

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Second Appeal No.151 of 1999
and
Cross Objection No. 59 of 2015

S.A.No.151 of 1999
Pushpa (deceased)

1.V.Nagalingam (deceased)
2.N.Gajalakshmi
3.N.Vijayalakshi
4.N.Dhanalakshmi
5.N.Govindaraju
6.N.Shanthakumar
7.N.Kamalakannan ...LRS of Deceased 2nd appellant

(Appellants 2 to 7 are recorded as legal heirs
of the deceased 1st appellant vide order of
Court dated 23.03.2017 & 13.12.2017
made in S.A.No151/1999) ... Appellants/3rd Defendant
2nd appellant

Versus

1.N.Venkatesh
2.Swarnammal
3.M.Chitra
4.M.Santhi
5.Velmurugan
6.Devaki Ammal
7.Sundaram
8.S.Ganesan
9.S.Senkazhani
10.Meenakshi Munuswamy
11.Lalitha Baghu
12.S.Sathianarayanan
13.Saraswathi Vasudevan
14.Kirupakaran
15.S.Barath

... Respondents

Second Appeal filed under Section 100 of C.P.C. against the
Decree and Judgment dated 22.04.1991 rendered in A.S.No.132 of
1990 on the file of the VI Additional Judge, City Civil Court,
at Madras, confirming the Decree and Judgment dated 09.07.1984
rendered in O.S.No.134 of 1982 on the file of the XVIII
Assistant Judge, City Civil Court, at Madras.

For Appellants : Mr. D.R.Sivakumar
For Respondents : Mr.Parthasarathy, Senior Advocate
for Mrs.R.J.Radhika for R1

Mr.A.S.Alaguraja
for Ms. S.Ponnarasi for R2, 3 & 5

Cross Objection No.59 of 2015

1.Swarnammal
2.M.Chitra
3.M.Velmurugan

..Petitioners/ Cross Objectors/
2,3,5 Respondents

Versus

1.V.Nagalingam (deceased)
2.N.Gajalakshmi
3.N.Vijayalakshmi
4.N.Dhanalakshmi
5.N.Govindaraj
6.N.Santhakumar
7.N.Kamalakannan

...1to7 respondents/1to7 Respondents/
1to7 appellants/8th respondent/8th
Respondent/1st Respondent

8.N.Venkatesh
9.M.Santhi
10.Devaki Ammal
11.Sundaram
12.S.Ganesan
13.S.Senkazhani
14.Meenakshi Munuswamy
15.Lalitha Bagu
16.A.Sathianarayana
17.Saraswathi Vasudevan
18.Kirubakaran
19.S.Barathi

...9to19 Respondents/9to19 Respondents/
4,6 to15 respondents

(RR2 to 7 are recorded as legal heirs of the
deceased R1 vide order of Court dated
23.03.2017 & 13.12.2017 made in Cross
Objection 59/2015)

(R9 to R19 herein are given up)

...Respondents

Cross Objection filed under Order 41 Rule 22 of the Code of
Civil Procedure to set aside the Decree and Judgment dated
22.04.1991 passed in A.S.No.132/1990 and in the cross objection
in A.S.No.132/90 on the file of VI Additional Judge, City Civil
Court, Chennai modifying the Decree and Judgment dated
09.07.1984 passed in O.S.No.134/1982 by the XVIII Asst. City
Civil Court of Chennai.

For Cross objectors : Mr. A.S. Alaguraja
for S.Ponnarasi
For Respondents : Mr. D.R. Shivakumar for R2 to R7
Mr.S.Parthasarathy, Senior Advocate
for Mrs.R.J.Radhika R8

COMMON JUDGMENT

The second appeal as well as the Cross-Objection arise out of the decree and Judgment dated 22.04.1991 passed in A.S.No.132/1990 on the file of the learned VI Additional Judge, City Civil Court modifying the Decree and Judgment dated 09.07.1984 passed in O.S.No.134/1982 by the XVIII Asst. City Civil Court of Chennai. Therefore, for the sake of convenience, the parties shall be referred to as 'plaintiff' and 'defendants' as has been arrayed before the trial Court.

2. The suit in O.S. No. 134 of 1982 was filed by N. Venkatesh - first respondent in the Second appeal, praying for a Decree and Judgment to cancel the document No.7 of 1953 on the ground that it is vitiated by fraud and consequently issue a permanent injunction restraining the defendants in the suit from interfering with the peaceful possession and enjoyment of the plaintiff or from dealing with the suit property in any manner.

