

(2013) 06 KAR CK 0053

In the Karnataka High Court

Case No : Regular First Appeal No. 1217 of 2011

V. Ethiraj

APPELLANT

Vs

S. Sridevi Since deceased by her L.Rs. , Prabhakar and B.K.
Sundara Rajan

RESPONDENT

Date of Decision : 07-06-2013

Acts Referred:

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

Citation : AIR 2014 Kar 58 : (2013) 4 AKR 759 : (2014) 1 KarLJ 273

Hon'ble Judges : N. Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : V.B. Shiva Kumar, for the Appellant; K.P. Asokumar and Sri. K. Honnaiah for R1(a) and (c) and Sri. B.K. Sundara Rajan for R3 (Party-in-Person), for the Respondent

Judgement

N. Kumar, J.—This is the 2nd defendant's appeal against the Judgment and Decree of the trial Court, which has decreed the suit in favour of the plaintiff declaring that she is entitled to the half share in the plaint schedule property. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.

2. The subject matter of the suit is the northern portion of the property bearing No. 113, 4th Main, Chamarajapet, Bangalore-560018, measuring east to west: 27 ft. and north to south: 80 ft., which is morefully described in the schedule to the plaint and hereinafter referred to as "the schedule property".

3. The schedule property originally belonged to Smt. Lokamma @ Sharadamma. She had two daughters by name Smt. Savithramma and Smt. Kanthamma. Smt. Kanthamma had two daughters viz., Smt. S. Sridevi - the plaintiff and Smt. Vijaya, and a son by name S. Prabhakar, the 1st defendant. During the pendency of the suit, Smt. S. Sridevi died and her daughters by name Smt. Nandini, Smt. Namitha R., Smt. Jayashree R., and a son by name Sri. Srinath R., have been brought on record as legal heirs of deceased plaintiff.

4. The case of the plaintiff is that under a registered Settlement Deed dated 25.03.1959, Smt. Lokamma @ Sharadamma gave the schedule property, which is a northern portion of the property bearing No. 130 to her daughter Smt. Kanthamma. Smt. Kanthamma died intestate on 15.12.1964, leaving behind two daughters and a son. After her death, her two daughters and the son are in peaceful possession and enjoyment of the ground floor portion of the schedule property. They are paying the Corporation taxes. They are running an educational institution by name Vijaya Primary School in the shop located in the front portion. The 2nd defendant-purchaser is running a flour mill and he is residing in the first floor.

5. Smt. Vijaya, the daughter of Smt. Kanthamma filed O.S. No. 784/1981 on the file of the XV Addl. City Civil Judge, Bangalore, against the plaintiff and others seeking partition and separate possession of her 1/3rd share in the schedule property. Unfortunately, she died intestate during the pendency of the said suit, leaving behind, her husband-Dr. B.K. Sundara Rajan as her only legal heir and he came on record and prosecuted the suit. Ultimately, O.S. No. 784/1981 was decreed on 21.07.1990. The plaintiff, the 1st defendant and Dr. B.K. Sundara Rajan were held to be entitled to the 1/3rd share in the schedule property. The 1st defendant, being aggrieved in respect of the portion of the decree granting of share to Dr. B.K. Sundara Rajan, filed R.F.A. No. 473/1990 on the file of this Court contending that he is not entitled to any share in the schedule property in view of the specific bar contained in Section 15(2)(a) of the Hindu Succession Act, 1956. It is only the plaintiff and himself who are entitled for equal share in the schedule property. The appeal was allowed by this Court on 11.08.1998 negating the claim of Dr. B.K. Sundara Rajan. In the result, the plaintiff and the 1st defendant became entitled to half share each in the schedule property in terms of Section 15(2)(a) r/w Section 16 of the Hindu Succession Act, 1956. The 1st defendant behind the back of the plaintiff suppressing the aforesaid facts, made an application to Bruhat Bangalore Mahanagara Palike, seeking transfer of khatha in respect of the schedule property from the name of Smt. Kanthamma to his name. The Palike authorities without notice to the plaintiff and without holding any enquiry, transferred the khatha of the schedule property from the name of Smt. Kanthamma to the name of the 1st defendant. Being aggrieved by the same, the plaintiff filed a review petition, which came to be dismissed on 05.09.2001. Aggrieved by the same, the plaintiff filed W.P. No. 46100/2001. This Court by its Order dated 14.12.2001, stayed the mutation proceedings made in the name of the 1st defendant. The 2nd defendant despite being aware of the said facts, purchased the schedule property from the 1st defendant on 12.07.2001 for a sum of Rs. 21,00,000-00, which is ridiculously low and totally wanting in bona fides. The whole transaction is fraudulent and nominal and not binding on the plaintiff. Therefore, the plaintiff was constrained to file the suit for partition and separate possession of her half share in the schedule property.

