

1975 KHC 901

Supreme Court of India

*K. K. Mathew; *V. R. Krishna Iyer; P. K. Goswami, JJ.*
Shikhir Chand Jain v. Digambar Jain Prabandhkarini Sabha
C. A. No. 1598 of 1967
04 March, 1975

Constitution of India, Art.136 - Special Leave Appeal -- Petition for recording compromise filed in appeal before Supreme Court -- Terms of compromise reasonable and promoted best interest of parties -- Direct that in substitution of the decree under appeal, a decree in terms of the compromise will be made (Para 4)

JUDGMENT

Krishna Iyer, J.

1 Notwithstanding the proclaimed equality of the sexes the personal laws, which are in some measure a legacy for the live present from the petrified past, have perpetuated an ancient discrimination as the facts and the law, we are called upon to decide in the present case, demonstrate. The core question argued before us, epigrammatically expressed, is whether the estate of a woman is only a woman's estate?

The Facts

The plaintiff, a public trust of the Jain community, instituted the present suit, a little over two decades ago. for recovery of possession of certain property from the contesting defendant (the present appellant) based on a gift thereof in its favour by Smt. Rajrani (5th defendant) who had purported to convey the full rights therein to the said trust. The contestant defendants denied the plaintiff's title and pleaded inter alia that Smt. Rajrani, who remained *ex parte* after filing a written statement in support of the plaintiff's case, had only a limited estate and her alienation would not therefore survive her. A more substantial defence was set up, viz., that the appellant first defendant had been in possession of the land since 1937 and that he had perfected his title by adverse possession. Various issues were framed and evidence recorded but the 1st defendant was worsted and the suit decreed. It is significant to note that on a crucial finding regarding the quantum of the interest conveyed to the plaintiff, which has a material bearing on the fate of the case, there has been no reference or reversal at the appellate stages - a *casus omissus*, as it were. The trial judge had found that the plaintiff's vendor Raj Rani, although a widow who had acquired the right in the property on allotment in a partition decree, had transferred the property for pious purposes to a religious trust, namely the plaintiff, and as such the entire right in the property, not merely a woman's estate, had been conveyed by the gift.

2. The first appellate Court reversed the decree of the Trial Court but on second appeal the latter was restored. The 1st defendant came to this Court in appeal but in the course of arguments on an earlier occasion it was felt necessary that a fresh finding should be called for in view of the death of Smt. Rajrani *pendente lite*. We will refer in some more detail to the said remand order but, at this stage, it may be mentioned that the question on which a finding was called for assumed that Raj Rani had only a limited estate. If so, the appellant, claiming to be the nearest reversioner, would ordinarily be entitled to the property and the respondent plaintiff

would lose the land unless other defences were made out. The finding recorded by the Trial Court on remand has gone in favour of the appellant so much so the appellant has to be taken as the nearest reversioner entitled to the property if the late Raj Rani had died as a limited owner of the suit property.

3. The crucial issue therefore is as to whether the alienor of the plaintiff had only a woman's estate, as understood in the Hindu Law; secondly, whether the finding recorded by the Trial Court based on spiritual benefit of the deceased husband and left obscurely alone in the later stages of the spiral of litigation, has any surviving impact on the result in this appeal.

4. We were not called upon to examine these contentions in view of the sequel resulting in a settlement of the dispute between the parties. Even at the time the arguments proceeded, we felt that it was desirable, having regard to the totality of the social circumstances and the individual facts of the case that an adjustment of the disputes would be the best course to secure justice for all concerned. The suggestion so thrown seems to have fallen on fertile soil for, learned counsel on both sides have played an activist role in bringing to fruition what was a spontaneous judicial response to the factors involved in the appeal. They have been able to make their clients appreciate the propriety and arrive at the terms of a just adjustment of the disputation. A petition for recording compromise has been put in and we feel that the terms are reasonable and promote the best interests of the parties. In this view we direct that in substitution of the decree under appeal, a decree in terms of the compromise will be made.