

(1998) 03 MAD CK 0010

In the Madras High Court

Case No : Second Appeals No. 1321 of 1984 and 733 of 1991 and C.M.P. No. 6601 of 1991

Kamala Bai Ammal

APPELLANT

Vs

Punyakoti Mudaliar(died) and 14 others

RESPONDENT

Date of Decision : 25-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2, 96
Hindu Succession Act, 1956 — Section 10, 14, 14(1), 14(1), 14(2)

Citation : (1998) 03 MAD CK 0010

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : N. Krishna Mitra, for the Appellant; A. Venkatesan, for the Respondent

Judgement

S.S. Subramani, J.—The Second Appeal No.1321 of 1984 arises out of O.S.No.3492 of 1975 on the file of V Assistant Judge, City Civil

Court, Madras. The second defendant in that suit is the appellant herein. The Second Appeal No.733 of 1991 arises out of O.S.No.7265 of 1980

on the file of the HI Assistant Judge, City Civil Court, Madras, wherein also the very same second defendant happened to be the fifth defendant,

who is the appellant in the latter Second Appeal also. The relevant facts are summarised thus. On 20th July 1931 a settlement deed was executed

by Veerabadhra Mudhaliar in favour of Periaswami Mudaliar and others. The said Veerabadhra Mudaliar had a daughter by name Poongavani

Ammal. At the time when he executed the settlement deed, she was a widow and was residing with her father. In the settlement deed, the plaint

schedule property was given to her for her life time. It was stated in the settlement deed that she being the widowed daughter and without any male

issue, is to enjoy the plaint property and take the income therefrom during her life-time and on her death it can be taken by the legal heirs of the settlor.

2. Poongavani Ammal died in the year 1972. Kamala Bai Ammal, who is the appellant in both the appeals, is her daughter. On the death of

Poongavani Ammal, a suit was filed by the male heirs of the settlor as O.S.No.3492 of 1975 for recovery of the property. In the suit, the appellant

contended that the property did not belong to Veerabadhra Mudaliar, but belonged to Thayammal, his wife, as stridhana property and on the

death of Thayammal, Poongavani Ammal became the absolute owner of the same.

3. Poongavani Ammal did not acquire any right on the basis of the alleged settlement deed executed by Veerabadhra Mudaliar. It is further stated

that on 11th August 1965 Poongavani Ammal sold the suit property to the appellant and she was placed in possession in pursuance thereof. She

has also stated that Poongavani Ammal has executed a mortgage in respect of the property and she has redeemed the same.

4. There is an allegation in the plaint that the appellant herein was residing away from the property and she obtained possession only on the basis of

an injunction order in a suit which she filed against the first defendant and others and that she was all along in possession.

5. The trial Court took oral and documentary evidence and came to the conclusion that the property absolutely belonged to Veerabadhra Mudaliar

and the subsequent document executed by him is invalid. The contention that it is the sreedhana property of Thayammal is also not true.

Poongavani Ammal came into possession of the property only on the basis of the settlement deed. So holding, the suit was dismissed stating that

on the death of Poongavani Ammal, all the legal heirs, both male and female children of Veerabadhra Mudhaliar are entitled to a share in the

property and therefore, Kamala Bai Ammal, who is the appellant herein also will be one of the legal heirs and she will be a co-owner. The suit was

dismissed further holding that the remedy of the plaintiffs is only to implead all the children, both male and female of Veerabadhra Mudaliar and if

any one of them is dead, then, to implead the legal heirs and to file a suit for partition. The claim of the plaintiffs that they are the absolute owners

was rejected and therefore, recovery was refused.,

6. The plaintiff's therein preferred A.S.No.55 of 1997 on the file of the II Additional Judge, City Civil Court, Madras. The lower Appellate Court

also dismissed the appeal. The appellant herein filed a cross-objection in the case putting forward the contention that the finding that she is a co-

owner is not correct and therefore that finding must be set aside. The lower Appellate Court dismissed the cross objection and also dismissed the

appeal. Against the said judgment, the second defendant Kamala Bai Ammal has preferred the Second Appeal No.1321 of 1984.

7. In this connection, it may also be noted that the plaintiffs in that suit also preferred a Second Appeal before this Court as S.A.No.1774 of 1979

and the same was dismissed upholding the findings of the trial Court as confirmed by the lower Appellate Court. Immediately, after the dismissal of

the second appeal, they filed O.S.No.7265 of 1980 on the file of the III Assistant Judge, City Civil Court, Madras. In that suit, they impleaded all

the legal heirs of Veerabadhra Mudaliar as was directed in the earlier suit and the appellant was the fifth defendant therein. In this suit they claimed

1/3rd share in the plaint property.

8. In that suit, the appellant who was the fifth defendant, filed a written statement stating that even if the settlement deed dated 20th July 1931 is

legal and valid, the plaintiffs are not entitled to any share over the same. A contention was taken that Poongavani Ammal was a destitute woman

and she was depending on her father for her maintenance. The father, who had an obligation to maintain his widowed daughter, settled the plaint

property towards her maintenance and she was in possession when the Hindu Succession Act came into force. It was further contended that u/s

14(1) of the Hindu Succession Act, Poongavani Ammal became the absolute owner and on her death, the appellant became the absolute owner

and therefore, the plaint property is not partible.

9. On the above contentions, the trial Court as well as the lower Appellate Court held that the claim u/s 14(1) of the Hindu Succession Act by the

appellant cannot be accepted. The appellant has to prove that her mother was not getting any maintenance from her paternal grandfather and only

if she proves that her mother could not be maintained by her husband or by her father-in-law, an obligation arises for Veerabadhra Mudaliar, to

maintain his widowed daughter. Merely because a widowed daughter resides with her father, it will not create any right on the widowed daughter

to claim maintenance. At any rate, it is only a moral obligation, which cannot be treated as a pre-existing right. It was further held that only Section

14(2) of the Hindu Succession Act will apply. Therefore, the plaintiffs, as legal heirs of Veerabadhra Mudaliar, are entitled to the share of the

property and the appellant is only a co-owner. A preliminary decree was passed and the same was confirmed in the appeal.

