

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

APPEAL NO. 151 OF 2018

Vansh Bahadur Sabhajeet Yadav. ... Appellant.
V/s.
Dudhnath Kallu Yadav and others. ... Respondents.

Mr.Vansh Bahadur Sabhajeet Yadav, the appellant in person.
Mr.Ramchandra Yadav with Mr.Netaji Gawade i/b. Sanjay Udeshi
and Co. for respondent No.1.
Mr.Rakesh Kumar Singh for respondent Nos.17, 18, 20 and 21.
Mr.Vedchand Patil for respondent No.22.
Mr.Satish Upadhyay i/b. Motichand & Co. for newly added respondents.

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CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 27th August 2018.

P.C.:

Heard the submissions of the appellant appearing in person.
The challenge in this appeal is to the order dated 12th January 2018
passed by the learned single Judge on a chamber summons taken out by
the present appellant who is a member of bar. The appellant is not a
party to Suit No.2219/2000. The appellant took out chamber summons
on which the impugned order has been passed. The claim of the
appellant is that he is one of the legal representatives of the deceased
defendant No.14 being a stepson of the deceased defendant No.14. The
prayer in the chamber summons taken out by the appellant was that he

may be ordered to be impleaded as the defendant No.14(e). There is also a prayer in the said chamber summons seeking a direction that a decree for partition of his separate share be passed.

2. The learned single Judge noted that the suit has been already dismissed as against the legal representatives of the deceased defendant No.14 who were brought on record. The learned single Judge dismissed the said chamber summons taken out by the appellant and directed the appellant to pay costs quantified at Rs.50,000/-. The learned single Judge relied upon the decision of the Apex Court in the case of **Lachman Singh v. Kripa Singh and others**¹. The learned single Judge observed that the Apex Court in the said decision held that a stepson or a stepdaughter of a female Hindu dying intestate is not covered by the expression “son” or “daughter” under clause (a) of sub-section (1) of section 15 of the Hindu Succession Act, 1956 (for short “the said Act of 1956”).

3. The submission of the appellant appearing in person is based on the definition of the word “child” in clause (15B) of section 2 of the Income Tax Act, 1961 (for short “Income Tax Act”) ought to be considered which includes stepson. He also relies upon the provisions of the Reserve Bank of India Act. His submission is that if the definitions in the said two central enactments are considered, it is obvious that a stepson will have to be included in the word “son” used in section 8 of the said At of 1956. His submission is that as the definitions in these Central Acts were not

¹ (1987) 2 SCC 547

pointed out to the Apex Court when the Apex Court decided the case in *Lachman Singh v. Kripa Singh* (supra), the said decision cannot be used against the appellant. His submission is that the other provisions of the said Act of 1956 recognize even the rights of adopted sons and daughters and, therefore, there is no reason to exclude a stepson from the purview of section 8 of the said Act of 1956. Inviting our attention to section 8 as well as the schedule which incorporates the description of class-I and class-II heirs, he submitted that the legislature has not excluded a stepson and, therefore, the learned single Judge committed serious error in dismissing the chamber summon.

4. We have considered the submissions. Even according to the case of the appellant, the original defendant No.14 died intestate and the provisions of the said Act of 1956 will govern his succession. Therefore, to enable the appellant to claim a share in the estate of defendant No.14, he will have to show that he is covered by any of the clauses of section 8 of the said Act of 1956 which lays down general rules of succession in case of males. Out of four clauses, clauses (c) and (d) are not applicable and, therefore, the appellant will have to show that he falls under class-I inasmuch as the deceased has other class-I heirs. Section 8 of the said Act of 1956 reads thus:

“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.”

Which are the heirs of the deceased included in class-I and class-II have been set out in the schedule. A stepson is not specifically included either in class-I or class-II. The list of heirs set out therein cannot be expanded.

5. In case of *Lachman Singh v. Kripa Singh* (supra), the question which arose before the Apex Court was whether a stepson of a female dying intestate is entitled to claim share in her property simultaneously with her son. The controversy was whether the word “sons” appearing in clause (a) of sub-section (1) of section 15 of the said Act of 1956 includes stepson. Section 15 incorporates general rules of succession in case of a female Hindu. Section 15 reads thus:

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 sub-section (1) in the order specified therein, but upon the heirs of the husband.

