
(1976) 11 MAD CK 0036

In the Madras High Court

Case No : Letter Patent Appeal No. 56 of 1974, against order of Ra

Munusamy Achari

APPELLANT

Vs

Rajambal Ammal and Others

RESPONDENT

Date of Decision : 09-11-1976

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 15, 16, 6, 8
Limitation Act, 1963 — Article 65

Citation : AIR 1977 Mad 228 : (1977) ILR (Mad) 380 : (1977) 90 LW 129 :
(1977) 1 MLJ 371

Hon'ble Judges : Kailasam, C.J;Balasubrahamnyam, J

Bench : Division Bench

Judgement

Balasubrahamanyam, J.—One Govinda Achari of Veeranandhal village, who was possessed of several items of immovable property in that

village, died intestate on 26-10-1927, leaving him surviving his widow Parvathiammal and his only daughter Ammakannu Ammal. Parvathiammal

died on 2-11-1946. Ammakannu Ammal was married to one Ponnuswami Achari. Ammakannu left her husband's family in the year 1916, and for

a number of years thereafter her whereabouts were unknown to the family. In December 1959, the news came that Ammakannu had died on 28-

6-1958 in Tirunboodi village. Ammakannu had five children, two sons and three daughters. One son and one daughter died unmarried. One

married daughter predeceased her in 1939 leaving four children. This left one daughter and one son, Rajambal and Munuswami Achari, who

survived Ammakannu.

2. The properties left by Govinda Achari on his death were in the possession and enjoyment of his widow Parvathiammal till her death on 2-11-

1946. Thereafter, they were in the possession of Munuswami. On 17-6-1956 the Hindu Succession Act, 1956 (Central Act 30 of 1956) came

into force. On 27-4-1970 Rajambal filed a suit, O. S. 418 of 1970 for partition and separate possession of her share in the properties left by

Govinda Achari, impleading therein five defendants, who were, her brother Munuswami and the four children left by their deceased sister

Chinnammal. Rajambal's claim in that suit was for a one-third share in the estate left by Govinda Achari which, according to her, comprised ten

items of Immovable property. According to Rajambal in her partition of that estate her brother Munuswami Achari also would be entitled to one-

third share and the remaining one-third share should go to the children of their deceased sister.

3. Munuswami resisted his sister's suit on various grounds. He contended that of the ten items of Immovable properties in which she had claimed a

one-third share, one item, set out as No. 7 in the plaint schedule, did not form part of the estate of Govinda Achari but had been purchased by his

father Ponnuswami Achari. As for the rest of the items of suit property which, he admitted to belong to Govinda Achari's estate, his case was that

he was the only heir of Govinda Achari and, as such, he was entitled to these properties as well, to the entire exclusion of the other children of

Ammakannu. He denied that his mother Ammakannu died on 28-6-1958. He denied that she survived Parvathiammal. He, accordingly claimed

that on the death of Parvathiammal on 2-11-1946, he succeeded to the properties as the one and only reversioner of Govinda Achari. In any case,

right from the death of Parvathiammal, he had been in exclusive possession of the entire estate. He stated that neither Rajambal nor any of the

children of his other sister, the deceased Chinnammal, were in possession of the property. In any case, to their full knowledge he had been in

adverse possession of the property for more than the statutory period and hence their rights, even if any, had become barred by adverse

possession.

4. On the evidence before it, the trial court recorded the finding that item No. 7 of the plaint schedule property was not part of the estate left by

Govinda Achari, but belonged to Ponnuswami Achari, the father of Rajambal and Munuswami Achari. On Ponnuswami's death intestate on 8-10-

1938, this item of property devolved on Munuswami alone as the only son, and Rajambal had no claim for any share in it. As for the other nine

items of the suit property, the trial court rejected the evidence adduced by Rajambal to the effect that Ammakannu died on 28-6-1958. The trial

court recorded a finding that Ammakannu did not survive the death of Parvathiammal on 2-11-1946. On this basis, applying the textual Hindu Law

as it stood before the coming into force of the Hindu Succession Act, 1956 the trial court held that Munuswami Achari was the only reversioner

entitled to the estate of Govinda Achari on the death of Parvathiammal. The trial court also accepted the alternative plea of Munuswami that he had

perfected his title by adverse possession on the basis of the evidence adduced by him regarding payment of taxes etc.