10. In the Second Appeal No.1321 of 1984 the following substantial questions of law were raised:

(1) Whether the appellate Court was right in rejecting the application for additional evidence?

(2) Whether the court below misconstrued the terms of Exhibits B-5,A-5,B-1 and B-3 for its conclusion that the property in question belonged to

Veerabadhra Mudaliar, though it noticed that the acquisition was in favour of Thayammal?

In the Second Appeal No.733 of 1991 the following substantial questions of law were raised:

(1) Whether there has been a proper appreciation and application of the principles u/s 14(1) of the Hindu Succession Act, 1956 to the facts of the present case?

(2) Whether on a proper construction of Ex.B-1 the courts below ought to have held that Section 14(1) would be applicable to the case on hand?

(3) Whether there has been a misconstruction and omission to construe the material evidence on record when the Courts below held against the appellant?

11. I will just consider the scope of the Second Appeal No. 1321 of 1984. According to me, the appeal before the lower Appellate Court as well

as this Court is not maintainable. The Original Suit No.3492 of 1975 was dismissed and the plaintiffs therein were not given any relief. It is true that

there is an adverse finding against the appellant but, that adverse finding will not affect her right, since the suit was ultimately dismissed and the

appellant is not an aggrieved person; against the decree of the trial court and therefore she cannot prefer an appeal. u/s 96 of the Code of Civil

Procedure, an appeal is maintainable only by an aggrieved person. Since the suit

was totally dismissed, the appellant who was the second defendant cannot prefer an appeal.

12. In the recent decision of the Supreme Court in *Devaram and another v. Ishwar Chand and another* (1995-6 S.S.C.-733) their Lordships

considered this question in detail. It was held therein thus:

An appeal does not lie against mere "findings" recorded by a Court unless the findings amount to a decree" or "order". Where a suit is dismissed,

the defendant against whom an adverse finding might have come to be recorded on some issue has no right of appeal and he cannot question those

findings before the appellate Court.

In the above cited case, their Lordships followed the decision of the Supreme Court in *Ganga Bai v. Vijay Kumar* (1974-2 S.S.C-393).

13. In *Devaram's* case, their Lordships, in paragraphs 15 to 17 of the judgment, have held thus:

In *Sidramgappa v. Rajashetty* (1970-1 S.C.C. -186), it was laid down that if the cause of action on the basis of which the previous suit was

brought, does not form the foundation of the subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in

the subsequent suit, the later namely, the subsequent suit, will not be barred by the rule contained in Order 2, Rule 2, C.P.C. In *Gurubux Singh v.*

Bhooralal (AIR 1964 SC-1810) it was observed:

In order that a plea of a bar under O.2 R.2(3), CPC should succeed the defendant who raises the plea must make out (1) that the second suit

was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was

entitled to more than one relief (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to suit

for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and

to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the

earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.

In view of the above, what is to be seen in the instant case is whether the cause of action on the basis of which the previous suit was filed, is

identical to the cause of action on which the subsequent suit giving rise to the present appeal, was filed. If the identity of causes of action is established, the rule would immediately become applicable and it will have to be held that since the relief claimed in the subsequent suit was omitted to be claimed in the earlier suit, without the leave of the Court in which the previous suit was originally filed, the subsequent suit for possession is liable to be dismissed as the appellants, being the defendants in both the suits, cannot be vexed twice by two separate suits in respect of the same cause of action.

We have already noticed in the earlier part of the judgment that the previous suit was filled for recovery of a sum of Rs.6300/- as sale price of the land in suit which was dismissed with finding that the document on which the suit was filed was not a sale deed but was a mere agreement for sale and therefore, the amount in question could not be recovered as sale price. That document, thus, constituted the basis of the suit.

14. It is true that in the appeal filed by the plaintiffs in A.S.No.55 of 1997, the appellant filed a cross-objection which is also dismissed. According to me, the dismissal of the cross objection also is not going to differentiate the matter in any way, since even now the suit stands dismissed. The appeal as against the cross objection is also dismissed. Therefore, the Second Appeal is also to be dismissed as not maintainable. Consequently, I do not want to consider the substantial questions of laws that are raised in that Second Appeal.

15. What is the evidentiary value of the findings entered in that case and whether that has a bearing in the subsequent suit, out of which Second Appeal No.733 of 1991 arises will be considered later.

16. In the Second Appeal No.733 of 1991 the only substantial question of law raised is whether Poongavani Ammal is entitled to the benefit of section 14(1) of the Hindu Succession Act? Section 14(1) of the Hindu Succession Act reads thus:

14. Property of a female hindu to be her absolute property:-

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be field by her as full owner thereof and not as a limited owner.

Explanation:- In this sub-section ""property"" includes both movable and

immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as sridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gifts or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property".

17. Before considering the applicability of the section, it is better to consider the scope of the settlement deed dated 20th July, 1931. The

document was executed by late Veerabadhra Mudaliar in favour of his sons Periaswami Mudaliar, Angamuthu Mudaliar, Govindaraja Mudaliar

and his daughter Poongavani Ammal. The total value of the property was settled as per the document was Rs.2,000/- It is stated that the entire

properties are demarcated as ABCD in the schedule. "A1 schedule property was allotted towards the share of Periaswami Mudaliar, "B" schedule

property was allotted to Angamuthu Mudaliar, "C" schedule property was allotted to Govindaraja Mudaliar. Regarding the share allotted to

Poongavani Ammal, it is stated in the settlement deed thus:

18. According to learned counsel for the appellant late Poongavani Ammal was permanently residing with her father at the time of the settlement

and it is also seen from the deed that she was a widow without any male issues and she was also directed to take the income from the property for

her life-time and enjoy the same. Learned counsel submitted that Veeraabadhra Mudaliar himself was satisfied that there is an obligation on his part

to maintain his widowed daughter and to provide for her maintenance. She was alive at the time when Hindu Succession Act came into force and

the property was also in her possession. When she was in lawful possession of the property, she is entitled to have the absolute right over the

property after the Hindu Succession Act came into force. Therefore, the property is not liable to be partitioned between the legal heirs of

Veerabadhra Mudaliar.