3. According to the plaintiff/first respondent in the second appeal, the house and ground measuring 2640 square feet bearing New Door No.94, Old Survey No.16/3A, R.S. No. 16/10, corresponding to T.S. No. 30, Block No.16, Lattice Bridge Road, Adyar, Chennai originally belonged to one P. Raja Chettiar. The said Raja Chettiar was also in possession and enjoyment of some other properties. After the death of Raja Chettiar, his four sons namely R. Venkataramulu Chettiar, R. Muthusami Chettiar, R. Ganesa Chettiar and R. Sundara Babu Chettiar have partitioned the properties left by their father by means of a registered partition deed dated 07.03.1938 which was registered as document No. 598 of 1998 on the file of Sub-Registrar, Mylapore. The suit property namely house bearing Door No. 94, L.B. Road fell to the share of R. Venkataramulu Chettiar and he was in possession and enjoyment of the same till his death on 13.08.1960. According to the plaintiff, during his life time, Venkataramulu Chettiar executed a sham and nominal sale deed dated 29.12.1952 in favour of his father in law along with a settlement deed dated 29.12.1952 in favour of his wife Babyammal in respect of all the properties standing in his name. According to the plaintiff, Mr. Danapal Chettiar, father in law of Venkataramulu Chettiar has got the sale deed dated 29.12.1952 executed in his favour by fraudulent means instead of getting a settlement deed in favour of his daughter Baby Ammal. Subsequently, Venkataramulu Chettiar realised having executed the sale deed erroneously in favour of his father in law and therefore, he made his father in law Dhanapal Chettiar to execute the property covered under the sale deed dated 29.12.1952 in favour of his wife Baby Ammal and accordingly, a

settlement deed registered as document No. 2701 of 1957 came to be executed. However, while executing the settlement deed, Dhanapal Chettiar made a claim that the superstructure was put up by him out of his own funds, which is factually incorrect. Baby Ammal, who was the only legal heir and was in possession and enjoyment of the suit property died on 27.10.1976 without any issues. During her life time, Baby Ammal also purchased a house property at Door No.4, Thanthoniamman Koil Street, in her name after the death of her husband. On the death of Baby Ammal, the house properties and other properties owned by her fell to the share of Munusamy Chettiar, Ganesan Chettiar and Sundara Babu Chettiar, all of whom are brothers of Late. Venkateswaralu Chettiar. In other words, the trio abovenamed are the paternal uncle of the deceased Baby Ammal and they succeeded to the estate as Class II legal heirs as contemplated under Section 3 of The Hindu Succession Act. While so, Ganesa Chettiar died on 24.09.1979 intestate leaving his widow Jayalakshmi as his only Class I heir. Thereafter, the Tahsildar, Mylapore-Triplicane Taluk issued a joint patta in the name of the above said Munusami Chettiar, Sundara Babu Chettiar and Jayalakshmi, wife of Ganesa Chettiar and also recognised the trio as the legal heirs Baby Ammal.

4. It is the case of the plaintiff that Sundara Babu Chettiar, one of the Class II legal heirs of Baby Ammal was in possession of western side portion of the suit property while the front portion was let out to the defendants 4 and 5 for rent. However, the defendants 4 and 5 did not pay the rent for more than five years. At this stage, the plaintiff has purchased the suit property from Munusamy Chettiar, Sundarababu Chettiar and V. Jayalakshmi. The Plaintiff paid a sum of Rs.10,000/- as advance on 29.09.1979 and also issued a cheque to the Corporation on 22.10.1979 for Rs.627/- so as to clear the arrears of property tax payable to the suit property. Thereafter, the plaintiff has also purchased the suit property by means of a sale deed registered as document No. 3486 of 1981. After purchase of the suit property, the plaintiff's name was also recorded in the records maintained by the Corporation with respect to payment of property tax and other charges in respect of the suit property. As the plaintiff became owner of the suit property, he issued a notice dated 21.12.1981 to the tenants demanding rental arrears, for which a reply notice dated 28.12.1981 was issued stating that Rent Control Proceedings were initiated and they are pending. The Plaintiff also came to know that Mrs. Dhanammal, wife of Late. Dhanapal Chettiar, Mrs. Sakunthala, Wife of Sundaram Chettiar and Ms. Pushpa Daughter of Dhanapal Chettiar have made a claim over the suit property inspite of the purchase made by the plaintiff. Therefore, the plaintiff has instituted the suit as against the aforesaid Mrs. Dhanammal, Mrs. Sakunthala, Mrs. Pushpa as defendants 1 to 3 and as against the tenants in the suit property who are arrayed as defendants 4 and 5.

