

(1971) 12 MAD CK 0006
In the Madras High Court

Shanmughasundarathammal

APPELLANT

Vs

Narayana Konar and Others

RESPONDENT

Date of Decision : 17-12-1971

Acts Referred:

Hindu Succession Act, 1956 — Section 8

Citation : (1972) 85 LW 678 : (1972) 2 MLJ 336

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The plaintiff is the appellant. He sued for declaration of his title to the suit property and for recovery of the same from

the three defendants. The case of the plaintiff was that the suit property originally belonged to one Sudalaimuthu Konar, that after his death his

widow, Somu Ammal was in enjoyment of the same till her death on 22nd March, 1966, that Somu Ammal had a daughter Kasamadi who

predeceased her leaving no issues and that after her death Somu Ammal sold the properties to her brother the first defendant under a registered

sale deed dated 21st June, 1935. One Shanmuga Konar and his brother Enamuthu filed a suit O.S. No. 275 of 1935 on the file of the District

Munsif, Srivaikuntam for a declaration that the sale deed executed by Somu Ammal was not binding on them as reversioners and succeeded in

obtaining a decree. After the death of Somu Ammal the suit property is claimed by the plaintiff as "the nearest heir of Sudalaimuthu as per the

provisions of the Hindu Succession Act, 1956.

2. The defendants resisted the suit contending that the third, defendant has been taken in adoption by Somu Ammal in 1965 and that as the

adopted son of Somu Ammal he is entitled to succeed to the suit property. They also contended that, in any event the succession to the properties

has to be governed by the law of succession as on the date of Sudalaimuthu's death and not under the Hindu Succession Act which was in force

on the date of the death of Somu Ammal.

3. Both the Courts below held that the case of adoption set up by the defendants had not been established. Therefore we have to proceed on the

basis that the third defendant was not adopted by Somu Ammal and he cannot claim the suit property on that basis. But the Courts below differed

in their view as to the applicability of the law of succession. The trial Court felt that the question as to who is to succeed to the suit property after

the death of Somu Ammal has to be found out with reference to the Hindu Succession Act which was the law in force relating to Hindu succession

prevailing at the time of Somu Ammal's death. But the lower appellate Court has taken the view that the orthodox law of succession which

prevailed at the time when Somu Ammal's husband Sudalaimuthu died has to be applied. It is for consideration in this second appeal as to which

of the two differing views is correct.

4. It is not in dispute that if the Hindu Law of inheritance at the time of Sudalaimuthu's death is to be applied, the plaintiff cannot be the nearest heir

of Sudalaimuthu. But on the other hand if the provisions of the Hindu Succession Act which was in force at the time of the death of Somu Ammal

are to be applied, the plaintiff will be the nearest heir of Sudalaimuthu and he will be entitled to succeed. The lower appellate Court purported to

follow the decision of the Supreme Court in *Eramma Vs. Verrupanna and Others*, holding that the provisions of Section 8 of the Hindu Succession

Act are not retrospective in operation and the decision in *V. Sampathkumari* by next friend and husband *C. Venkatachalapathi* (declared major)

Vs. M. Lakshmi Ammal and Others, wherein it has been observed that the death of a Hindu female owner opens the inheritance to the

reversioners, and the one most nearly related to the last full owner at the time of his death becomes entitled to possession. The lower appellate

Court felt that the decision in *Harbhaj Vs. Mohar Singh and Others*, holding that where a widow succeeded to her husband's property and the

succession opens to the reversioners on the death of the widow, the heirs of the

last male holder as on the date of the death of the widow have to be determined under the Hindu Succession Act which is in force on the date of the death of the widow, cannot held good after the above decision of the Supreme Court.

5. On this question there appears to be a divergence of judicial opinion. It is now well settled by the decision of the Supreme Court in *Eramma Vs.*

Verrupanna and Others, , that Section 8 of the Hindu Succession Act is not retrospective in operation and that where a male Hindu died before the

Act came into force, that is, where the succession opened before the Act, Section 8 will have no application. Only if succession or devolution is

treated as having taken place before the Act, the heirs are to be ascertained as on the date of the death of the last male holder and not as on the

date on which the widow died.