19. As against this contention of the learned counsel for the appellant, it is contended on behalf of the respondents that the contention that the property was given in lieu of the maintenance is taken only for the first time during previous litigations, she even denied the existence of the deed.

She also denied having taken a right out of the settlement deed. The finding in the earlier suit that the appellant and the other legal heirs of Veerabadhra Mudaliar are co-owners is binding and the said decision is res judicata in this case. Even if it is not res judicata, at least the principle of estoppel will apply.

20. It is further contended that a moral obligation of the father to maintain his widowed daughter will apply only in cases where her husband's family is not in a position to maintain her. In this case, there is no evidence let in that regard. Even though there is a moral obligation, that obligation will arise only on proving the above condition.

21. It is further contended that a moral obligation is not an enforceable right and therefore, it cannot be treated as a pre-existing enforceable right.

Section 14(1) of the Hindu Succession Act will apply only in the cases of enforceable pre-existing right. Further, Poongavani Ammal obtained a right only by virtue of the document and she is bound by the provisions therein. If so, on her death, the property has to go back to all the legal heirs of Veerabadhra Mudaliar and she can only be treated as a co-owner and the partitions has to take place.

22. I will consider these submissions in seriatim.

23. The settlement deed dated 20th July, 1931 shows that the settlor has no other property, apart from one which is settled under the deed. It is also the finding of the courts below that all these properties absolutely belong to Veerabadhra Mudaliar.

24. I will first consider the question of evidentiary value of the judgment in O.S.No.3492 of 1975 which is confirmed in the appeal in A.S.No.55 of

1977. I have already followed the decision in *Devaram v. Ishwar Chand* (1995-6 S.C.C.-733) to hold that the Second Appeal is not maintainable.

In the very same decision, their Lordships considered the question of res judicata also in paragraphs 24,28,29,30,31 which read thus:

In the previous suit, which was instituted by the respondents an issue namely. Issue 5 was framed on the status of the appellant as to whether they

were the tenants of the land in suit under the respondents but in the subsequent suit this issue was not raised as the appellants who were the defendants in the subsequent suits did not plead that they were the tenants under the respondents. What they pleaded was that they were in possessions since along time namely from samvat 2005 and had, therefore, acquired title by adverse possession. Consequently, in the subsequent suits, the issue which was raised and tried in the previous suit was not raised, framed or tried and no finding, therefore, came to be recorded as to whether the defendants were tenants of the land in suit. It is true that the instant suit, which is the subsequent suit, is between the same parties who had litigated in the previous suit and it is also true that the subject matter of their suit, namely, the disputed land, is the same as involved in the previous suit, but the issues and causes of action were different. Consequently, the basic requirement for the applicability of rule of res judicata is wanting and therefore in the absence of pleading in the absence of issues and in the absence of any finding, it is not open to the learned counsel for the appellants to invoke the rule of res judicata on the ground that in the earlier suit it was found by trial Court that the appellants were the tenants of the land in dispute under the respondents.

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In AIR 1922 241 (Privy Council)) it was observed as under:

Their Lordships do not consider that this will be found an actual plea of res judicata, for the defendants, having succeeded on the other plea, had no occasion to go further as to the finding against them; but it is the finding of a Court which was dealing with facts nearer to their ken than the facts are to the Board now, and it certainly creates a paramount duty on the appellants to displace the findings, a duty which they have now been able to perform.

Similar view was also expressed in an earlier decision in Run Bahadur Singh v. Locho Koer (ILR 1885 11 Cal-301).

The Oudh Chief Court in Pateshwaridin v. Mahant Sarju Dass (AIR 1938 Oudh - 18) held that where a decree in previous suit is wholly in favour

of a person and gives him all the reliefs sought for by him, he has no right of appeal against the decree so as to enable him to contest any adverse

finding against him in such suit. Hence such adverse finding cannot operate as

res judicata as against him in a subsequent suit.

The High Court of Andhra Pradesh in *Bansi Lal Ratwa v. Lakshminarayanan* (1969-2 An.WR. 246) and the Full Bench of the High Court of

Patna in *Arjun Singh and Others Vs. Tara Das Ghosh and Others*, have taken the view that an appeal would not lie against mere adverse finding

unless such finding would constitute res judicata in subsequent proceedings. We are however, not concerned with this aspect of the matter in the

present case nor are we concerned with the earlier aspect as the plea of res judicata having not been raised in the written statement, the appellant

cannot be permitted to raise the plea here.

(Emphasis supplied)

25. In view of the decision of the Supreme Court, the decision in this suit is not res judicata. If it is not res judicata, what is the evidentiary value of

the said judgment. At the most, the respondents can contend that they had asserted the right on the basis of the settlement deed and was

recognised as co-owner's right. By mere assertion and recognition they will not get a valid title if the appellant can show that she has got a better

title than the other sharers. The question of applicability of Section 14 of the Hindu Succession Act was not an issue in the suit. In fact in the earlier

case, the appellant did not claim any right under the settlement deed. She claimed that the property was "sridhana" of Thayammal and even

disputed the right of settlor. If at all there is any relevancy for the earlier judgment, it is only for the purpose of holding that the appellant herein

cannot again contend that the property did not belong to Veerabadhra Mudaliar.

26. When the scope of Section 14(1) of the Hindu Succession Act was not agitated, there is no bar in agitating the same in the suit and before this

Court. The question of estoppel also cannot arise, since on the basis of the representation made by the appellant the other legal heirs of

Veerabadhra Mudaliar acted on the same. Again, the principle of estoppel cannot be applied against law.

27. The only question now remains for consideration is how far Section 14(1) or 14(2) of the Hindu Succession Act would apply to the heirs.

