

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL (L) NO.191 OF 2017

Gurbir Shivdev Singh
and others.

... Appellants.

Versus

Naresh Nathulal Pal
and others.

... Respondents

....

Mr. Ashutosh Srivastava for the Appellant.

Ms. Pooja Khandeparkar a/w Ms. Asfiya Cutchi i/b. K.K. Associates
for Respondent Nos4 and 5.

....

***CORAM : Smt. Vasanti A Naik &
Sarang V. Kotwal, JJ.***

DATE : 19th December, 2017.

P.C. :

By this intra court appeal, the appellants have appealed against the order of the learned Single Judge, dated 08.03.2017 allowing an application filed by the respondent under Order 7 Rule 11 of the Code of Civil Procedure and rejecting the plaint of the appellants.

The appellants are the original plaintiffs. A testamentary suit was filed by the appellants for the grant of letters of administration in favour of the appellants in respect of the property of the deceased viz. Ms. Urvashi Chhabda. Ms. Urvashi Chhabda had expired on 09.11.2014 in Mumai. The appellants' claim to be the maternal uncle and the maternal aunts of the deceased. According to the appellants, the deceased had not left behind any other legal heirs. In the said suit, an application was made by the respondents stating

therein that they were related to the deceased from the paternal side and they were entitled to the letters of administration and that the plaint was liable to be rejected under Order 11 Rule 9 of the Code. The application of the respondents was allowed by the learned Single Judge by the order appealed against and while allowing the said application, the learned Single judge imposed the costs of Rs.2,00,000/- on the appellants and the appellants were also directed to donate a sum of Rs.3,00,000/- to the Army Welfare Fund (battle casualties). The order of the learned Single Judge dated 08.03.2017 is appealed against in this appeal.

The learned counsel for the appellants submitted that the appellants are the maternal uncle and the maternal aunts of the deceased, whereas the respondents are the daughters of the deceased brother of the father of the deceased. It is submitted that in view of the provisions of the Hindu Succession Act, 1956, the appellants would be entitled to succeed to the property left behind by deceased Urvashi, in view of the provisions of Section 15 of the Act. It is stated that since the deceased was not married and the mother and the father of the deceased had predeceased her, the property of the deceased would have devolved on the heirs of the father as per Clause (d) of Section 15(1) of the Act and if the father had not left behind any heirs, upon the heirs of the mother under Clause (e) of Section 15(1) of the Act. It is submitted that the father of the deceased has not left behind him any legal heirs under Class I and Class II of the Schedule under Section 8 of the Act. It is submitted that since the respondents do not fall in Class I and Class II of the Schedule of heirs that could be

left behind by a Hindu male dying intestate and they are only the agnates, Clause (d) of Section 15(1) of the Act would not come into play and in view of Clause 1(e) of Section 15(1), the appellants would be the heirs from the mother of deceased Urvashi and would be entitled to the property.

On hearing of the learned counsel for the parties and on a perusal of the order of the learned Single Judge and the provisions of the Act, it appears that the learned Single Judge was justified in allowing the application filed by the respondents under Order 7 Rule 11 of the Code for rejection of the plaint. Admittedly, the appellants are the brother and the sisters of the mother of deceased Urvashi and the respondents are the daughters of the deceased brother of the father of the deceased. By keeping this admitted fact in mind, it would be necessary to consider the provisions of the Hindu Succession Act. The relevant provisions of the Hindu Succession Act. Viz,- Sections 8, 9 and 15 of the Act, read thus:-

“Section 8. General rules of succession in the case of males.— *The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—*

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

Section 9. Order of succession among heirs in the Schedule.— Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.”

“Section 15. General rules of succession in the case of female Hindus.— (1) 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;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section(1),—

- (a) any property inherited by a female Hindu from her father or mother 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 father; and
- (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 subsection (1) in the order specified therein, but upon the heirs of the husband

It would now be necessary to note the Class I and and Class II heirs in the Schedule under Section 8 of the Act. The Schedule under

Section 8 of the Act is reproduced for the ready reference.

