

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO(S) .6758 OF 2009

DILIP KUMAR @ SRINIVAS  
AND ANR. . . . APPELLANT (S)

VERSUS

DAMODAR AND ORS. . . . RESPONDENT (S)

ORDER

1. The plaintiff's suit for partition was partly decreed by the learned trial Court and the said decree has been confirmed in the First Appeal as well as in Second Appeal. Defendant Nos. 1 and 7 are in appeal against the aforesaid decree.

2. We have heard the learned counsels for the parties.

3. There is no dispute that the property in respect of which the decree was

passed by the courts below was the property of one Sonubai, mother of first defendant and first wife of one Narayanrao (defendant No.6). The plaintiff and defendant Nos. 2 to 5 are sons and daughters of Narayanrao (defendant No.6) through his second wife one Leelabai. Defendant Nos. 2 to 5 supported the case of the plaintiff for partition whereas defendant No.1 and defendant No.7, who is the wife of the defendant No.1, opposed the same.

4. The learned courts below have consistently taken the view that the property in question having devolved on Sonubai, the mother of the first defendant, from her parents, succession to the same would be governed by the provisions of Section 15(1) of the Hindu Succession Act, 1956 (hereinafter referred to as "the Act") and not by the provisions of Section 15(2)

of the Act. Section 15 of the Act is in the following terms.

"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."

5. *Ex facie*, we do not see how in the present case the provisions of Section 15(2) of the Act, extracted above, can have any application, as contended by the first defendant (appellant No.1 herein) inasmuch as Sonubai who died in the year 1956 had left an issue i.e. defendant No.1 (son). If that is so, Section 15(1) of the Act would apply to the exclusion of Section 15(2) of the Act. On such application of the provisions of Section 15(1) of the Act, Narayanrao, the father of the first

defendant and the husband of Sonubai, would also be entitled to a share and the plaintiff and the defendant Nos. 2 to 5 as legal heirs of Narayanrao through his second wife would also be entitled to the proportionate share out of the share of Narayanrao as the husband of Sonubai. This is precise what the decree has provided for. We, therefore, can find no infirmity with the said decree so as to warrant interference in this appeal. The appeal consequently is dismissed.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(NAVIN SINHA)

NEW DELHI  
OCTOBER 24, 2017

ITEM NO.103

COURT NO.3

SECTION IV-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S). 6758/2009

DILIP KUMAR @ SRINIVAS &amp; ANR.

APPELLANT(S)

VERSUS

DAMODAR &amp; ORS.

RESPONDENT(S)

Date : 24-10-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s)

Mr. Basava Prabhu S. Patil, Sr. Adv.  
Mr. Sharanagouda Patil, Adv.  
Ms. Supreeta Patil, Adv.  
For Mr. V. N. Raghupathy, AOR

For Respondent(s)

Mr. S. N. Bhat, AOR

UPON hearing the counsel the Court made the following  
O R D E RThe appeal is dismissed in terms of the signed  
order.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]