# Manathankandiyil Nani vs Kuniyil Gangadharan on 6 June, 2012

## Author: P.Bhavadasan

## Bench: P.Bhavadasan

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 6TH DAY OF JUNE 2012/16TH JYAISHTA 1934

SA.No. 231 of 1997 (C)

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AS.20/1994 of SUB COURT, QUILANDY
OS.265/1989 of MUNSIFF COURT, QUILANDY

APPELLANT(S/APPELLANTS/PLAINTIFFS:

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1. MANATHANKANDIYIL NANI,
   VEYATTUMMAL, NATIYANAD
   AMSOM AND DESOM, KOZHIKODE TALUK.

2. THOTTATHIL UMMARATH KARTHI,
   PUNNASSERY AMSOM,
   KUTTAMPUR DESOM,
   KOZHIKODE TALUK.

BY ADVS.SRI.M.C.SEN (SR.)
SMT.SHAHNA KARTHIKEYAN
SRI.S.PRAKASH
SRI.M.P.SREEKRISHNAN

RESPONDENT(S)/RESPONDENT/1ST DEFENDANT:

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KUNIYIL GANGADHARAN,
S/O. KUNHIKANDAN,
SIVAURAM AMSOM AND DESOM,
QUILANDY TALUK.

BY ADV. SRI.BIJU ABRAHAM
BY ADV. SRI.B.G.BHASKAR

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 11-04-2012, THE COURT ON 06.06.2012 DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

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S.A. No. 231 of 1997

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Dated this the 6th day of June, 2012.

JUDGMENT

The twin questions that arise for consideration in this Second Appeal are (i) whether a murderer who secured an acquittal by virtue of the defence set up under Section 84 of the Indian Penal Code is disqualified under Section 25 of the Hindu Succession Act from inheriting the estate of the murderer and (ii) how is the separate estate of the murderer to devolve consequent on his death?

2. The facts fall within a very narrow compass and are not really in dispute. Plaint items 1 to 5 were acquired under Exts.A1, A2, A4, A5 and A7. The properties jointly belonged to Karthiyani and her son Mohandas. Ext.A6 relating to item No.6 of the plaint schedule is the property which Mohandas obtained by assignment from Kalliani, who was the second defendant in the suit. Mohandas was the only child of Karthiyani. Karthiyani, her S.A.231/1997.

husband and Mohandas died on 1983, 1959 and 1988 respectively. The plaintiffs are the paternal sisters of Mohandas. At the time of the death of Mohandas he had not left behind any legal heirs other than the plaintiffs. While they were in possession of the property, it is alleged that the defendants are said to have trespassed into the property and appropriated the usufructus from the property. According to the plaintiffs, the defendants have no manner of rights over the suit properties. They therefore sued for recovery of possession on the strength of title. The plaint also makes mention of a suit O.S.236 of 1989 filed by the second defendant in which she procured an interim injunction. On these allegations the suit was laid.

3. The defendants resisted the suit. Mohandas had no rights over plaint item No.6. It was in the exclusive possession of defendant No.2. The second defendant is the S.A.231/1997.

mother of Karthiyani, who was the mother of Mohandas. It is contended that Mohandas caused the death of his mother for which he had been convicted and sentenced. Since he had murdered his mother he is disqualified from inheriting her assets. Therefore the plaintiffs have no manner of rights over the suit property. As regards item No.6 it was contended that Et.A6 document was procured from the second defendant by threat and coercion and that has no value in law. Mohandas committed suicide on 18.10.1989. On the basis of these contentions, they prayed for a dismissal of the suit.

4. Issues were raised by the trial court. The evidence consists of the testimony of Exts.A1 to A8 marked from the side of the plaintiffs. The defendants did not adduce any evidence.

