

CASE NO.:
Appeal (civil) 6626 of 1995

PETITIONER:
V. DANDAPANI CHETTIAR

RESPONDENT:
BALASUBRAMANIAN CHETTIAR (DEAD) BY LRS AND ORS.

DATE OF JUDGMENT: 08/08/2003

BENCH:
M.B. SHAH & DR. AR. LAKSHMANAN

JUDGMENT:
JUDGMENT

2003 Supp(2) SCR 371

The Judgment of the Court was delivered by

Dr. AR. LAKSHMANAN, J. The unsuccessful plaintiff who lost his case in all the three Courts is the appellant in this appeal. The appellant (Dandapani Chettiar) filed O.S. No. 300 of 1974 in the Court of the subordinate Judge, Cuddalore for a declaration that the suit properties belonged to him and defendants 2-9 and 23 (respondents 2-9 and 23) and for partition and separate possession of his 1/10th share in the movables and immovables and for recovery of past mesne profits. His case in brief is that the suit properties came to Rajathiammal and that the properties were obtained by her from her mother Sivabagyammal. Rajathiammal succeeded to the properties as Stridhana heir and on the death of Rajathiammal on 01.07.1972 issueless and intestate, in accordance with Section 15(2) of the Hindu Succession Act, 1956 (hereinafter referred to as "the Act") the suit properties devolved upon the heirs of the father of Rajathiammal i.e. Venugopala Chettiar. The appellant (plaintiff) and the respondents 2-8 (defendants 2-8) are the children of the said Venugopala Chettiar through his wife and the 9th defendant(9th respondent) is the son of the said Venugopala Chettiar through another wife and the respondent No.23 (defendant No.23) is one of his wives and they are the heirs.

The case of the first respondent Balasubramanian Chettiar (died) and the other respondents is that on the death of Rajathiammal, the suit properties devolved upon the heirs of the husband of Rajathiammal, namely, Muthukumarasami under Section 15(1) of the Act in the absence of any issues to her. In the alternative, the respondents contended that Rajathiammal executed a Will, Exhibit B-26, dated 15.06.1972 and that in accordance with the said Will, there would be a testamentary succession for the first respondent - Balasubramanian Chettiar and the others.

The Subordinate Judge, Cuddalore framed as many as 22 issues. The Sub-Court took the view that the suit properties came to Rajathiammal only because of the Compromise Decree in O.S. Nos.8 of 1926 filed by one Natanasabapathy - son of Sivabagyam and 15 of 1942 and her pre-existing right has no relevance. The Sub-Court also held that only Section 15(1) of the Act is attracted which would be in favour of the first respondent Balasubramanian Chettiar and his supporting respondents/defendants. As regards the alleged Will, Exhibit B-26, the trial Court held that it is a true and valid document executed by Rajathiammal. On these findings, the trial Court negatived the appellant's/plaintiffs claim and dismissed the suit.

The appellant preferred an appeal, A.S. No. 1055 of 1977, in the High Court. The learned Single Judge of the High Court took the view that the suit properties devolved upon Rajathiammal not by inheritance from her mother but as Stridhana heir of her grand-mother under the compromise decrees in O.S. No. 8 of 1926 and O.S. No. 15 of 1942 granting the

properties to her and, therefore, Section 15(1) of the Act alone applies, dismissed the appeal of the appellant by a judgment dated 17.12.1982. The learned Single Judge also held that the Will, Exhibit B-26, pleaded by the first defendant/first respondent herein and found to have been executed by Rajathiammal by the trial Court, is not a Will that has been proved and, therefore, the finding of the trial Court regarding the Will was set aside in the appeal.

The appellant preferred a Letters Patent Appeal No. 32 of 1983 to a Division Bench of the said High Court. The Division Bench held that the property of Rajathiammal will devolve as per Section 15(1) and not Section 15(2) and that the property does not devolve on the plaintiff, the appellant herein and respondents 2-9/defendants 2-9. Therefore, the argument of the appellant/plaintiff that on the death of Sengamalam and Thaiyanayagi, Sivabagyam got absolute right in the properties was unacceptable. Holding so, the Division Bench dismissed the Letters Patent Appeal of the appellant on 12.04.1988 by rejecting the contentions of the appellant that it is only Section 15(2) of the Act that applies in the instant case. Aggrieved by the decision, say aforesaid, the plaintiff preferred the present appeal in this Court.