Whether a daughter has any right to claim against her father for maintenance, will have to be considered first.

28. In *Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa*, the

question was, what is the right of a manager of a Hindu Family

and the right of a Manager or father of a Hindu joint family to make a gift in favour of his daughter or sister of reasonable portions of property for

maintenance. In para 18 of the judgment their Lordships summarised the portions of the Hindu Law thus:

The Hindu Law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition.

That right was lost by efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift, by

way of reasonable provision for maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By

custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not

confined to the marriage occasion. It is a moral obligation and it continues to subsist till it is discharged. Marriage is only a customary occasion for

such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a

hard and fast rule, prescribing the quantitative limits of such a gifts as that would depend on the facts of each case and it can only be decided by

courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount

charges and other similar circumstances. If the father is within his rights to make a gift of a reasonable extent of the family property for the

maintenance of a daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or

the reasonableness of a gift does not depend upon the plurality of documents but on the power of the father to make a gift and the reasonableness

of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed

instead of one, cannot make the gift anytheless a valid one.

(Emphasis supplied)

29. In Mulla's "Principles of Hindu Law" 15th Edition in Chapter 25 "Maintenance" at page 642 the learned author has stated thus:

A father is bound to maintain his unmarried daughters. On the death of the

father, they are entitled to be maintained out of his estate. A daughter on marriage ceases to be a member of her father's family and becomes a member of her husband's family. Thenceforth she is entitled to be maintained by her husband, and after his death, out of his estate. If the husband has left no estate; her father-in-law if he has got separate property of his own, is morally, though not legally, bound to maintain her; but, after his death she acquires a legal right to be maintained out of his estate on the principle stated in 544 above. If she is unable to obtain maintenance from her husband, or, after his death, from his family, her father, if he has got separate property of his own, is under a moral though not a legal obligation to maintain her. But it is not settled whether after the father's death she acquires a legal right to be maintained by his heirs out of his estate. The High Court of Bombay has held that she acquires no such right. On the other hand, the opinion has been expressed by the High Court of Calcutta, that she does acquire such right, provided she is unable to obtain maintenance from her husband's family. The Madras High Court has held that a widowed daughter who is without means and whose husband's family is unable to support her is entitled to be maintained by her step-mother out of her father's estate.

(Emphasis supplied)

30. In Mayne's Hindu Law 14th Edition S.724 Chapter 23, page 1154 deals with the right of a daughter. The relevant portion reads thus:

After marriage her maintenance is a charge upon her husband during his life, and after his death, upon her husband's family. If they are unable to support her and the widowed daughter returns to live with her father, there is a moral obligation to maintain his widowed daughter, during his lifetime and to make provision out of his self-acquired property for her maintenance after his death. On his death, the moral obligation becomes a legal obligation when his estate comes into the possession of her heirs. A widowed daughter to sustain her claim for maintenance is to prove that at the material time she is a destitute and she could not get any maintenance from her husband's family. The right to maintain includes residence. The moral obligation was extended to a case of a helpless sister.

(Emphasis supplied)

31. In S. V. Gupta's Hindu Law, III Edition, Vol.II, at page 1042, the learned

author has stated thus:

A Hindu, if he has separate property, is under a moral obligation to maintain his married daughter who is destitute but there is a difference of

opinion on the question whether this moral obligation ripens into legal right against his property. According to the High Court of Bombay it does

not. According to the Calcutta and Madras High Courts, it does.

A daughter is to be regarded destitute when she is unable to obtain maintenance from her husband or after his death from his property or her

father-in-law or his property after his death.

32 In Paras Diwan's "Hindu Law" First Edition, at page 1370, the learned author has stated thus:

Under the old Hindu law when daughters did not inherit father's property, this moral obligation became a legal obligation against those who

inherited his property.

The learned author has also stated thus:

Similarly, the Karta has the moral duty to provide maintenance for widowed daughters and if the Karta alienate joint family property for providing

maintenance to widowed daughter or indigent married daughter, such alienation is binding on the family.

In N. R. Raghavachariar's "Hindu Law-Principles and Precedents"-VIII Edition at page 191, the learned author says thus:

A father is not legally bound to maintain his daughter after her marriage, and her right is only against the husband, or after his death, his estate, if

any, but there is still a moral duty upon him to see that his daughter though married does not suffer for want of maintenance, from her husband's

indigent family and this duty ripens into a legal obligation to maintain her when the property is inherited by her father's heirs, but even then she

cannot claim separate maintenance.

In the absence of material to show that a married daughter is not in receipt of any maintenance from her deceased husband's family it cannot be

said that there is a legally enforceable right to her to claim maintenance from her father or brother or from the heir who has succeeded to his

property. Where, however, a daughter was in need of some arrangement for maintenance as she had come out of her husband's family by reason

of some quarrel and her father gave her some property being a third share in a house and 80 cents of land and the provision was reasonable, the transaction was held to be on a par with an alienation of family property for legal necessity or benefit and would bind the other members of the family.

(Emphasis supplied).

The learned author also says thus:

A heir is legally bound to maintain out of the estate inherited all the persons whom the late proprietor was morally or legally bound to maintain, the reason being that the heir takes it for the spiritual benefit of the deceased achievable by the discharge of such obligations, both moral and legal, and that the estate is inherited only subject to the obligation to provide for such maintenance.

32-A. In S. V. Gupta's "Hindu Law of Adoption, Maintenance, Minority and Guardianship" at page 147, the learned author has stated thus:

It has so far been held that a Hindu under a moral obligation to maintain his (i) married daughter who is destitute and widowed daughter-in-law.

But it has been held that the grand daughter by a pre-deceased son is a dependent of the grandfather and within the group of persons to be

maintained according to the letter and spirit of Hindu texts. There being a normal obligation in the grandfather, his heirs who take the estate are

legally bound to maintain her out of the estate.