5. The trial court on an evaluation of the evidence came to the following findings: (i) Since Mohandas was S.A.231/1997.

acquitted in the criminal proceedings, it could not be said that he was guilty of murdering his mother. He is not disqualified from inheriting the estate of his mother and

(ii) since the parties have not adduced any evidence regarding the personal law applicable, it is not possible to determine the issue involved. On the basis of the above findings, the suit was dismissed.

6. The aggrieved plaintiffs carried the matter in appeal as A.S.20 of 1994. The appellate court on an independent evaluation of the evidence before it came to the conclusion that by virtue of Ext.A3 judgment in the criminal proceedings, it is clear that Mohandas caused the death of his mother and therefore was disqualified under Section 25 of the Hindu Succession Act from inheriting the estate of his mother. Thereafter taking aid of Section 27 of the Hindu Succession Act the appellate court came to the conclusion that Mohandas will be presumed to have died S.A.231/1997.

earlier than the intestate. However, applying Section 17 of the Hindu Succession Act, it was found that the plaintiffs could not succeed and hence the dismissal of the suit was confirmed. It is the said judgment and decree that are assailed in this appeal.

7. Notice is seen issued on the following questions of law:

> "1. Whether the lower appellate court was right in holding that Mohandas from whom the plaintiffs claim Succession was disqualified to succeed his mother under Sec.25 of the Hindu Succession Act when it is clear from Ext.A3 that the said Mohandas has been acquitted of the charge on grounds of insanity and has been given the benefit of Sec.84 of the Indian Penal Code.
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> 2. Whether the lower courts were right in overlooking Sec.8(b) r/w. Entry VII Clause (2) of the schedule of the Hindu Succession Act to decide that the plaintiffs are the actual legal heirs of deceased Mohandas.
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> S.A.231/1997.
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> 3. Whether the lower appellate court was right in deciding the Succession under Sec.17 of the Hindu Succession Act when there was no specific plea by the defendants that they were marumakkathayees.
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> 4. Whether the lower courts erred in overlooking the fact that the presumption in A.S.313/67 decided by the Hon'ble High court of Kerala that the Thiyyas of North Malabar are marumakkathayees is rebuttable and that the burden of proof lies on the

defendants who contended that they were marumakkathayees."

8. Learned counsel appearing for the appellants contended that the court below was not justified in holding that Mohandas was disqualified under Section 25 of the Act from inheriting the estate of his mother. The lower appellate court, according to the learned counsel, failed to note that the criminal proceedings ended in acquittal of Mohandas and if that be so, it could not be said that he is the murderer of his mother. It was also contended that S.A.231/1997.

Section 25 can be invoked only in case where the murder is committed with the intention of inheriting the estate and not in a case in which the murder is committed by a person who is found to be insane and acquitted in trial for the offence of murder. It was also contended that the finding of the court below that Section 27 applies is also erroneous. According to the learned counsel plaint items 1 to 5 were the joint acquisitions of Karthiyani and Mohandas and each had half right over the suit properties. Even assuming that by virtue of Section 25 of the Hindu Succession Act Mohandas was disqualified from inheriting the estate left behind by Karthiyani, he will be deemed to have died before the intestate only in respect of the assets which belonged to Karthiyani. As far as half share of Mohandas is concerned over items 1 to 5, it has to devolve according to normal rules of Hindu Succession Act. It was also contended that by virtue of Ext.A6 Mohandas had independent rights over S.A.231/1997.

plaint item No.6 and that had to devolve in accordance with Hindu Succession Act and could not be treated as the estate of Karthiyani taking aid of Section 27.

9. It was also pointed out by the learned counsel for the appellants that there is no evidence in the case on hand to show that Mohandas had caused the death of his mother and in the absence of any evidence the lower appellate court was not justified in coming to the conclusion that the disqualification under Section 25 is attracted.