6. After service of summons, the defendants entered appearance through their counsel and filed their separate written statements, contesting the claim.

7. The 1st defendant submitted that the plaintiff claims the right under the Settlement Deed dated 25.03.1959, which was subsequently cancelled by registration of Cancellation Deed, dated 19.05.1978 by Smt. Lokamma @ Sharadamma. Therefore, there is no justification for the plaintiff to claim any right under the said Settlement Deed dated 25.03.1995 as it is stood cancelled as aforesaid on 19.05.1978. Smt. Lokamma @ Sharadamma has left a registered Will dated 11.09.1981. Smt. Lokamma @ Sharadamma expired on 26.12.1981. The registered Will executed by Smt. Lokamma @ Sharadamma is accepted and acted upon by the plaintiff.

8. The 1st defendant as per the registered Will executed by Smt. Lokamma @ Sharadamma became the absolute owner of the schedule property. The plaintiff is also enjoying the property, which was bequeathed in her favour by late Smt. Lokamma @ Sharadamma. Therefore, she cannot question the 1st defendant, who is one of the beneficiaries of the Will. As per the registered Will, the bifurcation of the property has taken place in the Office of the Corporation at the City of Bangalore and the parties are paying the corporation taxes as per the assessment with respect to their respective portions. The plaintiff is in possession and enjoyment of only the portion of the property measuring 28 x 30 ft., mentioned as "B" schedule. The plaintiff has deliberately suppressed the recital of the Will making it clear that the property measuring 27 x 80 ft. is bequeathed in favour of the 1st defendant. The 1st defendant has all the legal right, title and liberty to deal with the same in any manner as deems fit. The plaintiff has no manner of right, title or interest in the property sold in favour of the 2nd defendant by the 1st defendant. Therefore, the suit is liable to be dismissed in limine.

9. The 2nd defendant filed his written statement contending that he is not aware of any proceedings initiated by Smt. Vijaya in O.S. No. 784/1981. The said suit was between the 1st defendant and Smt. Vijaya and he has nothing to do with said Smt. Vijaya. The 2nd defendant is not aware of the further litigation of this Court in R.F.A. No. 473/1990. The plaintiff has mentioned the execution of the Settlement Deed, but not the subsequent cancellation of the same by the executant herself. The 2nd defendant is not aware of the writ petition filed by the plaintiff against the 1st defendant, against the Order transferring the khatha in the name of the 1st defendant in W.P. No. 46100/2001. The plaintiff has neither 50% share nor any bit in the schedule property and the 1st defendant is the absolute owner of the entire property measuring 27 x 80 ft. as per the recitals in the registered Will executed by late Smt. Lokamma @ Sharadamma. The 2nd defendant is the bona fide purchaser of the schedule property in question and he is the sole and absolute owner. After obtaining legal opinion, he has completed the sale transaction and therefore, he sought for dismissal of the suit.

