

(1988) 02 MP CK 0030
In the Madhya Pradesh High Court
Case No : S.A. No. 590 of 1982

Reshamlal Baswan

APPELLANT

Vs

Balwant Singh Jwala Singh Punjabi and Others

RESPONDENT

Date of Decision : 02-02-1988

Acts Referred:

General Clauses Act, 1897 — Section 3(57)
Hindu Marriage Act, 1955 — Section 11, 16
Hindu Succession Act, 1956 — Section 8

Citation : (1989) ILR (MP) 606 : (1994) JLJ 160 : (1988) MPJR 11 : (1994) MPLJ 446

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : D.M. Dharmadhikari, for the Appellant; Ravish Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, J.

Whether the appellant, an "illegitimate son" of deceased Baswan, is the "son" of said Baswan, within the meaning of Section 8 read with the schedule to the Hindu Succession Act, 1956, is the crucial question that this Court is called upon to decide in this second appeal u/s 100, CPC by the defendant. The appeal is directed against the judgment and decree dated 25-11-1982 passed by IV Additional Judge to the Court of District Judge, Bilaspur in Civil Appeal No. 31-A/80 arising out of judgment and decree dated 29-12-1976 passed by Civil Judge, Class II in Civil Suit No. 14-A/1971 decreeing that the respondent/plaintiff Balwant Singh was the owner of the suit-lands and was entitled to possession thereof.

Respondent Balwant Singh filed the present suit claiming possession of lands described in "Schedule A to the plaint. According to him, these lands belonged to Baswan, who died sometime in 1966 leaving behind respondent Laxmidayal, his

son from first wife, his second wife, Smt. Shyambai, now dead, and his two daughters, respondents 7 and 8. He claims to have purchased suit-lands from these legal heirs of Baswan. He alleged that respondent Jhunhibai was the legally married wife of one Pusau and had developed illicit relationship with Baswan from whom she had appellant Reshamlal and respondents 3, 4 and 5 as her offsprings. Neither Jhunhibai nor her offsprings were heirs of Baswan. He further alleged that since these people disturbed his possession and the Sub-Divisional Officer, Mungeli by his order dated 1-6-1970 handed over possession of the suit-lands to them, it was necessary for him to file the present suit for obtaining possession. The appellant, his mother respondent Jhunhibai and his brothers and sisters, respondents 3 to 5, defended the suit on the ground that they were legitimate sons and daughters of Baswan and had interest in the suit-property and, therefore, they are entitled to remain in possession. The learned trial Judge, on appreciation of evidence, came to the conclusion that respondent Jhunhibai was not a married wife of Baswan and, therefore, she could not inherit his properties as his widow. The learned Judge further held that she could not have got remarried during the life time of her first husband. As a necessary consequence, the learned Judge held that appellant and respondents 3 to 5 were not heirs of Baswan. That is how, the suit was decreed. The learned lower appellate court affirmed these findings and dismissed the appeal. It may be mentioned that though respondents 2, 3, 4 and 5 along with the appellant have suffered the decree in the hands of the trial court, they remained satisfied with the same and did not appeal. The appeal before the lower appellate court and also in this court is by one of the 5 suffering the decree. The decree in so far as respondents 2 to 5 are concerned, must be deemed to have become final.

This court, while admitting this appeal for final hearing on 19-3-1983, had framed the following substantial question of law for its decision :-

"Whether, in terms of Section 16 of the Hindu Marriage Act, as amended by the Marriage Laws Amendment Act, 1976, the illegitimate children, i.e., the appellant Reshamlal and respondents Nos. 3, 4 and 5 are entitled to a share out of the property of the common ancestor Baswan?"