10. Learned counsel appearing for the contesting respondents pointed out that it is true that both sides did not adduce independent evidence at all to show whether Mohandas was the murderer or not of his mother Karthiyani. However, the plaintiffs produced Ext.A3 document, which is the judgment in S.C. No.110 of 1983 and placed considerable reliance on the said document for the position that since Mohandas was acquitted in the S.A.231/1997.

criminal trial, he is not disqualified under Section 25 of the Hindu Succession Act. Having produced Ext.A3 and having placed considerable reliance on the same, the defendants were therefore relieved of the burden of proving that Mohandas murdered his mother. Infact there was a finding in Ext.A3 that it is so. Learned counsel did not dispute the fact that strictly speaking the judgment in a criminal trial is not evidence in civil proceedings and independent evidence will have to be adduced in the civil proceedings to establish the fact that the person concerned is disqualified from inheriting the estate of the deceased by virtue of having caused the murder of the deceased. However, in the case on hand, the defendants stand relieved of discharging that burden because of the fact that the plaintiffs have produced the judgment and relied on the same to wriggle out of the disqualification under Section 25 Hindu Succession Act. In such circumstances, all that the defendants have to do is

to S.A.231/1997.

show that inspite of the acquittal as could be seen from Ext.A3 Mohandas did cause murder of his mother and thus was disqualified. Learned counsel went on to point out that the word murder in Section 25 of the Hindu Succession Act has a larger and wider meaning and cannot be equated to the term as contained in the Indian Penal Code. Learned counsel emphasized that the words used in Section 25 of the Hindu Succession Act are not 'convicted of murder' or 'tried for the offence of murder', but the word used is 'murder'. The word murder has to be understood in the common parlance and if that be so, when a person causes the death of another person, that amounts to murder and acquittal or conviction is not a matter of much relevance. In the case on hand, it was further pointed out that there is a definite finding in Ext.A3 that Mohandas had caused the death of Karthiyani by strangulating her thus his act amounted to murder. However, he set up defence under S.A.231/1997.

Section 84 of the Indian Penal Code which was accepted by the court below and therefore he was not convicted and sentenced. By virtue of having secured an acquittal on the basis of the defence set up under Section 84 I.P.C., it does not mean that Mohandas did not cause the murder of his mother and the acquittal on that ground cannot be taken aid of to avoid the disqualification under Section 25 of the Hindu Succession Act.

11. Strictly speaking the judgment of the criminal court is not by itself evidence in the civil proceedings. In the case on hand, neither side has adduced oral evidence. In the plaint, the plaintiffs claimed that they are the paternal heirs of Mohandas. In the written statement it was pointed out that having caused the death of his mother, Mohandas was disqualified from inheriting her assets and if that be so, the plaintiffs cannot succeed. It was in that context that the plaintiffs caused the production of Ext.A3. S.A.231/1997.

They placed considerable reliance on Ext.A3 to contend for the position that since the criminal proceedings ended in the acquittal of Mohandas, he was not disqualified under Section 25 from inheriting the estate of his mother. The question as to whether the judgment of the criminal court could by itself form an evidence in civil proceedings was considered in the decisions reported in Seth Ramdayal Jat v. Laxmi Prasad (AIR 2009 SC 2463) wherein it was held as follows:

> "14. Section 43 of the Indian Evidence Act reads, thus :
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> "43. Judgments, etc., other than those mentioned in Sections 40, 41 and 42, when relevant- Judgments, orders or decrees other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant, under some other provision of this Act."

S.A.231/1997.

In terms of the aforementioned provision, the judgment in a criminal case shall be admissible provided it is a relevant fact in issue. Its admissibility otherwise is limited. It was so held in Anil

Behari Ghosh v. Smt. Latika Bala Dassi and others [AIR 1955 SC 566] in the following terms :

> "The learned counsel for the contesting respondent suggested that it had not been found by the lower appellate court as a fact upon the evidence adduced in this case, that Girish was the nearest agnate of the testator or that Charu had murdered his adoptive father, though these matters had been assumed as facts. The courts below have referred to good and reliable evidence in support of the finding that Girish was the nearest reversioner to the estate of the testator. If the will is a valid and genuine will, there is intestacy in respect of the interest created in favour of Charu if he was the murderer of the testator. On this question the courts below have assumed on the basis of the judgment of conviction and sentence passed by the High Court S.A.231/1997.
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> in the sessions trial that Charu was the murderer. Though that judgment is relevant only to show that there was such a trial resulting in the conviction and sentence of Charu to transportation for life, it is not evidence of the fact that Charu was the murderer. That question has to be decided on evidence."