5. Rajambal appealed against the judgment and decree of the learned District Munsif. But before the Subordinate Judge in appeal she did not

press the claim in regard to item No. 7 of the plaintiff schedule property. She pressed her claim in the appeal in regard to the other items of

property for partition and separate possession of one-third share therein. The learned Subordinate Judge went into the evidence in the case, and

disagreed with the findings of the trial court on the issue relating to the date of death of Ammakannu. He recorded the finding that, although

Ammakannu had left her husband's house and the village in 1916 and was not in possession of the suit properties, she survived her mother

Parvathiammal, and died only on 28-6-1958. On this basis, the learned Subordinate Judge held that Ammakannu was lawfully entitled to succeed

to the estate left by Govinda Achari as a limited owner after her mother's death. The learned Subordinate Judge observed that while Ammakannu

was not in actual physical possession of the properties at any time, neither had she alienated them to any one else, and must accordingly be held to

have been in legal possession of the estate. Since she died on 28-6-1958, after the commencement of the Hindu Succession Act, 1956, the

learned Subordinate Judge held that S. 14 of the Act applied. Applying that section, he held that Rajambal was entitled to one-third share of the

properties. Munuswami one-third share of the properties and the balance of one-third should go to the children of the other daughter Chinnammal.

On the question of possession, the learned Subordinate Judge agreed with the trial court's finding that Munuswami was in physical possession of

the property from the date of death of Govinda Achari but held that Munuswami Achari could not, under the law, prescribe as against Rajambal.

He held that the suit filed by Rajambal on 27-4-1970 was in time since she filed it within 12 years of the date of death of Ammakannu, which had

occurred on 29-6-1958. He held that there was no question of adverse possession against the reversionary heir so long as the limited owner was

alive. In this view, he set aside the judgment and decree of the trial court and granted a preliminary decree for partition and separate possession in

favour of the plaintiff in respect of items Nos. 1 to 6 and 8 to 10 of the plaint schedule properties.

6. Munuswami, therefore, appealed to this court in S. A. No. 1368 of 1973. The second appeal was heard by Ramanujam J. Before the learned

Judge it was argued that Ammakannu's death was not proved to have occurred after the coming into force of the Hindu Succession Act, 1956.

The learned Judge. However, rejected this contention, relying on a postcard dated 4-12-1959, which one Vaitheeswara Achari of Tirumboondi

village wrote, wherein he informed Rajambal of the death of her mother Ammakannu. The learned Judge also relied on the evidence of P. Ws. 1, 3

and 6, who were personally aware of the death of Ammakannu and who spoke to the exact time and place of death.

7. Various other contentions were put forward by the appellant Munuswami in this second appeal. But the most important of them was that on the

death of Ammakannu, the question of succession to the estate must be determined only under the textual Hindu law and not under the provisions of

the Hindu Succession Act, 1956. But this contention was rejected by the learned Judge. Relying on the authority of a decision of the Supreme

court in Daya Singh (Dead) through Lrs. and Another Vs. Dhan Kaur, , the learned Judge held that the law of succession to be applied was the

law as it stood on the death of Ammakannu, namely, the Hindu Succession Act, 1956. He further held, on the same authority, that succession to

the estate of Govinda Achari, who was the last male holder in this case, opened on the death of Ammakannu, who was the last of the limited

owners. On this basis, the learned Judge dismissed the second appeal and upheld the preliminary decree of the learned Subordinate Judge,

holding, under S. 8 of the Hindu Succession Act, 1956, that Munnuswami and Rajambal were entitled to one-third share each, the remaining one-

third going to go the children of the deceased Chinnammal.

