
(1998) 02 MAD CK 0207

In the Madras High Court

Case No : Second Appeal No's. 877 and 878 of 1983 and 251 of 1984

Mrs. Chinna Pillai and another

APPELLANT

Vs

Sellammal (died) and 7 others

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Hindu Succession Act, 1956 — Section 24, 25, 26, 28, 4

Citation : (1998) 02 MAD CK 0207

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

Bench : Single Bench

Advocate : V. Swaminathan Counsels in S.A. Nos. 877 and 878 of 1983, Mr. K. Saravabhauman counsel in S.A. No. 251 of 1984, for the Appellant; V. Swaminathan Counsel for (R3 and R5 in S.A.878/1983 and R4 to R6 in S.A.877/1983 respectively who are (R-2, R-5, R-8 and R-8 in S.A.251/1984), Mr. K. Saravabhauman counsel for (R-2 in S.A.877 and 878/1983) Miss. Asha Counsel for R-1, R-4 and R-7 in S.A.878 of 1983 (R-1, R-3 and R-7 in S. A. 877/1983 - R-1, R-3 and R-9 in S.A.251 of 1984 respectively), for the Respondent

Judgement

S.S. Subramani, J.—All these Second Appeals arise out of the same suit viz. O.S. No. 774 of 1979, on the file of District Munsif at Ariyalur. The relevant facts for the purpose of our case may be summarised thus: All the plaint items originally belonged to one Poomalai Konar who died in the year. 1955. His widow Sellammal is the plaintiff in the suit, who claimed partition of 2/3rd share over the plaint items. It is the case of the plaintiff that out of her marriage with Poomalai, Saminatha Konar was born, who died in the year 1970. 1st defendant is the widow of Saminatha and 2nd defendant was a minor daughter born to them. It is further averred by the plaintiff that apart from Saminatha, Poomalai had one more daughter by name Panchavaranam. It is her case that on the death of Poomalai, she became entitled to one half of the plaint items and on the death of Saminatha Konar, over his one half share in the suit items she is entitled to 1/3rd share altogether 2/3rd right in the plaint items. She demanded partition. She also alleged that defendants 1 & 2 who are the widow and

daughter of Saminatha are alienating the properties, as if the properties are absolutely belonging to them only, and mere-fore, it is invalid to the extent of her share. She wanted to ignore the sale deeds executed by defendants 1 and 2 and to demarcate her properties separately.

Defendants 1 and 2 have filed written statement contending that the plaintiff is not entitled to any share in the properties. It is their case that long before Poomalai died, the plaintiff had deserted him and in fact she was living with one Govindasamy and in that connection a daughter was born to her by name Panchavarnam, her date of birth being 3.10.1947. It is further said that at the time when the plaintiff left the company of Poomalai, Ex. 11, a document of maintenance arrangement was executed by Poomalai, gifting certain items to the plaintiff. That was in the year 1946. It is also said that there are records to show that Panchavarnam is born to Govindasamy, the second husband of the plaintiff and since there was no husband and wife relationship between the plaintiff and Poomalai at the time of his death, she is not entitled to any share in his assets. In so far as the share of Saminatha is concerned, it was contended that his mother is unchaste and who left her husband and was leading an adulterous life, and she is not entitled to any share in the family assets. The claim through his son can also only be as a widow of late Poomalai, and therefore, the said claim as a sharer of the son also cannot be maintained. It was also contended by them that they have been dealing the property as absolute owners and alienees have come into possession. The suit has been filed about 25 years after Poomalai died and the claim is, therefore barred by limitation.

2. The other defendants who are alienees also denied the right of the plaintiff and they contended that they are bona fide purchasers for value and the properties which they have purchased are not liable to be surrendered to the plaintiff.

3. On the above pleadings the trial Court marked Exs. A1 to A6 on the side of the plaintiff and Exs. B1 & B2 on the side of the defendants. The plaintiff was examined as P.W. 1 and D.Ws. 1 to 3 were examined on the side of the defendants. The trial Court after elaborately considering the evidence passed a preliminary decree. It held that the plaintiff is entitled to 1/3rd share in the plaintiff items except those items which have already been alienated. It came to the conclusion that the plaintiff got married for the second time with Govindasamy or that she was living as wife of Govindasamy even during the life time of Poomalai and a daughter was born in that connection. Therefore, Poomalai might have divorced her and the plaintiff is not entitled to any share in the assets of Poomalai. But in regard to the claim of the plaintiff as legal heir of her son, the trial Court came to the conclusion that either unchastity or remarriage will not stand in the way of the plaintiff claiming a share as mother, which fact was never disputed by any of the parties. The alienations were also found to be bona fide transactions. A preliminary decree was passed declaring 1/3rd right over those items which are retained by the family.

