be deemed to effect his severance from the joint family. Section 20 lays down that subject to the provisions of Section 19 any person whose marriage is solemnized under the Special Marriage Act shall have the same rights and shall be subject to the same disabilities in regard to succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 applies. Section 21 lays down that notwithstanding any restrictions contained in the Indian Succession Act, 1925, with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnised under the Special Marriage Act and to the property of the issue of such marriage shall be regulated by the provisions of the Indian Succession Act and for the purposes of Section 21 of the Special Marriage Act, the Indian Succession Act shall have effect as if Chapter III of Part V (Special Rules, for Parsi Intestates) had been omitted therefrom. Section 21A incorporated in the Special Marriage Act by Act 69 of 1976 provides that where the marriage is solemnized under the Special Marriage Act of any person who professes the Hindu, Buddhist, Sikh or Jain religion with a person who professes the Hindu, Buddhist, Sikh or Jain religion. Section 19 and Section 21 shall have no application and so much of Section 20 as creates a disability shall also not apply. It is clear from a reading of these provisions that Sections 19 and 21 were, as if, repealed as far as Hindus,

Buddhists, Sikhs or Jains marrying Hindus, Buddhists, Sikhs or Jains are concerned. The specific provisions regarding, succession Therefore, which were created by virtue of Sections 19 and 21 of the Special Marriage Act for those who marry under the Special Marriage Act thus ceased to have any application as far as Hindus, Buddhists, Sikhs and Jains are concerned so long as they marry someone who was also a Hindu, Buddhist, Sikh or Jains are/concerned so long as they marry someone who was also a Hindu, Buddhist, Sikh or Jain. To contend, Therefore, that Section 21 A was a law in the Special Marriage Act and not a law regarding succession is of little avail)

(6) The learned counsel then contended that Section 21 h. took away vested rights of persons who had chosen to adopt the secular form of marriage postulated by the Special Marriage Act. There are several fallacies in this argument. First of all, there is no vested right which cannot be taken away by a legislature by passing a valid law unless it is specifically prohibited by the Constitutional provisions regarding legislative power. It was not argued that the parliament did not have the power to legislate Section 21A of the Special Marriage Act. Vested rights can be taken away both prospectively and retrospectively so long as the legislative power is there. The next question is as to what is the vested right which the appellant is seeking to enforce. According to the learned counsel the vested right was that she contracted a secular form of marriage and wanted succession also in a secular manner without bringing in any religions or personal law. The appellant's own right, whether under the Indian Succession Act or under the Hindu Succession Act, remains the same and is in no way, jeopardised by the enactment of S. 21A of the Special Marriage Act. Learned counsel urged that it was her son's right which was being jeopardised as under the Indian Succession act he as a lineal descendent of the deceased would have been entitled to 2/3rds of the intestate estate as of right instead of 1/3rd of the estate as of right and 1/3rd by its being surrendered in his favor by his grandmother. Here, against the argument is misconceived. Admittedly the appellant's son was born after 1976. An unborn person has no vested right under provisions which have been repealed prior to his birth. In this case, Therefore, the question of a vested right of the son being taken away by enactment of s 21 A in the Special Marriage Act does not arise for consideration.

(7) The argument regarding the retrospective application of S. 21A of the Special Marriage Act may now be noticed. The learned Single Judge came to the conclusion that the applicability of Section 21A would arise for consideration only when the succession opens and not earlier. We agree, Therefore, there is no question of retrospectively which really arises for consideration Miss Jethmalani urged that when the appellant chose the secular form of marriage under the Special Marriage Act, one of the things she had in mind was that her children and she will also succeed, if such a contingency arises, in the secular form postulated by the Indian Succession Act. Therefore, in effect the enactment of Section 21A of the Special Marriage Act is sought to be given retrospective operation. Successions or possible chances of succession cannot be regarded as a right,

