

(1984) 05 DEL CK 0076
In the Delhi High Court
Case No : F.A.O. No. 74 of 1984

Smt. Maneka Gandhi

APPELLANT

Vs

Smt. Indira Gandhi

RESPONDENT

Date of Decision : 10-05-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 15(1), 19(1)(f), 37, 44
Hindu Succession Act, 1956 — Section 2, 5
Special Marriage Act, 1954 — Section 14, 15(1), 19, 20, 21
Succession Act, 1925 — Section 278, 31, 32, 33, 34

Citation : AIR 1984 Delhi 428

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : Shujat Ullah Khan with Miss Rani Jethmalani, for the Appellant; R.K. Anand and Master Feroz Varun Gandhi through guardian ad litem R.K. Kaul appointed by Court, for the Respondent

Judgement

M.L. Jain, J.—I had dismissed this appeal on 2-5-1984 with reasons to follow later on. Here are those reasons:

2. The appellant Smt Menka Gandhi married Shri Sanjay Gandhi on 29-9-1974. She had a son Feroze Varun Gandhi born on 13-3-1980. Shri Sanjay Gandhi died on 23-6-1980. On 3-2-1982 Smt Maneka Gandhi prepared a petition for the court of the District Judge, Delhi for grant of letters of Administration in respect of some company securities valued to the tune of Rs. 4,73,058,80 paise u/s 278 of the Indian Succession Act 1925, on behalf of Varun as petitioner No. 1 and herself as petitioner No. 2. It was presented to the Court on 17-4-82 by their advocate one Shri Karan Bal. They were directed to file the list of companies and relatives on 6-7-82 and then on 13-12-82 and 5-1-83. On 5-1-83 no one was present and the case was consigned to records to be revived at the instance of the petitioners as and when they chose to appear.

3. On 23-3-83 Smt. Maneka Gandhi left her residence at 1, Safdarjung, New

Delhi along with Varun. On 25-3-83 their counsel Shri Shujat Ullan Khan made an application for revival of the case and also filed the aforesaid lists. That application was dismissed for default on 22-8-83. It was restored on 6-9-1983. Citations were then to be issued in the Hindustan Times. But on 23-4-83 due to some undisclosed reason, they applied for issue of citations in the National Herald The citations were then published on 26-9-83. Notices were also issued to Smt Indira Gandhi and Shri Rajiv Gandhi.

4. Shri Rajiv Gandhi elder brother of Shri Sanjay Gandhi did not file any reply.

5. Smt. Indira Gandhi the mother of late Shri Sanjay Gandhi filed a reply on 23-10-83. She said that after the departure of Smt Maneka Gandhi and Varun from 1, Safdarjung Road, Varun was allowed to meet her on some Sundays for a brief spell of time but since October, 1982 Varun was not allowed to visit her except on 13-3-83, his birthday that too for less than half an hour. However, she contended that she is one of the legal heirs to the estate of late Shri Sanjay Gandhi but she would not be interested to claim her share for herself and would like her share and interest in the properties to be treated as the properties accruing to the ownership of Varun for his benefit She desired that the properties to the extent of her share and that of Varun should remain intact till he comes of age to manage the same by himself. She had no objection to the grant of letters of Administration in favour of Smt Maneka Gandhi to the extent of her share only but with respect to the share of Varun and that of her provided for by her in his favour, she asked for suitable arrangements to be made so as to avoid any misuse in any form by any one and to have strict vigilance over the management of the said shares accruing to Varun.