10. The schedule property was given to 1st defendant under the aforesaid Will and on the basis of the said Will the 1st defendant got the katha of the schedule property entered in his name. He was paying Corporation tax and thus he was

the absolute owner of the suit schedule property. He sold the same in favour of 2nd defendant by a registered sale deed dated 12.07.2001. Therefore on the date of filing of the suit, the suit property cannot said to be in joint possession of the plaintiff and the defendants. During the life time of Smt. Lokamma her grand daughter by name Smt. Vijaya, daughter of Kanthamma filed a suit in O.S. No. 784/1981 against Smt. Lokamma, the plaintiff and the 1st defendant herein. Lokamma filed written statement in the said suit stating that the settlement deed dated 25.03.1959 was obtained by fraud and therefore the same was cancelled subsequently, under the registered deed of cancellation dated 19.05.1978. In the suit filed, the plaintiff and 1st defendant adopted the written statement filed by Smt. Lokamma by filing a memo. Therefore, both the plaintiff and 1st defendant admitted the cancellation deed dated 29.05.1978 executed by Smt. Lokamma. During the pendency of the suit Smt. Lokamma expired. Thereafter, plaintiff and 1st defendant filed written statement claiming their right under the registered will dated 11.09.1981 executed by Smt. Lokamma. Therefore, it is not open to the plaintiff now to contend that Smt. Lokamma died intestate as alleged in para 3 of the plaint. The suit filed by Smt. Vijaya though decreed by the trial Court, was set aside by the Hon"ble High Court in RFA 473/1990 filed by the 1st defendant. Smt. Vijaya expired during the pendency of the suit and therefore her husband alone came on record as legal representative of Smt. Vijaya. Therefore, the High Court held the husband is not entitled to a share of his wife Smt. Vijaya and set aside the decree passed by the trial Court in O.S. No. 784/1981. During the pendency of the said appeal the plaintiff herein tried to put up construction in the property. Therefore first defendant filed O.S. No. 1716/1998 for the relief of injunction, in which the present plaintiff filed written statement claiming right under the Will dated 11.9.1981, therefore, the plaintiff has not come to the Court with clean hands. Even though the plaintiff was aware of the registered Will executed by late Smt. Lokamma and as per the Will parties have acted and enjoying the properties, plaintiff has filed the present suit against 1st defendant seeking for a partition, though the plaintiff has no right, title or interest over the suit schedule property. Therefore, he sought for dismissal of the suit.

11. On the aforesaid pleadings, the trial Court framed as many as eight issues. The plaintiffs eldest daughter Dr. Nandini was examined as PW 1. She also produced 15 documents which were marked as Ex. P1 to P15. On behalf of the defendants, 1st defendant did not choose to enter in to witness box. The purchaser was examined as DW 1. He has produced 12 documents which were marked as Ex. D1 to D12.

12. The trial Court on appreciation of the oral and documentary evidence on record has held, after the death of Smt. Kanthamma, the plaintiff, 1st defendant and another daughter Smt. Vijaya became joint owners in possession of the suit schedule property. The first defendant has failed to prove the settlement deed dated 25.03.1959 got cancelled on 19.05.1978 by executing a registered cancellation deed. Further defendants 1 and 2 have failed to prove the will dated 11.09.1991 said to have been executed by Smt. Lokamma. The execution of sale

deed by first defendant in favour of second defendant on 12.07.2001 is in dispute. Second defendant has failed to prove that he is a bona fide purchaser of the suit schedule property from first defendant for valuable consideration. Therefore, the trial Court decreed the suit of the plaintiff as prayed for. Aggrieved by the said judgment and decree of the trial Court, second defendant alone has preferred this appeal.

13. Learned Counsel for the appellant-2nd defendant assailing the impugned judgment and decree of the trial Court contended that the plaintiff claims right under the registered settlement deed. The said registered settlement deed was cancelled by a registered document dated 19.05.1978 and therefore the plaintiff has no right in respect of the suit schedule property. After cancellation of the settlement deed Smt. Lokamma original owner executed a Will dated 11.09.1981 bequeathing the schedule property in favour of first defendant and a small portion was also bequeathed in favour of the plaintiff. In the suit filed by Smt. Vijaya in O.S. No. 784/1981 first defendant and plaintiff filed a common written statement contending that the settlement deed is cancelled and the Will is executed. Therefore, it is too late in the day for the plaintiff to contend that she is entitled to share in the property by virtue of settlement deed. The appellant who is a bona fide purchaser for valuable consideration, was not aware of the proceedings in O.S. 784/2981 and RFA 473/1990. When first defendant handed over the Will, khatha endorsement, tax paid receipt and he was in possession of the property, he took note of the same and purchased the schedule property and therefore same is valid and it cannot be found fault with.

