APPELLATE CIVIL

Before Prem Chand Pandit, J.

RAM KALI,—*Appellant.*

versus

SOHAN LAL ETC.—*Respondents.*

Regular Second Appeal No. 1015 of 1965.

March 15, 1972.

Hindu Succession Act (XXX of 1956)—Sections 3(1)(c)(i), 15, 16 and 18—Widow remarrying and succeeding to the property of her second husband—Children from her first husband—Whether have a right to succeed to such property after her death.

Held, that under section 15(1) of the Hindu Succession Act, 1956, the property of a Hindu female dying intestate, devolves upon her sons and daughters and by virtue of section 16, Rule 1, all of them would take the property simultaneously that is in equal shares. A widow who remarries and succeeds to the property of her second husband on his death, all the children from her first husband and the second husband are her children. They cannot be treated as full blood and half-blood because these expressions have reference to children born of different wives and not of husbands. Hence a widow who re-marries and succeeds to the property of her second husband, her children from her first husband are entitled to succeed to this property after her death. (Paras 8 and 11).

Regular Second Appeal from the decree of Shri Dev Raj Khanna, Court of Senior Sub-Judge with enhanced appellate Powers, Gurgaon. dated the 21st day of April, 1965 affirming that of Shri Bharat Bhushan, Sub-Judge 1st Class, Palwal, dated the 10th April, 1964, granting the plaintiff a decree for joint possession of the suit land to the extent of 1/4th share of suit land and leaving the parties to bear their own costs.

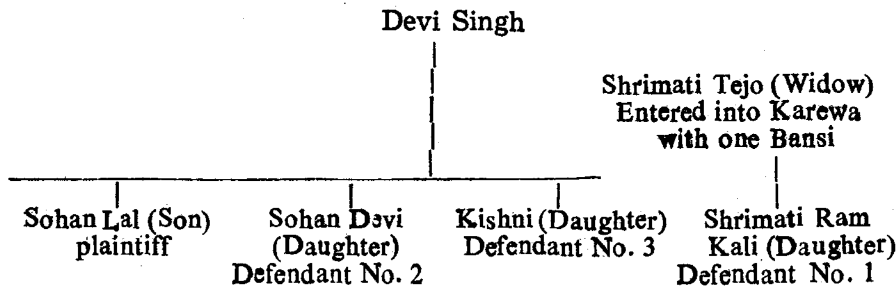
The appellate Court too left the parties to bear their own costs.

N. C. Jain, Advocate, *for the appellant.*

I. S. Balhara for R. S. Mittal, Advocate, *for the respondents.*

JUDGMENT.

PANDIT, J.—The following short pedigree-table will be helpful in understanding the facts of this case :—



(2) The facts are not in dispute. Sohan Lal, Shrimati Sohan Devi and Kishni are the children of Devi Singh from Shrimati Tejo. After the death of Devi Singh, Tejo contracted *Karewa* with one Bansi. Out of this wedlock, one daughter Shrimati Ram Kali was born. The property in dispute, measuring 15 Kanals and 4 Marlas, situate in village Babhalpur, District Gurgaon, admittedly belonged to Bansi and after his death, Tejo succeeded to it. In November, 1963, Sohan Lal brought a suit for joint possession regarding 1/4th share in the said property against Ram Kali, Sohan Devi and Kishni. His allegations were that the property belonged to his mother Tejo and he was entitled to 1/4th share in it. The remaining 3/4th belonged to the three defendants in equal shares.

(3) The suit was mainly contested by Ram Kali defendant No. 1. Her case was that the plaintiff had no right to succeed to this property, because he was the son of Tejo from Devi Singh and the property in dispute belonged to her father Bansi, and therefore, she alone was entitled to it. After her mother Tejo contracted *Karewa* with Bansi, she lost all her connections with Devi Singh's family.

(4) Defendants Nos. 2 and 3 virtually sided with the plaintiff. It is true that in the written statement, their case was that Ram Kali was not the daughter of Tejo, but subsequently in the statement before issues, this plea was given up and it was conceded by their counsel that Ram Kali was born to Tejo from Bansi.

(5) On the pleadings of the parties, only one issue was framed, namely, whether the plaintiff had a right to succeed to the property of the deceased and if so, to what share ?

(6) Both the trial Judge and the lower Appellate Court have come to the conclusion that the plaintiff was entitled to 1/4th share in the property and the remaining 3/4th belonged to the defendants in equal shares. The suit had, therefore, been decreed. Defendant No. 1, Ram Kali, alone has come here in second appeal.

(7) Section 15(1) of the Hindu Succession Act, hereinafter called the Act, deals with the general rule of succession in the case of female Hindus. The relevant part of this section reads:

> "The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—
>
> (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
>
> * * * * * * "

(8) Section 16 of the Act talks of the order of succession and the manner of distribution among the heirs of a female Hindu. It says:

"The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heir shall take place according to the following rules, namely: —

Rule 1. Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously."

There is no manner of doubt that the last holder of this property was Tejo and she had died intestate. Both the plaintiff and the defendants are her children, though from different husbands. Under section 15(1)(a), her property, when she died intestate, would devolve upon her sons and daughters and by virtue of section 16, Rule 1, all of them would take the property simultaneously, that is to say, in equal shares.

(9) Now it is urged that the property admittedly belonged to Bansi, the second husband of Tejo, and Ram Kali was his only daughter. Would this fact make any difference in the rule of succession ? For supporting the case of Ram Kali, reliance was placed on section 18 of the Act, which said that the heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship was the same in every other respect. It was suggested that Ram Kali was related to Tejo by full blood, while the plaintiff and defendants Nos. 2 and 3 were related to her by half blood.

(10) This argument is not sound and ignores the meaning of full blood and half blood as given in the Act itself. Both these expressions have been defined in section 3(1)(c)(i) as :

" "full blood", "half blood" and * * *

(i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives :

* * * * * *"

(11) These two expressions obviously have reference to the children born of different wives and not husbands. In the instant case, there were two different husbands, namely Devi Singh and Bansi, but the wife was common and she was Tejo. Therefore, section 18 will have no application to the facts of the present case. There is an illustration (2) given in Mulla's Hindu Law, 13th Edition, at page 845 under section 16, rules 1 and 2, which says:

> "A dies leaving her surviving son S a son by her first husband H; and S1 and D son and daughter respectively by her second husband H2. A had inherited property from H. All her property including the property inherited from H will devolve upon S, S1, D and H2 simultaneously and they will each take a one-fourth share. The case will not be governed by clause (b) of section 15(2) because A dies leaving issue".

This illustration goes a long way to support the case set up by the plaintiff.

Section 15(2)(b) of the Act says:—

> "Notwithstanding anything contained sub-section (1)—
>
> (a) * * * * * *
>
> (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

(12) From the language employed therein, it is quite clear that this provision will come into play if there were no son or daughter of the deceased, which is not the position in the present case.

(13) In view of what I have said above, no ground has been made out for disturbing the decision given by the lower Appellate Court.

(14) The result is that this appeal fails and is dismissed, but in the circumstances of this case, especially when the point involved is bare of any authority, I will leave the parties bear their own costs.

N.K.S.