A Hindu, if he has separate property, is under a moral obligation to maintain his married daughter who is destitute but there is a difference of

opinion on the question whether this moral obligation ripens into a legal right against his property. According to the High Court of Bombay it does

not. According to the Calcutta and Madras High Courts, it does.

33. Dr. Sir Hari Singh Gour in his book "The Hindu Code" Vol.IV has considered the question regarding the right of a widowed daughter for

maintenance from her father. The learned author says at page 14 thus:

On the question whether a right of maintenance accrues to the widowed daughter under the Hindu law the consensus of judicial opinion seems to

be in favour of the view that such a right does exist. A widowed daughter to sustain her claim for maintenance out of the estate of the father in the

hands of his heirs need not be destitute nor need be actually maintained by the father during his lifetime. All that she is required to prove to get such

maintenance is that at the material time she is a destitute and she could not get any maintenance from her husband's family. The right of

maintenance would include the right of residence.

(Emphasis supplied).

34. In one of the earlier decisions of Calcutta High Court in *Mokhada Dassee v. Nundo Lall Halder* (1901) ILR 28 Calcutta 278), "their

Lordships held that if the daughter removed herself from her father-in-law's house to her father's, and if she was a dependent upon her father's

family, it is submitted, the father's family was bound to maintain her. In the said judgment, their Lordships observed thus:

The authorities appear to me to establish that when a Hindu maiden marries, she becomes, if I may use the expression, incorporated into her

husband's family, and that it is to that family she, in the first instance, look for her maintenance on becoming a widow, and that, any way she cannot

be regarded as entitled to demand successfully maintenance from her father's heir, who has succeeded to his estate, unless and until it can be

satisfactorily shown, that she is unable to obtain maintenance from the family into which she has married. It is perhaps, not clear, in fact there is a

distinct authority the other way, whether, even in such an eventuality, she can succeed as against her late father's estate.

35. In the earlier decision of a Full Bench of Allahabad High Court in *Janki v. Nand Ram* (I.L.R. 11 AUahabad-194) their Lordships held thus:

Maintenance by a man of his dependants is, with the Hindus, primary duty. They hold that he must be just before he is generous, his charity

beginning at home; and that even sacrifice is mockery, if to the injury of those whom he is bound to maintain. Nor of his duty in this respect are his

children the only objects, co-extensive as it is with his family, whatever be its composition, as consisting of other relations and connections,

including(it may be) illegitimate offspring. It extends to the out case, if not to the adulterous wife, not to mention such as are excluded from the

inheritance, whether through their faculty or their misfortune, all being entitled to be maintained with food and raiment at least under the severest

sanctions.

This passage is supported by the text upon which the learned author has relied; but I am anxious to quote a passage from more recent authority

(Dr. Gurudas Banerjee's Tagore Law Lectures, 1878,

We have hitherto been considering the claim of a widow for maintenance against the person inheriting her husband's estate. The question next

arises how far she is entitled to be maintained by the heir when her husband leaves no property, and how far she can claim maintenance from other

relatives. The Hindu sages emphatically enjoin upon every person the duty of maintaining the dependent members of his family. The following are a

few of the many texts on the subject:-

Manu:- ""The ample support of those who are entitled to maintenance is rewarded with bliss in heaven; but hell is the portion of that man whose

family is afflicted with pain by his neglect, therefore, let him maintain his family with the utmost care."

Narada:- "Even they who are born, or yet unborn, and they who exist in the womb, require funds for subsistence; the deprivation of the means of

subsistence is reprehended."

Brihaspati:- "A man may give what remains after the food and clothing of his family; the giver of more who leaves his family naked and unfed, may

taste honey at first, but shall afterwards find it poison.."

To these texts I may add the following from Manu (Chap.XI Sections 9 and 10):-

He who bestows gifts on strangers, with a view to worldly fame, while he suffers his family to live in distress, though he has power to support

them, touches his lips with honey, but swallows poison; such virtue is counterfeit; even what he does for the sake of his future spiritual body, to the

injury of those whom he is bound to maintain, shall bring him ultimate misery both in this life and in the next.

All these texts read together in the spirit of the Hindu Law, leave no doubt in my mind that at least in point of religious or spiritual and moral

obligation, maintenance of the dependants of the family is an obligation resting on the head of a Hindu family.

In the same judgment, their Lordships also extracted a passage from Mayne's Hindu Law which is as follows:

The principle that the right of inheritance, according to Hindu Law, is wholly regulated with reference to the spiritual benefits to be conferred on

the deceased proprietor, has been laid down on the highest judicial authority as an article of the legal creed, which is universally true, and which it would be heresy to doubt.

Their Lordships in the above judgment have held thus:

There being thus no legal obligation upon the father to provide a husband for his daughter, or to pay her marriage expenses, I proceed to show

that the obligation which was only a moral or religious obligation resting upon the father becomes a legally enforceable obligation as against the son

who has inherited the property of his father, even though such property, is only self-acquired property of the father. In other words, what was a

mere moral obligation on the father matures itself into a legal obligation against the brother.

(Emphasis supplied)

36. Learned counsel for the appellant cited the decision in AIR 1934 29 (Privy Council) . "It was a case of daughter-in-law claiming maintenance

against her father-in-law. In that case, their Lordships said that the liability on the father-in-law, as per the Hindu Law, towards the widow, of his

son is no-doubt a moral liability. But that liability, when transmitted to his sons, on his death, became, in their persons, a legal liability, the measure

of which however was restricted to the amount of the estate to which they succeeded from their father.

37. In a Full Bench judgment of this Court in Ambu Bai Ammal v. Soni Bai Ammal (A.I.R. 1940 Madras-804 = 52 L.W. 179), the learned judges

considered the facts cited above. That is a case where a widowed daughter claimed maintenance against her father's widow. Their Lordships,

after extracting the relevant portion from Mulla's Hindu Law, has approved the statement of Ghosh's Hindu Law and stated thus:

Ghose states that a female is entitled to be maintained by her father's family, if her husband's family is extinct, or incapable on account of extreme

poverty, to support her (Ghose's Principles of Hindu Law, 10th Edition., P.305)

He also points out that the sonless widowed daughter and granddaughter and sister come back to the family of the father according to Medhatithi.

