**SUPREME COURT OF INDIA**

Karunanidhi

Vs.

Seetharama Naidu

C.A.No.4490 of 2017

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

27.03.2017

**JUDGMENT**

**Abhay Manohar Sapre,J.,**

SLP(Civil)No.22148/2013

1. Leave granted.

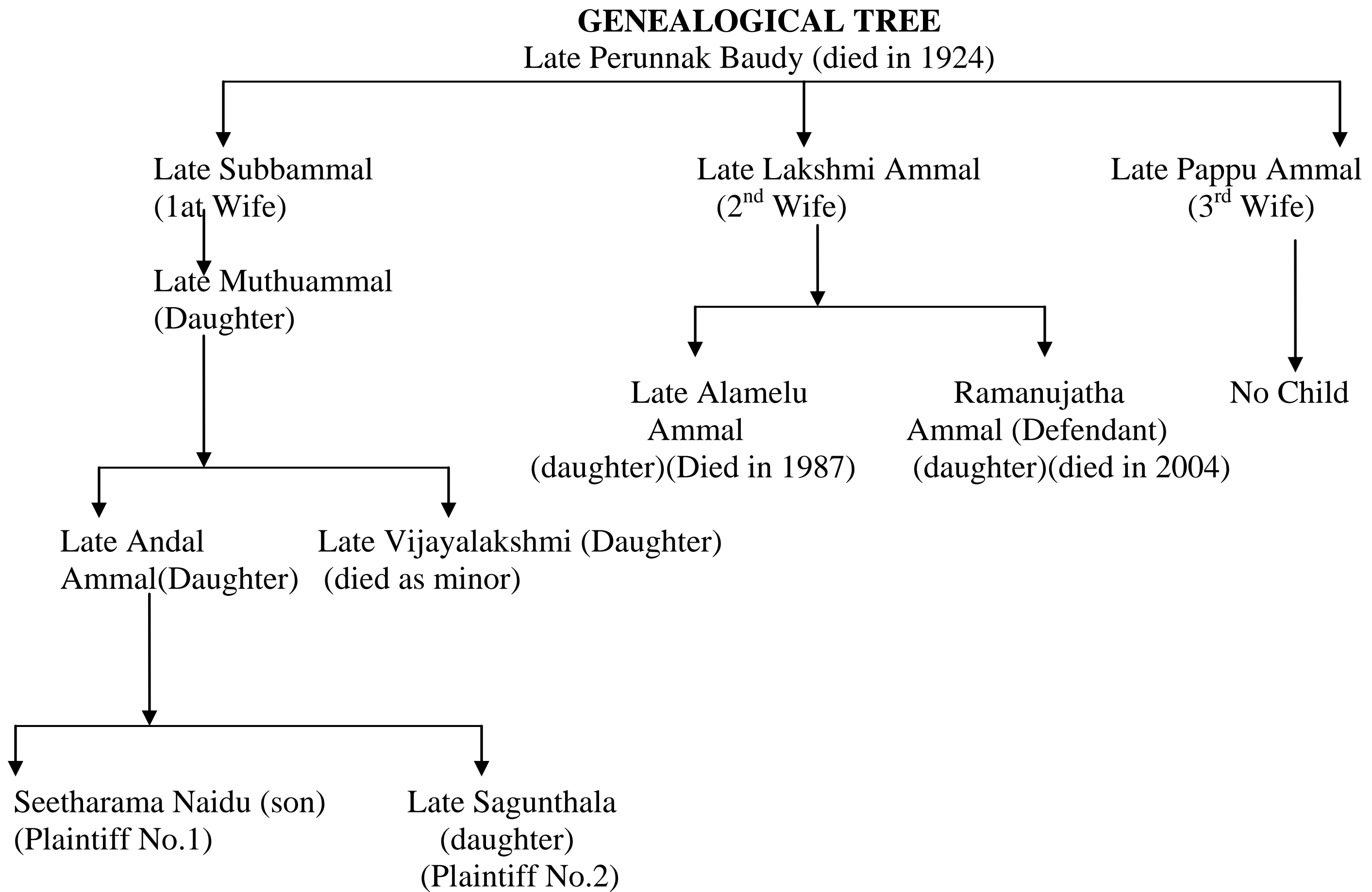
2. This appeal is filed by the legal representative of the original defendant against the final judgment and order dated 26.07.2012 passed by the High Court of Judicature at Madras in S.A. No. 873 of 2003 whereby the High Court allowed the appeal filed by the respondents (plaintiffs) herein in part and set aside the judgment and decree passed by the Trial Court in respect of 'A' Schedule properties and modified the judgment and decree to the effect that each respondent(plaintiff) was held entitled to 1/3rd share in respect of 'A' Schedule property except Item No.2 of 'A' Schedule and for consequential relief regarding mesne profits in respect of 2/3rd share of the respondents(plaintiffs) in 'A' Schedule property and accordingly confirmed the judgment and decree passed by the Trial Court in respect of 'B' Schedule property.