6. In her counter reply Smt Maneka Gandhi alleged that the visits of Varun to Smt Indira Gandhi had to be restricted because the child was being placed in undesirable circumstances likely to cause distress and trauma. He was being used for political publicity by his grandmother and was made to pose before the photographer and television crews. The child was being exploited instead of being loved and no mother can acquiesce into the use of her child and as such these visits had to be restricted and curtailed Smt. Indira Gandhi who is administering the joint family property has not paid a single paise for the education, maintenance and welfare of this little child whose father's accounts have been frozen after his sudden and untimely death whereas other grandchildren are getting all benefits out of the income of joint undivided family property. She contended that Smt Indira Gandhi has no locus standi to file any objection since her marriage with Shri Sanjay Gandhi was solemnised under the provisions of the Special Marriage Act, 1954. Smt Indira Gandhi is not entitled to any share in the property of late Shri Sanjay Gandhi in the light of the provisions of the Indian Succession Act If Smt Indira Gandhi is so concerned that she is not interested in acquiring any share in the estate of late Shri Sanjay Gandhi for her own personal benefit or use and intends to secure any share she received for the ultimate benefit of Varun, she should see to it that first he receives his due share

of the estate of the joint family. The grandmother of the child has not helped him in any manner as yet and despite her considerable income she has failed to give anything to her grandson and instead she has chosen to file frivolous objections to delay the grant of the letters. Smt Indira Gandhi is misusing her great power against the orphan child and his widow mother by creating legal hurdles in their way of succession.

7. Smt Indira Gandhi filed a supplementary reply in which she stated that the allegation that the child was being placed in an undesirable situation likely to cause him distress and trauma is highly vague and devoid of any merit. It is false to say that the child was ever posed before photographers or the television for political publicity. Smt Maneka Gandhi wants to keep the child away from the grandmother and seems to prompt the facts to suit her. There is no basis for saying that Smt Indira Gandhi is administering the joint family property. She is concerned, equally in all her grandchildren. She maintained that she had right in law to succeed having regard to Section 21 and Section 21-A of the Special Marriage Act as amended in the year 1976. Smt Maneka Gandhi has made irrelevant and baseless averments about the misuse of any powers by her. All these averments have been advanced merely to suit her convenience.

8. On 18-11-83, the learned District Judge framed the following issues:

1. Whether the petitioners are entitled to the estate of the deceased Shri Sanjay Gandhi to the exclusion of the respondent Smt Indira Gandhi?

2. Relief?

9. The case was then set down for recording of petitioner's evidence on 6-12-83. The case was adjourned to 23-1-84. On 23-1-84, the petitioner did not produce any evidence and made an application for her own examination on commission. It was rejected and the case was adjourned to 30-1-84. On 30-1-84 the petitioner instead of producing herself for examination moved an application for framing of additional issues under O. 14 R. 5 C.P.C. The additional issues suggested were as follows:

1. Whether Section 21-A as amended by the Special Marriage Act in the year 1976 confers a right of succession on Mrs. Indira Gandhi to the estate of late Shri Sanjay Gandhi?

2. Whether succession can be claimed by the objector Mrs. Indira Gandhi under the provisions of any customary law?

3. Whether the objector Mrs. Indira Gandhi has any share in the estate of late Shri Sanjay Gandhi under the provisions of Indian Succession Act?

10. The learned District Judge by his order dated 30-1-84 rejected this prayer holding that the issue already framed was exhaustive enough to cover the point sought to be raised by way of additional issues and that though there was no ground for not producing evidence on that day, the case was adjourned to

21-2-84 for evidence of the petitioners. While doing so, the learned District Judge made it clear that it will be a responsibility of the petitioners to summon, serve and produce the entire evidence on this date and that no further opportunity will be given.

11. On 20-2-84 Smt Maneka Gandhi filed a revision petition No. 189/84 in this Court in which I directed the learned District Judge to send the record.

12. On 21-2-84, since no witnesses were present nor was the petitioner, the learned District Judge closed the evidence, heard the arguments and proceeded to give the judgment. The same day Smt Maneka, Gandhi filed a transfer petition along with a petition C.O. No. 582/84 for stay of proceedings. I directed the learned District Judge not to pronounce the judgment but it appears that he had already pronounced his judgment on 21-2-84 by the time my orders were conveyed to him. A contempt petition No. 42/84 was filed against him which was rejected by me on 24-2-84.