14. Per contra, learned Counsel for the plaintiff submitted that once the registered settlement deed was executed by Smt. Kanthamma, she had no right to execute cancellation deed, as such said cancellation deed is of no value. On the day she executed the Will, she was not the owner and therefore the said Will does not confer any right on the first defendant. In fact the original of the said Will did not see the light of the day, not produced before the Court and not proved in accordance with law. Therefore, the trial Court was justified in holding, the Will is without any value. However, he submits the first defendant is a party to the suit in O.S. 784/1981, the suit was decreed granting 173rd share to the plaintiff and first defendant. The first defendant preferred an appeal in RFA 473/1990 challenging grant of share to defendant No. 3 in this case who is the husband of Smt. Vijaya on the ground that by virtue of Section 15(2)(a) defendants 1 and 2 are entitled to ? share. His contention was accepted, appeal was allowed and it was declared that the plaintiff and first defendant alone are entitled to half share each in the schedule property. Defendant No. 2 in the course of his evidence has admitted that he has seen the judgment copy of O.S. No. 784/1981 and RFA 473/1990. But, still he purchased the property. Therefore, it is too late for him to contend that he is a bona purchaser for valuable consideration without notice of these proceedings. The trial Court on appreciation of oral and documentary evidence on record has rightly decreed the suit of the plaintiff and therefore no case for interference is made out.

15. The third respondent herein Dr. B.K. Sundara Rajan, the husband of late Smt. Vijaya was not made a party to the suit. Therefore at the stage of argument of the suit, he filed an application on 13.04.2011 purporting to be u/s 151 of CPC read with Order 1 Rule 8(3) and Order 1 Rule 10 CPC and Order 2 Rule 2 and Order 7 Rule 11(d) of CPC, seeking dismissal of the suit as barred by res judicata, under Order 2 Rule 2 and Order 7 Rule 11(d) CPC in view of the preliminary decree passed in O.S. No. 784/81, RFA 473/90 and P & SC 25/08. In the affidavit filed in support of the said application, he contended referring to the previous proceedings in O.S. No. 784/81, FDP 58/1990 and RFA 473/1990, the present suit is not maintainable in law. He contended that he has obtained a probate in P & SC 25/08 on 17.01.2011. The trial Court considered the said application and held that in P & SC proceedings, there is no reference to RFA 473/1990. In the suit O.S. 784/81 there is no mention about the Will alleged to have been executed by Smt. Vijaya in his favour. Therefore, once in RFA 473/1990 this Court has held that the third respondent has no share in the schedule property, by mere obtaining a probate of the Will he would not get any right in the schedule property. Therefore it rejected the application as meritless while passing the judgment and decree. It is in this background he filed an application before this Court to implead himself. His application was allowed by order dated 28.02.2012. Therefore, he was also heard. He has also made an application for remand of the matter to the trial Court to enable him to establish his right to the schedule property.

16. In the light of the aforesaid facts and rival contentions of the parties the points that arise for our consideration are:

- 1) Whether the findings of the trial Court that the cancellation deed executed by Smt. Lokamma cancelling the earlier settlement deed dated 25.03.1959 is void, requires interference?
- 2) Whether the finding of the trial Court that under the sale deed dated 11.09.1981 first defendant acquires no right to the schedule property calls for interference?
- 3) Whether the third respondent is entitled any share in the suit schedule property?