4. Against the said Judgment both the plaintiff as well as the 2nd defendant filed appeals before Subordinate Judge, Ariyalur in A.S. Nos. 181 of 1981 and 94 of 1982 respectively. Both the appeals were clubbed together and by a common Judgment, the appeal filed by the 2nd defendant was dismissed, but the appeal filed by the plaintiff as A.S. No. 181 of 1981 was allowed in part. The Lower Appellate Court declared that the plaintiff is entitled to 1/3rd share in all the items including the alienated items by Exs.B3 and B4. But it directed that equities will be worked out at the time of final decree. It is against the said Judgment, Defendants 3 & 5 filed S.A. No. 877 of 1983, 6th defendant filed S.A. No. 878 of 1983 and 2nd defendant filed S. A. No. 251 of 1984.

5. Before further proceeding with the matter, it is better to note that the 1st defendant in the suit died while the first appeal was pending before the Lower Appellate Court and the Court Guardian is appointed for the 2nd defendant. After the filing of these Second Appeals, the original plaintiff Sellammal also died. To bring her legal representatives on record, an application has been filed by the appellants in S.A. Nos. 877 & 878 of 1983, after setting aside the abatement. The said application was allowed and they were brought on record.

6. The substantial questions of law that arise for consideration in S.A. Nos. 877 and 878 of 1983 which are common are as follows :-

1. Whether the first respondent herein, a Hindu wife, who remarried even during the life time of her husband, would forfeit her right of succession to the property of her husband who died in 1955 leaving a son in view of Section 2 of the Hindu Widows Remarriage Act XV of 1956?

2. Whether the first respondent, a Hindu wife, on remarriage could claim to inherit to toe lineal descendants of her husband, namely, son, In view of Section 2 of the said Act?"

The substantial Question of law that arises for consideration in S.A. No. 251 of 1984 is as follows:-

"Whether the plaintiff would be entitled to a share in her deceased husband's estate when she is found to be unchaste and living with another man at the time of her 1st husband's death."

7. The main question that arises for consideration in all these appeals is whether the decree granted in favour of the plaintiff is liable to be interfered with. The main argument of the counsel for the appellants is that the plaintiff who was unchaste and who left the company of her husband Poomalai and was living with one Govindasamy is not entitled to the assets of Poomalai, and since Saminatha also derives title only through Poomalai, the plaintiff is not entitled to any Share in any of the plaint kerns. It is their case that an unchaste wife is considered to be as not a member of the family and mat disqualifies her from getting any share in the properties of Poomalai.

8. Though the plaintiff claimed share in the assets of Poomalai, the Courts below

have held that the plaintiff is entitled to succeed only as legal heir of her son Saminatha. It came to the conclusion that the plaintiff is not entitled to any share as a widow of Poomalai. It was further found by the courts below that the deceased plaintiff was having connection with one Govindasamy, even during the life time of Poomalai and that necessitated the execution of Ex. A1 and Ex.B2, on the same date. The courts below have held that Ex.A1 shows that Poomalai did not want the plaintiff to be with him and therefore, provided a separate maintenance for her. It further came to the conclusion that the plaintiff has given birth to a female child, whose father was none other than the said Govindasamy. Even though the plaintiff alleged that Panchavarnam is the daughter born to her through Poomalai, the same was not accepted by the Courts below and concurrently it is found that Govindasamy is the father of Panchavarnam. In view of the said finding, the Courts below held that the plaintiff is not entitled to a share as a legal heir of Poomalai. The said finding is not challenged by the plaintiff or by her legal heirs by filing any Appeal or Second Appeal. I also do not think that the said finding is improper, in view of the decision of the Supreme Court in M. Govindaraju Vs. K. Munisami Gounder (D) and others, That was also a case which arose from the decision of this Court, and the parties therein are also non-dwija caste. In that case it was held by the Hon'ble Supreme Court that if a non-dwija woman is turned out of the house by her husband and she lives with another man and giving birth to children the divorce was thus complete. In that case one Pappammal stood married to one Koola Gounder. She walked away from the house of her husband and lived with one Munisami Gounder and in that alliance she got children. Considering the caste habits (Gounders), the Hon'ble Supreme Court held thus:-