13. The learned District Judge was of the view that the amended Section 21-A of the Special Marriage Act lays down that personal law will apply to the parties claiming the succession if the marriage has been performed under the Special Marriage Act and so in this case the provisions of the Hindu Succession Act will apply entitling Smt Indira Gandhi, Varun and Smt Maneka Gandhi to 1/3rd share each in the estate left behind by Shri Sanjay Gandhi. Since Smt. Indira Gandhi has relinquished her 1/3rd share in favour of her grandson, Varun is entitled to 2/3rd share in the estate of his late father. The learned District Judge, therefore, directed that letters of Administration shall be issued to petitioner No. 2 subject to the following conditions:

1. Petitioner No. 2 shall file the correct particulars of the shares with the addresses of the companies and valuation of the property in the form prescribed by law.

2. Petitioner No. 2 shall pay the court-fee thereon.

3. Petitioner No. 2 shall also file the Estate Duty Clearance Certificate and execute the requisite administration bond with the surety.

4. Petitioner No. 2 shall get 2/3rd shares out of the shares mentioned in annexure A transferred in the name of Master Feroze Varun Gandhi 1/3rd his and 1/3rd share of Smt. Indira Gandhi.

5. The amount of dividend which has since been realised or has become due to the share of the minor shall be deposited by petitioner No. 2 in fixed deposit in the name of the minor in some Nationalised Scheduled Bank.

6. The share of Master Feroze Varun Gandhi shall not be sold without prior permission of this Court.

7. If at any time it is found that the sale of the share shall be to the evident advantage of the minor, then Smt Maneka Gandhi shall have to seek prior

permission of this Court and the sale proceeds of the shares of the minor shall be deposited in the name of the minor in fixed deposit in some Nationalised scheduled bank.

8. The amount so deposited shall not be withdrawn by petitioner No. 2 during the period of minority of Master Feroze Varun Gandhi without permission of this Court.

9. Petitioner No. 2 shall also file statement of account quarterly in respect of the shares of the minor in the estate of Shri Sanjay Gandhi, deceased.

14 In para 18 of the judgment the learned District Judge also observed that "the allegations of Mrs. Maneka Gandhi that her son was being used and exploited only for political ends by his grandmother, Mrs. Indira Gandhi are not only irrelevant, misconceived but seem to be prompted by political considerations. Judicial proceedings cannot be allowed to be misused by any party as a platform to engineer and achieve political ends. In the present matter, the petitioner was totally unjustified in asking Mrs. Indira Gandhi to give share to the minor son of late Shri Sanjay Gandhi out of the estate of joint family. By voluntarily relinquishing her share in the estate of her late son in favour of her grandson, Mrs. Indira Gandhi has abundantly made known how dearly and nearly she holds the welfare of her grandson. In the death of Shri Sanjay Gandhi, if the petitioner lost her dear husband, the respondent lost her dearer son. Her approach to the present case has been that of a magnanimous grandmother."

15. It is against this judgment that Mrs. Maneka Gandhi has filed the present appeal on 20-3-84. In this appeal, I issued a notice to show cause why the appeal be not admitted and upon the insistence of the counsel for the appellant, I also stayed the operation of the impugned order and posted the case for hearing on 27-4-84.

16. On 16-4-84 an application No. C.M. 1165 of 1984 was made on behalf of the respondent Smt Indira Gandhi that Varun was a necessary party but has not been impleaded and the appeal cannot be disposed of without making him a party. It was prayed that Varun be added as a party and suitable guardian be appointed on his behalf. On 19-4-84, I directed that Varun will be added as a respondent to this appeal but the appointment of a guardian ad litem will be taken up on 24-4-84.

17. On 23-4-84 the appellant's advocate made an application No. 1236/84 that the appellant and her counsel were both out of Delhi, when the notice of the application of the respondent was served upon one Shri Vijay Sood who has been filing affidavits in this case on behalf of the appellant but was not authorised to accept the service on behalf of the appellant, and that time may be allowed to enable him to obtain instructions and file a reply.