3. We herein set out the facts, in detail, to appreciate the issues involved in this appeal.

4. The dispute in this appeal is between the heirs of one Perumal Naidu, who was the original ancestor in the family. The legal heirs of Perumal Naidu represent three branches of the family.

5. The questions, which arise for consideration in this appeal, are what is the extent of share of each heir of Perumal Naidu in his properties; secondly, how the devolution of each heir's share would take place; and thirdly, on the death of any heir, how his/her share would devolve on his/her legal representative in law. These are broadly the issues which arise in this appeal.

6. In order to properly answer the aforementioned questions, which lie in a narrow compass and based on more or less undisputed facts, it is necessary to set out the family genealogy tree.




7 As would be clear from the family tree, the original ancestor of the family was one male Hindu -Perumal Naidu. He owned extensive immovable properties situated in Thenkarai Esanur, Thiruvaikur Vattam, Nagapattinam Taluk in State of Tamil Nadu. The details of the properties held by Perumal Naidu are set out in the plaint and would hereafter be referred to as "suit properties".

8. Perumal had three wives-Subbammal, Lakshmi Ammal and Pappu Ammal. Out of the first marriage with Subbammal, one daughter was born - Muthammal. Out of the wedlock of Muthammal, two daughters-Andal Ammal and Vijayalakshmi were born. Vijayalakshmi, however, died during her minority. Out of the wedlock of Andal Ammal, one son-Seetharama Naidu (plaintiff No.1) and a daughter- Sagunthala (plaintiff No. 2) were born.

9. Out of Perumal Naidu's second marriage with Lakshmi Ammal, two daughters were born-Alamelu Ammal and Ramanujatha Ammal (defendant). Both did not have any issue.

Alamelu Ammal died in 1987 whereas Ramanujatha Ammal died in 2004. So far as Perumal Naidu's 3rd wife-Pappu Ammal is concerned, she died issueless.

10. On 27.12.1923, Perumal Naidu executed a Will and bequeathed his immovable and movable properties including the suit properties to his heirs such as, his 3rd wife, two daughters from second wife, his granddaughters from first wife and his son-in-law. The Will specified the extent of properties bequeathed to each heir named above. Soon after the execution of the Will, Perumal Naidu died in the 1924.

11. The execution of the Will by Perumal Naidu gave rise to litigation amongst his heirs. One suit being Civil Suit No.13/1924 was filed by his two daughters-Alamelu Ammal and Ramanujatha Ammal. Since both the daughters were minor, therefore, the suit was filed through their local guardian - one Gopalsami Naidu.

12. In the suit, the challenge was made to the legality and validity of the Will executed by Perumal Naidu including the extent of properties bequeathed to the plaintiffs. According to the plaintiffs, they were entitled to receive more shares in the properties left by their father - Late Perumal Naidu than what was bequeathed to them in the Will. In this suit, Andal Ammal-grand-daughter of late Perumal Naidu, who is the mother of the plaintiffs of this litigation was one of the defendants.