We heard Mr. K. Ram Kumar, learned counsel for the appellant and Mr. A.T.M. Sampath learned counsel for the contesting respondents. Mr. K Ram Kumar, learned counsel for the appellant/plaintiff took us through the pleadings and the judgments passed by the trial Court and of the High Court and also the compromise decrees in O.S. No. 8 of 1926 and O.S. 15 of 1942. Mr. K. Ram Kumar submitted that since the properties have been got by Rajathiammal by compromise decrees (Exhibits B1-B4), they cannot be said to be the properties inherited by her mother and, therefore, the contentions of the respective parties will have to be considered and a conclusion arrived at regarding the question whether Section 15(1) of the Act is applicable or Section 15(2) of the Act is applicable in the matter of succession of the properties of late Rajathiammal. In other words, as per the provisions of the Act, the appellant/plaintiff and his brothers and sisters, namely, defendants 2-9 and his mother defendant 23 are the heirs of Rajathiammal and they are entitled to the properties.

Per contra, Mr. A.T.M. Sampath, learned counsel for the contesting respondents, submitted that Rajathiammal executed a Will, Exhibit B-26, dated 15.06.1972 under which she bequeathed absolute interest in some of the properties to Balasubramanian Chettiar, the first defendant/first respondent and some of the properties to his son Saravanan and limited interest in other items of properties to others like one Subramaniam Chettiar, husband of Rajalakshmi (D-6) V. Krishnasamy Chettiar (D-9) and Nagalakshmi (D-25) directing the remainder in some of the properties to be vested in the first respondent/first defendant and in some other properties in his son Saravanan. There was also some direction to the first respondent for performing Brahmotsavam at a temple at Thiruppapuliur etc. out of income from the properties items 8 and 9 mentioned in the second schedule. It was further contended by Mr. Sampath that after the death of Rajathiammal he took possession of the properties as per the terms of the Will and effected improvements and leased out some of the properties also. Therefore, the first respondent and other respondents, who are the beneficiaries under the Will are entitled to the properties and even if the Will is not there and Rajathiammal died intestate, the contesting defendants alone are entitled to the properties as heirs of Rajathiammal under the Act.

The question, therefore, is who will succeed to the properties left by Rajathiammal (got by her under compromise decrees B-2 and B-8 dated 27.08.1927 and 19.09.1949) in O.S. No.8 of 1926 and O.S. No.15 of 1942 respectively on her death on 01.07.1972 as between the appellant/plaintiff and respondents 2-9/defendants 2-9 on the one hand and the first defendant/first respondent and other contesting respondents on the other hand. Before we proceed further, it is useful to reproduce the relevant provision,

namely, Section 15 of the Act, which reads thus:

"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 rule set out in section 16,-

(a) firstly, upon the sons and the daughters (including the children of any pre-deceased son or daughter) and also 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."

The above section propounds a definite and uniform scheme of succession to the property of a female Hindu who dies intestate after the commencement of the Act. This section groups the heirs of a female intestate into five categories described as Entries (a) to (e) and specified in sub-section (1). Two exceptions both of the same nature are engrafted by sub-section (2) on the otherwise uniform order of succession prescribed by sub-section (1). The two exceptions are that if the female dies without leaving any issue, then (1) in respect of property inherited by her from her father or mother, that property will devolve not according to the order laid down in the five Entries (a) to (e), but upon the heirs of the father; and (2) in respect of property inherited by her from her husband or father-in-law it will devolve not according to the order laid down in the five Entries (a) to (e) of sub-section (1) but upon the heirs of the husband. The two exceptions mentioned above are confined to property 'inherited' from the father, mother, husband and father-in-law of the female Hindu and do not affect property acquired by her by gift or by device under a Will of any of them. The present Section 15 has to be read in conjunction with Section 16 which evolves a new and uniform order of succession to her property and regulates the manner of its distribution. In other words, the order of succession in case of property inherited by her from her father or mother, its operation is confined to the case of dying without leaving a son, a daughter or a children of any pre-deceased son or daughter.

Sub-section (2) of Section 15 carves out an exception in case of a female dying intestate without leaving son, daughter or children of a pre-deceased son or daughter. In such a case, the rule prescribed is to find out the source from which she has inherited the property. If it is inherited from her father or mother, it would devolve as prescribed under Section 15(2) (a). If it is inherited by her from her husband or father-in-law, it would devolve upon the heirs of her husband under Section 15(2)(b). The clause enacts that in a case where the property is inherited by a female from her father or mother, it would devolve not upon the other heirs, but upon the heirs of her father. This would mean that if there is no son or daughter including the children of any pre-deceased son or daughter, then the property would devolve upon the heirs of her father. Result would be - if property is inherited by a female from her father or her mother, neither

her husband or his heirs would get such property, but it would revert back to the heirs of her father.

In the present case, it is not disputed that Rajathiammal died intestate without leaving any son or daughter or children of pre-deceased son or daughter. Hence, the property would devolve on the heirs of her father. It is contended that she got the property because of the compromise decree and, therefore, the property is not inherited by her from her father or mother. This submission, in our view, is without any substance. She was daughter of Sivabagyammal and, therefore, she was entitled to inherit the property of her maternal grandmother as her mother had expired. As some dispute was raised by the other heirs, a suit was filed. In that suit, rights of Rajathiammal were recognized and compromise decree was passed in her favour. Result is - she got the property as daughter of her mother. That means, she got the property not from her husband or father-in-law, but from her mother side. In that state of affairs, the heirs of her father, that is, heirs of S.V. Venugopala Chettiar would be entitled to inherit her property in view of Section 15(2)(a) of the Act.

