
(1938) 03 BOM CK 0029

In the Bombay High Court

Case No : O.C.J. Testamentary Suit No. 1 of 1938 and Petition No. 523 of 1937

Raghunandan N. Kothare

APPELLANT

Vs

Keshavrao B. Kirtikar

RESPONDENT

Date of Decision : 24-03-1938

Acts Referred:

Citation : AIR 1939 Bom 194 : (1939) 41 BOMLR 287

Hon'ble Judges : Somjee, J

Bench : Single Bench

Judgement

Somjee, J.—This is a petition for Letters of Administration to the estate of Bai Champubai, daughter of one Keshav Vinayak Dhairyavan. The petitioner is the son of the sister of the father of the deceased Bai Champubai. Defendant No. 1 has filed a caveat. He is the son of the sister of the mother of Bai Champubai. Another caveat has been filed by defendant No. 2 who is a distant paternal relative of the deceased Bai Champubai, being the father's father's brother's son's son.

2. The first question for consideration is whether defendant No. 2 had any interest in the estate of Bai Champubai to entitle him to file the caveat. It is admitted by all parties concerned that in the absence of any interest in the estate of the deceased Bai Champubai defendant No. 2 would have no right to file this caveat in this suit.

3. It is also admitted by all parties before me that Bai Champubai died unmarried and her estate is her stridhan property which has to be administered now. The question then is, who are the heirs to the stridhan of this unmarried lady who died on August 3, 1937? Succession to a maiden's stridhan is dealt with in Mulla's Hindu Law, 8th edn., pp. 138 and 139. The heirs to such stridhan in order are (1) uterine brother; (2) mother; (3) father; and father's heirs in order of propinquity. It is admitted that the first three heirs mentioned above are not there, and therefore the stridhan property of Bai Champubai must descend to the heirs of her father in order of propinquity. The succession to the estate of Bai

Champubai opens at her death on August 3, 1937, and the heirs of her father have to be found as on August 3, 1937. The heirs must be those persons who would be entitled to succeed to the estate of her father at the time when the succession opens in this case, viz. on the death of Bai Champubai.

4. Sir Chimanlal Setalvad, the learned Counsel for defendant No. 2, contends that defendant No. 2 is the nearest sapinda of the father of Bai Champubai and is therefore entitled to succeed to the estate of Bai Champubai in preference to the petitioner who is a bandhu and defendant No. 1 who is a maternal relation.

5. Now the question for determination is who would be the heirs of the father of Bai Champubai if he had been living and had died on the date on which Bai Champubai died, viz. on August 3, 1937. The petitioner's contention is that under Act II of 1929 the heirs of the father of Bai Champubai are those mentioned in Mulla's Hindu Law at pp. 42 and 43. Sir Chimanlal Setalvad contends that Act II of 1929 does not and cannot apply to this case. His contention is, first, that the Act expressly states that it is to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate. Secondly, he proceeds to say that in Section 1 of the Act it is stated that the Act applies only to persons who, but for the passing of this Act, would have been subject to the law of the Mitakshara in respect of the provisions herein enacted and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by will. The argument is that this Act provides a particular line of descent in succession to a Hindu male and not to the line of descent in succession to the estate of the stridhan of a maiden. The Act is not sought to be applied to determine the succession to the stridhan of a Hindu maiden but it is sought to be used by the petitioner to ascertain the fourth class of heirs to the stridhan of a Hindu maiden mentioned at p. 139 of Mulla's Hindu Law. It is admitted by Sir Chimanlal that the heirs of the father must be found as on the date of the death of Bai Champubai. Therefore if the father of Bai Champubai had died on August 3, 1937, his heirs would certainly be those under the Hindu law as amended by Act II of 1929. Thus the petitioner who is Bai Champubai's father's sister's son would be a preferential heir to defendant No. 2 who is a distant paternal relation as stated above. In ascertaining the father's heirs in the order of propinquity at the time of the death of Bai Champubai Act II of 1929 is not applied to determine the rights of succession to Bai Champubai or to alter the order in which her heirs would be entitled to succeed to her estate. The heirs of the father at the time of her death have to be ascertained in accordance with the Hindu law as it existed at the time of the death of Bai Champubai. Thus the Act comes into operation for ascertaining the order in which the heirs of her father would be entitled to succeed to his estate because the heirs of the father in the order of propinquity who would be entitled to succeed to him if he had died on August 3, 1937, would be the heirs of Bai Champubai in the absentee of the uterine brother, the mother and the father. Thus the contention of Sir Chimanlal Setalvad that the heirs of the father should not be determined by reference to the provisions of Act II of 1929 is unfounded.

6. On this finding it is clear that the petitioner is a preferential heir to defendant No. 2 and defendant No. 2 has no interest at all in the estate of Bai Champubai. The caveat of defendant No. 2 is therefore dismissed with costs.

7. Defendant No. 2 to pay the costs of the petitioner as well as of defendant No. 1 up to now. The costs which defendant No. 2 is to pay to the petitioner and defendant No. 1 are the costs which have been occasioned by reason of the caveat filed by defendant No. 2.

8. Defendant No. 1's caveat dismissed.

9. Letters of administration to issue to the petitioner.

10. By consent between petitioner and defendant No. 1 decree in terms signed by counsel and handed in and marked exhibit A.

11. There was an appeal (O.C.J. Appeal No. 23 of 1938) and it was argued on October 14, 1938. But before judgment was delivered, the parties arrived at a compromise and a consent decree was passed.