8. On leave by the learned Judge, this L. P. Appeal has been brought before us by Munnuswami Achari. Mr. V. K. T. Chari, learned counsel for

the appellant, did no, and could not, canvass the factual finding of the learned Subordinate Judge, subsequently affirmed by Ramanujam J. to the

effect that Ammakannu died on 28-6-1958. But he put the case of his client Munuswami in the following manner--Munuswami was born on 26-

10-1927 during the lifetime of the last male holder Govinda Achari. Ammakannu had left the home even in 1916 and was not heard of when on

26-10-1927 Govinda Achari died and Parvathiammal succeeded to the estate as limited owner. On the death of Parvathiammal on 2-11-1946,

Ammakannu was not there on the scene that all to claim the estate by way of succession. let alone take possession of the properties. In such a

case, when Ammakannu as the next heir of Parvathiammal had not claimed inheritance, it would be quite proper to regard Munuswami, who had

actually got into the estate, as a person entitled to claim succession from the earlier stage, that is to say, even on the death of Parvathiammal on 2-

11-1946. Under the textual Hindu Law. Munuswami, as the daughter's son, was entitled to claim as the heir of the last male holder. Learned

counsel cited Mayne's Hindu Law 11th Edn., para. 481, p. 584, and also the text of Yajnavalkya subsequently clarified by Vignaneswara, to

show that the daughter's son was the preferential heir and that the daughter's daughter was not one of the heirs who could take on the death of the

maternal grandfather. He further argued that, in the circumstances of the present case, Ammakannu should not be regarded as having had any

limited estate whatever which might be said to have stood in between the termination of the prior limited estate and the opening of the reversion to

the estate of the last male holder. In these circumstances, the finding as to when the succession opened and who the heirs of Govinda Achari were

on the appropriate date would depend only on the date of death of Parvathiammal on 2-11-1946. By the same token the property law to be

applied to the case would also be the law that then stood, namely, the textual Hindu Law under which the daughter's son would take the maternal

grandfather's property to the exclusion of others, including daughter's daughters and daughter's grandchildren. These were the arguments put

forward on behalf of Munuswami.

9. Mr. G. Ramaswami, learned counsel for Rajambal contended, on the contrary, as follows: On the death of Parvathi Ammal on 2-11-1946,

Ammakannu succeeded to the property, as the law then stood, as a limited owner. She never parted with the estate thereafter, and, as on 17-6-

1956, which was the date of the commencement of the Hindu Succession Act, 1956, although she might therefore have possessed only a limited

interest in the properties she became a full owner by virtue of S. 14 of the Act. It followed that, on her death, on 28-6-1958, leaving behind her

surviving Rajambal, Munuswami and the children of her predeceased daughter Chinnammal, they were all entitled to succeed as her heirs under the

provisions of S. 15 of the Act. Even if the possession by Ammakannu of the properties was not such as to make her their full owner under S. 14,

yet, since she was undoubtedly a limited owner, her death on 28-6-1958 marked the opening of the succession to the estate of the last male holder

Govinda Achari even under the Hindu Succession Act, 1956, as a result of which Rajambal was entitled to claim, one-half share of the properties

as the heir of Govinda Achari falling under Class I of the Schedule to the Act, the other half share going to Munuswami as the daughter's son falling

under the same class I. In this event, Chinnammal's children would stand excluded by the Class I heirs, since they belonged only to Class II of the

schedule, as the daughter's children of the last male holder. In either event, therefore, the claim of Munuswami to exclude Rajambal from

inheritance was untenable. Mr. G. Ramaswami relied very strongly on the decision of the Supreme Court in *Daya Singh (Dead) through Lrs. and*

Another Vs. Dhan Kaur, .

10. It seems to us that the contention of Mr. G. Ramaswami is well founded. It may be that Ammakannu was not found to be in actual physical

possession of the properties even as a limited owner. It may be that in the period between the death of Parvathiammal on 2-11-1946 and the

death of Ammakannu on 28-6-1958, Munuswami was the person actually found to be in possession. But the possession of Munuswami was

without any semblance of title, for, so long as his mother lived, he could not claim to be an heir of his maternal grandfather even under the textual

Hindu Law. During the period between the death of Parvathi Ammal on

2-11-1946 and the death of Ammakannu on 28-6-1958, the period of 12 years to prescribe title by adverse possession had not wholly passed, and, by the time Ammakannu dies on 28-6-1958 she had not lost her right to recover possession of the properties from Munuswami. Hence, Munuswami had not in any sense, acquired any title against his mother Ammakannu by adverse possession. It follows that she died possessed of properties as absolute owner within the meaning of S. 14 of the Act. It follows, therefore, that, on her death, S. 15 would operate so as to enable Rajambal as well as Munuswami, to inherit the property along with the children of their deceased sister Chinnammal. Even otherwise, the circumstances that Munuswami had had actual possession of the property could not alter the legal position that the estate of Govinda Achari devolved on Ammakannu as a limited owner only on the termination of the prior limited interest of Parvathiammal on 2-11-1946.