6. The Apex Court has specifically held that the words “sons and “daughters” used in clause (a) of sub-section (1) of section 15 will not include a stepson or a stepdaughter. As clause (b) of sub-section (1) of section 15 provides that in absence of sons and daughters and the husband of deceased female Hindu, her property will devolve upon the heirs of the husband, the Apex Court observed that in case of clause (b), stepson and stepdaughter may come in as heirs. The reason is if the deceased female Hindu has a son or daughter from her deceased husband, they will fall in clause (a). The other sons and daughters of husband will fall in clause (b).

7. The argument that section 8 as well as the schedule referred therein do not exclude a stepson has no merit. What is material is who

are the persons who are included in class-I and class-II heirs. The schedule expressly names the relatives of the deceased who are included in Class-I and Class-II. The Court cannot add anything to the list.

8. Reliance placed on the definition of “child” under the Income Tax Act and the provisions of the Reserve Bank of India Act is completely misplaced. By no stretch of imagination the said statutes can be said to be *pari materia* with the said Act of 1956. The said Act of 1956 has been enacted to amend and codify the law relating to intestate succession among Hindus. Both enactments relied upon by the appellant do not deal with intestate succession at all. The learned single Judge has referred to the definition of “son” in clause (57) of section 2 of the General Clauses Act, 1987 which includes only adopted son and not a stepson. We, therefore, concur with the view taken by the learned single Judge that a stepson is not included in Class-I and Class-II heirs in the schedule. On plain reading of section 8 of the said Act of 1956 and the schedule, a stepson of a male Hindu dying intestate is not included either in class-I or class-II.

9. During the course of dictation of this order, the appellant appearing in person relied upon the decision of the Division Bench of this Court in ***Rama Ananda Patil v. Appa Bhima Redekar***² and submitted that the said decision supports his case. We find that in paragraph-8 of the impugned order, the learned single Judge has dealt with the said

2 2 AIR 1969 Bom. 205

argument based on the decision of this Court in the case of ***Rama Ananda Patil v. Appa Bhima Redekar*** (supra). In paragraph-8 of the impugned order, the learned single Judge has held thus:

“8. The Applicant relies on a Division Bench judgment of this court in the case of Rama Ananda Patil Vs. Appa Bhima Redekar, in support of his submission that a stepson is entitled to succeed to the property of the deceased. The Judgment of this court in Rama Patil's case was rendered in an altogether different set of facts. The application to inheritance in that case was by a son through the first husband of a deceased female Hindu. The property held by the deceased was inherited by her as a sole heir of her second husband. After her death, the applicant claimed to succeed to her property in preference over a nephew and a grand nephew of the second husband. The claim was accepted by our court. This judgment has no application to the facts of our case. In the first place, the succession is claimed here not to the estate of the Applicant's mother, but to the estate of his mother's second husband. Succession to the estate of a male hindu can only be claimed under Section 8 of the Hindu Succession Act read with the schedule under that Act which, as noted above, provides for two classes of heirs. Also as noted above, the Applicant does not fall under either of these classes and is not entitled to succeed to the estate of the deceased male hindu, namely, defendant No.14. Even otherwise this judgment is considered by the Supreme Court in the case of Lachman Singh Vs. Kripa Singh and ors.3. The Supreme Court in that case held that a stepson or a stepdaughter of a female Hindu dying intestate are not covered by the expression “son” or “daughter” in clause (a) of subsection (1) of Section 15 of the Hindu Succession Act. They could merely be said to be falling under either clause(b) of subsection(1) of Section 15 or subsection(2) of Section 15. In any event, as noted above, there is no warrant for

construing the provisions of Section 15, either subsection (1) or (2) or any of the clauses therein, for our purposes. In our case, the applicable provision is Section 8 of the Hindu Succession Act.”

We concur with the view taken by the learned single Judge. Therefore, in our view, the learned single Judge is right in holding that the claim made by the appellant is clearly preposterous and, therefore, he proceeded to impose costs of Rs.50,000/-. We find no merit in the appeal and the same is accordingly dismissed.

10. At this stage, the appellant appearing in person prays for stay of this order to enable him to move the Apex Court.

11. The present appeal is lodged on 5th March 2018. Till today, there is no ad-interim relief granted in this appeal. Therefore, prayer for stay is rejected.

(M.S.SONAK, J.)

(A.S.OKA, J.)