"They were "Gounders", necessarily falling in the classification other than Dwijas. Hindu Law is clear on the subject that if a non-Dwija woman is turned out of the house by her husband, or she wilfully abandons him and is not persuaded to be brought back as wife, a divorce in fact takes place, sometimes regulated by custom, and then each spouse is entitled to remarriage his/her life in marriage with other marrying partners. Walking out of Pappammal from the house of her first husband Koola Gounder was irretrievable and irreversible, for it is in evidence that neither of them took interest in each other thereafter. The divorce was thus complete."

9. In this case, the finding of the Courts below is that Panchavarnam is born to Govindasamy, and she was born on 3.10.1947. Even at that time Poomalai was alive, Till the death of Saminatha in 1970, neither Sellammal nor Poomalai made any effort for reconciliation and they never wanted their relationship to continue. That was why Poomalai executed the documents - Exs. A1 and B2 in favour of the plaintiff Sellammal. Granting separate maintenance implies that both of them do not want to continue their relationship. It is in evidence of P.W. 1 that she came into possession of the property covered under Exs.A1 and B2, and even on the date of suit she was in possession of the same. Neither the plaintiff nor the defendants have mentioned the exact date of death of Poomalai. The suit was

filed in the year 1979 and in the plaint it is said that Poomalai died 20 years back, that means, his death must be in 1959. But that is not going to affect this case, for the reason that Sellammal must be deemed to have been divorced by Poomalai at least when Panchavarnam was born on 3.10.1947. On the date of death of Poomalai, Sellammal was not the wife, and therefore, she cannot claim that as a widow she is entitled to a share in the property. The finding of the courts below that the plaintiff is not the legal heir of the deceased Poomalai is therefore confirmed.

10. The further question that arises for consideration is whether the said disqualification will apply to the plaintiff when she claims a right as the mother of Saminatha who died in the year 1970. Section 28 of the Hindu Succession Act, 1956, runs as follows:-

"28. Disease, defect, etc. not to disqualify:- No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever."

Commenting on Section 28 of the Hindu Succession Act, in Mayne's Hindu Law & Usage - 14th Edition at page 1140, the learned author has said that "after the commencement of this Act unchastity is not a ground of disqualification for inheriting the property, as widow.

In this case, the claim of the plaintiff is not as widow, but as mother. At page 1088 of the same book, the learned author further said that "under the Mitakshara law unchastity was not a disqualification from inheritance in the case of a mother. But an unchaste mother was excluded from inheriting to her son under the Dayabhaga law. Under this Act a mother who is unchaste is also entitled to inherit the property of her deceased son. A fortiori she is not divested of the estate inherited from her son on her subsequent unchastity."

11. In Modern Hindu Law by Ramesh Chandra Nagpal, on his commentary to Section 28 of the Hindu Succession Act, 1956, the learned Author has also said thus:-

"Section 28 has derecognized or discredited "unchastity" as a ground of disqualification. The old law deprived certain females of succession on this ground. The Dayabhaga was very strict in this matter. It disqualified all the female heirs from succession on the ground of unchastity. But the Mitakshara disqualified only the wife on that ground and no other female heir. The Hindu Succession Act does not enlist unchastity as a ground of disqualification."

In Sir Hari Singh Gour's Hindu Code - 6th Edition (2nd Volume), learned author made his comments to Section 28 of the Hindu Succession Act at page 1579 of the Book as hereunder :-

"Moral or righteous indignation to unchastity on ethical foundations or sentiments of the people would not and should not, stand in the way to the statutory construction of the wide language on any ground whatsoever and effect given."

In Mulla's Principles of Hindu Law - 15th Edition, the learned author has at page 1039 of the book also said that

"the present section discards almost all the grounds which imposed exclusion from inheritance. It rules out disqualification on any ground whatsoever excepting those expressly recognised by any provisions of the Act. Unchastity of a widow is not a disqualification under the Act."