5. The suit was resisted by the first defendant - Dhanammal and second defendant - Sakunthala by filing a written statement in which it was contended inter alia that during the

life time of Baby Ammal, she had bequeathed all the properties owned by her to the brothers of her husband is false. On the contrary, after the death of Baby Ammal, the brothers of her husband grabbed all the property and alienated to enrich themselves in collusion with the plaintiff. In effect, it was contended that the defendants 1 and 2 that they are entitled to the suit property and no one else can assert a right, interest or title to the suit property. It was also contended that the prayer sought for by the plaintiff in the suit are inconsistent with each other and therefore, the suit, as filed, is not maintainable.

6. Before the trial Court, the plaintiff examined himself as PW1 along with another witness namely Sundara Babu as PW2 and marked Exs. P1 to P20. On behalf of the defendants, the first defendant examined herself as DW1 and Ex. B1 to B8 were marked. The trial Court, on analysis of the oral and documentary evidence, held that the purchase of the suit property by the plaintiff is legal and lawful and therefore it has to be construed that the plaintiff is in symbolic possession and enjoyment of the suit property. The trial Court also concluded that the brothers of husband of Baby Ammal, as class I heirs are having a right, interest and title in respect of the suit property especially when the husband of Baby Ammal pre-deceased her and Baby Ammal also died intestate. It was further held that patta in respect of the suit property has been mutated in the revenue records in the name of the plaintiff, but the defendants have not taken any steps to cancel the same. In such circumstances, the trial Court recognised the sale of the suit property in favour of the plaintiff as valid and consequently decreed the suit as prayed for by granting a declaratory decree. The trial Court also restrained the defendants 1 to 3 by granting a decree for permanent injunction from restraining them from in any manner interfering with the peaceful possession of the suit property besides directing the defendants 4 and 5, who are the tenants in the suit property, to pay the rental arrears of Rs.500/- to the plaintiff.

7. Aggrieved by the Decree and Judgment dated 09.07.1984 passed in O.S. No. 134 of 1982, the defendants 2 and 3 in the suit have filed A.S. No. 132 of 1990. Pending the Appeal suit before the first appellate Court, Sagunthala, the second defendant in the suit, died and therefore, her legal heirs were brought on record as appellants 2 to 10 before the First Appellate Court. The first appellate Court, after considering the oral and documentary evidence dismissed the first appeal by the Decree and Judgment dated 22.04.1991. The defendants, having suffered a decree before both the Courts below, have come forward with this second appeal.

8. The Cross Objection has been filed by the Cross Objectors contending that the plaintiff/first respondent herein is not entitled for a declaratory decree of title inasmuch as he has not purchased the suit property from the lawful owners. When Baby Ammal and her husband Venkataramulu Chettiar died

intestate and issueless, the reversioners of Baby Ammal are entitled to the suit property, but the plaintiff/ first respondent has purchased the suit property from the reversioners of Venkataramulu Chettiar, who were not made parties to the suit.

9. At the time of admission of this Second appeal on 04.02.1999, the following substantial questions of law were framed for consideration:

1. When a Hindu Female dies intestate, if the property was settled upon by her husband, whether she takes the property by inheritance or succession?

2. If the Hindu female dies, if the property was acquired by her by a settlement deed by her father, whether Section 15(1) or Section 15(2) of Hindu Succession Act applies?

