

MUKESH KUMAR  
2018.11.15 12:19  
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has died because if the word 'deceased' is read as a husband or father-in-law, it would not be any sense.

At this stage, learned counsel for the appellant has drawn attention of the Court to a judgment passed by this Court on this aspect interpreting Sections 15, 16 and 18 of the Act of 1956 in **Mst. Ram Kali Vs. Sohan Lal and others, AIR 1972 (P&H) 419.**

This Court is bound by the view which has been conclusively taken by this Court. Even otherwise, this Court is convinced that the word 'deceased' in Section 15(2)(b) of the Act of 1956 would not mean husband or father-in-law as the case may be. No doubt, while dealing with the property of a female Hindu, the source from where she got the property is relevant but only in absence of son or daughter including children of pre-deceased son or daughter.

The view taken by this Court also finds support from the judgment of Madhya Pradesh High Court in **Keshri Parmai Lodhi and another Vs. Harprasad and others, 1971 AIR (M.P.) 129.** The relevant observations made therein is extracted as under:-

*“The only question is whether the word 'son' should be restricted to the 'son' of the husband from whom the Hind female inherited the property or it should include sons of the Hindu female irrespective of whether they are born of the husband whose property is in dispute or by any other husband. It was argued that the legislature intended to preserve the property to the branch of the person from whose it devolved on the widow and therefore the word 'son' should be restricted to mean a son of the husband whose property is in dispute. I do not see any reason to restrict the interpretation of the word 'son' in this manner. From the language used in sub-sections (1) and (2) it is clear that the intention of the Legislature was to allow succession of the property to the sons and daughters of the Hindu female and only in the absence of any such heirs the property would go to the husband's heirs.”*

For the facility of reference, Sections 15, 16 and 18 of the Act of 1956 are extracted as under:-

### **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 predeceased 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.*

***16. Order of succession and manner of distribution among heirs of a female Hindu-*** *The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:-*

*Rule 1- Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.*

*Rule 2-If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such*

*son or daughter would have taken if living at the intestate's death.*

*Rule 3-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.*

**18. Full blood preferred to half blood-** *Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.*

No doubt, this aspect has not been pleaded in so many words, however, the defendants-appellants have claimed ownership/share in the property, of course on the ground that it is a joint Hindu Family Property. In the considered view of this Court, once the ownership has been claimed in the property, the appellants cannot be debarred to argue their case on the basis of a purely legal proposition.

In view of the aforesaid discussions, the impugned judgments and decrees are set aside to this extent as indicated above while answering the question framed in favour of appellant. The case is remitted back to the learned trial court to re-decide the matter, keeping in view the observations made above. The present appeal is disposed of. Pending application(s), if any, shall also stand disposed of, in terms thereof.

Parties are directed to appear through their counsel before the learned trial court on 12.11.2018.

**30.10.2018**  
**mks**

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned: Yes/No**

**Whether Reportable: Yes/No**