

**(1990) 10 MAD CK 0057**  
**In the Madras High Court**  
**Case No : Second Appeal No. 1101 of 1981**

|                                                         |            |
|---------------------------------------------------------|------------|
| Komalavalli Ammal and Rangamani Ammal                   | APPELLANT  |
| Vs                                                      |            |
| T.A.S. Krishnamachari and Kandamani alias T.K. Seshadri | RESPONDENT |

---

**Date of Decision :** 12-10-1990

**Acts Referred:**

Hindu Succession Act, 1956 — Section 15, 15(2), 16

**Citation :** (1990) 10 MAD CK 0057

**Hon'ble Judges :** Srinivasan, J

**Bench :** Single Bench

**Advocate :** M.N. Padmanabhan, for the Appellant; N.S. Varadachari, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Srinivasan, J.—The plaintiffs are the appellants before me. They are daughters of one Srinivasachariar through his second wife. Srinivasachariar had another daughter by name Amirthammal through his first wife. By a will dated 27-4-1945 marked as Ex.A-1 Srinivasachariar bequeathed his properties in favour of his three daughters to be taken by them equally. After his death, the daughters entered into a partition on 25-9-1950 under & registered partition deed marked as Ex A-2. Amirthammal died issueless on 20-7-1974. The plaintiffs claiming to be heirs of Amirthammal instituted the suit out of which, this second appeal arises. The first defendant is the son of Amirthammal's husband's brother. The second defendant is the son of the first defendant. The defendants resisted the suit on the ground that under the provisions of Hindu Succession Act, the plaintiffs are not the heirs of Amirthammal. The courts below accepted the contention of the defendants and dismissed the suit. S.15 of the Hindu Succession Act is the relevant provision. In so far as it is relevant the section reads as follows:

15.(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in S.16?

- (a) firstly, upon the sons and daughters (including the children of any predeceased 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-S.(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 predeceased son or daughter) not upon the other heirs referred to in sub-S.(1) in the order specified therein, but upon the heirs of the father; and...

2. Learned counsel for the appellants contends that under S. 15(2), the word used is "inherited". According to him, the property is inherited by a female Hindu even if she gets the same under a will executed by the deceased owner. This contention of the learned counsel cannot be accepted as the matter has been considered in detail by this Court in *Ayiammal v. Subramania Asari* AIR 1966 Mad. 369=79 L.W. 192 Justice Natesan held that S. 15(2) contains an exception to the general rule of succession provided under sub S.(1) by recognising a different mode of devolution in respect of property which a Hindu woman acquired by inheritance. Learned Judge held that the word "inherit" means "to receive as heir" that is "succession by descent." Consequently, he took the view that a property which was gifted by the father in favour of his daughter would not fall within the terms of S. 15(2) as it was not a property inherited by the female hindu.

3. A division bench of Andhra Pradesh High Court adopted the same reasoning in *Babballapati Kameswararao and Another Vs. Kavuri Vesudevarao*, and held that the term "inherited" occurring in S.15(2) in the context means "to receive property as heir" or "succession by descent" The division bench observed that the word had a restricted meaning and did not include acquisition of property by device under a will. The judgment of Justice Natesan was referred to by the division bench. The judgment of Gujarat High Court in *Jayantilal Mansukhlal and Another Vs. Mehta Chhanalal Ambalal*, , was also referred to by the division bench.

4. I am also taking the same view as Justice Natesan as the word inherit would not include a devolution by will. The term inherit is restricted to cases in which the property passes on by a non-testamentary succession. Wherever there is a testament, it would not fall within the term inherited.

5. Learned counsel for the appellant places reliance on a judgment of this court in *Narayanaswamy v. Gopalaswamy* AIR 1938 Madras 6=46 L.W. 285. While

interpreting a deed of gift by a Hindu father to his daughter, Varadachariar. J. held that two considerations had to be borne in mind: (1) that he ordinarily desired that the property should devolve only on the children born to her and not upon other heirs in her husband's family and (2) that such a parent making a gift to his daughter soon after her marriage would think it inauspicious to refer in terms to her death without issue and often employs circumlocutory language to indicate that contingency. It is seen from the facts of the case that in the document of gift, the donor had stated that the property would not go to any person other than the descendants of the donee who was the daughter of the donor. Taking into consideration all the clauses of the gift deed the great judge held that the deed did not convey an absolute estate to the daughter so as to devolve on her husband by inheritance on her death without issue. The case really turned on an interpretation of the document and would not help the appellants in this case.

6. 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 hold that the said daughter had really inherited the property from her deceased father within the meaning of S.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 Srinivachariar.

7. 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 to 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. In the result, the appeal has to fail and is dismissed. There will be no order as to costs. The parties will bear their respective costs throughout.