S.V. Gupta, in his book Hindu Law, commenting on Section 28 of the Hindu Succession Act, has said that unchastity is not a ground of disqualification and the words "on any other ground whatsoever" makes the section exhaustive. At page 552 of the Book, learned author said thus:-

"Section 28 lays down that no person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity or save as provided in this Act, on any other ground whatsoever, the object of the section is to exclude all grounds of exclusion or disqualification except those stated in Sections 24, 25 and 26."

Under the old Hindu Law, so far as "Smrita Chandrika" is concerned, which is governing the State of Madras also, only the widow was disqualified, but not any other heir. Sir Ernest John Trevelyan, in his Hindu Law at page 356, while dealing with Exclusion from inheritance said that

"in parts of India governed by the Mitakshara law a widow is the only female heir, at any rate in Bombay and Madras, who is excluded by unchastity from inheritance to a male Hindu."

12. In N.R. Raghavachariar's Hindu Law Principles and Precedents - 8th Edition 1987, at page 999, the learned author said thus:-

.... "This Section removes the disqualification prescribed by the Hindu Law based upon disease, defect or deformity. Unless the disqualification is one gamer-able from the provisions of this Act it does not operate as a bar to succession. That means that the, Act has made its intention specific that unchastity of a widow will, after the Act came into force, no longer be a disqualification in regard to her heritable capacity, nor conversion of an heir to any other religion is a disqualification under the Act."

At page 396 of the same volume, the learned Author also deals with the law before 1956, wherein he says as follows:-

"The mother's right to inherit to her son is declared by the text. Besides, the rather is the common parent to other sons but the mother is not so; and since her propinquity is consequently greatest, it is fit that she should take the estate in the first instance conformably with the text, "to the nearest sapinda, the inheritance next belongs, her place is next to the daughter's son under the Mitakshara, and she takes, like a widow or a daughter, only a limited estate. The term mother includes "adoptive mother", but not a step mother, because the

step-mother is not mentioned in the table of succession. In the case of a mother, as in the case of a daughter, neither unchastity, nor re-marriage operates as a bar to her claim to succeed to her son. Heritable blood exists even between a mother and her bastard son."

13. In Dr. Paras Diwan's Hindu Law -1st Edn. 1995, the learned author considered this question in detail on the basis of decided cases and at page 1338 of the Book, he said thus:-

"This Section (Sec.28) specifically lays down that no person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, and then adds" "or any other ground whatsoever". This obviously means that unchastity is no longer disqualification of an heir preventing him or her from succeeding to the property."

thereafter, the learned author deals with the decision of this Court in Ramaiya v. Mottayya (AIR 1951 Madras 954=64 L.W.776). That was a case coming under Hindu Women's Rights to Property Act, 1937. The question was whether the unchaste wife is entitled to succeed her husband's property. A Full Bench of this Court headed by Rajamannar, C.J. held that the wife will not be entitled to succeed her husband's estate due to her unchastity,

14. The said question again came up for consideration before this High Court in a case reported in A.I.R.1972 Madras 357=85 L.W.82 (Jayalakshmi Ammal and others v. T. V Ganesa Iyer). A Division Bench of this Court, after referring to the decision of the Full Bench of this Court reported in AIR 1951 Madras 954 (Supra) held thus:-

"It seems to us that the position under the Hindu Succession Act is entirely different. The Hindu Succession Act, in so far as it covers the matters therein, is meant to be a complete code relating to Hindu Succession and to that extent the Act prevails and the Hindu Law in respect of it will cease to operate. That is the effect of Section 4 which, as we said, gives the provisions of the Act an effect of overriding the Hindu Law except to the extent save as otherwise, expressly Provided for in the Act itself. The effect of Section 8 is to limit succession to the class of persons in the order of priority specified. Unless, therefore, any rule of Hindu Law with reference to the disqualification of any of the heirs mentioned in any of the classes is covered by Section 8 each one of them will be as a matter of right, entitled to succeed in accordance with the provisions of that section. As a matter of fact the Act has, by Sections 24 to 26, provided otherwise which relates to the disqualifications enjoined by Hindu Law in respect of remarriage, murder and conversion. Where a widow has remarried, she will not be entitled to inherit as the widow. So too murder will be a disqualification as enjoined by Section 25 and conversion u/s 26. Section 28 makes it manifest that no person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in the Act, on any other ground whatsoever. That means, in our opinion the Act has made its intention specific

mat unchastity of a widow will, after the Act came into force, no longer be a disqualification for her to succeed as the father's widow."

