Supreme Court of India
Seethalakshmi Ammal vs Muthuvenkatarama Iyengar & Anr on 3 April, 1998
Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:
SEETHALAKSHMI AMMAL

Vs.

RESPONDENT:
MUTHUVENKATARAMA IYENGAR & ANR.

DATE OF JUDGMENT: 03/04/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R The appellant is the daugher-in-law of the deceased Gomathi Ammal. Venkatarama Iyengar, the husband of the appellant was the only son of Gomathi Ammal and her husband Sesha Iyengar. He died prior to the death of Gomathi Ammal. Venkatarama Iyengar and the appellant have no children. The husband of Gomathi Ammal also died long prior to her death. The appellant filed a suit for declaration of ownership and possession of properties left by Gomathi Ammal who died intestate. The respondent, claiming to be the son of Gomathi Ammal's brother, contested the suit on the ground that Gomathi Ammal made a will in his favour.

The will has not been accepted either by the trial Court or by the first appellate Court or by the High Court in second appeal. The only reason why the High Court has allowed the second appeal is on the ground that the appellant is not an heir of her mother-in-law under the Hindu Succession Act.

This finding proceeds on a misconception of the provisions of the Hindu Succession act. Section 15 of the Hindu Succession act provides general rules of succession in the case of female Hindus. Under sub-section (1), the property of a Hindu female dying intestate shall devolve (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. Gomathi Ammal does not have any heirs falling under (a). Therefore, we have to examine who are the heirs of her husband. The heirs of a male Hindu are set out in the Schedule to the Hindu Succession Act. Heirs in class I include a widow of a pre-

deceased son. The appellant fits this description. But the High Court has held that when Sesha Iyengar, the husband of Gomathi Ammal died, their son Venkatarama Iyengar was alive. So the appellant cannot be called the widow of a pre- deceased son.

In order to decide who are the heirs of a female Hindu under category (b) of Section 15(10, one does not have to go back to the date of the death of the husband to ascertain who were his heirs at that time. The heirs have to be ascertained not at the time of the husband's death but at the time of the wife's death because the succession opens only at the time of her death. Her heirs under Section 15(1)

(b) will have to be ascertained as if the succession to her husband had opened at the time of her death. Thus, if at the time of Gomathi Ammal's death, there is any heir of her husband who fits the description in the schedule of being the widow of his pre-deceased son, she will be one of the heirs entitled to succeed. The status of the heir must be determined at the time of the death of the female whose heirs are being ascertained. The appellant was the widow of a pre-deceased son on the date when Gomathi Ammal died. Therefore, the learned single Judge was not right in coming to the conclusion that the appellant is not an heir of Gomathi Ammal.

The appeal is, therefore, allowed. the impugned order of the High Court is set aside and the suit filed by the plaintiff is decreed with costs.