POINT NO. 1

17. The facts are not in dispute. Smt. Lokamma had two daughters by name Kanthamma and Savithamma. She was the absolute owner of the Property bearing No. 113, 4th Main, Chamarajpet, Bangalore. She executed a registered settlement deed dated 25.03.1959 settling northern portion of the said property which is the schedule property in favour of Kanthamma, southern portion was given to Smt. Savithamma. Smt. Kanthamma had two daughters namely Vijaya and Sridevi and a son by name S. Prabhakar-defendant No. 1. Kanthamma died on 15.12.1964 intestate. It is after the death of Smt. Kanthamma cancellation deed said to have been executed on 19.05.1978 cancelling the settlement deed

dated 25.03.1959 on the ground of fraud, undue influence. That Smt. Lokamma realized the fraud and undue influence practiced on her after nearly 29 years from the date of execution of the settlement deed. On the day of the execution of the cancellation deed Kanthamma was not alive. By virtue of the settlement deed schedule property vests with Kanthamma. On the date of execution of the document, she had become absolute owner of the schedule property. Once, the settlement deed was executed in favour of her daughter, Lokamma lost her right, title and interest in the schedule property. On the day she executed cancellation deed, she had no right in the property. The registered settlement deed cannot be cancelled by executing a cancellation deed. If at all the said document is to be canceled, it had to be done under the provisions of Specific Relief Act, by approaching a competent civil Court for cancellation of such document. The fact of fraud, undue influence, mistake or any other ground which is alleged for cancellation of the said documents being proved, the Court may order for cancellation. That is the only mode known to law to cancel the registered settlement deed. Otherwise the parties by consent has to annul the settlement by executing the document of reconveyance, the settle can give up her right in favour of the settler. Admittedly, no suit was filed against cancellation. Therefore, by execution of cancellation deed, the registered settlement deed dated 25.03.1959 did not stand cancel. Unilaterally the settler cannot execute a cancellation deed of settlement. Therefore, the trial Court was fully justified in holding so. In the suit OS No. 784 of 1981, this plea was raised by Smt. Lokamma and the 1st defendant and it was negated. This Court in RFA No. 473 of 1990 has affirmed the said finding. The second defendant is claiming title to the property under the first defendant. Therefore, he is also equally bound by the said finding and he is estopped from re-agitating the said issue. In fact, the first defendant has accepted the judgment and has not preferred any appeal challenging the said finding. The said finding operates as res judicata. There is no infirmity in the said finding recorded by the trial Court and we, therefore affirm the same.

POINT NO. 2

18. The said Lokamma said to have executed a Will dated 11.09.1981 bequeathing the suit schedule property in favour of first defendant and a small portion in favour of the plaintiff. On the day Lokamma said to have executed the Will, Lokamma was not owner of the said property. Therefore even if the Will is proved, as she was not owner of the property, under the Will she could not have bequeathed any title to the legatee. Therefore, the trial Court has rightly held the said Will has no value in the eye of law. The original will was not produced. Attesting witnesses of the Will were not examined to prove the will. Therefore, the Will is not proved in accordance with law.

19. It is also on record Kanthamma's daughter Vijaya, after the death of her mother filed O.S. No. 748/1981 for partition and separate possession of her 1/3rd share in the schedule property against Lokamma her grandmother, the