15. In AIR 1976 Calcutta 356 (Chandi Charon Naskar v. Bhagyadhar Mondal and others), a learned Judge of the Calcutta High Court, in paragraph 6 of the Judgment held mat "the Hindu Succession Act is clear and specific and there is no bar to any unchaste widow succeeding to her husband. Section 4 of the Act is the overriding provision. The rule of Hindu Law has ceased to operate regarding succession with the appearance of the Hindu Succession Act, 1956." The learned Judge accepted the principles enunciated in Jayalakshmi Ammal's case (stated supra).

16. In A.I.R.1978 Calcutta 431(Khagendranath Ghosh and others v. Karonadhar Kala and others), also a similar question came up for consideration, wherein another Judge of the Calcutta High Court held thus:-

"Reading the different provisions of the Hindu Succession Act and specially Ss.4 and 28 there is no doubt, that except the disqualifications mentioned in Ss. 24, 25 and 26 any other disqualification which existed in the Hindu law has been removed by the Hindu Succession Act. As unchastity of a widow has not been mentioned as a disqualification in Ss.24 to 26, it must be deemed that her unchastity is no longer a disqualification for her succeeding to the property of husband."

17. In the decision reported in Smt. Kasturi Devi Vs. Deputy Director of Consolidation and Others, the Hon"ble Supreme Court considered this question and in paragraph 3 of the Judgment, it has been held thus:-

"Our attention has not been invited to any text of the Hindu Law under which a mother could be divested of her interest in the property either on the ground of unchastity or remarriage. We feel that the application of bar of inheritance to the Hindu widow is based on the special and peculiar, sacred and spiritual relationship of the wife and the husband. After the marriage, the wife becomes an absolute partner and an integral part of her husband and the principal on which she is excluded from inheritance on remarriage is that when she relinquishes her link with her husband even though he is dead and enters a new family, she is not entitled to retain the property inherited by her. The same, however, cannot be said of a mother. The mother is in an absolutely different position and that is why the Hindu Law did not provide that even the mother would be disinherited if she remarried."

18. In 1984 (II) M.L.J.224 (Kuppu Alias Kuppammal v. Kuppusami Mandiri and others), a learned Judge of this Court also held that Section 28 of the Hindu Succession Act is exhaustive, and the provisions are not retrospective. In the decision reported in AIR 1988 A.P.309 (Narsimhulu and others v. Smt. Manemma), Justice K. Ramaswamy (as he men was) has also considered this question and after referring to various decisions, in paragraphs 11 & 12 it was held thus:-

"11. In view of the opinions of the text book writers and also the decisions referred to hereinbefore, I have no hesitation to conclude that the Act expressly abrogates the pre-existing Sastrik Law to the extent it is inconsistent with the provisions of the Act. The Act expressly provides an absolute right to inheritance to a Hindu Woman by intestate succession. The Rule of survivorship open to a coparcener was intersected when a female heir was available on the death of a coparcener, if he died intestate; and the rule of "survivorship" has been given way to the rule of "succession." Sections 24 to 26 provide the disqualifications. Section 28 removes all disabilities while engrafting "on any other ground whatsoever".

"12. It is settled principle of statutory construction that court is to endeavour to find what is the existing law, the defects which the law did (not provide for and the remedy the Legislature intended to provide and cure the defect and the reasons therefore. There is a presumptive evidence that the Legislature is aware of the pre-existing Sastrik law as judicially interpreted including the one in Ramaiya's (AIR 1951 Mad. 954) (FB) ratio in regard to unchastity as a disqualification for succession to or maintenance of Hindu women. Articles 14 and 15 of the Constitution provide equality to every citizen regardless of sex and prohibits invidious discrimination, enables the Legislature to make inroads into the pre-existing law. The Legislature felt the need most acute to remove many a disability under which the Hindu women are reeling from in matters of inheritance, succession rights. It animated to remove all the disabilities except those preserved under the Act, used the appropriate language in S.4 and chose not to make unchastity a disqualification. On the other hand, S. 28, while enumerating removal of name disabilities, used in a wide language "on any ground whatsoever" which engulfs in its ambit "unchastity too". Youthful urge and satiety of biological need may lead to astray and its abhorrence to keep to family prestige or social cohesion may be understandable. But moral or righteous indignation to Unchastity or ethical foundations or sentiments of the people "would not should not" stand in the way to the statutory construction of the wide language "on any ground whatsoever" and effect given. The restrictive, interpretation sought to be, put by the learned counsel for the appellant not only not permissible but if applied would also defeat the avowed object of the Act. "therefore, the doctrine of ejusdem generis cannot be applied and it must be construed broadly. If so constituted, I have no hesitation that the legislature intended to wipe out the pre-existing disqualification of unchastity as a bar to succeed to the deceased coparcener. The interpretation given by the Full Bench in Ramaiya 's Case does not hold the field after the Act came into force. Therefore, it no longer continues to be a good law."