(Ghose's Principles of Hindu Law, 10th Edition,P310). As Mayne observes Medhatithi's work is the earliest commentary extant on Manu and is

frequently referred to as of high authority and mentioned in the Mitakshara and

Smritichandrika (Mayne on Hindu Law and Usage, 10th Edition, P.43). Sircar expresses the opinion that a married daughter is ordinarily to be maintained in her husband's family, but if they are unable to maintain her, she is entitled to be maintained in her father's family (Sircar's Hindu Law, 8th Edition, P.534). West and Buhler quote with approval the decision in the two cases reported by strange (West and Buhler's Hindu Law, 4th Edition, P.241). Before the decisions in 23 Bom 291 Mayne was of the same opinion, but the learned author of the next edition accepted that decision as being correct and altered his opinion accordingly. This view has been maintained in the latest edition. (Mayne's Hindu Law and Usage, 10th Edition P.825). Gour's Hindu code also accepts the Bombay case as deciding the point (4th Edition, page 322).

The decision in 11 All 194 must now be accepted as embodying a rule of Hindu Law and as there is a moral obligation on a father to support his daughter, whether married or unmarried, I can see no valid reason for refusing to apply the rule to a widowed daughter who is penniless. The only distinction between a widowed daughter-in-law and a widowed daughter is that on her marriage the daughter passes into another family, but the moral obligation of the father to support her when in want still remains and the same reasoning which led to the rule in 11A1U94 (Janki v. Nandram) being laid down applies: The decision reported in strange and Macnaghten provide additional reasons for applying it and most of the learned authors of works on Hindu Law have accepted it. The right to maintenance which was claimed in the cases reported in strange and Macnaghten was not based on the reasoning to be found in 11 All 194, but the right was clearly recognised. It is not necessary to consider how far the rule extended to guru, guests, religious mendicant, or an aged and helpless person who is in no sense a member of the family and could only be the object of charity. There is however ample authority for applying the rule in this case.

Consequently, I hold that a widowed daughter in the position of the respondent in this case is entitled to maintenance out of her father's estate in the hands of his widow and I would dismiss the appeal with costs.

(Emphasis supplied)

38. In the said decision, the Full Bench approved a passage from Ghose's

"Principles of Hindu Law". The relevant passage at pages 309 and 310

of the learned author reads thus:

It is a difficult question whether married daughters can ever claim to be maintained by the father's family. The law of Narada is clear, that when

the husband's family is in destitute circumstances, the father's family has to maintain a female. It is difficult to see, how it is only a normal duty on

the part of the father's family, when the legal right to keep a woman in subjection under such circumstances vests in them by law. It should be

observed that according to the texts of Brinaspatis cited in this section, the king should provide maintenance to the females of the family of the

deceased person, and make over the remainder to the heirs. It should also be remembered, that according to the law of the Rishis, a girl on

marriage had to be given Stridhana, besides ornaments, by the father's family, which was considered as given for her maintenance. When the

father's family fail in their clear duty in this respect and marry a girl to a poor man—say to a kulin Brahmana, who looks upon the father-in-law as

liable to maintain his wife by custom—how can it be said, that when she becomes helpless on account of poverty, the father's family can turn her out

without a maintenance? It has been held that a son-in-law, who had been kept in the house and supported by the father-in-law, can after his death

obtain by a suit a decree for maintenance against his heir. The son-in-law's right is doubtful, but the daughter is clearly entitled to maintenance

under such circumstances. Mr. Mayne, Mr. Macnaghen and Babu Gopal Chunder Sircar are of opinion that indigent married daughters are entitled

to maintenance. Our courts have held that no person, who has not taken her husband's wealth, is liable to maintain a married woman, and it has

also been very definitely laid down in Bombay, that the father's family are not liable under any circumstances, to maintain a married woman. In

Madras, this decision has been expressly dissented from and Mr. Justice Sadasiva Aiyar in a very learned judgment has shown how the rights of

females have been curtailed on account of ignorance of the law and its history and expressed his concurrence with the opinion expressed in this

book. The Calcutta High Court has in a recent case declined to go further than that a daughter "cannot be regarded as entitled to demand

successfully maintenance from her father's heir, who has succeeded to his

estate, unless and until it can be satisfactorily shown, that she is unable to obtain maintenance from the family into which she had married.

Under the Dayabagha, the sonless widowed daughter is no heir to her father, and it would be cruel to deprive her of maintenance also. The

sonless widowed daughter and grand- daughter and sister come back to the family of the father according to Medhatithi. The Vivada Tandava and

the Keshava Vijayanthi clearly lay down that all these females are entitled to be maintained.

(Emphasis supplied)

39. The learned author has referred to a decision of this Court in Venkarazu v. Kotayya (23 M.LJ.-223) by Sadasiva Aiyar, J. speaking for the

Bench. According to me, the observation made in this judgment is also relevant for our purpose, which is extracted below:

But even assuming for argument's sake, (I do not concede it except for the purposes of argument) that unless the daughter has some claim on her

father's estate for her maintenance her power of disposal as heir of her father cannot extend to the finding of means for meeting the supreme

necessity of procuring her own "necessaries", has not a widowed destitute daughter whose husband's family is unable to give her anything, has she

not a legal claim on her father for her maintenance at least when she lives with him as a member of his family? Has she not, at least, a social and

moral claims against her father which ripens into legal right against his estate after his death just as in the case of a daughter-in-law who has only a

social and moral claim against her father-in-law if he has no ancestral property and whose moral claims becomes a legal claim after his death? The

authorities are all in favour of the existence of such a right in the destitute married daughter except one doubtful decision in Ben Mangat v. Bai