18. In application No. 1237/84 it was stated that if Varun is added as a respondent it will be very fatal for the present appeal The order of 19-4-84 be

recalled In fact, Varun is a necessary party along with his mother and his name was omitted from the memo of appeal by inadvertence and the appellant will file a-separate application for the addition of Varun as an appellant

19. All those applications were posted for hearing on 27-4-84 along with the appeal.

20. On 24-4-84 Mr. Khan filed an application No. 1260/84 asking me to send this file to the Chief Justice for transferring it to some other Judge because the appellant has an apprehension that she is not likely to get justice in this Court He referred to certain remarks which I am alleged to have made on 24-4-84 and which indicated that all pleas whether legal or illegal made on behalf of Smt Indira Gandhi are likely to prevail On 26-4-84 two applications C. Ms. 1297 and 1298 of 1984 were filed for adjournment and for amendment of the memo of appeal An application No. 1405/84 was also made with an affidavit of Smt Maneka Gandhi withdrawing application No. 1260/84 because she was out of town-when that application was moved.

21. On 30-4-84 Mr. Khan submitted an application No. 1342/84 that the appellant will withdraw the present appeal if Smt Indira Gandhi agrees that the impugned decision will not be used in any subsequent proceedings to put forth a plea of res judicata and if she agrees to relinquish her one third share in all the property of the deceased not covered by the present petition. In response, Mr. Anand cited Lalit Mohan Das v. Radharaman Sana, (1910) 15 Cal WN 1021 that a decision in these proceedings does not operate as res judicata and also assured that the grand mother will take all adequate steps that are for the welfare of Varun. But the appeal was not withdrawn.

22. On 1-5-84 an application No. 1341 of 1984 was made that the name of Varun be transposed and added as an appellant through his guardian Smt Maneka Gandhi An application No. 1340/84 was also made for condonation of delay in making the said application. It was submitted that Varun was entitled to 2/3rd share in his own right and was a necessary party but his name was omitted due to inadvertence and oversight I found it difficult to believe that Varun was not impleaded on account of inadvertence and I rejected this plea and appointed a senior Joint Registrar of this Court as a guardian ad litem.

23. For the grant of letters of administration, it is certainly not usual to go into the question of title of the deceased to the assets but when the applicant asks for letters of administration on the ground that he or she has some or sole interest in these assets and when public and individual notices are issued and some one in response to such notices disputes it or claims a simultaneous interest the court is certainly called upon to decide such a dispute.

24. The first contention that is being put forth here is whether Section 21-A of the Special Marriage Act 1954 has any retrospective operation. Special Marriage Act 1954 repeals the Special Marriage Act, 1872 and largely re-enacts it Sections 19 to 21 of the Special Marriage Act 1954 were designed to provide in substance

that Whenever a person who is a member of an undivided family marries under the Special Marriage Act, he shall be deemed to have severed his relationship with such family. This provision when it was being enacted was fiercely attacked on the ground that it was not there in 1872 Act and was inserted in 1923. It penalizes the lawful marriages made under the Act. Automatic severance from the family was condemned as defeating the very purpose of encouraging inter-caste and secular marriages. Late Smt Sucheta Kriplani and others protested that this provision introduces a discrimination which is unconstitutional and illogical. It is not compatible with secularism. They maintained that the succession should be governed by personal law. But the Joint Select Committee in its report of 16-3-54 recommended to retain this clause because it simplified the law of succession.

25. Section 20 of the Special Marriage Act provided that a person whose marriage is solemnised under this Act shall have the same right and disability in regard to succession to property, as a person to whom the Caste Disabilities Removal Act, 1850 applies. That Act provides that so much of any law or usage as may in any way impair or affect any right of inheritance of any person by reason of his or her renouncing or having been excommunicated from the communion of any religion or being deprived of caste, shall cease to be enforced as law.

26. Section 21 provided that the succession of the property of such a person including a Parsi be regulated by the Indian Succession Act, Sections 31 to 48.