In Perumal v. Devarajan and others [AIR 1974 Madras 14], it was held :

> "2. Even at the outset, I want to state that the view of the lower appellate court that the plaintiff has not established satisfactorily that the first defendant or the second defendant or both were responsible for the theft is perverse and clearly against the evidence and the legal position. The lower appellate Court refused to rely on Exhibit A- 3 which is a certified copy of the judgment in C.C. No. 1949 of 1965. It is true that the evidence discussed in that judgment and the fact that the first defendant had confessed his guilt in his statement is not admissible in evidence in the suit. But it is not correct to state that even the factum that the first and the second defendants S.A.231/1997.
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> were charged under Sections 454, and 380, I.P.C. and they were convicted on those charges could not be admitted. The order of the Criminal Court is, in my opinion, clearly admissible to prove the conviction of the first defendant and the second defendant and that is the only point which the plaintiff had to establish in this case..."

A similar issue is dealt in some details in Lalmuni Devi and Ors. v. Jagdish Tiwary and Ors. [AIR 2005 Patna 51] wherein it was held :

> "14. Relying on the judgment of the Supreme Court in Anil Behari Ghosh v. Smt. Latika Bala Dassi and Ors., (supra), a Division Bench of this Court in its judgment reported in 1968 BLJR 197, Mundrika Kuer v. President, Bihar State Board of Religious Trusts, and 8 others, has laid down to the same effect. Paragraph 7 of the judgment is set out herein below for the facility of quick reference :-

> "7. It is true that, if the Board acted capriciously and arbitrarily without any material whatsoever and attempts to administer private property, saying that it is a public religious trust, this Court S.A.231/1997.
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> may have to interfere in appropriate cases; but it cannot be said here that there were no prima facie materials to show that the trust is a public religious trust. The acquittal of the petitioner in the criminal case (Annexure-A) was very much relied upon; but it is well settled that acquittal or conviction in a criminal case has no evidentiary value in a subsequent civil litigation except for the limited purpose of showing that there was a trial resulting in acquittal or conviction, as the case may be. The findings of the criminal Court are inadmissible."

15. A judgment in a criminal case, thus, is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever.

16. Mr. Sharma also relies upon a decision of this Court in Shanti Kumar Panda v. Shakuntala Devi [(2004) 1 SCC 438] to contend that a judgment of a civil court shall be binding on the criminal court but the converse is not true. Therein it was held :

> S.A.231/1997.
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> "(3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and weight before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence."

With respect, the ratio laid down therein may not be entirely correct being in conflict with a Three-Judge Bench decision of this Court in K.G. Premshanker vs. Inspector of Police and Anr. [(2002) 8 SCC 87].

17. A civil proceeding as also a criminal proceeding may go on simultaneously. No statute puts an embargo in relation thereto. A decision in a criminal case is not binding on a civil court. S.A.231/1997.

In M.S. Sheriff and Anr. v. State of Madras and Ors. [AIR 1954 SC 397], a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence.

In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other,

or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment.

If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding.

S.A.231/1997.

The question came up for consideration in K.G. Premshanker (supra), wherein this Court inter alia held :

> "30. What emerges from the aforesaid discussion is - (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case. Section 300 Cr.P.C. makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.
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> 31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other S.A.231/1997.

provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is - whether judgment, order or decree is relevant, if relevant - its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

It is, however, significant to notice a decision of this Court in M/s. Karam Chand Ganga Prasad S.A.231/1997.

and Anr. etc. v. Union of India and Ors. [(1970) 3 SCC 694], wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled, stating :

> "33. Hence, the observation made by this Court in V.M. Shah case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case as well as Sections 40 to 43 of the Evidence Act."