Rukhmani (1898 ILR 23 B.291) .J. C. Ghose says (Hindu Law,P.295 and 296) "The law of Narada is clear that when the husband's family is in

destitute circumstances, the father's family has to maintain a female. It is difficult to see how it is only a moral duty.... When the father's family

marry a girl to a poor man how can it be said that when she becomes helpless on account of indigence of the husband's family the father's family

can turn her out without a maintenance?.. According to the strict letter of the Hindu Law and also according to the nature of the constitution of

Hindu Society, it is a clear legal duty on the part of the father's family to maintain a woman under the circumstances noted above." And then the

learned author proceeds to criticise *Bai Mongol v. Bai Rukhmani* (1898 ILR 23 B.291) and says that the decision "is not correct according to the

old law of the Rishis." Mr. Mayne was formerly of opinion that if the husband's family "are unable to support" a married daughter "she must be

provided for by the family of her father" and he was supported by Macnaghten (Vol.2 P. 118) and West and Buhler (233,245,248 and 437) and

2 *Strange* (pages 83,90). Mr. Mayne, however, seems to have changed his opinion after the decision in *Bai Mongol v. Bai Rukhmani* (1898 L.R.

23 B-291). The learned judge who decided that case while finding on the question of fact that "it is not clear that she" (the daughter) "is absolutely

without any provision," proceeded to lay down that even if she was destitute, there was only a social and moral obligation and not a legally

enforceable right by which her maintenance can be claimed against her father's family and even though she had returned to live with her father and

brother after she became a widow. With the greatest difference to the very learned judges (Justices Ranade and Parsons) who decided the case in

Bai Mongol v. Bai Rukhmani (1898 L.R. 23 B-291), I must regretfully express my dissent from that decision and I concur in the opinion of J. C.

Ghose, West and Buhler, Macnaghten and *Strange* that there is a legal obligation on the father and his family to support a destitute daughter

(though she had been married away) if she could not get sufficient provision from her deceased husband's family for her maintenance.

Bhattacharya also says that under the Hindu Law texts, widowed daughters are entitled to maintenance and "Justice requires that their right should

be recognised". The argument that by marriage she becomes a member of another family and becomes so to say, "dead" to her own family is

merely carrying legal[^] fictions to absurd lengths. A wife is half her husband's body but you cannot on that account give double rations to the

husband for his meals and give none to the wife; nor does the daughter lose her consanguineness? blood relationship to her father and her right of

inheritance to him and other similar rights, simply because she becomes attached by Pinda, Gotra and Sootaka to her husband's family by

marriage.

(emphasis supplied)

40. If I go by this decision I feel that there is not only a moral obligation, but also a legal obligation on the part of the father to maintain his destitute

daughter, even though, given in marriage. Full Bench has approved the observation of the learned author that if a sonless widowed daughter or

grand daughter or a sister comes back to the family of the father or brother she is entitled to be unmaintained. Taking into consideration the above

facts, when father of Poongavani Ammal has recognised his obligation by executing the settlement deed that this widowed daughter requires some

financial protection, it can be presumed that she could not be maintained by her husband's family. In such a case, the burden will be on the

brothers and in this case to prove that Poongavani Ammal could be maintained by her husband's family, there is absolutely no evidence.

41. The decision of the Full Bench of this Court in Ambu Bai Ammal v. Soni Bai Ammal (A.I.R.1940 Madras-804 = 52 L.W. 179) has been

followed in the decision in Khantamoni v. Shyam Chand (AIR 1973 Calcutta 112). After considering the earlier decision of the Court the learned

judge had held thus:

It therefore, follows that a widowed daughter to sustain her claim for maintenance out of the estate of the father in the hands of his heirs need not

be a destitute nor need be actually maintained by the father during his lifetime. All that she is required to prove to get such maintenance is that at the

material time she is a destitute and she could not get any maintenance from her husband's family.

42. Though in a different context, the Supreme Court had an occasion to consider the question of validity of the gift executed by a father of a joint

Hindu family, in favour of his sister in Guruamma's case (A.I.R. 1964 SC-510)cited supra. Their Lordships held that daughter has a right of

partition in the family property, but subsequently, that right got lost by efflux of time and thereafter it became the moral obligation of a father to

maintain his daughter or sister, and this right of moral obligation was given in the nature of gift at the time of marriage. But. their lordships further

said that need not be given at the time of marriage alone, it can be at any time, and the gift so executed in favour of a daughter is a valid one.

43. If this is the legal position of a widowed daughter, the question that will have

to be considered is whether the settlement deed dated 20th July 1931 creates a right in favour of Poongavani Ammal.

44. Our High Court has recognised the principle of Ghose that a widowed daughter having no sons normally returns to her father's house from her father-in-law's house and she becomes dependent on her father. That seems to be the reason for Veerabadhra Mudaliar to execute a settlement deed, providing some property for her life towards maintenance. As was held in Guruamma's case reported in AIR 1964 S.C-510 also following the judgement in Ambu Bai Ammal's case in AIR 1940 Madras 804 = 52L.W. 179 cited supra, the pre-existing right of a daughter to get a share in the family property changed into that of a right of maintenance and that could be gifted or exercised by a father at any time. So, it cannot be said that there is no pre-existing right as contended by the learned counsel for the respondents.

45. Learned counsel for the respondents submitted that even the moral obligation arises only if the widowed daughter proves that she cannot get maintenance from her husband's family. I do not think that such a contention could be accepted, when the father himself recognises the right of the daughter and has provided maintenance. When the widowed daughter resides with her father and is sonless, she may enjoy the income, from the infra-structure that has been drawn out of property which has been given in lieu of the maintenance. Even if she had right from her husband or from her father-in-laws when the father recognises his moral obligation and provides property in lieu of maintenance, that will be protected u/s 14(1) of the Hindu Succession Act. The Court is concerned only about the fact that the document was executed for maintenance. The document only shows that the father recognised the right of his widowed daughter.

