

B.C. SINGH (D) BY LRS.

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v.

J.M. UTARID (D) BY LRS.

(Civil Appeal No. 6935 of 2011)

MAY 08, 2018

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[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Succession Act, 1925 – ss.24,25,26,33,35,47 and 48 – Original plaintiff and his wife (both Christians) purchased an immovable property – Both held equal share in the property – Wife invited her relative with his family to stay with them at their property – Wife expired, without leaving any issue – After some time, dispute arose between the plaintiff and his wife’s relative for possession – Wife’s relative asserted share in the property through succession – Thereafter, plaintiff and his wife’s relative both died and their legal representatives were brought on record – Legal representatives of plaintiff contended that neither relative of plaintiff’s wife nor his children were the co-owners of the suit property and further even if they were related to wife of plaintiff they could not succeed to her share since sister of plaintiff’s wife was alive – Held: Plaintiff already held half share in the property by virtue of the sale deed and on death of his wife he succeeded half of the share in the property held by his wife as provided u/s.33(b) r/w. s.35 of the Act – Thus, he held 3/4th share in the entire property – Now, insofar as 1/4th share was concerned, wife of plaintiff did not leave behind any lineal descendant and left behind only her sister – Her sister was the only near kindred and preferential heir of the intestate and she would succeed to 1/4th share in the property – Legal representatives of wife’s relative being a distant kindred would not be entitled to succeed any share in the property since the intestate has left behind her real sister.

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Allowing the appeal, the Court

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HELD: 1. An immovable property was jointly purchased by the original plaintiff and his wife. Both of them held equal share in the entire property. Plaintiff’s wife invited a relative with his family to stay with them. Wife of plaintiff expired, leaving no issue.

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A After some time, plaintiff asked his wife's relative to vacate the property. However, wife's relative asserted 1/4th share in the property as a distant kindred of plaintiff's deceased wife. [Paras 1, 4 and 10][749-F-H; 750-C; 751-E-F]

2. Plaintiff and his wife were Christians. Therefore, Indian
B Succession Act, 1925 would be applicable to the succession of the property. Part V of the Act lays down the rules of succession to a person dying intestate. However, this Part does not apply to the property of any Hindu, Muhammedan, Buddhist, Sikh or Jaina which is evident from Section 29 of the Act. Chapter II of this
C Part lays down the rules of succession in cases of intestates other than Parsis. Section 32 states that the property of an intestate devolves upon wife or husband, or upon those who are of the kindred of the deceased in the order and according to the rules contained in the said Chapter.[Paras 9, 13][751-C-D; 752-F-G]

3. In the instant case, the intestate (wife of plaintiff) has
D left behind her husband and kindred. There are no lineal descendants as defined under Section 25. Sections 42 to 48 lay down the rules of distribution of property of an intestate where the intestate had died without leaving children or remoter lineal descendants and the rules of distribution are in the order of
E priority. [Para 15][753-C-D]

4. Plaintiff has already half share in the property by virtue
F of the sale deed dated. He being the husband would succeed half of the share in the property held by his wife as provided under Section 33(b) read with Section 35 of the Act. Thus, he holds 3/4th share in the entire property. [Para 16][753-D-E]

5. It is clear from s.47 that in case the intestate has not left
G a lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children taking equal shares only the shares which their respective parents would have taken if leaving at the intestate death. In the instant case, wife of plaintiff has left behind her sister. She has not left behind any lineal descendant. Her sister was the only near kindred and preferential heir of the intestate and she would have succeeded to 1/4th share in the property. [Para 18][753-G-H;
H 754-A-B]

6. The rules of distribution are in the order of priority as contained in Sections 42 to 48. It is clear from scheme of the Act that when intestate has not left behind any lineal descendant and has only kindred, the nearer kindred excludes the distant kindred. The wife's relative being a distant kindred is not entitled to succeed any share in the property since the intestate has left behind her real sister. [Para 20][754-D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6935 of 2011.

From the Judgment and Order dated 22.08.2005 of the High Court of Uttaranchal at Nainital in Second Appeal No. 31 of 2001 (Old No. 1510 of 1985).

Ms. Binu Tamta, Sudarshan Singh Rawat, Advs. for the Appellants.

Varinder Kumar Sharma, Ms. Parul Sharma, Shantanu Sharma, Yugal K. Prasad, Advs. for the Respondents.