6. The following decisions have taken the view that though the reversionary heirs are to be found out after the death of the widow who earlier

succeeded to her husband's estate, succession should be deemed to have opened before the Act that therefore, Section 8 has no application and

the reversionary heirs have to be determined as on the date of the death of the last male holder, and that, if Section 8 has no application Section 4

of the Act has to come into play bringing into operation the general Hindu Law which was in operation before the commencement of the Hindu

Succession Act. In *V. Sampathkumari by next friend and husband C. Venkatachalapathi (declared major) Vs. M. Lakshmi Ammal and Others*, , a

Division Bench of this Court in dealing with a similar question took the view that it is only for the limited purpose of"" ascertaining the reversionary

heirs that a fiction has been created by which the deceased person is deemed to have lived upto the date of the death of the female heir who

immediately succeeds him, and that a fiction in law cannot be relied upon for any purpose other than the limited purpose for which it has been

created. It was contended before the Bench that in every case where a Hindu male dies intestate leaving a female heir to succeed him, succession

to the estate of the male does not really open until the death of the intervening female heir, when alone it would be possible to ascertain as to who

would be the person entitled to take the estate as reversioners. In rejecting that contention the Bench held that though the estate of the last male

holder had vested in his female heir, if the female heir dies the reversionary heirs to succeed to the estate have to be found out as if the succession

had opened on the date when the last male holder died. The learned Judges observed as follows:

It is only for the limited purpose of ascertaining the reversionary heirs that a fiction has been created by which the deceased person is deemed to

have lived upto the date of the death of the female heir who immediately succeeds him. It is well known that a fiction in law cannot be relied upon

for any purpose other than the limited purpose for which law has sanctioned the creation of such fiction.

In that view the learned Judges held that Section 8 will not have operation in a case of succession opening to the estate of the last office-holder

after his widow's death if he had died before the commencement of the Act. In *Kempiah v. Girigamma* AIR 1966 Mys. 189 also a similar view

was taken. There the last male holder died before the Hindu Succession Act came into force, and the widow's estate came to an end after the

coming into force of that Act. The question arose as to whether the reversioners are to be treated according to the provisions of the Hindu Law

which was in force on the date of the actual death of the last male holder, or whether according to the law in force on the date when the widow's

estate came to an end. The learned Judge in that case held that as Section 8 of the Hindu Succession Act is not retrospective in operation and as

the death referred to in Section 8 does not mean the fictional death which happens on the termination of the life estate, but the actual physical death

of the last male holder, Hindu Law in force before the commencement of the Act has to be applied in view of the saving provision contained in

Section 4(2) of the Hindu Succession Act, and that Section 8 should apply only in case of death of the last male holder occurring subsequent to the

enactment of the said Act. *Chaturbhuj Pradhan and Others Vs. Sarbeshwar Pradhan and Another*, , also took the same view. In that case after the

death of the last male holder his widow succeeded and was in possession of the property as limited owner. Her death took place after the

commencement of the Hindu Succession Act. In finding out the line of succession the Court applied the rule of succession as prevalent at the time

of the death of the last male holder on the view that Section 8 is not retrospective and that no provision of the Hindu Succession Act will come into

play in the case of succession to the estate of a last male holder, who died before the commencement of the Act, when it opens subsequent to the

Act on the death of a limited owner, who was in possession of that estate. *Mst. Jandebi Vs. Upendra Sahu and Another*, , purported to follow the

decision of the Mysore High Court in *Kempiah v. Girigamma* AIR 1966 Mys. 189, and held that as Section 8 is only prospective and applies only

to cases where a Hindu male dies after the commencement of the Hindu Succession Act, and the death of the Hindu male after the commencement

of the Act refers to actual and not fictional death, it is not the orthodox rule of Hindu Law, which was prevalent on the date of the death of the last

male holder for whose estate the reversion opens, that is to be taken into account. The learned judges did not accept the views expressed in *Bepin*

Behary Mullick and Others Vs. Sm. Lakshasona Dassi and Others, , *Harbhaj Vs. Mohar Singh and Others*, and *Ramulu and Another Vs. Govur*

Venkanna (Died) Govur Narayana and Others, , on the ground that the matter is concluded by the decision of the Supreme Court in *Eramma Vs.*

Verrupanna and Others, , holding Section 8 to be only prospective.

7. In *Bepin Behary Mullick and Others Vs. Sm. Lakshasona Dassi and Others*, , the learned Judges invoked the fiction that the husband is deemed

as continuing to live till the death of his widow for purposes of succession to his estate, and the consequence of introducing that fiction is that the

time relevant to the question of the further devolution of the estate is the time of the widow's death, with which the law makes the husband's death

simultaneous. In that case the last male holder died in 1948 and his widow who succeeded to his estate died on 1st June, 1958 after the

commencement of the Hindu Succession Act on 17th June, 1956. The Court held that the succession to the estate of the last male holder opened

after the Hindu Succession Act came into force and, therefore, the provisions of the Hindu Succession Act have to be applied. *Ratan Kumari v.*

Sunder Lal AIR 1959 Cal. 786, also took the same view. That decision laid down that the rule of devolution as laid down by Section 8 of the