A passage in the case of *Ayi Ammal v. Subramania Asari and Anr.*, AIR (1966) Madras 369 can be beneficially reproduced hereunder:

"The succession to a female Hindu generally is provided for under Sub-section (1) of Section 15 an exception has been engrafted under sub-section (2) recognizing a different mode of devolution in respect of property which the woman acquired by inheritance, in a way to a very limited extent recognizing the old Hindu law in the matter which restricted a woman's estate in inherited property and provided for its devolution as from the last full owner. Prima facie, the exception engrafted seeks to retain in the father's family property inherited by the deceased lady from her parents and similarly seeks to retain in the husband's family property inherited from her husband or father-in-law. The word "inherit" means to receive as heir, that is, succession by descent."

In the case reported in *Venugopal Pillai v. T. Ammal*, AIR (1979) Madras 124, a Division Bench of the Madras High Court observed that in cases where the female Hindus acquired rights by virtue of compromise is a reiteration and a declaration of a pre-existing right of the female Hindus.

The respective case of the parties, as contended by their respective counsel, has already been summarized in the above paragraphs. It is not in dispute that Rajathiammal died intestate and got certain items by way of compromise in Suit No. 8/1926 and in Suit No. 15/1942 filed by Natanasabapathy. Items 1 to 3, 5 and 8 to 18 in the plaint second schedule were allotted to Rajathiammal under the compromise decree passed in O.S.No. 8/1926. Likewise, items 4, 6 and 7 were given to Rajathiammal under the compromise decree passed in O.S.No. 15/1942. Thus all the items got by Rajathiammal were under the compromise decree in both the suits.

We have given our thoughtful consideration on the arguments advanced by the counsel for the appellant and the counsel for the respondents with specific reference to the pleadings, evidence exhibits, records and the judgments impugned in this appeal. The submission made by learned counsel for the appellant-plaintiff merits acceptance. The trial Court, the learned single Judge and the learned Judges of the Division Bench of the High Court are in error in dismissing or rejecting the case of the appellant/plaintiff.

In our opinion, the contention of the appellant/plaintiff that it is only Section 15 (2) of the Act that applies in the instant case to the properties of Rajathiammal upon her death on 1.7.1972 has support and well founded. The High Court having been upheld the finding of the learned single Judge that Ex.B-26, a Will executed by Rajathiammal, according to the first respondent, is not a Will that is proved to have been executed by her, should have further held that the properties devolved upon the heirs of the father of Rajathiammal in accordance with Section 15(2)(a) of the

Act.

It will be seen from the facts of the present case that Rajathiammal had inherited the property from her mother, the section applicable will be Section 15(2) of the Act, according to which the properties will go to the heirs of her father and, therefore, the plaintiff/appellant and defendants 2-9/respondents 2-9 who are the sons and daughters of Rajathiammal's father, Venugopal Chettiar, through his third wife Nagalakshmi would be entitled to the suit properties. Therefore, the case put forward by the first defendant and other contesting defendants that Rajathiammal inherited the properties not from her mother but also from her grand-mother and great grand-mother, and, therefore, Section 15(1) of the Act would only apply cannot at all be countenanced.

In the instant case, Rajathiammal acquired her rights by virtue of compromise which is a reiteration and a declaration of her pre-existing right. Therefore, on the death of Rajathiammal who died intestate and issueless, the suit properties devolved upon the heirs of her father, Venugopal Chettiar. The present plaintiff/appellant, V. Dandapani Chettiar, who is the son of the father of Rajthiammal through his third wife and respondents 2-9 and 23 who are children of the father of Rajathiammal and one of his wives becomes the heirs and entitled to succeed under Section 15(2) (a) of the Act since the properties came to Rajathiammal under the compromise decree amounts to a declaration of her pre-existing right under the compromise decree passed by the Courts.

In our opinion, the plaintiff/appellant and respondents 2 to 9 and 23/defendants 2-9 and 23 are the only rightful heirs of Rajathiammal and would be entitled to succeed to the properties of Rajathiammal.

For the foregoing reasons, we have no hesitation to set aside the judgment and decree passed by the subordinate Judge, Cuddalore as confirmed by the learned single Judge of the High Court in A.S. No. 1055 of 1977 and by the Division Bench of the High Court in L.P.A. No. 32/1983 dated 12.4.1988.

Therefore, this appeal filed by the plaintiff/appellant succeeds. Considering the relationship of the parties to this action, there shall be no order as to costs.