11. In *Daya Singh (Dead) through Lrs. and Another Vs. Dhan Kaur*, the Supreme Court was concerned with a case where the last male holder died before the Hindu Succession Act, 1956 came into force, but whose widow died after the commencement of the Act. The Court held that the last male holder must be held to have died only when the widow died, and the Hindu Succession Act, 1956, had to be applied to find out who the heirs of the last male holder were and what those shares were. Since this decision had been the subject of much argument before us, it may be necessary to notice the facts of the case more closely.

12. One Wadhawa Singh died in the year 1933, leaving behind him surviving his widow and a daughter. The widow succeeded to the estate of her deceased husband, which comprised agricultural lands in Punjab. In April 1933, she made a gift of the property in favour of her daughter. The reversioners to the estate of Wadhawa Singh then filed a suit against the widow, questioning the alienation. That suit was decreed, and confirmed on appeal, the finding being that the alienation by the widow was invalid, and not binding on the reversioners. Thereafter, on the coming into force of the Hindu Succession Act of 1956, on 17-6-1956, the widow once again made a gift of the same land to the alienee, that is, her daughter. The widow died in 1963. The reversioners thereafter filed a suit against the alienee, out of which the appeal before the Supreme Court arose, for

possession of the lands. They urged that the second gift was void. The trial Court decreed the suit, but, in appeal, the alienee succeeded both in

the first appellate court and in the High Court in the second appeal. On appeal to the Supreme Court by the reversioners it was held that the

second gift made by the widow of Wadhawa Singh after the commencement of the Hindu Succession Act, 1956 was invalid. The Court pointed

out that the widow would have become the absolute owner of the property under S. 14 of the Act, only if she had not alienated the property, but

having made a gift in 1933, she did not become full owner, with the result that the subsequent gift made by her in favour of the respondent was of

no effect. Nevertheless, the Supreme Court dismissed the appeal of the reversioners holding that the daughter, although not entitled to the property

as the alienee from her mother, was yet entitled to the property as the heir of Wadhawa Singh, the last male holder, S. 8 of the Hindu Succession

Act. The court held that by virtue of the inter-position of the limited estate of the widow, the succession to Wadhawa Singh's estate must be held

to have been only in 1963 when Wadhawa Singh's widow died, and since this was after commencement of the Hindu Succession Act, 1956, the

rules of succession contained therein alone applied to that case, overriding the earlier Hindu Law, both textual and customary. Hence,

notwithstanding that in the earlier suit the reversioners have established their locus stand under the customary law of Punjab to file the suit as

reversioners of the estate of Wadhawa Singh, in view of the fact that succession had, in law, opened only subsequent to the death of the widow in

1963, the Supreme Court held that S. 8 of the Hindu Succession Act had to be applied and not the customary law under which the daughter stood

excluded by the nearest male collateral of the last by the nearest male collateral of the last male holder, in the case of landed properties.

13. In the present case we have already expressed the view that Ammakannu, as the daughter of the last male holder, was entitled, on the death of

his widow, to succeed to the estate, although as a limited owner, under the textual Hindu Law in force at that time. Her limited ownership,

however, ripened into that of a full owner under the Hindu Succession Act, 1956. And, when she died on 28-6-1958, there could be no doubt

that S. 15 applied, and her heirs had to be determined in accordance with the provisions of S. 15. Even otherwise, on the footing that she remained

only a limited owner till her death, yet on her death on 28-6-1958, the last male holder Govinda Achari must be held to have died and in that

event, S. 8 of the Hindu Succession Act, 1956 must be held to apply as on that date, on the authority of the decision of the Supreme Court in

Daya Singh (Dead) through Lrs. and Another Vs. Dhan Kaur, . On the facts, the present case before us must be regarded as a fort or case

considering that while in the case before the Supreme Court Wadhwa Singh's widow had actually made an alienation of the property, although

held invalid, in the present case Ammakannu had made no such alienation.