10. Mr. D.R. Sivakumar, learned counsel appearing for the defendants/appellants would submit that originally the property belonged to R.Venkataramulu Chettiar's family. The said R.Venkataramulu Chettiar executed a sale deed in favour of his father in law i.e. Dhanapal Chettiar in the year 1952 by way of document No.7 of 1953. After the purchase, the said Dhanapal Chettiar became the absolute owner of the property. Since the property was purchased by Dhanapal Chettiar for a valuable sale consideration, which was paid by his son in law i.e. R.Venkataramulu Chettiar, Dhanapal Chettiar became the absolute owner of the property. Thereafter, in order to devolve the properties to the daughters, Dhanapal Chettiar executed a settlement deed in favour of his daughter Babyammal on 04.12.1957. Accordingly, the said Babyammal inherited the property by way of settlement deed from her father. Therefore, the property belonged to Babyammal's father's family. While the facts are so as stated above, as per Section 15(2) of the Hindu Succession Act, the sisters and brothers of Babyammal will also entitle to a share and right in the suit schedule property, however, depriving their right, the plaintiff had purchased the said property from the brothers of the husband of late. Baby Ammal and the same is not sustainable. The suit property was inherited by Babyammal from her father and the Courts below have failed to apply Section 15(2) of the Hindu Succession Act.

11. In order to buttress his submissions, the learned counsel for the defendants relied upon the following decisions

(i) The decision of the Hon'ble Apex Court reported in the case of (Bhagat Ram (Dead) by Legal heirs) vs. Teja Singh (dead) by Legal Heirs) reported in 2002 (1) SCC 210 wherein it was held as follows:-

12. We do not think that the law laid down by the learned Single Judge in the above said decision is correct. Even if the female Hindu who is having a limited ownership becomes full owner by virtue of Section 14 (1) of the Act, the rules of succession

given under such-section (2) of Section 15 can be applied. In fact, the Hindu Succession Bill, 1954 as originally introduced in the Rajya Sabha did not contain any clause corresponding to sub-section (2) of Section 15. It came to be incorporated on the recommendations of the Joint Committee of the two Houses of Parliament. The reason given by the Joint Committee is found in clause 17 of the Bill, which reads as follows:

"While revising the order of succession among the heirs to a Hindu female, the Joint Committee have provided that, properties inherited by her from her father reverts to the family of the father in the absence of issue and similarly property inherited from her husband or father in law reverts to the heirs of the husband in the absence of issue. In the opinion of the Joint Committee such a provision would prevent properties passing into the hands of persons to whom justice would demand they should not pass".

13. The source from which she inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit and property. That would defeat the intent and purpose of sub-section (2) of Section 15, which gives a special pattern of succession.

(ii) The decision rendered in the case of (Thippeswamy and another vs. Sri Rangappa) reported in 2014 (2) ICC 276: 2014 ILR (Karnataka) 3266: 2013(34) R.C.R. (Civil) 542, which reads as follows:

"17. From the aforesaid discussion, it could be certainly said that the intent of the Legislature to incorporate Section 15(2)(a) of the Act is to see that the property originally belonged to the parents of the deceased female Hindu should be inherited by only those descendants of the parents family and such property shall not go either to the husband or to his heirs unless the deceased has left behind her a son or a daughter. In any other cases, it is the provisions of Section 15(1) of the aforesaid Act which would be applicable and therefore, Section 15(2)(a) of the Act is an exception to the general rule of succession in case of female Hindus.

18. Now to advert to the facts, though Rangamma had gifted the suit property to her daughter Muddamma, as she was the next reversioner, the gift to the next reversioner is the surrender in her life time and only inference that has to be drawn is that it accelerates the right of inheritance of her daughter and it relates back to the date of gift and the right of inheritance of the heirs of her parents would not change merely because there was a gift by widow to her next reversioner".

12. The learned counsel for the appellants would submit that applying the above decisions of the Hon'ble Apex Court to this case, the suit property was inherited by Babyammal from her father and therefore such an inheritance right will fall only under Section 15 (2) of Hindu Succession Act and consequently, the the sale deed in favour of the plaintiff, ignoring the rights of the defendants, is legally not sustainable.

13. On the contrary, Mr. Parthasarathy, learned Senior counsel appearing for the plaintiff/first respondent would contend that after purchasing the suit property, the plaintiff immediately applied for mutation of revenue records and he was in possession and enjoyment of the suit property. Both the courts below, on perusal of oral and documentary evidence have concluded that the possession of the suit property, vests with the plaintiff/first respondent. The Plaintiff has asserted a right, title and interest over the suit property and it was not questioned by the defendants for a long time. Even though the defendants have contested the present suit, they have not filed any suit independently seeking for a declaration of the sale deed in favour of the plaintiff/first respondent as null and void. Even a bare perusal of Section 15 of Hindu Succession Act, 1956 would makes it clear that if the property is purchased or possessed by any one in his individual capacity, it goes to the heirs of the husband. Accordingly, in the present case, as per Section 15(1)(b), since Babyammal is wife of R.Venkataramulu Chettiar and she got the property by way of settlement deed from her father, immediately after the settlement, the said Babyammal became the absolute owner of the property. In such circumstances, the legal heirs of R.Venkataramulu Chettiar, as class-II legal heirs of Babyammal from whom the plaintiff has purchased the property, alone are entitled to a right in the suit property.