27. Two years later came the Hindu Succession Act 1956, Section 5 whereof provided that the Hindu Succession Act will not apply to any property succession to which is regulated by the Indian Succession Act, by reason of the provisions contained in Section 21 of the Special Marriage Act, 1954.

28. The combined effect of Section 5 of the Hindu Succession Act and sections 19 to 21 of the Special Marriage Act is that in case of a Special Marriage an otherwise valid marriage, between two Hindus themselves, (Sikhs, Jains and Buddhists including) their own right of inheritance and succession to their properties would be governed by a different rule simply because they have chosen this form of solemnization. It was a very harsh provision. It appeared still more hard when one finds that even marriages solemnised according to the customary rites and ceremonies of either party could be registered u/s 5 of the Special Marriage Act. The Law Commission in its 59th report recommended that the cases where both the parties are Hindus should be excluded from Sections 19 and 21.

29. Therefore, Section 21-A was inserted in the Special Marriage Act on 27-5-76 by the Marriage Laws (Amendment) Act, 1976 removing this apparent discrimination in succession consequences of such type of marriages.

Section 21-A provided as follows:

21-A. Special provision in certain cases Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhists. Sikhs or Jain religion with a person who professes the Hindu, Buddhism, Sikh or Jain religion, sections 19 and 21 shall not apply and so much of Section 20 as creates a disability shall also not apply.

30. It is contended that the said Section 21-A cannot be so construed as to effect the succession relating to the person whose marriage was solemnised before the amendment. But who died after the amendment. In support of this contention the learned advocate Miss Rani Jethamalang referred to Halsbury's Laws of England, 3rd ed. Vol.36 page 423 para 643, Carson v. Carson and Stoyek (1964) 1 All ER 681. Wijesuriya v. Amil (1965) 3 All ER 701, Allen v. Thorn Electrical Industries Ltd. (1967) 2 All ER 1137, Dr. Indramani Pyarelal Gupta Vs. W.R. Nathu and Others, , Eramma Vs. Verrupanna and Others, . Govind Das and Others Vs. The Income Tax Officer and Another, and Mt. Sukhribai v. Pohkalsing AIR 1950 Nag 33.

31. I have had occasions to examine (his matter, in Nemichand v. State of Rajasthan. 1977 Raj LW 430 and Dr. Kailash Chandra Kotia Vs. University of Rajasthan and Others, . I said as follows:

Retrospective operation is an inaccurate term causing confusion. The purest cases of retrospective laws are those in which the date of commencement is earlier than enactment or which validate some invalid law, otherwise every statute affects rights which would have been in existence but for the statute and a statute does not become a retrospective one because a part of the requisition for its action is drawn from a time antecedent to its passing. All what it means is that save in cases where the law creates a new offence or increases a penalty, a legislature is not prevented from enacting an ex. post facto law but if any such law takes away or impairs any vested right acquired under existing law, or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past, it must so provide in express terms or such should be a necessary implication from the language employed. That is why where an Act is in its nature procedural declaratory or explanatory or where a statute is passed for the purpose of supplying an obvious omission in a former statute, it does, unless otherwise provided, operate retrospectively obviously because it does not affect vested rights. That is further why a law enacted for the benefit of the community and also of individuals, may relate to a time antecedent to its commencement.

32. This summary of the law was approved by a Full Bench of this Court in Daulat Ram Mehnidatta Vs. Lt. Governor of Delhi and Others, . It appears therefore that a law is not to be interpreted to operate retrospectively so as to affect vested rights unless it is so provided expressly or that is the necessary intendment. It is contended that Section 21-A was not made retrospective expressly or impliedly and cannot affect succession, a right which had vested in the spouses at the time of their marriage in 1974 in this case. This is to my mind