14. We hold that the reasoning of the Supreme Court in Daya Singh (Dead) through Lrs. and Another Vs. Dhan Kaur, is one of general

application and not limited merely to a case where a widow or other female heir inheriting the property on the death of the last male holder

alienates the property. The following passage from the Supreme Court's judgment lays down the principle which, in our opinion, is of application

to the present case:--

The accepted position under the Hindu Law is that where a limited owner succeeds to an estate, the succession to the estate on her death will

have to be decided on the basis that the last full owner died on that day.....
If succession opens and is to be decided on the basis of the last full

owner dying on the date of death of the limited owner, the inevitable corollary is that it is only the law in force at the time of death of the limited

owner that should govern the case. To hold that the old Hindu Law applies to such a case is to allow the imagination to boggle.

The Supreme Court further pointed out-

We can see no reason either in principle or on authority why the principle consistently followed under the earlier Hindu Law that on the death of

the limited owner succession opens and would be decided on the basis that the last male owner died on that day, should not apply even after the

coming into force of the Hindu Succession Act.

15. Undaunted by the decision of the Supreme Court in Daya Singh (Dead) through Lrs. and Another Vs. Dhan Kaur, , Mr. V. K. T. Chari

submitted further arguments. He invited our attention to R. 3 in S. 16 read with S. 15(2)(a) of the Hindu Succession Act. Section 15 lays down

rules of devolution of the property of a female Hindu dying intestate. The general

rule of succession is set out in S. 15(1). Section 15(2) lays down two exceptions, one in Cl. (a) and the other in Cl. (b). Clause (a) has reference to property inherited by a female Hindu from her father or mother, and it provides that on her death it shall devolve, in the absence of any son or daughter, not upon the heirs referred to in sub-s. (1) but upon the heirs of her father. In that context, R. (3) of S. 16 provides that the devolution of the property of the intestate shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's as the case may be and such person had died intestate in respect thereof immediately after the intestate's death. According to Mr. Chari, Rule (3) of S. 16 is an express provision for the purpose of ascertaining the heirs of a deceased female in respect of the property inherited by her from her parents. Under this provision ascertainment of the heirs of a female in respect of the property inherited by her from her parents. Under this provision ascertainment of the heirs of a female Hindu dying intestate has to be by the application of the fiction enacted in S. 16, under which the parent is to be deemed to have died a moment after the death of the deceased female. Mr. Chari points out that there is no similar statutory fiction in the Hindu Succession Act, 1956 in respect of the succession to the property of the last male holder after the termination of the limited interest occurring after the commencement of the Act. He urges that, in the absence of an express statutory provision, R. (3) of S. 16 which is confined in its application to S. 15 alone, cannot be applied, by way of analogy, to a case falling under S. 8 of succession to property of the last male holder, subsequent to the termination of a limited interest of a female.

16. A study of the judgment of the Supreme Court would show, however, that the learned Judges had not based their decision on any statutory analysis whatever, much less on the analogy of Rs. 3 of S. 16 of the Hindu Succession Act, 1956. The Supreme Court had arrived at their conclusion as a matter of straight-forward construction of S. 8, by juxtaposing the words of that section to those found in S. 6 of the same Act, and also by considering the position in the background of well-settled principles of textual Hindu Law relating to succession to the property of the last male holder after the intercession of limited interests in between the death

of the last male holder and the opening of the reversion.

17. In coming to the conclusion that it did, the Supreme Court was fortified by earlier decisions of the Privy Council in *Momiram Kolita v. Kerry*

Kolitani, (1880) ILR 5 Cal 776 (PC), and AIR 1946 173 (Privy Council) In those decisions, the Privy Council took the view that in a case where

a widow succeeded to the estate of her husband in default of male issue, it was impossible to say who were the persons who would be entitled to

succeed as heirs of the husband until the termination of the widow's estate and that upon the termination of that estate the property would descend

to those who would have been the heirs of the husband if he had lived upto, and died at, the moment of her death.