14. As regards the cross-objection, it is contended that the Cross Objectors have no locus standi to question the title of the plaintiff/first respondent in the present appeal. The cross objectors are merely squatting on the suit property taking advantage of the present litigation between the plaintiff and defendants. They are liable to pay the rent for the period of their occupation and therefore, the learned counsel prayed for dismissal of the second appeal as well as the Cross Objection.

15. In support of his case, the learned Senior counsel for the plaintiff/first respondent also relied upon the following decisions:

(i) The decision of this Court in the case of (Ayi Ammal Vs. Subramania Asari and another) reported in AIR 1966 MAD 369 (Vol.53, C.110) wherein in para No.3, it was held as follows:

"3.If that be so, the present petitioner that is the sister, cannot claim the outstandings, as the father's heir, to the deceased Kanniammal. As set out above, the case of the petitioner is that Kanniammal, the deceased female, got the property

from her father by way of gift and that she is entitled to the same as the father's heir, under S.15(2)(a) of the Act. As it cannot be said, that the property has been inherited by Kanniammal, the exemption cannot be availed of. The rules of devolution provided under S.15(1) apply, and the respondents as the heirs of the husband of the deceased female, will take the property. In the circumstances, there is no reason for interfering with the order of the learned District Judge".

(ii) The decision of this Court in the case of (Bobballapati Kameswararao and another Vs. Kavuri Vasudevarao) reported in AIR 1972 ANDHRA PRADESH 189 (V.59 C 43) wherein in para Nos.12 & 13, were held as follows:

"12. The term 'inherited' employed in sub-section (2) is not defined in the Act. A reading of Section 14(1) of the Act would indicate that the words 'device' meaning 'bequest' under the will and 'inheritance' are used separately. They are distinct expressions and therefore must convey two separate meanings. The term 'inheritance' therefore would have to be given a meaning which would not include 'device' or a 'bequest under the will'. The term 'inheritance' therefore acquires a restricted meaning and not a wide one though in other Acts or Constitution the word 'inheritance' may have been given a broader meaning. It accords well with the principles enunciated above that as sub-section (2) is an exception to sub-section (1) it must be taken to have limited the generality of sub-section (1) and consequently the word 'inheritance' will have to be given a narrow meaning because it is in accord with the legislative intent. If that term is given the widest possible meaning so as to include within it a will, gift or any transfer inter vivos as is urged by the learned advocate for the appellant, then sub-section (2) ceases to serve as an exception to sub-section (1) and would be so general as to make sub-section (1) ineffective and it would almost destroy it to that extent. It would mean that property acquired by a female from her mother, father, husband or father-in-law by whatever means, would devolve after the death of the female intestate dying issueless in all cases under Section 15(2) only, sub-section (1) being applicable to other kinds of acquisition by the female from other persons than the one mentioned in sub-section (2), thus there would be two distinct provisions for devolution of property according to the source from which the property is acquired by the female. And in such a case the transfer in whatever form may have been made by the persons mentioned in sub-section (1)

(2) in favour of the female would be meaningless and ineffective. Sub-section (2) then would be enlarged in its scope and would function as an independent provision and not strictly as an exception to sub-section (1).

13. It is manifest that Section 14 abolishes the various kinds of Stridhana and property of every kind possessed by a female Hindu however acquired and whenever acquired now becomes her absolute property. She can effect any transfer inter vivos like anyone else and can also bequeath the property by will. She can thus prevent the property without allowing (sic) it to go back to the heirs of her father, mother, husband or father-in-law. If all such transfers are brought within the meaning of inheritance in Sec.15(2) then in spite of such transfers if she dies issueless and if the case is otherwise coming under sub-section (2) then the property will devolve upon her father's or husband's heirs although they may have transferred the property inter vivos or by a will. We do not think that the legislature intended to produce such a result. We are clear in our view that sub-section (2) provides for an exception only with regard to one source of acquisition viz., the inheritance and then again the exception is confined to the property inherited by her either from her father or mother or husband or father-in-law and from none else. There is therefore, no justification to clothe the word 'inheritance' with wider meaning than what it is capable of in the context in which it is used. It means only the acquisition of the property by succession and not by device under a will. The word 'inherit' thus can in the context only mean 'to receive property as heir' or 'succession by descent'.