In view of the concurrent finding of fact that respondent Jhunhibai was not married to deceased Baswan in any form, the learned counsel for the appellant frankly conceded that the aforesaid question should not arise for consideration of this court in this appeal. Then, it is also felt that the Marriage Laws Amendment Act, 1976 would not, as such, govern this case because Baswan died in 1966 and, therefore, the succession to his properties opened much before this enactment. In spite of it, it is submitted that the appellant, even as an illegitimate son, would be included within the meaning of "son" in Section 8 read with schedule to the Hindu Succession Act, 1956. The submission appears to be that the word "son" has not been defined in this Act and, therefore, deserves to be given wide meaning so as to include every male offspring of a Hindu dying intestate. Such an interpretation, according to the learned counsel, would be in

keeping with the spirit of Marriage Laws (Amendment) Act, 1976 and would otherwise give full effect to the intention of the Legislature and object of the enactment. The learned counsel elaborated the argument by submitting that the parties being Sudras, an illegitimate son was entitled to inherit the property of his father even under the old Hindu Law and since this beneficial provision has not been modified by 1956 Act, there is no reason why the liberal interpretation of the word "son" should not be given. Reliance is placed on a Division Bench judgment of this Court in *Anusayabai v. Jagdish Prasad Hajarilal and Ors.* 1977 MPLJ 7, and in *Laxmibai Nagappa Matiwadar and Ors. v. Limbabai Nagappa Matiwadar* 1983 Mh.L.J. 103. The learned counsel for the respondent/plaintiff, however, opposes such a broad and liberal construction as, according to him, this would be against the public policy and shake the foundation of legitimate family relationship. Relying on *Lachman Singh Vs. Kirpa Singh and Others*, , and *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others*, , it is submitted that the Supreme Court has not favoured such a broad construction.

Marriage Laws Amendment Act, 1976 provided legitimacy to children of a marriage hit by Section 11 of Hindu Marriage Act. Section 11 provides a procedure for getting a marriage declared void if it contravenes one of the conditions of Section 5 of the said Act. The conditions under which a marriage is said to be void are those mentioned in clauses (i), (iv) and (v) of Section 5 of the said Act. Marriage between parties having a spouse living at the time of marriage is hit by this provision. This provision has been interpreted to mean that there must be a marriage, which would be hit by the provisions of this Act and would not cover a relationship resulting from any other arrangement than the marriage. That is the reason why it has been held in *M. Muthayya v. Kamu and Ors.* AIR 1981 NOC 172, that in those cases where there is no proof of solemnisation of marriage, the provision in Section 16 is not attracted. The two courts, in the instant case have found that there was no marriage of any type between respondent Jhunhibai and the deceased Baswan and hence, it will have to be held that even if Baswan had died after 1976, the benefit of Section 16 of Hindu Marriage Act would not have been available to the appellant. That appears to be the reason why the learned counsel for the appellant did not seriously press the question as framed by this Court.

It may, therefore, be examined if the submission of the learned counsel for the appellant that he, even as an illegitimate son, is the "son" for purposes of Section 8 read with the Schedule to the Hindu Succession Act? The Division Bench judgment of this Court in *Anusayabai's* case (supra) is really not the authority for the submission aforesaid. The Division Bench was considering the meaning and scope of the word "children" and in passing observed that the "son" u/s 8 would include not only the adopted son, but also illegitimate son. The Division Bench has therefore, not interpreted the word "son" appearing in the schedule of this Act. It is well settled that casual observations contained in any judgment do not either amount to ratio of the case or even obiter dicta. Indeed, in *John Martin Vs. State of West Bengal*, , it was held that observations

made even by two Judges out of the six cannot be regarded as laying down the law on the point. What is binding on this court is the ratio of the case and not a casual observation. Under the circumstances, this Court is unable to accept the submission that this decision is final and binding in so far as this Court is concerned. Indeed, in *Holiya v. Josoda* 1977 J LJ 395, this court examined the meaning and scope of the word "son" to ascertain whether the "step son" was included therein and held that though because of the definition of son available in the General Clauses Act, an adopted son would be included within its scope, the step son would not be so included. Supreme Court decision in *Lachmansingh's* case (supra) also takes this view and excludes step-son from the word "son" appearing in Section 15(1)(a) of this Act. While so holding, the Supreme Court observed that ordinarily laws of succession to property follow the natural inclinations of men and women. According to the Court, the list of heirs reflects the current notions about propinquity or nearness of relationship.

