

## **Madhu Kishwar and others v. The State of Bihar and others (AIR 1996 5 SCC 125)**

### **1) Reference Details**

Jurisdiction: Indian Supreme Court

Date of Decision: 17 April 1996

Link to full case: <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=15686>

### **2) Facts**

The petition, under Article 32 of the Constitution, challenged certain provisions of the Chota Nagpur Tenancy Act 1908, (the Act) which provide for succession to property in the male line, on the premise that this is discriminatory against women and therefore, *ultra vires* due to the equality clauses in the Constitution. A two-member Bench hearing these matters was told that the State of Bihar had set up a Committee to consider the feasibility of appropriate amendments to the legislation and to examine the matter in detail. The bench postponed decision pending outcome of the Committee.

The State of Bihar furnished an affidavit to the effect that:

*"[A] meeting of the Bihar Tribal Consultative Council was held on 31 July 1992, presided over by the Chief Minister and attended to by M.P.s and M.L.A.s of the tribal areas, besides various other Ministers and officers of the State, who on deliberations have expressed the view that they were not in favour of effecting any change in the provisions of the Act, as the land of the tribals may be alienated, which will not be in the interest of the tribal community at present."*

The matter was not closed, however, because the Council recommended that the proposal may widely be publicised in the tribal community and their various sub-castes may be prompted to give their opinion if they would like any change in the existing law.

### **3) Law**

*National Law*

- The Constitution of India
- The Hindu Succession Act
- The Indian Succession Act
- Sharia Law
- The Chota Nagpur Tenancy Act, 1908

### **4) Legal Arguments**

None noted

### **5) Decision**

Justice M.M. Punchhi giving the judgment of the Court summarised the effects of relevant legislation. He noted that three acts or laws which applied to the case:

1. The Hindu Succession Act sets rules of succession applicable to a large majority of Indians being Hindus, Sikhs, Buddhists, Jains etc. A female heir is put at par with a male heir.
2. Under Sharia Law, applicable to Muslims, the female heir has an unequal share in the inheritance, by and large half of what a male gets.
3. Then Indian Succession Act applies to Christians and to people not covered under the other two, conferring in a certain heirship on females and males.

He pointed out, in relation to the Hindu Succession Act, that the State Government can exempt any race, sect or tribe from the operation of the Act and the State of Bihar has exempted the tribes that are included in this petition.

Therefore neither the Hindu Succession Act, nor the Indian Succession Act, nor Sharia Law was applicable to the concerned tribes. He noted that the Chota Nagpur Tenancy Act was a law to amend and consolidate certain enactments relating to the law of landlord and tenants and the settlement of rent in Chota Nagpur. The Act related to classes of tenants and not to ownership to land.

He turned to Article 21 of the Constitution, which enshrines the right to life to include a right to livelihood and pointed out that:

*“Agriculture is not a singular vocation. It is, more often than not, a joint venture, mainly of the tiller's family members. Some of them have to work hard and the others harder still. Everybody, young or old, male or female, has chores allotted to perform; a share in the burden of toil. Traditionally and historically, the agricultural family is identified by the male head, but on his death, his dependent family females, such as his mother, widow, daughter, daughter-in-law, grand-daughter, and others joint with him have, under the Act, to make way to a male relatives within and outside the family of the deceased entitled there under, disconnecting them from the land and their means of livelihood. Their right to livelihood in that instance gets affected, a right constitutionally recognised, a right which the female enjoyed in common with the last male holder of the tenancy. It is in protection of that right to livelihood, which the immediate female relatives of the last male tenant have the constitutional remedy to stay on holding the land so long as they remain dependent on it for earning their livelihood, for otherwise it would render them destitute.”*

The Court decided that the exclusive right of male succession included in ss. 7 and 8 of the Act must be suspended so long as the right of livelihood of the female descendant's of the last male holder continues. Accordingly, the Court ordered disposal of the petition with the above relief to the female dependents/descendants. The Supreme Court directed the State of Bihar:

*“to comprehensively examine the question on the premise of our constitutional ethos and the need voiced to amend the law [and] to examine the question of recommending to the Central Government whether the latter would consider it just and necessary to withdraw the exemptions given under the Hindu Succession Act and the Indian Succession Act at this point of time in so far as the applicability of these provisions to the Scheduled Tribes in the State of Bihar is concerned.”*