18. In AIR 1946 173 (Privy Council) the Privy Council had to construe the expression "Hindu male dying intestate", occurring in the Hindu Law of

Inheritance (Amendment) Act, 1929. That Act introduced certain statutory heirs after the father's father and before the father's brother. The case

before the Privy Council was one where the death of a Hindu male holder had occurred before the coming into force of the Hindu Law of

Inheritance (Amendment) Act, 1929. In that case he was succeeded by a female heir, who died after the Act came into operation. The Privy

Council held that the succession to the estate of the last male holder opened on the death of the female heir, and hence the Act would apply to that

case and an heir under the said Act would be entitled to succeed. It was pointed out by the Privy Council that during the lifetime of the female

limited owner, the reversionary right to the estate of the last male holder is a mere possibility or *spes successions* and that it cannot be predicated

as to who would be the nearest reversioner excepting when the reversion actually opened on her death. It was pointed out by the Privy Council

that succession would not open until the widow died and that the person who would be the next reversioner at that time would succeed to the

estate and the alternation in the rule of Hindu Law brought about by the Hindu Law of Inheritance (Amendment) Act, 1929 would then be in full

force. It was argued before the Privy Council that such a conclusion would tend to give retrospective operation to the statute. On the words

employed by the statute, which were "in the case of intestacy of a Hindu male", it was further argued that retrospective operation should not be

given to the provision at all. The Privy Council, however, rejected this contention, holding that the words of the statute only conveyed a description

of the status of the deceased and were not intended to have any reference to the time of the death of the Hindu male referred to in the Act. The

Privy Council observed, by way of further explanation, that to place such an interpretation of the Act was not to give a retrospective effect to the

provisions, but merely to fix the material point of time as the date when the succession opens, namely, the death of the widow.

19. The principle of the Privy Council's decision is AIR 1946 173 (Privy Council) was held by the Supreme Court in *Daya Singh (Dead) through*

Lrs. and Another Vs. Dhan Kaur, to be applicable to the interpretation of S. 8 of the Hindu Succession Act, 1956. The words in S. 8 of the Act

are "the property of a male Hindu dying intestate shall devolve according to the provisions of this chapter." The court contrasted this language of S.

8 with the words in S. 6 in the same Act, which were ""When a male Hindu dies after the commencement of this Act....."" According to the

Supreme Court, s. 6, in terms, refers to the case of a male Hindu dying after the commencement of this Act. These words, according to the

Supreme court, were obviously made to indicate the time of death, whereas under S. 8 the words, "the property of a male Hindu dying....."

merely referred to the fact of intestacy.

20. The above reasoning of the Supreme Court shows that it had come to the conclusion that it did only as a matter of pure construction of the

words "any male Hindu dying intestate" occurring in S. 8 of the Hindu Succession Act, 1956, and not on the basis of any analogical reasoning

derived with reference to the express provisions of R. 3 of S. 16 of the Act.

Mr. Chari then submitted that the Hindu Law of Inheritance (Amendment) Act, 1929, was amenable to the kind of interpretation placed by the

Privy Council in AIR 1946 173 (Privy Council) because the said Act did nothing more than introduce certain statutory heirs without, in any way,

making any modifications in the fundamental concepts underlying the textual Hindu Law relating to inheritance. By way of contrast, according to

Mr. Chari, the Hindu Succession Act, 1956, purported to amend and codify the law relating to succession of Hindus. He, accordingly, submitted

that the decision in AIR 1946 173 (Privy Council) could not really serve as laying

down an apposite principle for application, while construing S. 8

of the Hindu Succession Act, 1956. Mr. Chari cited an expression of opinion similar to his arguments from Dr. Derett's Text Book "Introduction

to Modern Hindu Law (1963) at pp. 367 and 368. The learned author expresses the view in his book that the Privy Council's decision in AIR

1946 173 (Privy Council) decided under the Hindu Law of Inheritance (Amendment) Act, 1929, cannot serve as an analogy for dealing with the

determination of the date when succession opens under the provisions of the Hindu Succession Act, 1956. The author seems to endorse the view

of the Patna High Court, reported in Renuka Bala Chatterji Vs. Aswini Kumar Gupta and Others, , holding that the two Acts are not comparable,

referring also to an article in 1958 SCJ (J) 262.

21. The Supreme Court, has, however, held that the Hindu Succession Act provides an a fortiori case for application of the textual Hindu Law

doctrine that the last male holder must be held to die on the termination of the limited owner. At p. 668 of the decision in Daya Singh (Dead)

through Lrs. and Another Vs. Dhan Kaur, , the Supreme Court observes as under-

We should consider that if even the limited change in the area of succession effected by the Hindu Law of Inheritance (Amendment) Act. 1929, is

to be given effect to as the law applicable on the date of the death of the limited owner, it is all the more reason why the Hindu Succession Act

which makes a much more radical change in the Hindu Law should have similar application.