(iii) The decision of this Court in the case of (O.M.Meyyappa Chatter vs. Kannappa Chatter and others) reported in AIR 1976 MAD 154 wherein in para No.2, it was held as follows:

"2. The main contention raised by the appellants in C.M.A. No.596 of 1973 is that the husband of the original decree-holder is not nearest heir of the decree-holder in respect of the decree amount in as much as the amount represented her stridhana. They contended that Section 15(2) of the Hindu Succession Act applied and as such, they being the brothers of the original decree-holder are nearer heirs excluding the husband. This contention however, has absolutely no force. It is the case of the appellants that the money deposited by the original decree-holder with the first defendant had been gifted to her by her father at the time of her

marriage and therefore it was stridhana property. Assuming that case regarding the character of the amount is true, surely Section 15(2) of the Hindu Succession Act has no application. Under Section 15 (1), the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16 firstly upon the sons and daughters and the husband. Sub-section (2) is a non obstante clause and according to that sub-section any property inherited by a female Hindu from her father or mother shall devolve not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father. But the sine qua non for application of this non obstante clause contained in sub-section (2) is that the property of the female ought to have been inherited from her father or mother. As noted earlier, the case of the appellants has been that the father had gifted the amount to the original decree-holder at the time of her marriage. That is not inheritance as contemplated in sub-section (2) of Section 15. It is to be noted that this sub-section does not say that all properties obtained by a female in whatever manner known to law, from her father or mother, shall devolve upon the heirs of the father. It restricts the application of the said sub-section only to property inherited from the father or mother. As these appellants do not even contend that the decree amount had been inherited by the original decree-holder from her father, there is no question of applying sub-section (2) of Section 15 and making the appellants in C.M.A. No.596 of 1973 the rightful heirs to succeed to the interest of the decree-holder. Undoubtedly, the husband is the heir and therefore, he was entitled to assign the decree in favour of the contesting respondent who filed the petition for execution".

(iv).The decision of this Court in (Komalavalli Ammal and another vs. T.A.S. Krishnamachari and others) reported in 1990 (2) Law Weekly 598 wherein it was held as follows:-

"7. It is next contended by the learned counsel that Srinivasachariar would never have intended that the property should go to any person other than the descendants of his three daughters. Learned counsel submits that Ex.A1 Will should be treated as a document acknowledging the position which existed in law then, that is, the daughters were the only heirs of Srinivasachariar on his death without executing a testament and when one of the daughters died, without issues, the court should held that the said daughter had really inherited the property from her descended father within the

meaning of Section 15 (2). This involved argument cannot be accepted. The Court is not entitled to ignore the existence of the Will. If Srinivasachariar had died without executing a Will the position would have been different. But he did execute a Will admittedly and the daughters had divided the properties as per the terms of the Will equally. In that situation, it is not possible for this Court to consider the Will as non est and hold that Amirthammal got the property by inheritance from Srinivasachariar.

8. Learned counsel contends that the interpretation of the word "inherit" to mean only a non-testamentary succession would cause great hardship and would go against the object of the legislation. According to him, the act itself was passed with a view to benefit the Hindu women and enlarge the limited estates held by them. It is also contended that the legislature would not have intended to confer any benefit on a person who is distantly connected with the deceased woman through her husband in preference to her sisters. I cannot accept this argument in view of the express language used in the section. It is for the legislature to have thought of such contingencies and made a suitable provision. Having regard to the terms used in the section, the only conclusion possible is that the section would apply only in cases of non-testamentary succession."