The Judgment of the Court was delivered by

S.ABDUL NAZEER, J. 1. This appeal by the appellants-plaintiff is directed against the judgment and decree dated 22.08.2005 in Second Appeal No.31/2001 (Old No. 1510.1985) passed by the High Court of Uttaranchal at Nainital.

2. Brief facts necessary for disposal of this appeal are narrated herein below.

3. Dr. B.C. Singh and his wife Dr. Stella Lillian Singh ('Dr. S.L. Singh' for short) had purchased immovable property known as Capel Cottage No.2/3, along with Annexe No.2/3/4 and Annexe No.2/3/5 situated in Survey No.199 at Ranikhet by deed of sale dated 11.2.1952. Dr. S.L. Singh died on 20.3.1976 leaving no issue. Dr. B.C. Singh and his deceased wife Dr. S.L. Singh were Christians. In the year 1968 Dr. S.L. Singh became acquainted with J.M. Utarid, and she invited him to Ranikhet. J.M. Utarid came to Ranikhet in 1969 and stayed at the home of Dr. B.C. Singh and his wife. During this period J.M. Utarid started living in Capel Cottage Annexe No.2/3/5 after it was vacated by its previous tenant. After sometime, Dr. B.C Singh asked J.M. Utarid and his children to vacate the annexe but they failed to vacate the premises in question. Dr. B.C. Singh filed a suit for eviction against J.M. Utarid.

- A The suit was dismissed on 28.8.1978 as Dr. B.C. Singh failed to prove the tenancy of Mr. J.M. Utarid. The revision filed against the said order was also dismissed. Thereafter, Dr. B.C. Singh filed Civil Suit No.32 of 1980 against Mr. J.M. Utarid and his two sons for possession of the property and for damages on the ground that they were the licensees in respect of the suit property and that their licence had been terminated by a notice served on 4.10.1980.
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4. The defendants filed the written statement asserting that the plaintiff is not the sole owner of the property. It was contended that deceased Dr. S.L. Singh was their relative. On her death, defendant No.1, a distant kindred, succeeded to 1/4th share in the entire property. Therefore, the plaintiff was not entitled for relief of possession of the property nor was he entitled for any damages.
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5. The trial court dismissed the suit by its judgment and decree dated 24.11.1981. Dr. B.C. Singh challenged the said decree by filing Civil Appeal No.21 of 1981 before the first Appellate Court. The First Appellate Court by its judgment and decree dated 3.9.1985 allowed the appeal, set aside the judgment and the decree of the trial court and the suit was decreed. This decree was carried in appeal by the defendants in Second Appeal before the High Court. The High Court by its judgment and decree dated 22.8.2005 reversed the judgment and decree of the First Appellate Court. During the pendency of the appeal before the High Court, Dr. B.C. Singh died and his legal representatives have been brought on record. Similarly, the first defendant J.M. Utarid also died and his LRs. were already on record.
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6. We have heard learned counsel for the parties. The contention of the learned counsel for the appellants-plaintiff is that neither J.M. Utarid nor his children (the defendants in the suit) were the co-owners of the suit property and that the original plaintiff, namely, Dr. B.C. Singh was the sole owner of the property. The defendants were only licensees and that their licence had been terminated. It is further contended that even if the defendants were related to Dr. S.L. Singh they could not succeed to her share since Ida Utarid, the sister of Dr. S.L. Singh, was alive. She was preferential heir as compared to the defendants. At best, first defendant was a distant kindred as compared to Ida Utarid and was not entitled to succeed to the property. Though Ida Utarid was a foreign national there was no bar for her to succeed to her share in the property of her deceased sister Dr. S.L. Singh.
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7. On the other hand, learned counsel appearing for the respondents-defendants submits that Ida Utarid, is not entitled to succeed to the estate of Dr. S.L. Singh as she is a Pakistani national. The defendants being the kindred of deceased Dr. S.L. Singh are entitled to 1/4th undivided share in the suit property. They are the co-owners and not the licensees as contended by the plaintiff. Therefore, the High Court has rightly dismissed the suit.

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8. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record.