13. Vide judgment/decree dated 15.09.1925, the Trial Court dismissed the suit. It was, however, held that the Will executed by Perumal Naidu in favour of his several heirs was a valid Will. The plaintiffs, felt aggrieved, filed appeal being First Appeal No. 284/1925 but it was dismissed. The plaintiffs then filed second appeal, which was also dismissed. This litigation ended finally as no further appeal was filed by the plaintiffs after the decision of the High Court in S.A. No. 234 of 1925.

14. On 29.07.1957, two daughters of Perumal Naidu from his second wife-Alamelu Ammal and Ramanujatha Ammal effected partition between them in relation to the properties which they had received by Will from their late father. Both also got their name mutated in the revenue records as owner in respect of their respective shares.

15. On 01.10.1987, Alamelu Ammal-daughter of Perumal Naidu executed a Will of her property and bequeathed its some portion to her sister- Ramanujatha Ammal and the remaining to the appellant herein. Alamelu Ammal, however, died soon after execution of the Will on 29.10.1987.

16. Ramanujatha Ammal-another daughter also executed a Will dated 25.11.1987 of her share, which consisted of some properties received by her from her father and remaining from her sister -Alamelu Ammal by Will .By her Will, she bequeathed her properties to the appellant herein and others.

17. It is with the aforementioned factual background, second round of litigation began between the surviving heirs of Late Perumal Naidu out of which the present appeal arises.

18.The second round of litigation with which we are concerned here was initiated by two heirs, i.e., great-grandson and the great-granddaughter of late Perumal Naidu- Seetharama Naidu and Sagunthala-son/daughter of Andal Ammal, who is the daughter of Muthammal, who, in turn, is the daughter of Perumal Naidu from his first wife Subbammal.

19. On 15.12.1987, Seetharama Naidu and Sagunthala served a legal notice to Ramanujatha Ammal. Though in the notice, no legal basis was mentioned and nor any specific share in the suit properties was demanded and nor any factual foundation was laid as to how and on what basis, the notice was being sent demanding share in the properties held by Alamelu Ammal and Ramanujatha Ammal except stating therein that they were entitled to claim right, title, interest and share in the properties received by Ramanujatha Ammal from her late father and sister-Alamelu Ammal. In other words, according to them, the properties received and possessed by Ramanujatha Ammal had devolved on them by succession on the death of Alamelu Ammal in 1987 but did not devolve on Ramanujatha Ammal because they were heirs through father's side. Ramanujatha Ammal, on receipt of notice, denied the claim by sending her reply on 23.12.1987.

20.Seetharama Naidu and Sagunthala then filed a suit being Civil Suit No. 26/1988 on 23.03.1988 against Ramanujatha Ammal. The suit was for a declaration of their title and for possession in relation to the suit properties. In substance, the plaintiffs' case was that the defendant and her late sister-Alamelu Ammal had only life interest in the properties which she had received from their late father Perumal Naidu through Will and hence on the death of Alamelu Ammal in 1987, the properties held by her devolved on the plaintiffs as reversioners by succession through Perumal Naidu's first wife as father's heirs. It was averred that disposition made by Alamelu Ammal of her share by Will executed in favour of her sister-Ramanujatha Ammal was of no avail because Alamelu Ammal herself had life interest in the properties and, therefore, such properties could not be bequeathed by her through Will to the defendant. It was averred that her property could not be devolved on the defendant also by succession but could only be devolved in favour of the plaintiffs as father's heirs (reversioners).