much less a vested right. It is only an expectancy. In a country whose Constitution is wedded to social justice, time and again legislations have been brought in affecting personal laws which have affected expected rights of succession. We may only remind ourselves of the right of succession being varied by the enactment of the Hindu Succession Act 1956, Miss Jethmalani cited a number of decisions on how and when vested rights can be affected by legislation and what rules of interpretation should be adopted to adjudge whether the newly enacted provisions can be given retrospective effect. In our view, there can be no quarrel with the rules that are to be deduced on a reading of these judgments. No legislation can be considered as having retrospective effect unless it is higher expressly so stated or by necessary intendment the provisions have to be construed as having retrospective effect. That question really does not arise for consideration in the present case. No right which had arisen earlier in the present case have been adversely effected by the enactment of Section 21A of the Special Marriage Act. We repeat that a right to succeed to a property which may arise in future is not a right in present that is at all enforceable and it certainly did not exist in the present case in the son of the deceased when Section 21A was enacted.

(8) Learned counsel for the appellant then went-left-to Large that Section 21A of the Special Marriage Act would be violative of Articles 14, 15, 19 and 44 of the Constitution. Her arguments were, in our view, rather far-fetched particularly in view of the provisions of Article 25 of the Constitution. That it is desirable to have a common civil code has been declared by Article 44 of the Constitution itself. Whether the common civil code can be enacted, at present is for the Parliament to say. Learned counsel urged that by enacting Section 21A the Legislature has taken a retrograde step violative of Article 44 of the Constitution. In the state of the law in the country it cannot be said to be so. Connected with this submission learned counsel urged that Section 21 of the Special Marriage Act guaranteed a collateral right of the manner of succession and, Therefore, it was a retrograde step to have enacted Section 21A. She relied on Commissioner of Wealth Tax Madras and others v. Late R. Sridharan by L. Rs. 1976 (2) SCJ 482. We have already expressed our view earlier on this submission and we find no force in the contention. Learned counsel did not clarify how Articles 15 and 19 of the Constitution are violated.

(9) Miss Jethmalani then contended that the finding of the learned Single Judge that late Shri Sanjay Gandhi was a Hindu was on the basis of inadmissible evidence. She conceded that neither party had led any evidence in the case. The learned Single Judge has made his observations in view of the arguments addressed before him to the effect that late Shri Sanjay Gandhi was a Parsi. In our opinion, this argument should not have even been allowed to be urged when there is no pleading to this effect and no evidence had been led. Nevertheless as the learned Single Judge had come to the above conclusion and the learned counsel for the appellant again urged this point before us, we have to make some observations in this regard. The learned counsel conceded that the term

"Parsi" has not been defined in any enactment except the Parsi Marriage and Divorce Act, 1936. By Section 2(7) of that Act a Parsi has been defined as a Parsi Zoroastrian. If the appellant's case is that late Shri Sanjay Gandhi was a Parsi she should have led evidence to show that he had been initiated into the Zoroastrian religion by, as is well known, his having had a "Navjot. If that was not done, it necessarily follows that late Shri Sanjay Gandhi being born by a Hindu mother was rightly found to be a Hindu.

(10) We may at this stage take note of the pleadings filed by Smt. Indira Gandhi and the rejoinder the appellant had herself filed in which she had pleaded that late Sh. Sanjay Gandhi was a member of a joint family, which concept is known only to Hindu Law and none other. By pleading a joint family it obviously meant that the appellant knew and regarded late Shri Sanjay Gandhi to be a member of a joint Hindu Family. Having pleaded this it was not open for her learned counsel to have contended that late Sh. Sanjay Gandhi was a Parsi nor is it open for the learned counsel to urge before us that he was a Parsi or that the finding to the contrary is not correct. Indeed, it is obvious that a person who ceases to be a Hindu ceases to be a member of a joint Hindu family and Section 19 of the Special Marriage Act mentions this. If Section 21A is applicable, even that disability will not stand in the way of intestate succession to the estate of late Shri Sanjay Gandhi being governed by the rules of succession postulated by the Hindu Succession Act 1956.

(11) The appeal was, Therefore, dismissed in limine, as aforesaid.