The Supreme Court rejected the view of the Patna High Court in Renuka Bala Chatterji Vs. Aswini Kumar Gupta and Others, , that because the

change brought about by the Hindu law of Inheritance (Amendment) Act, 1929 is different from the change brought about by the Hindu

Succession Act 1956, a different conclusion should follow.

22. It may be observed that the same view, as above, finds expression in a judgment of a Division Bench of this court to which one of us was a

party in Anthony Servai v. Pethi Naicker, (1974) 87 MLW 254, N. S. Ramaswami, J. delivering the judgment of the Bench observed as follows:-

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It must be remembered that the Hindu Law of Inheritance (Amendment) Act. 1929, was not a codifying law. It only altered the order of

succession of certain persons mentioned therein. when even under that Act it is held that the expression "a male Hindu dying intestate" should be

taken to have reference to the date on which the limited owner dies and succession opens, in the present case which is under the Act which is a

codifying law relating to intestate succession among Hindus, it would be incongruous to say that even though succession opens very much after the

commencement of the Act, still one has to look to the old textual Hindu law, to determine the reversionary heirs, taking the expression "a male

Hindu dying intestate" as having reference to only to the date of physical death of the man.

23. Mr. Chari also pressed us to take note of the circumstance that Daya Singh's case before the supreme court arose under peculiar

circumstances, in background of the customary law of Punjab which governed the succession in that case and he proceeded to submit that it would

hence be unreasonable to regard that decision, as one having universal application. We are not able to accept this contention. the Supreme Court

was well aware of the special problems posed in that case, one only of which was the circumstance that, had it not been for the court's decision

that the Hindu Succession Act applied to the facts of that case, the proper law to apply would have been the customary law. The Supreme Court

actually set down the relevant rules of the customary law of Punjab, observing that the daughter of the deceased Wadhawa Singh could not be

heard to say that the customary law would not apply, if the succession could be held to have opened before the commencement of the Hindu

Succession Act, 1956. Nevertheless, in the view it took that Wadhwa Singh must be deemed to have died on the death of his widow in 1963, the

court held that S. 8 of the Hindu Succession Act, 1956 would apply and not the customary law. It is on this basis that the court gave judgment in

favour of the daughter, having earlier held that, as alienee, she was bound by the previous decision invalidating the alienation by Wadhawa Singh's

widow in her favour.

24. Nor can we accede to the suggestion of Mr. V. K. T. Chari that the Supreme Court's ruling must be restricted in its application to cases

bearing a similarity to the facts in that case. After discussing the case law bearing on the previous textual Hindu law and also the relevant provisions

of the Hindu Succession Act, 1956 and the different decisions of High Courts, the Supreme Court laid down the broad principle in no uncertain terms. they observed-

Where a female heir succeeds to an estate the person entitled to succeed on the basis as if the last male holder had lived upto and died at the death of the limited owner succession opens and it would have to be decided on the basis that the last male holder died in 1963, after the coming into force of the Hindu Succession Act 1956." (sic)

In our view, this passage very clearly shows that the Supreme Court was not minded to render a decision merely as one applicable to the particular case before them, but had decided to lay down the meaning and construction of the relevant provisions of the Hindu succession Act 1956, to all cases to which those provisions applied.

25. The last point that Mr. Chari argued was the one relating to the claim of adverse possession put forward by Munuswami. This argument was easily met by Mr. G. Ramaswami, learned counsel for the plaintiff Rajambal. He submitted that there could be no adverse possession as against the reversioner at a time when reversion has not yet opened. He cited before us two decisions of the Supreme Court in Kalipada Chakraborti and Another Vs. Palani Bala Devi and Others, and Ram Kristo Mandal and Another Vs. Dhankisto Mandal, . of the later decision it is observed as

follows-

A person who has been in adverse possession for 12 years or more of property inherited by a widow from her husband by any act or omission on her part is not entitled on that ground to hold it adversely as against the next reversioners on the death of such a widow. The next reversioner is entitled to recover possession of the property, if it is immovable within 12 years from the widow's death under Art. 141. This rule does not rest entirely on Art. 141, but is in accord with the principles of Hindu Law and the general principle that as the right of a reversioner is in the nature of spas successions and he does not trace that title through or from the widow, it would be manifestly unjust as if he has lost his right but the negligence or sufferance of the widow.