plaintiff as well as S. Prabhakar-defendant No. 1 in the suit. In the said suit Smt. Lokamma set up a plea that after cancellation of settlement deed, she has become owner again and in turn she executed a Will in favour of Sri Prabhakar-defendant No. 1 on 11.09.1981 and therefore Smt. Vijaya has no right in the property. In the said proceedings the plaintiff herein and defendant No. 1 supported their grandmother, who had set up the deed of cancellation and also the Will. During the pendency of the proceedings Smt. Vijaya died and her husband, was brought on record as respondent No. 3. He prosecuted the suit. The trial Court after trial held the cancellation deed was not valid, the Will dated 19.09.1981 has no value and then it decreed the suit of the plaintiff granting 1/3 share to the plaintiff and 1/3rd share to defendant No. 1 and 1/3 share to the 3rd defendant herein. Defendant No. 1 preferred an appeal in RFA 473/1990 before this Court contending that in view of Section 15(2)(a) of the Hindu Succession Act, 1956 the husband does not inherit the property u/s 15(1) of the Act as the said property was inherited by Smt. Vijay from her mother. Accepting the said contention the decree of the trial Court to that extent was set aside and it was declared that the plaintiff herein and defendant No. 1 herein are entitled to half share each. Husband of Smt. Vijaya, the 3rd respondent has no share in the property. He did not chose to challenge the said decree of this Court which has attained finality. It is after the said judgment and decree defendant No. 2 has purchased the plaint schedule property from defendant No. 1 under a registered sale deed dated 12.7.2001. The subject matter of Will is the suit schedule property in which defendant No. 1 has got half share. The evidence on record shows defendant No. 1 got khatha of the property transferred to his name on the basis of the Will, exclusively in his name. He has sold the property to defendant No. 2. The evidence on record shows defendant No. 2 purchaser was aware of the proceedings in O.S. No. 784/1981 and R.F.A. No. 473/1990. He has purchased the entire property from defendant No. 1 though he was aware that the 1st defendant was only owner of half portion of the suit schedule property. Even other wise, the purchaser ought to have made necessary enquiry and only after satisfying about the title of the property he should have purchased the same. Therefore it is not open for him now to contend that he is a bona fide purchaser without notice of the aforesaid proceedings and he is entitled to the entire property. In that view of the matter the trial Court was justified in holding, defendant No. 2 cannot claim absolute title to the schedule property. He can only claim half share in the schedule property and therefore no interference in the said finding is made out.

POINT NO. 3

20. Third respondent is the husband of Smt. Vijaya who is the daughter of Smt. Kanthamma. As set out above, Smt. Vijaya had filed a suit in O.S. No. 784/1981 after the death of her mother claiming 1/3rd share in the suit schedule property. During the pendency of the suit, she died and the 3rd respondent, her husband, came on record, he prosecuted the matter. The suit was decreed granting him 1/3rd share. The first defendant herein preferred RFA 473/1990 contending that

in view of Section 15(2)(a) of the Hindu Succession Act, 1956, he is not entitled to the said share as the share which Smt. Vijaya inherited from her mother has to revert back to her mother's family. After hearing, the appeal was allowed. The claim of the 3rd respondent was negated. The said judgment of this Court has attained finality. However, the 3rd respondent is still contending that notwithstanding the said judgment, as he has obtained probate of the Will of his wife, he is entitled to 1/3rd share in the suit property. The application filed by him in the suit came to be dismissed as merit less. However, his application filed in this appeal came to be allowed and he is arrayed as the 3rd respondent. Again he is rearguing his claim to 1/3rd share of his wife in the schedule property.

21. Section 15 of the Hindu Succession Act, 1956 provides for the rules of succession in case of female Hindu. Section 15 reads as under:

15. General rules of succession in the case of female Hindus.- (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,--

(a) firstly, upon the sons and the 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 subsection (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-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law 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-section (1) in the order specified therein, but upon the heirs of the husband.

22. This Section fell for consideration by the Apex Court in several judgments. The Apex Court in the case of Bhagat Ram (D) by Lrs. Vs. Teja Singh (D) by Lrs., held as under:

8. We do not find any merit in the contention raised by the Counsel for the respondents. Admittedly, Smt. Santi inherited the property in question from her mother. If the property held by a female was inherited from her father or mother, in the absence of any son or daughter of the deceased, including the children of

any predeceased son or daughter, it would only devolve upon the heirs of the father and, in this case, her sister Smt. Indro was the only legal heir of her father. Deceased Smt. Santi admittedly inherited the property in question from her mother. It is not necessary that such inheritance should have been after the commencement of the Act. The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female, should go to the legal heirs of the father. So also under clause (b) of sub-Section 2 of Section 15, the property inherited by a female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband. It is the source from which the property was inherited by the female, which is more important for the purpose of devolution of her property. We do not think that the fact that a female Hindu originally had a limited right and later, acquired the full right, in any way, would alter the rules of succession given in sub-section 2 of Section 15.