9. Dr. S.L. Singh died on 20.3.1976 without leaving any issue. It is not disputed that Ida Utarid is the real sister of Dr. S.L. Singh. According to the admitted pedigree, M. Utarid had two sons, namely, Dr. M.B. Utarid and Nazir Utarid. Nazir Utarid had two daughters, namely, Dr. S.L. Singh (wife of the original plaintiff) and Ida Utarid. J.M. Utarid (defendant No.1) is the son of E. Utarid and grandson of Dr. M.B. Utarid. Dr. S.L. Singh is admittedly an Indian Christian. Therefore, the Indian Succession Act, 1925 (for short 'the Act') would be applicable to the succession of the property left by her. This Act does not bar the succession of property of any Indian Christian by a person who is not an Indian national. There is no prohibition for succession of the property in India by a foreign national by inheritance.

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10. Admittedly, the immovable property known as Capel Cottage was jointly purchased by the original plaintiff Dr. B.C. Singh and his wife Dr. S.L. Singh. Therefore, each of them hold equal share in the entire property. According to the defendants, first defendant is the kindred of deceased Dr. S.L. Singh and has become the co-owner after her death. Hence, he cannot be evicted from the suit property. The subject matter of the suit is Annexe No.2/3/5 of Capel Cottage.

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11. Section 24 defines kindred or consanguinity, which is as under:-

“24. **Kindred or consanguinity**.-Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.”

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12. Sections 25 and 26 classify lineal consanguinity and collateral consanguinity, which is as under:

“25. **Lineal consanguinity**.- (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a

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A direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line, or between a man and his son, grandson, great-grandson and so downwards in direct descending line.

B (2) Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on."

C "26. **Collateral consanguinity.**- (1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

D (2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is necessary to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, a degree being allowed for each person, both ascending and descending."

E Thus lineal consanguinity is that between two persons connected in one straight line whether descending or ascending, drawn from the propositus. Collateral consanguinity is between two persons connected by a line which is not a straight line.

F 13. Part V of the Act lays down the rules of succession to a person dying intestate. However, this Part does not apply to the property of any Hindu, Muhammedan, Buddhist, Sikh or Jaina which is evident from Section 29 of the Act. Chapter II of this Part lays down the rules of succession in cases of intestates other than Parsis. Section 32 states that the property of an intestate devolves upon wife or husband, or upon those who are of the kindred of the deceased in the order and according to the rules contained in the said Chapter. Section 33(b) is relevant for the purpose, which is as under:-

G "33. **Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.** -Where the intestate has left a widow—

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(a);

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(b) [save as provided by section 33A], if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;

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(c)”

14. Section 35 states that a husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband’s property, if he dies intestate.

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15. In the instant case, the intestate has left behind her husband and kindred. There are no lineal descendants as defined under Section 25. Sections 42 to 48 lay down the rules of distribution of property of an intestate where the intestate had died without leaving children or remoter lineal descendants and the rules of distribution are in the order of priority.

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16. Dr. B.C Singh has already half share in the property by virtue of the sale deed dated 11.2.1952. He being the husband of Dr. S.L. Singh would succeed half of the share in the property held by her as provided under Section 33(b) read with Section 35 of the Act. Thus, he holds 3/4th share in the entire property. Now the question is what should happen to the remaining 1/4th share in the property?

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17. Section 47 provides for devolution of the property where intestate has left neither lineal descendant, nor father, nor mother. The said Section is as under:-

“47. **Where intestate has left neither lineal descendant, nor father, nor mother.** - Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate’s death.

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18. It is clear from this provision that in case the intestate has not left a lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children

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- A of such of them as may have died before him, such children taking equal shares only the shares which their respective parents would have taken if leaving at the intestate death. In the instant case, Dr. S.L. Singh has left behind her sister, Ida Utarid. She has not left behind any lineal descendant. Ida Utarid was the only near kindred and preferential heir of the intestate and she would have succeeded to 1/4th share in the property.
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19. It is only when intestate has left neither lineal descendant, nor parent, nor brother and nor sister, the property has to be divided among those relatives of the intestate who are in the nearest degree of kindred to him. This is clear from Section 48, which is as under:-

- C “48. **Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.** - Where the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.”
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20. The rules of distribution are in the order of priority as contained in Sections 42 to 48. It is clear from scheme of the Act that when intestate has not left behind any lineal descendant and has only kindred, the nearer kindred excludes the distant kindred. The first defendant being a distant kindred is not entitled to succeed any share in the property since the intestate has left behind her real sister.

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21. We find no merit in the contention of the respondents that they are entitled to succeed 1/4th share in the property. We, therefore, allow this appeal, set aside the judgment and decree of the High Court and restore the judgment of the First Appellate Court. There will be no orders as to costs.
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