The decision in the earlier case, Kalipada Chakraborti and Another Vs. Palani Bala Devi and Others, was also to the same effect. But Mr. Chari

contended that the reasoning in the above cases cannot be applied to the present case because the plaintiff Rajambal was not a reversioner in the sense in which the textual Hindu Law understood the expression. He pointed out that under the Hindu law texts, a daughter's son would be an heir to his maternal grandfather, but a daughter's daughter was not recognised as an heir. In this sense. Mr. Chari argued that possession by Munuswami for more than the statutory period would certainly be adverse to Rajambal. He further added that if Ammakannu were treated as absolute owner as and from 17-6-1956, which is the date of commencement of the Hindu Succession Act, 1956, then also, the adverse possession by Munuswami Achari must be held to continue against her. In our view, however, there is a flaw in the argument of Mr. Chari. While it may be conceded that Rajambal could not be regarded as an heir under the textual Hindu law, it would be a mistake to regard her either as an heir or their mother Parvathiammal or as a reversioner to the estate of Govinda Achari. Whether we apply to her the old textual Hindu Law or the subsequent statute, she was an heir, but not the reversioner of Govinda Achari and not the heir of the mother. In this sense, it will not be correct to say that the present suit filed by the plaintiff Rajambal is out of time.

26. There is yet another consideration which goes against Mr. Chari's contention. Under Art. 65 of the Schedule to the Lim. Act, 1963, a suit for possession of immovable property or any interest therein based on title could be filed within 12 years of the date when the possession of the defendant becomes adverse to the plaintiff. Explanation (b) to that Article says that where a suit is filed by a Hindu entitled to the possession of immovable property on the death of a Hindu female, the possession of the defendant shall be deemed to become adverse only when the female dies. On the basis of this clear statutory provision, the period of limitation in the suit filed by Rajambal against Munuswami must be calculated from the date of death of Ammakannu, and, so computed, the suit is well within time. We hold, in passing that Art. 65 of the Schedule to the Lim. Act, 1963, read with Expln. (b) to that article applied generally to all suits by Hindu plaintiffs, where the right to possession is claimed on the death of a female Hindu. the claim may be that of a reversioner of the last male holder or it may be that of an heir of a deceased female Hindu. whatever be

the case, provided the right of possession in the suit property is claimed on the death of a female Hindu, the deeming provision of Expln. (b) to Art.

65 would operate, and the suit for possession would be within time if filed within 12 years of the death of the female Hindu on whose death the plaintiff claims possession.

27. At the close of the arguments, Mr. G. Ramaswami submitted that whether Rajambal was claiming as heir of Ammakannu or as heir of Govinda

Achari, for the purposes of applying the Hindu Succession Act, 1956, the date of death of both must be regarded as the same date. In either case,

Munuswami could not claim any title or possession to the suit properties to the entire exclusion of the plaintiff Rajambal. If, as the learned

Subordinate Judge and Ramanujam J. had held, the suit properties (excepting Item 7) were regarded as possession by Ammamannu within the

meaning of S. 14, then, on her death, the properties would devolve in the following shares: 1/3 for Rajambal 1/3 for the children of the deceased

Chinnammal. If, on the other hand, S. 14 were held to be not applicable to the facts for the reason that Ammakannu were not possessed of the

properties, even in that eventuality, the properties must, on her death, devolve on Rajambal and Munuswami, equally, by the operation of S. 8 of

the Hindu Succession Act, and applying the principles decided by the Supreme Court in Daya Singh (Dead) through Lrs. and Another Vs. Dhan

Kaur, .

28. It is, however, unnecessary to pursue this argument of alternatives in this Letters Patent Appeal. For, on the findings arrived at by the learned

Subordinate Judge, as affirmed in second appeal by Ramanujam J., on the aspect of Ammakannu's possession, we do not feel called upon to

disturb their ultimate conclusion in any respect, especially when we recognise that it is in consonance with the broader aspects of equity.

29. For all the above reasons, we dismiss the Letters Patent Appeal with costs.

30. Appeal dismissed.