21.The defendant filed her written statement and denied the plaintiffs' claim. According to her, the Will executed by Perumal Naidu (her father) conferred "absolute interest" on the defendant and her sister-Alamelu Ammal in the suit properties and not the "life interest" as contended by the plaintiffs. It was also contended that since the defendant and her sister Alamelu Ammal, got "absolute interest" in the properties, Alamelu Ammal was, therefore, competent to transfer her share in any manner to anyone and which she did by executing the Will in defendant's favour. It was also contended that on the death of Alamelu Ammal in 1987, her share did not devolve on the plaintiffs as heirs of Perumal Naidu but it devolved upon the defendant by virtue of two Wills-one executed by her father Perumal Naidu and the other executed by her sister-Alamelu Ammal.

22. The Trial Court, vide judgment/decree dated 16.06.1994 dismissed the suit. It was held that Alamelu Ammal and defendant had "absolute interest" in the properties received by

them by Will from Perumal Naidu. It was also held that the plaintiffs failed to prove that the defendant or/and Alamelu Ammal had only life interest in the properties. It was also held that since the plaintiffs' mother Andal Ammal (who was grand-daughter of Late Perumal Naidu) also got one share along with the defendant and others in the properties through same Will of Perumal Naidu and she having enjoyed "absolute interest" of her share like other heirs, had no right to challenge the Will nor the plaintiffs, who are her son and daughter, had any right to challenge the Will. It was held that it was more so when Andal Ammal was party to the earlier civil suit, she was bound by the findings recorded in the said suit.

23. The plaintiffs, felt aggrieved, filed first appeal being A.S.No. 124/1994 before the District Judge. By judgment dated 14.08.1995, the District Judge dismissed the appeal and affirmed the judgment/decree of the Trial Court.

24. The plaintiffs, felt aggrieved, filed Second Appeal No. 873/2003 before the High Court. During the pendency of the second appeal, the defendant passed away on 29.07.2004. The plaintiffs filed C.M.P. No. 8691 of 2006 before the High Court to implead the appellant herein as respondent in the second appeal as legal representatives of the defendant. By its order dated 25.04.2012, the High Court brought the appellant herein as respondent to represent the estate of the respondent(defendant).

25. By impugned judgment, the High Court interfered in the judgment/decree of the two courts below, allowed the appeal in part and while setting aside the judgment, decreed the suit in part. The High Court, however, upheld the concurrent findings of the two Courts below and held that the Will executed by Perumal Naidu in favour of his two daughters conferred "absolute interest" in the properties and not the "life interest" as claimed by the plaintiffs. The High Court then proceeded to place reliance on Section 15 (2) (a) read with Section 8 and Schedule appended to the Hindu Succession Act, 1956 (hereinafter referred to as "the Act") and held that since the plaintiffs are son and daughter of a pre-deceased daughter of a pre-deceased daughter and are class I heir as specified in the Schedule and hence by virtue of Section 15(2)(a) which has overriding effect on those categories of the heirs specified in sub-section(1), would be entitled to claim 1/3rd share in the suit properties along with defendant, i.e., plaintiff No. 1 would be entitled to get 1/3rd, plaintiff No. 2 would be entitled to get 1/3rd, i.e., both would get 2/3rd share whereas the defendant would be entitled to get 1/3rd in relation to the properties specified in schedule 'A' ( except one item).

26. It is against this judgment of the High Court, the defendant has felt aggrieved and filed this appeal by way of special leave before this Court questioning its legality and correctness.

27. Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned judgment, restore that of the Trial Court/First appellate Court and, in consequence, dismiss the suit.

28. Section 15 and Schedule appended to the Act are relevant for deciding the appeal. It read 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 daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother. (2) Notwithstanding anything contained in sub-section (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 pre-deceased 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.”

**“THE SCHEDULE**
**[Section 8]**
**HEIRS IN CLASS I AND CLASS II**
**CLASS I**

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a predeceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a predeceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son; [son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son.]