cannot be a correct construction. Section 21-A does not affect the marriages which took place before its insertion. It does also not affect the successions which had opened earlier than the amendment. It was urged that the petitioner had contracted this secular form of marriage with late Shri Sanjay Gandhi so that in the event of the death of her husband the provisions of the Indian Succession Act and not of the Hindu, Succession Act will apply. No doubt this shows some foresight which the appellant had at the time of her marriage that in case her husband died and she and her children will be entitled to succeed to his estate, to the exclusion of his mother. But rights of succession to a person's estate do not arise upon the marriage but arise upon the death of that person. It is therefore, incorrect to say that this Section affects the transactions which have taken place before the amendment. Nor does it impair or take away any vested right. No doubt, Special Marriage Act (Sections 19 to 21) did affect succession and so does Section 21-A, but Section 21-A did not affect the successions that had already opened before its enactment. To my mind, therefore, Section 21-A is only prospective in operation, i.e. when the succession opened in this case on 23-6-80, it was to be governed by the law that was in force on that date. I, therefore, see no force in the contention that Section 21-A affects the rights which are said to have accrued to the appellant or on her son on the date of her marriage and that Section 21-A cannot be invoked by the respondent Smt Indira Gandhi.

33. As regards the constitutionality of Section 21-A it was canvassed that it is violative of the Preamble, Articles, 14, 15(1), 19(1)(f) (unamended), 25, 44 and 300-A (earlier 31) of the Constitution. There is ingenuity in the argument but it cannot as Mr. Anand contends, be raised in these proceedings. He relies upon K.S. Venkataraman and Co. Vs. State of Madras, for his submission. That apart it has no merit. Though as said in Commr. of Wealth Tax, Madras v. late Sridharan by legal representatives, 1976 UPTC 423 (SC), Section 21 guaranteed inter alia to the issue of the person whose marriage has been solemnised under the Special Marriage Act a collateral statutory right of succession to the estate of the later in case he died intestate, yet it severed a Hindu from his family whether he or his coparceners wished otherwise and excluded the mother from succession. That was unreasonable and discriminatory. This discrimination was removed by the insertion of Section 21-A in the Special Marriage Act. However, it was urged that the Section being restricted to Hindus only could not be constitutionally valid. But a provision dealing with Hindus is not a law of religious discrimination. As the history of the amendment shows, the differentia of Classification has a rational relation to the legislative object of promoting inter community marriages amongst Hindus. It does not affect the marriages between Hindus and those who are not Hindus. It is, therefore, in conformity with Articles 14 and 15(1). It does not violate the freedom of religion under Article 25, if Sections 19 to 21 which also affect religious matters, did not. Section 21-A does not deprive the appellant of any property and, therefore, does not violate any provision of the Constitution relating to property. I thus find nothing in the Constitution which prevents

enactment of Section 21-A.

34. Miss Jethamalani then drew my attention to 1978 (37) FLR 280 (SC) wherein the Court said:

The mandate of Article 37 of the Constitution is that while the directive principles of State Policy shall not be enforceable by any Court, the principles are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Addressed to Court, what the injunction means is that while courts are not free to direct the making of legislation, courts are bound to evolve, affirm and adopt principles of interpretation which will further not hinder the goals set out in the Directive principles of State policy. This command of the Constitution must be ever present in the minds of the judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy.

35. It was urged that the mandate of Article 44 of the Constitution is that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The Special Marriage Act, 1954, specially Section 21 was such one step but Section 21-A has reversed that step and the court should not enforce such an anti-constitutional measure. I wonder how Section 21-A amounts to a backward step so as to come in conflict with Article 44. It has rather been enacted to bring the matter of succession in tune with other legislation on the same subject and is designed to encourage civil or call them secular, marriages. By allowing the Hindus to remain a part of their families and keeping their rules of inheritance intact, the provisions which tended to discourage such marriages have rather been whittled down. Hence, I reject this contention of the appellant.