The decision of Bombay High Court in *Laxmibai's* case (supra), of course, supports the contention advanced by the learned counsel for the appellant. The question for consideration of the court was the impact of Section 16(1) and 16(3) of the Hindu Marriage Act read with the provision of Section 8 of the Hindu Succession Act. It has already been noticed that Section 16 deals with the offsprings of marriage, which is void. The Court was of the opinion that 1976 amendment of the Hindu Marriage Act takes away and eclipses general rule that the offspring of a marriage, which is null and void ipso jure is illegitimate. According to the Court, this was common law doctrine, inevitably resulting in the effect of bastardising children and has been superseded by this provision. Considering the effect of this amendment, in the context of Section 8, clause (a) of the Hindu Succession Act, the Court held that illegitimate children now given legitimacy would be included within the meaning of "son" and "daughter" in the Schedule to the Hindu Succession Act. The Court, therefore, held that though the lady would not be the widow, her sons and daughters would be included within the meaning of the term in Section 8 read with the schedule. A close reading of this decision would indicate that it was the effect of 1976 amendment of Section 16 of the Hindu Marriage Act that made the difference. If the said amendment had not been there or any particular case was not governed by the said amendment, the learned Judge would not have decided in the same manner. Since 1976 amendment does not apply to the facts and circumstances of the case before this Court, this judgment cannot be of any help to the appellant. In fact, *Dadu v. Raghunath* AIR 1976 Bom 176, is the case before the amendment and holds on a detailed consideration of provisions, that illegitimate sons even of a Sudra would not be included within the meaning of the word "son" or "daughter" appearing in Schedule to Hindu Succession Act. Learned Judge had noticed that before 1956, legitimate children of a Sudra had enjoyed the status of an heir and, therefore, it observed surprisingly that an otherwise dynamic legislation should have extinguished the intestate succession rights of illegitimate sons of Sudras. Regrettable it may be, but since it was intended, it should be

accepted as our national discipline. Sentiments howsoever strong cannot justify transgressing the limits of judicial discipline. This being a direct case on the point should, if at all, conclude the matter.

This court is otherwise not able to appreciate and accept the submission. Relationship created by a Hindu Marriage is treated to be eternal. Marriage among Hindus is distinguished as a sacrament and is, therefore, most solemn relationship of the Hindu polity. Even when Hinduism permitted diversions, it permitted a Hindu male to marry more than once and provided similar status and rights to the children of all marriages and treated all wives similarly. Neither Hindu Law nor Hindu religion conferred legitimacy to the offspring of a relationship created otherwise than by marriage. Children of such relationship did not get even the social respect. What has not been approved and accepted by the society so long cannot be said to have been forced upon the society by the Hindu Succession Act, 1956. By abolishing polygamy, the Parliament did not intend to encourage illegitimacy. The high standard of virtue cannot be said to have been given up. In this view of the matter, this Court is unable to hold that the Parliament while enacting Hindu Succession Act, 1956 or amending Hindu Marriage Act, 1956 intended to legitimatise the illegitimate relationship between opposite sexes.

Then, it is also not correct to say that the word "son" has not been defined anywhere. It has, of course, not been defined in the Hindu Succession Act, 1956, but every word need not be defined in the statute itself. The General Clauses Act defines "son" and includes only the adopted son. In case the illegitimate son was also included within this definition, a corresponding amendment would have been made in the definition given in the General Clauses Act.

In view of the discussion aforesaid, this Court is unable to hold that the appellant, even as an illegitimate son is a "son" for purposes of Section 8 read with schedule to the Hindu Succession Act and, has, therefore, right to succeed to the properties of late Baswan. In the opinion of this Court, he is not a "son" within the meaning of the term and, therefore, not an heir to Baswan. The appeal accordingly fails and is dismissed, but without any order as to costs.