46. In all the cases cited above, it was the family property that was dealt with and came for consideration. In this case, the father executed the settlement deed in respect of his self acquired property, which provided a right of enjoyment of his daughter. If the father is competent to provide in any way he wanted, being his self-acquisition, naturally the sons who inherit or who would take over from the father, are also bound by the obligation. In the hands of the sons, that obligation to maintain their sister becomes a legal obligation. When the father has earmarked the property

to the daughter and after his death, if that obligation survives, it is converted into legal obligation and it becomes the pre-existing right which the daughter can enforce against the sons of her father.

47. In that view of the matter I feel that Section 14 of the Hindu Succession Act applies and therefore, Poongavani Ammal will be the absolute

owner of the property. It is not disputed that she died in the year 1972 and when the Hindu Succession Act came into force she was in physical

possession of the property. So all the statutory ingredients of section 14(1) of the Hindu Succession Act are satisfied in this case.

48. Learned counsel for the appellant relied on the decision in *George Thomas v. S. Lilly Samuvel* (1996(1) L.W.-134) wherein their Lordships

considered the scope of section 14(1) of the Act. In that case a widowed daughter was provided some property in lieu of maintenance. The

learned counsel quotes para 10 of the judgement which reads thus:

In the leading case on the subject of Section 14 *V. Thulasamma & others v. Sesha Reddi* (dead) by L.f.c.1977-3-S.C.R. 261 = 90 L.W.89

(S.N.) it is held that under the Sastric Hindu Law a Hindu widow had a right to be maintained out of joint family property and this right ripened into

a charge if the widow took the necessary steps for having her maintenance ascertained and specifically charged on the joint family property. Even if

no specific charge were created this right was enforceable against joint family property in the hands of a volunteer or a purchaser taking it with

notice of her claim. When specific property was allotted to the widow in lieu of her claim for maintenance, the allotment was in satisfaction of her

right to be maintained out of the joint family property. It was not a grant for the first time without any pre-existing right in the widow. The widow

got the property by virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right.

Section 14(1) was large in its amplitude and covered every kind of acquisition of property by a female Hindu including acquisition in lieu of

maintenance. Where such property was possessed by her at the date of commencement of the Act, she became its full owner. The words "any

property" were large enough to cover any and every kind of property but in order to expand the reach and ambit of the Section and make it all

comprehensive the Explanation thereto had been enacted. Whatever be the kind

of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by Section 14(1). The object of the legislature was to wipe out the disabilities from which a Hindu woman suffered in regard to the ownership of property under the old Sastric Law and to recognize her status as an independent and absolute owner of the property. Sub-Section(2) of the Section 14 was in the nature of a Proviso to Sub-Section(1). It had to be read in the context of Sub-Section(1) to leave as large a scope for the operation of Sub-Section(1) as possible. So, read, Sub-Section(2) had to be confined to cases where property was acquired by a Hindu woman without any pre-existing right for the first time under a gift, will, instrument, decree, order or award, the terms of which prescribed a restricted estate in the property. Where property was acquired by a Hindu woman in lieu of her right to maintenance, it was by virtue of pre-existing right and such acquisition was not within the scope and ambit of sub-section(2) even if the instrument allotting the property prescribed a restricted estate in it, Where property was acquired by a Hindu woman under an instrument by virtue of a pre-existing right to maintain and under the law as it stood prior to the enactment of the Act, she would have had no more than a limited interest in the property a provision in the instrument giving her limited interest in the property was merely by way of recognition of the legal position as it existed and the restriction on her interests, being a disability imposed by law, was wiped out and her limited interest enlarged under subsection(1).

49. The only interpretation which could be given to the settlement deed in this case, is that the property given by the father under that settlement was towards maintenance for the enjoyment of his widowed daughter and it was a pre-existing right. When the Hindu Succession Act came into force, the same became an absolute right.

50. I feel that the decision referred to by the learned counsel for the appellant also applies to the facts of this case.

51. Learned counsel for the respondent contended that in the earlier litigation the appellant had no case that she is in possession of the plaintiff's property as per the deed. She claimed a right de hors the document. It is further contended that when she had no claim on the basis of the settlement deed, it is too late for her to plead that the settlement deed was

executed in lieu of maintenance.

52. I do not think that such a contention could be accepted. It is true that such a contention was taken by the appellant in the earlier litigation, but the same was not accepted by Court. The contention of the respondent was accepted. It appears that she has only accepted the case of the respondents and is claiming absolute ownership over the property.

53. It is further contended that in the settlement deed, there is no statement that Veerabadhra Mudatiar's daughter is given the plaint property in lieu of maintenance.

54. I do not think that the absence of those words in the settlement deed is of any importance. In this case, the appellant has pleaded and proved the financial position and the circumstances under which the document came to be executed. It is for the respondents to rebut the case that the property was not given in lieu of maintenance or it was executed not in recognition of the pre-existing right.

55. A reading of the document, prima facie shows that Poongavani Ammal was allowed to enjoy the income and was put in possession of the property for her life with the intention that it must be utilised for maintenance. A sonless widow comes to a father's house only as a dependant and therefore, the presumption is that the schedule property was given to her for maintenance.

56. Learned counsel for the respondents relied on the decision in Himi (Smt) and Another Vs. Hira Devi (Smt) and Others, . I do not think that this decision has got any applicability to the facts of this case. That is a case where a step-mother and a step-daughter entered into compromise in a suit. Their Lordships held that the step-mother had no right over the property. She had only transferred her right over the property and she cannot convey a better title than the step- daughter. Consequently, their Lordships held that Section 14(1) has no application. The facts in this case are entirely different. In the result, I hold that the appellant herein is entitled to the benefit of Section 14(1) of the Hindu Succession Act and the substantial questions of law have to be answered in her favour. Naturally, the Second Appeal No.733 of 1991 will have to be allowed and I do so. The judgment and decree in O.S.No.7265 of 1980 on the file of the III Assistant Judge, City Civil Court, Madras, and that of the lower

Appellate Court in A.S.No.33 of 1989 on the file of II Additional City Civil Judge, Madras are set aside. Second Appeal No."1321 of 1984 is dismissed. No costs. Consequently, C.M.P.No.6601 of 1991 is closed.