

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 04th October, 2024

FOR COMPLIANCE:

31. TP/2635/2024 P. C. : Shri. Siddharth Desai Ld. Advocate for the Petitioner
[Original]
(ECHCBM0203688
2024)

1. Ld. Advocate for the petitioner after passing an order on 29.08.2024, further submitted that the daughter of the deceased (Dr. Swapnil) claims to be legal heir of the said deceased vide Sec. 15(1) (a) of the Hindu Succession Act, 1956 (for short "HS Act").

2. Therefore, in life time of the petition, heirs of the husband, other than the petitioner, could not claim the inheritance of the deceased. He further relied upon the decision of the Hon'ble Supreme Court in case of **Mst. Mohindero Vs. Kartar Singh and Ors on 30/10/1990 (equivalent Citations: 1991 AIR 257, 1990 SCR SUPL. (2) 475, AIR 1991 SUPREME COURT 257)**, In the said case, the succession of the deceased, namely Santi, was in question. Said deceased married firstly with Kisso and from the said wed lock gave birth to Buta. After death of first Husband, she married with fist husbands' brother, namely Ditto. From said wedlock, there was no any issue. After death of the said Ditto his land was mutated in the name of Santi. Upon her death issue arises about the estate of the said deceased. It was held, that the daughter (Mohindero) of the predeceased Son (Buta) of said Santi, would have preferential right over other to inherit the estate of said Santi, vide Sec. 15(1)(a) of HS Act.

3. He further relied upon the decision of the Keral High Court in Case of *Sindhu Ajayan v. Damodaran Pillai* (2011 SCC OnLine Ker 3709 : (2011) 2 KLT 476 : (2011) 103 AIC 668 : (2012) 1 CCC 21 at page 478). In the said Case, substantial questions of law were as follows: -

"1) What is the devolution of interest of a minor

Hindu female died intestate? 2) In the facts and circumstances of the case, whether the lower appellate court is right in holding that father is the sole legal heir of a minor female Hindu died unmarried and is entitled to her $\frac{1}{3}$ share.”

Hence, facts of the cited cases are different than presence case.

4. In presence case, facts are different which as mentioned in order dated 29.08.2024, which are reproduced as under:

“However, in the present petition, the deceased (Dr. Swapnal) died in year 2010 leaving behind her daughter(petitioner) and her husband (Sitaram). Hence, property devolved upon the petitioner and Sitaram, equally, vide Section 15(1) (a) of the Hindu Succession Act, 1956. On the death of said Sitaram, in year 2018, said property, to the extent of the share of Sitaram, would further devolve upon his heirs as per Sec. 8 of the HS Act. Now, it is admitted in the TP No. 2270/2024 that Aradhya is the daughter of the said Sitaram from the second marriage. Hence, for the share, which has been devolved upon Sitaram, the said Aradhya would be legal heir, claiming through Sitaram.....

5. Hence, the petitioner to mention all legal heirs, who are claiming through Sitaram.”

5. Hence, the petitioner to comply the directions given in the said order.

6. S.O. to 09.10.2024

04.10.2024

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with Testamentary Department