“THE SCHEDULE

(See section 8)

HEIRS IN CLASS I AND CLASS II

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son; (son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son)

Class II

- I. Father.*
- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.*
- III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.*
- IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.*
- V. Father's father; father's mother.*
- VI. Father's widow; brother's widow.*
- VII. Father's brother; father's sister.*
- VIII. Mother's father; mother's mother.*
- IX. Mother's brother; mother's sister.*

Explanation.- In this Schedule, reference to a brother or sister do not include references to a brother or sister by uterine blood.

Admittedly, since the deceased was a female, Section 15 of the Act would come into play. It would also be necessary to refer to the

provisions of Section 16 of the Act and Rule 1 thereof that provides that amongst the heirs specified in sub-section (1) of Section 15, those in the first entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously. As per Section 15(1)(a) of the Act, the property of a Hindu female dying intestate would devolve firstly upon the sons and daughters and the husband of the deceased but here the deceased was not married. Secondly, the property of the deceased female would devolve upon the heirs of the husband but since she was not married, Clause (b) of Section 15(1) would also not apply. As per sub-clause (c) the property would devolve on the mother and the father but the mother and the father of deceased Urvashi had predeceased her. As per clause (d) of Section 15, the property would devolve upon the heirs of the father. For determining who would be the heirs of the father, it would be necessary to consider the provisions of Section 8 and Section 9 of the Act and the Schedule under Section 8 thereof. On a reading of the provisions of Sections 8 and 9 of the Act, it appears that the property of a male Hindu dying intestate would devolve firstly upon the heirs specified in Class I of the Schedule and if there are no heirs in Class I then upon the heirs specified in Class II of the Schedule. In the instant Case, since Section 15(1)(d) may apply to the case in hand and the property of deceased Urvashi may devolve upon the heirs of the father, it would be necessary to consider whether the respondents would be the heirs of the father in view of the provisions of the Act. It appears that the respondents would be the heirs of the father in view of the schedule under Section 8. A brother's son, a sister's son, a brother's daughter and a sister's daughter would fall in entry IV of Class II of the Schedule under Section 8 of the Act. Section 9 of the Act provides that among

the heirs specified in the Schedule, those in Class I would be preferred over those in Class II and the first entry in Class II is preferred over those in the second entry, those in the second entry shall be preferred over the third entry and so on in succession. The appellants would fall in entry IV of Class II of the Schedule. It cannot be said that the respondents are only the agnates and not the heirs of the father of the deceased as per Section 15(1)(d). On a combined reading of the provisions of the Sections 8, 9, 15 and 16 of the Act and the Schedule appended to Section 8 thereof, it appears that the respondents would be entitled to succeed to the property of deceased Urvashi in view of the provisions of Section 15(1)(d) of the Act in preference to the appellants who fall under Section 15(1)(e) of the same. The learned Single Judge has rightly considered the provisions of the Hindu Succession Act to hold that the appellants would not have a right to the property of deceased Urvashi and in the absence of right, the plaint was liable to be rejected under Order 7 Rule 11 of the Code. Though we are in agreement with the view expressed by the learned Single Judge while allowing the petition filed by the respondents under Order 7 Rule 11 of the Code, we find that the order imposing costs of Rs.2,00,000/- on the appellants and the direction to the appellants to donate a sum of Rs.3,00,000/- to the Army Welfare Fund (battle casualties) was not necessary. Admittedly, the appellants are related to the deceased from her maternal side and they may have believed that they had a right to claim the property of deceased Urvashi in preference to the other heirs. In the circumstances of the case, it would be necessary to set aside the order imposing a penalty of Rs.5,00,000/- on the appellants.

In the result, the appeal is partly allowed. The order of the learned Single Judge is modified. The part of the order that allows the petition filed by the respondents for rejection of the plaint under Order 7 Rule 11 of the Code is confirmed. The part of the order that imposes costs of Rs.2,00,000/- on the appellants and directs the appellant to donate a sum of Rs.3,00,000/- to Army Welfare Fund (Battle casualties) is set aside. Order Accordingly. No order as to costs.

(Sarang V. Kotwal, J)

(Smt.Vasanti A Naik, J)