36. As a last fling, the counsel contended that the appellant married a man who was a Parsi born of a Parsi father and, therefore, Section 21-A has no application in this case. This argument is again devoid of merit. There is no allegation anywhere in any document filed or submitted by Smt Maneka Gandhi that Shri Sanjay Gandhi was not a Hindu. Moreover, as rightly pointed out by Mr. Anand, according to clause (b) of the explanation to sub-section (1) of Section 2 of the Hindu Succession Act, Shri Sanjay Gandhi was a Hindu because one of his parents, namely, the mother was without doubt a Hindu and he himself was brought up as a member of the family to which she belonged. He never underwent Navjot ceremony to christen him a Parsi. Smt Indira Gandhi had openly brought up Sanjay Gandhi as a Hindu. Indeed this fact has not been challenged. That apart, the marriage of late Shri Feroze Gandhi with Smt Indira Gandhi is a matter of history. The marriage of Smt Indira Gandhi was performed by Vedic rites. Sanjay Gandhi is thus born of Hindu parents. I therefore, reject the contention that Shri Sanjay Gandhi was not a Hindu and further that Section 21-A of the Special Marriage Act cannot be invoked in his case.

37. Mr. Khan's grievance against the learned District Judge is that proper issues

were not framed in the case and that is also the subject matter of his Revision. I have gone through the additional issues suggested by Shri Khan but I think the learned District Judge was correct in saying that all these points were covered by the omnibus issue framed by him. Mr. Khan then complained that the onus of the issue was wrongly placed upon the appellant Firstly, it is not so because when so obvious a thing that Smt Indira Gandhi did have a share in succession was disputed, the burden was to be borne by the appellant to prove her contention and secondly, no evidence was led by her in spite of several adjournments given in this regard and thirdly, it was purely a legal issue and could be and was rightly decided only on the basis of the undisputed facts on record. I, therefore, find no substance in this complaint of Mr. Khan.

38. Mr. Khan then pointed out that as a result of the order of the learned District Judge, Varun will have to bear the gift tax. I do not know how far it is correct but even if it is, then how can one make an order against lawful entitlement just in order to avoid gift tax? Certainly the court cannot

39. Mr. Khan then urged that the learned District Judge has imposed court-fee and the Estate Duty on the appellant though the beneficiary of the 1/3rd share should be Smt Indira Gandhi One cannot ignore that Smt Indira Gandhi has in fact got nothing out of these proceedings. The Court-fee Act, and the Wealth Tax Act 1957 make their own provisions in respect of such matters and how could the appellant or Varun escape these charges if Smt Indira Gandhi had been excluded from succession? I wonder if the amount of Court-fee and the tax that is payable cannot ultimately be paid out of the funds of the deceased This is, therefore, an argument without any substance.

40. During the course of these proceedings which have been coming up before me from 20-2-84 the refrain of the argument of Mr. Khan has been that ranged on one side is a widowed daughter in-law and on the other side is a mighty mother-in-law and that for that reason justice was being sacrificed in the court below. A simple legal question could be dealt with soberly and with restraint in language. The courts do not decide cases according to the status in life of the parties but at the same time one cannot approve the use of derisive language simply because one of the parties happens to be the Prime Minister of India. Indeed, Mr. Anand has submitted that if the law did not permit her any share, Smt Indira Gandhi would be the last person to project herself in this case. But that having vindicated her right she made her share available for Varun only shows that she is reasonably quite concerned in the welfare of Varun. Once having known that under the Hindu Succession Act she gets only 1/3rd share, she gets no more even under the Indian, Succession Act it was rather futile on the part of Smt Maneka Gandhi to have filed the present appeal Varun has not come in appeal at all and when I made him a respondent that order was resented and was required to be recalled, which I have declined to do and appointed a highly senior officer of this Court to look after his interests in the case. It was urged that Smt Maneka Gandhi was not fighting for herself but for