13. The source from which she inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. That would defeat the intent and purpose of sub-Section 2 of Section 15, which gives a special pattern of succession.

23. The Apex Court in the case of V. Dandapani Chettiar Vs. Balasubramanian Chettiar (Dead) by Lrs. and Others, considered the extent and nature of the rights conferred by this section and held as follows:-

9. The above section propounds a definite and uniform scheme of succession to the property of a female Hindu who dies intestate after the commencement of the Act. This section groups the heirs of a female intestate into five categories described as Entries (a) to (e) and specified in sub-section (1). Two exceptions, both of the same nature are engrafted by sub-section (2) on the otherwise uniform order of succession prescribed by sub-section (1). The two exceptions are that if the female dies without leaving any issue, then (1) in respect of the property inherited by her from her father or mother, that property will devolve not according to the order laid down in the five Entries (a) to (e), but upon the heirs of the father; and (2) in respect of the property inherited by her from her husband or father-in-law, it will devolve not according to the order laid down in the five Entries (a) to (e) of sub-section (1) but upon the heirs of the husband. The two exceptions mentioned above are confined to the property "inherited" from the father, mother, husband and father-in-law of the female Hindu and do not affect the property acquired by her by gift or by device under a Will of any of them. The present Section 15 has to be read in conjunction with Section 16 which evolves a new and uniform order of succession to her property and regulates the manner of its distribution. In other words, the order of succession in case of property inherited by her from her father or mother, its operation is confined to the case of dying without leaving a son, a daughter or children of any predeceased son or daughter.

10. Sub-section (2) of Section 15 carves out an exception in case of a female dying intestate without leaving son, daughter or children of a predeceased son or daughter. In such a case, the rule prescribed is to find out the source from which she has inherited the property. If it is inherited from her father or mother, it would devolve as prescribed u/s 15(2)(a). If it is inherited by her from her husband or father-in-law, it would devolve upon the heirs of her husband u/s 15(2)(b). The clause enacts that in a case where the property is inherited by a female from her father or mother, it would devolve not upon the other heirs, but upon the heirs of her father. This would mean that if there is no son or daughter including the children of any predeceased son or daughter, then the property would devolve upon the heirs of her father. Result would be if the property is inherited by a female from her father or her mother, neither her husband nor his heirs would get such property, but it would revert back to the heirs of her father.

24. Again the Apex Court in the case of Omprakash and Others Vs. Radhacharan and Others, , held as under:

8. Sub-Section (1) of Section 15 lays down the ordinary rule of succession. Clause (a) of sub-section (2) of Section 15 providing for a non-obstante clause, however, carves out an exception viz. when the property is devolved upon the deceased from her parents" side, on her death the same would relate back to her parents" family and not to her husband"s family. Similarly, in a case where she had inherited some property from her husband or from her husband"s family, on her death the same would revive to her husband"s family and not to her own heirs.

9. The law is silent with regard to self-acquired property of a woman. Sub-section (1) of Section 15, however, apart from the exceptions specified in sub-section (2) thereof does not make any distinction between a self-acquired property and the property which she had inherited. It refers to a property which has vested in the deceased absolutely or which is her own. The self-acquired property of a female would be her absolute property and not the property which she had inherited from her parents. In that view of the matter, we are of the opinion that sub-Section (1) of Section 15 of the Act would apply and not the sub-Section (2) thereof

25. The Apex Court in the case of S.R. Srinivasa and Others Vs. S. Padmavathamma, held as under:

34. A perusal of the aforesaid provisions would show that the basic aim of Section 15(2) is to ensure that inherited property of an issueless female Hindu dying intestate goes back to the source. It was enacted to prevent inherited property falling into the hands of strangers.

15. The report of the Joint Committee which was accepted by Parliament indicates that subsection (2) of Section 15 was intended to revise the order of succession among the heirs to a Hindu female and to prevent the properties from passing into the hands of persons to whom justice would demand that they

should not pass. That means the property should go in the first instance to the heirs of the husband or to the source from where it came.