(v) The decision of the Andhra Pradesh High Court in the case of (Goraka Anjaneyulu vs. Gunti Tatayya Naidu and others) reported in AIR 2011 Andhra Pradesh 120 wherein it was held as under:-

"6. From the above-reproduced provision, it is evident that the property of a female Hindu dying intestate shall devolve firstly upon the sons and daughters and the husband. Sub-section (2) however, carved out an exception in respect of the property inherited by the female Hindu from her father or mother in which case the property devolves upon the heirs of her father. It is not in dispute that the father-in-law of the plaintiff has executed a will i.e., Ex.B1 in favour of the plaintiff's wife which, in fact, was exhibited as a document on the appellant's side. Thus, the plaintiff's wife had become the owner of the property through testamentary succession and not by inheritance. Section 15 (2) gets attracted only in case of inheritance and not that of succession. With the execution of Will in favour of the plaintiff's wife, she became the absolute owner of the property notwithstanding the fact that the same was ancestral. Therefore, with her death, her husband i.e., plaintiff succeeded to the property by virtue of Section 15 (1) (a) along

with his sons and daughters including the children of any pre-deceased son or daughter. In the instant case, the plaintiff and his wife did not have issues. Accordingly, the property devolved upon the plaintiff alone.

16. Heard the counsel on either side and perused the records. In this case, the controversy centred around in this appeal is as to whether on the death of Baby Ammal, who died intestate and without leaving any children to succeed her estate, who can inherit the properties left behind by her.

17. Admittedly, the suit schedule property belongs to one R.Venkataramulu Chettiar and his family. By way of partition, the said R.Venkataramulu Chettiar, acquired the suit property. Subsequently, the suit property was sold by Mr. Venkataramulu Chettiar on 29.12.1952 to his father in law i.e. Dhanapal Chettiar. After five years, Venkataramulu Chettiar came to know that Mr. Dhanapal Chettiar got the sale deed dated 29.12.1952 by deceitful means in the guise of obtaining a settlement deed in favour of his daughter. Therefore, at the instance of Venkataramulu Chettiar, Mr. Dhanapal Chettiar executed a Settlement Deed in favour of Mrs. Baby Ammal. By virtue of the settlement deed, Babyammal became the absolute owner of the suit property. The husband of Baby Ammal pre-deceased her and thereafter, Baby Ammal also died intestate without leaving any children to succeed to her estate. With this factual background, it is necessary to look into the provisions of Section 15 (1) (b) and 15(2) of Hindu Succession Act, 1956, which are extracted hereunder:

"S.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 the 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".

18. On a perusal of Section 15 (1) of Hindu Succession Act, 1956, it is clear that the property of a female Hindu, who died intestate, shall devolve firstly to the sons and daughters and the husband, who are the class-I heirs. In the absence of class-I legal heirs, the property will devolve upon the heirs of the husband. In the present case, the said R. Venkataramulu Chettiar and Babyammal had no issues for succeeding to their estate as class-I legal heirs. The surviving legal heirs are brothers of R. Venkataramulu Chettiar. One of the brothers i.e. R. Ganesa Chettiar died intestate, leaving behind his wife V. Jayalakshmi to succeed his estate. The other two brothers R. Munuswami Chettiar and R. Sundara Babu Chettiar also acquired the estate of Babyammal in the capacity of class-II legal heirs and in such capacity, they have sold the suit property to the plaintiff/first respondent herein.

19. Apart from the decision cited by the learned counsel for the first respondent/plaintiff, in similar situation, the Hon'ble Apex Court in the decision reported in (2009) 15 SCC 66 (Omprakash and others Vs. Radhacharan and others) wherein in para Nos. 9 to 15 were held as follows:

"9. The law is silent with regard to self-acquired property of a woman. Sub-section (1) of Section 15, however, apart from the exceptions specified in sub-section (2) thereof does not make any distinction between a self-acquired property and the property which she had inherited. It refers to a property which has vested in the deceased absolutely or which is her own. The self-acquired property of a female would be her absolute property and not the property which she had inherited from her parents. In that view of the matter, we are of the opinion that sub-Section (1) of Section 15 of the Act would apply and not the sub-Section (2) thereof.

10. This is a hard case. Narayani during her life time did not visit her in-laws' place. We will presume that the contentions raised by Mr. Choudhury that she had not been lent any support from her husband's family is correct and all support had come

from her parents but then only because a case appears to be hard would not lead us to invoke different interpretation of a statutory provision which is otherwise impermissible.

11. It is now a well-settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous. In *HSIDC v. Hari Om Enterprises*, this Court held:

"38. This Court applied the doctrine of proportionality having regard to a large number of decisions operating in the field. This Court, however, also put a note of caution that no order should be passed only on sympathy or sentiment."