Added by amendment by Act 39/2005, section 7(w.e.f.9.9.2005)”

29. Section 15 of the Act Applies to the case of female Hindus. It specifies the general rules of succession and provides the categories of heirs on whom the property of a female Hindu would devolve on her death. Sub-section(1) sets out for categories of heirs specified in clauses (a) to (e) on whom her property would devolve as per the rules set out in Section 16.

Sub-section(2) is given an overriding effect on the categories of persons specified in sub-section(1). So far as clause(a) of sub-section(2) is concerned, it provides that any property inherited by a female Hindu from her father or mother shall devolve upon the heirs of the father, if female does not have her son, daughter including the children of any pre-deceased son or daughter but would not devolve upon the categories of heirs specified in sub-section(1).

30. So far as Schedule in relation to Class I heirs is concerned, it was amended by the Parliament by Act 39/2005 w.e.f. 9.9.2005. By this amendment, four new categories of heirs, namely, (1)son of a pre-deceased daughter of a pre-deceased daughter; (2)daughter of a pre-deceased daughter of a pre-deceased daughter; (3) daughter of a pre-deceased son of a pre-deceased daughter; and (4) daughter of a pre-deceased daughter of a pre-deceased son, were included in the categories of Class I heirs.

31. Now reverting to the facts of this case, in our considered opinion, the High Court rightly upheld all the material findings of the two courts below but committed one legal error when it placed reliance on Section 15(2)(a) read with Schedule appended to the Act for granting relief to the plaintiffs and by recognizing their right in the suit properties against the defendant. This finding of the High Court is bad in law for various reasons mentioned hereinafter.

32. In the first place, such was not the case set up by the plaintiffs in the Trial Court or the first appellate Court or even before the High Court. Second, no substantial question of law was framed by the High Court on the applicability of Section 15(2) of the Act and third, in the absence of any pleading, issue and finding recorded by the two courts below on the applicability of Section15(2) of the Act, the High Court had no jurisdiction to examine the case of its own for the first time in second appeal on such issue.

33. It is a settled principle of law that the High Court has jurisdiction to hear the second appeal only on the substantial question of law framed under Section 100(5) of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). Equally well settled principle of law is that the High Court has no jurisdiction to decide the appeal on the question which is not framed as required under Section 100(4) of the Code.

34. It is clear from the record of the case that the High Court had framed following three substantial questions of law, which did not include any question regarding the applicability of Section 15(2) of the Act:

> "1. Whether the lower appellate Court erred in law in not drawing adverse inference against the defendant for non-production of the original of the Will dated 23.12.1923 executed by Perumal Naidu when the same was produced by them in the earlier suit?
>
> 2. Whether the lower appellate Court erred in law in receiving in evidence Exs. B3 and B4 in the absence of any explanation for non-production of the original Will and without making grounds for reception of second evidence?

3. Whether the lower appellate Court erred in not taking the circumstances prevailing in 1923 at the time of execution of the Will that female heirs were given only life estates and hence the female lagatees of Perumal Naidu as per Will only got life estate and not absolute interest?"

35. The High Court, in our considered opinion, was, therefore, not right in suo moto applying the provisions of Section 15(2)(a) of the Act without even framing any additional substantial question of law by taking recourse to Section 100(5) of the Code. If it was of the view that such issue was involved in the case then it was mandatory for the High Court to have first formulated the specific question on the applicability of Section 15(2)(a) of the Act either at the time of admission of the appeal or at the time of final hearing of the appeal by assigning reasons for framing such question. This was not done. It was, in our view, a jurisdictional error committed by the High Court while deciding the second appeal.

36. That apart and even otherwise, in our considered opinion, the High Court was not right in placing reliance on Section 15 of the Act for deciding the rights of the parties. It is for the simple reason that the category of heirs to which the plaintiffs had belonged, namely, "son of a pre-deceased daughter of a pre-deceased daughter and daughter of a pre-deceased daughter of a pre-deceased daughter" was added in the Schedule (class I) only with effect from 9.9.2005 by amendment by Act No.39 of 2005.

