
(1944) 04 AHC CK 0024
In the Allahabad High Court

Mt. Bhagwan Devi

APPELLANT

Vs

Mt. Jai Devi and Others

RESPONDENT

Date of Decision : 19-04-1944

Acts Referred:

Citation : AIR 1944 All 224(1) : (1944) 14 AWR 163

Hon'ble Judges : Malik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Malik, J.—This is a plaintiff's appeal. The property in suit had belonged to one Gopi Nath who died on 27th May 1941, leaving his mother Mt. Jai Devi who is defendant 1 and the plaintiff the widow of a pre-deceased son Jagdish Prasad.

2. The plaintiff's case was that under the Hindu Women's Rights to Property Act, 18 of 1937, she was entitled to inherit the entire property left by Gopi Nath. The suit was contested by Jai Devi and Debi Prasad, brother of Gopi Nath. The lower Court held, that the plaintiff had no right to claim any share in the agricultural land left by Gopi Nath by reason of a decision of the Federal Court, In the matter of the Hindu Women's Rights to Property Act, 1937, reported in ('41) 28 AIR 1941 P.C. 72 and therefore, dismissed the plaintiff's claim as regards the agricultural property. The lower Court further held that the Hindu Women's Rights to Property Act was meant to better the rights of those women who had no such rights and not to take away the rights that the Hindu law gave to them and he, therefore, held that the plaintiff will have now to share the property with her grandmother-in-law Mt. Jai Devi who would have inherited the property under the Hindu law but for this Act, and passed a decree for only a half share in plaintiff's favour and gave the other half to defendant 1, Mt. Jai Devi.

3. The plaintiff in this appeal has urged that by reason of the U, P. Hindu Women's Rights to Property (Extension to Agricultural Land) Act of 1942, the plaintiff's suit as regards the agricultural land should also have been decreed

inasmuch as the said Act was passed with retrospective effect. The Act itself is quite clear on the point that it has retrospective effect and we think that the plaintiff's claim to agricultural land must now be decreed. As regards the other point, when the language of the Act is clear it is not open to us to go into the question of policy and to consider whether the Hindu Women's Rights to Property Act was passed with the object of improving the status of Hindu women or not. The relevant section of the Act lays down : "that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving." It is clear, therefore, that Gopi Nath not having left any surviving son Mt. Bhagwan Devi is to inherit "as a son" of the deceased. If Jagdish Prasad, son of Gopi Nath, had been alive there can be no doubt that Mr. Jai Devi, mother of Gopi Nath, would have had her right of inheritance. By reason of the Act, Mt. Bhagwan Devi, widow of Jagdish Prasad, is to be treated for purposes of inheritance as a son. We therefore are of opinion that Mr. Bhagwan Devi was entitled to inherit the entire property and Mr. Jai Devi could not get any share in the same. On these findings the plaintiff's suit should have been decreed in its entirety. We allow this appeal and modify the decree of the Court below and declare that the plaintiff is the owner of the entire property but her rights are those of a Hindu widow. As regards costs we are of opinion that the plaintiff should get her costs of the lower Court. We, however, make no order as to costs of this Court inasmuch as the U.P. Hindu Women's Rights to Property (Extension to Agricultural Land) Act, 11 of 1942, was passed after the decision of the case by the lower Court and that has materially affected the rights of the parties.