12. In *Subha B. Nair & Ors. vs. State of Kerala*, this Court held: (SCC p.776, para 22)

"21. This Court furthermore cannot issue a direction only on sentiment/sympathy."

13. In *Ganga Devi vs. District Judge, Nainital*, this Court held: (SCC p.776, para 22)

"22. The court would not determine a question only on the basis of sympathy or sentiment. *Stricto sensu* equity as such may not have any role to play."

14. If the contention raised by Mr. Choudhury is to be accepted, we will have to interpret sub-section (1) of Section 15 in a manner which was not contemplated by the Parliament. The Act does not put an embargo on a female to execute a will. Sub-section (1) of Section 15 would apply only in a case where a female Hindu has died intestate. In such a situation, the normal rule of succession as provided for by the statute, in our opinion, must prevail. For the aforementioned purpose, the golden rule of interpretation must be applied.

15. This Court in *Bhagat Ram (Dead) vs. Teja Singh*, held as under: (SCC pp.88-89, paras 6-7)

"6. On perusal of the two Sub-sections we find that their spheres are very clearly marked out. So far Sub-section (1), it covers the properties of a female Hindu dying intestate. Sub-section (2) starts with the words 'Notwithstanding anything contained in Sub-section (1)'. In other words, what falls within the sphere of

Sub-section (2), Sub-section (1) will not apply. We find that Section 15(2)(a) uses the words 'any property inherited by a female Hindu from her father or mother'. Thus property inherited by a female Hindu from her father and mother is carved-out from a female Hindu dying intestate.

In other words any property of female Hindu, if inherited by her from her father or mother would not fall under Sub-section (1) of Section 15. Thus, property of a female Hindu can be classified under two heads : Every property of a female Hindu dying intestate is a general class by itself covering all the properties but Sub-section (2) excludes out of the aforesaid properties the property inherited by her from her father or mother.

7. In addition, we find the language used in Section 15(1) read with Section 16 makes it clearly, the class who has to succeed of property of Hindu female dying intestate. Sub-section (1) specifically state that the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16. So, in case Sub-section (1) applies, then after the death of Santi, Indro can not inheritance by succession but it would go to the heirs of the pre-deceased husband of Santi."

20. The learned counsel for the appellants contended that the property of Babyammal was inherited by way of settlement deed and it is not legally valid. According to the learned counsel, the property possessed by a female Hindu can be inherited as that of a family property. In this case, the suit property was settled in favour of Babyammal by her father and it cannot be said to be an inheritance of the family property. Once the settlement had taken place, the said Babyammal becomes the absolute owner of the property. Therefore, class-II legal heirs of the deceased Baby Ammal, in the absence of class-I, alone are entitled to inherit the property as has been contemplated under Section 15 (1) (b). In view of the above discussions and the decisions cited supra, this Court is of the opinion that the substantial questions of law have to be answered against the appellants and accordingly they are answered. Consequently, the second appeal is dismissed and the Decree and Judgment dated 22.04.1991 rendered in A.S.No.132 of 1990 on the file of the VI Additional Judge, City Civil Court, at Madras, modifying the Decree and Judgment dated 09.07.1984 rendered in O.S.No.134 of 1982 on the file of the XVIII Assistant Judge, City Civil Court, at Madras is confirmed. The parties are directed to bear their own costs.

21. Though the tenants have filed cross objection in Cros.Obj. No.59 of 2015, in the light of the discussions made in the preceding paragraph and having regard to the fact that the Second Appeal itself has been dismissed, by answering the substantial questions of law, the cross objection fails and it is dismissed. However, this Court directs the tenants/respondents 2,3, 5 to deposit the rents to the credit of O.S.No.134 of 1982, on the file of the XVIII Assistant Judge, City Civil Court, Chennai, within four weeks from the date of receipt of a copy of this Judgment.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kas
To

1. The VI Additional Judge
City Civil Court
Madras
2. The XVIII Assistant Judge
City Civil Court, at Madras.

+ 1 cc to Mr.S.D. Ramaliangam, Advocate SR.9299
+ 1 cc to Mr. S. Ponnarasi, Advocate sr.9096
+ 1 cc to Mr.P. Ravichandran, Advocate Sr.8761

S.A.No.151 of 1999

CA (CO)
EU (03/05/2018)

WEB COPY