[See also Syed Askari Hadi Ali Augustine Imam and Anr. v. State (Delhi Admn.) and Anr. 2009 (3) SCALE 604] Another Constitution Bench of this Court had the occasion to consider the question in Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. [(2005) 4 SCC 370]. Relying on M.S. Sheriff S.A.231/1997.

(supra) as also various other decisions, it was categorically held :

> "32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given."

The question yet again came up for consideration in P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu [AIR 2008 SC 1884], wherein the law was stated, thus :

> "13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

18. It is now almost well-settled that, save and except for Section 43 of the Indian Evidence Act S.A.231/1997.

which refers to Sections 40, 41, and 42 thereof, a judgment of a criminal court shall not be admissible in a civil suit.

19. What, however, would be admissible is the admission made by a party in a previous proceeding. The admission of the appellant was recorded in writing. While he was deposing in the suit, he was confronted with the question as to whether he had admitted his guilt and pleaded guilty of the charges framed. He did so. Having, thus, accepted that he had made an admission in the criminal case, the same was admissible in evidence. He could have resiled therefrom or explained away his admission. He offered an explanation that he was wrongly advised by the counsel to do so. The said explanation was not accepted by the trial court. It was considered to be an afterthought. His admission in the civil proceeding was admissible in evidence."

12. In the decision reported in Devendra v. State of U.P. ((2009) 7 SCC 495) it was held as follows:

> S.A.231/1997.
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> "In Shanti Kumar Panda v. Shakuntala Devi this Court held:
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> "23. (3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 14/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and wait before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence."

There cannot, however, be any doubt or dispute whatsoever that in a give case a civil suit as also a criminal proceeding would be maintainable. They can run simultaneously. Result in one proceeding would not be binding on the court determining the issue before it iin another proceeding. In P. Swaroopa Rani v. M. Hari Narayana the law was stated, thus:

> S.A.231/1997.
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> "11. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

14. It was, however, submitted that by reason of execution of a deed of sale claiming title over the property, which the appellants were not entitled to , the respondent complainant had been cheated. It is difficult to accept the said contention. The appellants had not made any representation to respondent 2. No contract and/or transaction had been entered into by and between the complainant and the appellants."

13. In the decision reported in Mohandas v. Abdul Azeez (2011(3) K.L.T. SN 145) it was held as follows:

> "A perusal of the provisions contained in Ss.41 to 43 will give a clear perspective as to how judgments, orders or decrees passed by a competent court would become relevant in S.A.231/1997.
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> another case. If the decree or judgment in question is inter partes and if the existence of the said judgment is not disputed by either of the two parties, the said judgment or decree becomes all the more relevant. It need not be stressed that the decree or judgment assumes greater relevance and significance if the decree or judgment sought to be relied on is in respect of the same subject matter. In the case on hand admittedly the suit was in relation to the very same cheque (Ext.P1). It is beyond controversy that the trial court had passed the judgment in the case on April 26, 1995 holding the petitioner guilty of the offence. Nevertheless the complainant chose to

> institute the suit before the civil court on August 4, 1995. Apparently at that time the appeal preferred by the petitioner was pending before the Sessions Court. The civil court dismissed the suit on December 5, 1997. The Sessions court had disposed of the criminal appeal only on June 21st, 2001. However, it appears that the decree passed by the civil court was not brought to the notice of the Sessions S.A.231/1997.
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> Court. Any how the fact remains that the Sessions Court confirmed the order of conviction and sentence passed by the trial court. As mentioned earlier, the short question that falls for consideration is whether the fate of the criminal prosecution should hang on the decree and judgment passed by the civil court based on the very same cheque. It is trite that if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant, if conditions stipulated in Ss. 40 to 43 are satisfied."