Hindu Succession Act has no reference to the time of the death of the person, that "'dying interstate"' in the section must be and indeed has been

construed as a description of the status of the man and has no reference to the time of the death of the person, that the point of importance is not

the time of death but the time of devolution and that in order that Section 8 might apply the time of devolution must be after the date of the Act

coming into force, not the date of death. According to the learned Judge in that case a man may die prior to the date of the Act but succession will

open after the date if, in between, one or more female heirs intervened and the rule of devolution as laid down in Section 8 will apply only if

succession opens after the Act came into force, which normally takes place at the time of the death of a male Hindu but not necessarily, and the

devolution may be long after the death of the male Hindu. *Taro Vs. Darshan Singh and Others*, also has taken the same view. There it was held

that where the last male holder dies leaving behind him his widow before the Hindu Succession Act but the widow continues to survive after the

Act came into force, succession really opens on the demise of the intervening female heir and that it was wrong to say that the succession opens

out on the death of the last male holder.

8. The cleavage of judicial opinion as to the rule of succession to be applied in cases where the last male holder to whose estate the devolution

takes place died before the Hindu Succession Act but the succession opened only after the Act on the death of the intermittant life estate-holder

has, in my opinion, been finally concluded by the decision of the Supreme Court in *Fateh Bibi etc. Vs. Charan Dass*, . While dealing with a

situation where a Hindu male died in testate before Central Act II of 1929 came into force but was succeeded by a female heir after that date, their

Lordships of the Supreme Court expressed the view that succession in such cases opened only after the Act when the life estate terminates and

that in consequence, the questions as to who is the nearest reversionary heir, or what is the class of reversionary heirs will fall to be settled at the

date of the termination of the life estate and that the inheritance is opened to the reversioners only on the death of the Hindu females life estate

holder, and that the one most nearly related at that time to the last male holder becomes entitled to the estate. Though that decision was rendered

with reference to the provisions of Central Act II of 1929, the rationale of that decision equally applies to the situation on hand.

9. Even in the earlier decision in *Eramma Vs. Verrupanna and Others*, , where the date of death of the person and the devolution of his was the

same it has been observed that the date of devolution has also to be taken as the relevant date for applying the rules of succession. In the later decision in *Fateh Bibi etc. Vs. Charan Dass*, reference has been made to certain earlier decisions by various High Courts which showed a sharp difference of opinion between the various Courts on the point as to when succession opens, whether it is the date of death of the last male holder or whether it is the date of death of the life estate holder. In *Krishnan Chettiar (died) and Another Vs. Manickammal and Another*, , and *Kanhaiya Lal Vs. Mt. Champa Devi*, , it had been expressed that Central Act (II of 1929) applied only to a case of a Hindu male dying intestate on or after 21st February, 1929, and if a person had died before the Act the succession to his estate must be considered to have opened on the date of his death. But later in *Shakuntala Devi v. Kousalya Devi* AIR 1936 Lah. 124, AIR 1937 402 (Oudh) *Pokhan Dusadh Vs. Mt. Manoa and Another*, , and *Lakshmi Ammal and Another Vs. Anantharama Aiyangar and Another*, , a contrary view had been taken that succession to the estate of the last male holder must be considered to open only on the termination of the life estate and the Act will apply in considering the heirs of the last male holder at the termination of the life estate in cases where the male holder had died before the Act and the estate was in the possession of the life estate holder who died after the Act. The Supreme Court resolved the conflict, and agreeing with the view expressed by the Judicial Committee in AIR 1946 173 (Privy Council) holding that Central Act (II of 1929) altering the order of succession of certain persons therein mentioned, which came into force on 21st February, 1929, applied not only to the cases of Hindu male dying intestate on or after the Act but also to cases of such a male dying intestate before that date, if he was succeeded by a female heir who died after that date, that succession in such cases to the estate of the last Hindu male holder who died intestate did not open until the death of the life estate holder, that during the lifetime of the life-estate holder, the reversioners in Hindu Law have no vested interest in the estate, that they have mere spes successionis, that the point of time for the applicability of Act II of 1929, is when the succession opens, that is, when the life estate terminates, and that questions as to who is the nearest reversionary heir or what is the class of the reversionary heirs will fall to be settled on the termination of the life estate. Their Lordships have specifically held that

Act II of 1929, applied not only to cases of Hindu male dying intestate after the Act but also to cases of a Hindu male dying intestate before the

Act came into operation and has been succeeded by a female heir who died after that date. Therefore, following the above decision of the

Supreme Court in Fateh Bibi etc. Vs. Charan Dass, , I hold that the plaintiff, who is the one most nearly related to Sudalaimuthu, the last male-

holder at the time of the death of Somu Ammal, becomes entitled to the suit properties, the date of the death of the last male-holder not being

relevant.

10. The result is the view taken by the lower appellate Court has to be set aside. The second appeal is, therefore, allowed, the decree and

judgment of the lower appellate Court are set aside and those of the trial Court restored. There will be no order as to costs. Leave granted.