37.The plaintiffs, therefore, were not entitled in law to take the benefit of the aforesaid amendment because even according to them, their right to claim the share, if any, in the suit properties held by Alamelu Ammal accrued on the death of Alamelu Ammal in 1987 and they filed civil suit in the year 1988. In other words, a right, if any, to claim interest by succession in the properties of Alamelu Ammal opened in plaintiffs' favour as an heir from father's side in 1987 when Alamelu Ammal died. In this view of the matter, the plaintiffs' rights as an heir to claim shares in the suit properties had to be worked out on the basis of law in force on the date (1987), i.e., when succession opened for them to enforce such right and when they filed the suit (1988) .

38. As mentioned above, the category of an heir to which the plaintiffs belonged was not included in class I list in the Schedule in 1987 but it was so included for the first time on 09.09.2005 by Act 39/2005. In this view of the matter, the plaintiffs had no right on the strength of succession/devolution to claim any interest in the properties of Alamelu Ammal in 1987 as father's heir. A fortari - the devolution of interest in suit properties could not take place in their favour by virtue of Section 15(2)(a) of the Act. Since the amendment in the Schedule was prospective, it had no application to the case in hand with its retrospective effect so as to create any right in plaintiffs' favour in 1987.

39. However, if Alamelu Ammal had died after 09.09.2005 then perhaps, the plaintiffs could have claimed some interest in the suit properties subject to however their proving other conditions. The reason being the category of heirs to which they belonged was by that time included in the Schedule. Such was, however, not the case.

40. Apart from what we have held supra, the plaintiffs had otherwise no case on merits on yet another ground. It is not in dispute that the Courts below concurrently held and, in our view, rightly that Perumal Naidu bequeathed his properties to all his heirs including his two daughters by conferring on them "absolute interest" and not the "life interest" in the properties. A fortiori, Alamelu Ammal and the defendant, therefore, acquired absolute ownership rights in the suit properties on the strength of the Will. They, therefore, rightly got their names recorded in the Revenue Records in 1957 itself and continued to exercise their ownership rights till 1987 without any interference from anyone including plaintiffs or/and their predecessor-in-title.

41. One cannot dispute a legal proposition that once a heir becomes the absolute owner of the property by virtue of a Will then as a necessary consequence, he/she is entitled to alienate such property by any mode permissible in law to anyone. Alamelu Ammal did it when she alienated her share by executing a Will in favour of the defendant(her sister). It was legally permissible.

42. If however, Courts had held in the plaintiffs' favour that the heir got only "life interest" in the property through Will of Perumal Naidu then perhaps on the death of such heir, her share may have devolved on the surviving heirs (reversioners) of father (Perumal Naidu) in terms of Section 15(2) of the Act subject to proving other conditions. Such was, however, not the case.

43. In the light of foregoing discussion, we are of the considered opinion that though the High Court was right in upholding all the findings of fact of the two courts below but was not right in relying upon Section 15(2)(a) of the Act for allowing the plaintiffs' second appeal by treating them to be Class I heirs from father's side and, in consequence, was also not right in decreeing the plaintiffs' suit in part by granting 1/3rd share to each plaintiff in the suit property. This finding, as held above, is legally unsustainable and hence deserves to be set aside. It is accordingly set aside.

44. Here we consider it apposite to mention that we did not consider it necessary to examine the meaning of the words "any property inherited by a female Hindu from her father or mother" occurring in Section 15(2)(a) of the Act for deciding a question as to whether such expression would include "a property received by a female Hindu by Will from her father or mother" or it would include only those properties which are devolved on female by natural succession on the death of her father or mother. In this case, this question need not be decided once we have held that Section 15(2) of the Act has no application to the facts of this case.

45. As a consequence, the appeal succeeds and is allowed. The impugned judgment is set aside and that of the trial Court is restored resulting in dismissal of the suit filed by the plaintiffs.