26. It is also necessary to notice the object behind this provision. In fact, the Hindu Succession Bill 1974 as originally introduced in the Rajya Sabha did not contain any clause corresponding to sub-Section (2) of Section 15. It came to be incorporated on the recommendations of the Joint Committee of the two Houses of Parliament. The reason given by the Joint Committee is found in Clause 17 of the Bill.

While revising the order of succession among the heirs to a Hindu female, the Joint Committee have provided that, properties inherited by her from her father reverts to the family of the father in the absence of issue and similarly property inherited from her husband or father-in-law reverts to the heirs of the husband in the absence of issue. In the opinion of the Joint Committee such a provision would prevent properties passing into the hands of persons to whom justice would demand they should not pass.

27. Therefore the above section propounds a definite and uniform scheme of succession to the property of a female Hindu who dies intestate after the commencement of the Act. Then Sub-Section (1) of Section 15 lays down the ordinary rule of succession. This section groups the heirs of a female intestate into five categories described as Entries (a) to (e) and specified in sub-section (1). Two exceptions, both of the same nature are engrafted by sub-section (2) on the otherwise uniform order of succession prescribed by subsection (1). Sub-section (2) of Section 15 starts with a non-obstante clause, carving out the said two exception. The two exceptions are that if the female dies without leaving any issue, then (1) in respect of the property inherited by her from her father or mother, that property will devolve not according to the order laid down in the five Entries (a) to (e), but upon the heirs of the father; and (2) in respect of the property inherited by her from her husband or father-in-law, it will devolve not according to the order laid down in the five Entries (a) to (e) of sub-section (1) but upon the heirs of the husband. The two exceptions mentioned above are confined to the property "inherited" from father, mother, husband and father-in-law of a female Hindu and do not affect the property acquired by her by gift or by device under a Will of any of them. When a property is devolved upon a deceased from her parents' side, on her death the same would revert back to her parents' family and not to her husband's family. Similarly, in a case where she had inherited some property from her husband or from her husband's family, on her death, the same would revert back to her husband's family and not to her own heirs. The present Section 15 has to be read in conjunction with Section 16 which evolves a new and uniform order of succession to her property and regulates the manner of its distribution. In other words, the order of succession in case of property inherited by her from her father or mother, its operation is confined to the case of dying without leaving a son, a daughter or children of any predeceased son or daughter. In fact, the source from which she

inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. That would defeat the intent and purpose of sub-Section (2) of Section 15, which gives a special pattern of succession.

28. In the light of the aforesaid legal position, the property which the third respondent is claiming belongs to his wife which she inherited from her mother. On her death as issue-less, the said property would revert back to her parents family and not to her husband. She acquired rights to the property by inheritance from her mother. In view of Section 15(2)(a), the property will not devolve according to the order laid down in 5 Entries (a) to (e) of sub-Section (1) of Section 15. It falls within the exception carved out in clause (a) of sub-Section 2 of Section 15. Therefore, her husband, the third respondent herein would get no right in the said property. Therefore he gets no right under the Will or under the probate. A probate does not confer title in the property to the person in whose favour the probate is granted. The said probate was obtained by the third respondent by suppressing the judgment and decree passed by this Court in RFA 473/90 to which the third respondent was a party. In the said proceedings it is declared that the third respondent has no share in the schedule property. The said judgment has attained finality as the third respondent has not chosen to challenge the said judgment and decree. The said judgment and decree operates as res judicata. He cannot be permitted to reagitate his right, which is finally adjudicated between the same parties. Therefore, when the third respondent has no right in the schedule property, when no right is conferred under the probate and when his right to the property is already adjudicated by this Court in RFA 473/90, the question of remanding the matter again to the trial Court would not arise as the trial Court would be bound by the judgment and decree passed by this Court in RFA 473/90. Therefore the third respondent is not entitled to any share in the suit schedule property. His application for remand also stands dismissed. In view of the aforesaid discussion, we do not find any merit in this appeal. Accordingly it is dismissed.

Parties to bear their own costs.