the rights of her son that he does not depend upon the mercy of his grandmother and is entitled to 2/3rd share in his own right under the Indian Succession Act and therefore, what are affected in this appeal are his rights vis-a-vis Smt Indira Gandhi As I have already demonstrated that it is not so, but if it were so, then Smt Maneka. Gandhi being his natural guardian should have filed an appeal on his behalf. How could it then be that Varun was omitted on account of inadvertence and oversight? I have found it difficult to believe this plea and I have already rejected it Since Varun had to be joined as a respondent Smt Maneka Gandhi the appellant could not be appointed his guardian ad litem. Order 32 permits appointment of a person other than the natural guardian specially when the interests of the parties are not identical Besides, if his mother has not cared to appeal in his behalf, the Court was called upon to watch his interest and welfare. So I appointed no outsider but an officer of this Court as his guardian ad litem I find that the law does not give him more than 1/3rd, while Smt Gandhi has made it 2/3rd He has gained and does not gain anything by opposing his grandmother for the sake of opposition. There was nothing for him to appeal unless there was an attempt to show that the grandma grudged him even his due.

41. Lastly Mr. Khan submitted that the learned District Judge has gone out of his way to make certain observations in para 18 of the judgment which have been earlier reproduced herein verbatim. As a matter of fact this is the first ground of appeal wherein it is said "that these observations are not supported by the evidence on the record and are uncalled for. They should be expunged in the interest of justice because the learned District Judge was not called upon to decide whether Mrs. Maneka Gandhi was justified in asking for the share of her minor son out of the joint family property. Further there was no opportunity for the District Judge to weigh the magnanimity of Smt. Indira Gandhi and to pay tributes in the judicial proceedings. The District Judge has misused the judicial proceedings by praising Indira Gandhi and maligning Maneka Gandhi against the evidence on record".

42. Now, remarks are expunged if there is a flagrant abuse of power by a subordinate court in passing them upon a matter not relevant to the controversy or are unwarranted and are likely to cause harm or prejudice to the person concerned. If the learned District Judge has considered some action of a party to be magnanimous, so as he said that Smt. Indira Gandhi had great love and affection for her deceased son and grand son and has given her share to be utilised for the benefit of her grandson, there is nothing in it that is against the record. And what harm can these cause to the appellant? None. Varun is entitled to receive favours from his grandmother and what she has done is only just what is expected of an affectionate grandmother anxious about his future.

43. Again, the reaction of the learned District Judge against certain allegations of Smt Maneka Gandhi that Varun was being used and exploited only for political ends by his grandmother are prompted by political consideration is not

unprovoked Smt Indira Gandhi in her reply had only said that the grandson was not allowed to visit her. Smt Maneka Gandhi has admitted that this was so and that she curtailed the visits because the child was likely to suffer from distress and trauma because he was made to pose before the photographers and television and was being used only for political publicity. This is an insinuation, a very uncharitable indeed The Prime Minister of India does not survive on such gimmicks and Smt Indira Gandhi will be the last person to allow anything to be done by which Varun is even remotely subjected to trauma and distress. The life of the national leaders is not exclusively their own. The nation is entitled to and should know what human elements their leaders are made of. As a matter of fact facing the camera and the media is a part of the life of the important political personalities. If the camera has entrapped the moods of Varun and his fond grandmother, it has preserved something worth preserving in any family album. To say that it was done to achieve political publicity is to display a perverse attitude. Smt Maneka Gandhi has complained that Smt Indira Gandhi has not spent anything on the education and upbringing of Varun. How was this allegation justified? Has she been asked for any assistance which was refused? Indeed, the cruel circumstances of the death of his father and subsequent events have deprived Varun of the high cultural and educative environment which was and is his due. On the one hand Smt Maneka Gandhi talks of the mighty power of the grandmother and on the other she is admittedly keeping the kid away from her and thereby depriving him of the benefit of that situation which other grandchildren are able to enjoy and which is given to a lucky few. Mr. Anand assures that there should be no doubt in the mind of anybody that Mrs. Indira Gandhi will be the most concerned person in proper upbringing and education of Varun His complaint is that Smt Maneka Gandhi is keeping him away from his grandmother.

44. Considering all the circumstances of the case I do not feel persuaded to expunge the remarks complained of.

45. All the contentions of the appellant fail The appeal and the revision stand dismissed All the other indisposed of applications stand disposed of accordingly.