19. In view of this legal position, the plaintiff who claims only as a mother of late Saminatha is not disqualified from claiming a share in the estate of her deceased son. Even under the law as it originally stood before 1956, the disqualification. is only for a widow and not for the mother. Even that disqualification is now removed u/s 48 of the Hindu Succession Act. Section 4 of the Hindu [Succession

Act has also overriding effect against any other provision law or custom to the contrary. If that was the legal position even before 1936, and the claim of succession arose after 1956, under no stretch of imagination it can be said that the mother is disqualified, merely because she deserted her husband or she became unchaste. The finding of the Courts below that Sellammal is entitled to inherit her son's property and she is entitled to 1/3rd share over the schedule properties is therefore, confirmed,

20. The only other question that requires consideration is what has to be done in regard to the various alienations that were effected. Admittedly, to these alienations, plaintiff Sellammal was not a party. Therefore, it is not binding on her. The purchasers also will not get any right of Sellammal. There cannot be any question of adverse possession, since the suit was filed in the year 1979, and the inheritance was owned only in 1970, when, Saminatha died. Under the above circumstance, the only relief available to the alienees is that as far as possible the properties that have been alienated will be allotted towards the share of their alienors, and the deceased plaintiff Sellammal will not be bound by the same. Further equities, if any, will have to be considered at the time of actual allotment, which will arise only during final decree proceedings.

21. It was contended by the learned counsel for the appellants that Sellammal has got a daughter by name Panchavarnam, and she has not been made a party in all these appeals. When the Second Appeals are pending, original plaintiff died. In S.A. Nos. 877 and 878 of 1983, she had been made as a party, but in the other appeal filed by the 2nd defendant, she is not a party. But In the two appeals the 2nd defendant is also recorded as one of the legal heirs of the deceased plaintiff Sellammal, being a daughter of pre-deceased son.

22. I do not want to consider what is the right of Panchavarnam in this case. A contention was raised on behalf of the 2nd defendant that Panchavarnam is an illegitimate daughter and therefore, she is not entitled to any share in the property of Poomalai. The question whether Panchavarnam is entitled to any share or whether the 2nd defendant alone is to be recorded as a legal heir is not a matter, which requires consideration in this case. Even if Panchavarnam is entitled to any share, that has to be worked out separately, in an independent proceeding, since the scope of these Second Appeals is whether the deceased plaintiff is entitled to any share in the property.

23. An argument was also put forward by the learned counsel for the appellants in S.A. Nos. 877 and 878 of 1983, that the 2nd defendant is also a party to the alienation and now that she has become one of the legal heirs of the plaintiff and she cannot attack the alienation, the benefit of becoming a legal heir goes to her alienees. The contention is that the 2nd defendant is estopped from challenging the alienation. I do not find any merit in the said contention. The 2nd defendant in this case, while she was a minor executed certain transactions represented by her mother, who was the 1st defendant in the suit. Those documents are executed as if herself and the deceased mother are the absolute owners of the

property. The 2nd defendant has not derogated against that grant in favour of the appellants in S.A. Nos. 877 & 878 of 1983, nor she got any other property in that status. Even though she becomes one of the legal heirs of the deceased plaintiff, she stands only as a plaintiff in that case, which is entirely a different legal status so far as she is concerned. The benefit she gets as one of the legal heirs is not a ground to extend the principle of estoppel, as contended by the counsel for the appellants in S.A. Nos. 877 & 878 of 1983. In the result all the Second Appeals are dismissed, however without any order as to costs.