From a reading of the above decisions, it becomes clear that mere production of a judgment of the criminal court will not be sufficient to establish any fact which needs to be independently established in a civil proceeding. At best, the judgment in the criminal proceedings would indicate that there was such a proceedings before the criminal court which ended in a particular manner. Normally therefore S.A.231/1997.

independent evidence had to be adduced in the suit to show that Mohandas had caused the murder of his mother and therefore was disqualified. Since the defendants relied on such a disqualification, it was for them to establish the said fact.

14. But unfortunately in this case, that burden on the defendants stands relieved by the act of the plaintiffs in producing Ext.A3 judgment in S.C.No. 110 of 1983 of the Sessions Court, Kozhikode and relying on the same for the purpose of showing that the trial has ended in the acquittal of Mohandas. Since reliance was placed on by the plaintiff on Ext.A3 and had produced the said document as a piece of evidence and also on that basis contend that Mohandas is not disqualified under Section 25 of the Hindu Succession Act, it will be open to the defendants to rely on the very same item of evidence to show that it is not so. S.A.231/1997.

15. Having placed reliance on Ext.A3 document by the plaintiffs to show that the disqualification under Section 25 of the Hindu Succession Act is not attracted, they cannot be heard to say that the defendants cannot rely on the very same document and establish that inspite of the acquittal, Mohandas stands disqualified from inheriting the estate of Karthiyani, his mother.

16. The next question that arises for consideration is the consequence of acquittal in the criminal proceedings.

17. Section 25 of the Hindu Succession Act reads as follows:

> "25. Murderer disqualified.- A person who commits murder or abets the commission of murder shall be disqualified from inhering the property of the person murdered, or

> any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder."

S.A.231/1997.

The Section only makes mention of a person committing murder. It does mention that the person who has committed the offence of murder and not that the person who has been convicted for the offence of murder. The above provision has come up for consideration before different courts including the Apex Court. It will be useful at this point of time to refer to some of the decisions to understand the real purport of the word murder in Section 25 of the Hindu Succession Act.

18. Before going into the decisions, it may be noted that disqualification for the first time came in the statutory form in Section 25 of the Hindu Succession Act. Even prior to such statutory introduction, the issue had come up for consideration before courts. In the decision reported in Kenchuva v. Girimallappa (AIR 1924 PC 209) a similar issue had arisen for consideration. At the relevant S.A.231/1997.

time, the Hindu Law did not contain a provision disqualifying a murderer from inheriting the estate of the victim and it was contended before the court that since there is no statutory disqualification, the murderer can inherit the estate of the murdered. Repelling the contention, it was held as follows:

> ".....There is much to be said for the argument of the Subordinate Judge that the principles of jurisprudence which can be traced in Hindu law, would warrant an inference that according to that law a man cannot take advantage of his own wrong, and that if this case had come under consideration by the Hindu sages they would have determined it against the murderer. But it is unnecessary so to decide, because the alternative is between the Hindu Law being as above stated or being for this purpose non-existent, and in this latter case the High Court have rightly decided that the principles of equity, justice and good conscience exclude the murderer.
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> S.A.231/1997.
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> The English law on this subject is based upon principle and is well settled. It is true that the reported decisions have been in cases where the murderer was a devisee or legatee under the will of the murdered person, and that Joyce, J, in Re Houghton (1) thought it a matter for consideration whether the same rule would apply in the case of an intestacy, and cited a decision of a court in the U.S.A. by which it was held that the provisions of the Statute of Distributions were paramount and forbade the consideration of any disqualification. But the actual decision of Joyce, J. was rested upon another ground and a quite satisfactory one; and their Lordships are are unable to follow the reasoning of the learned American Jude. Statutes regulating heirship or descent, or giving force to wills and to the devises contained in wills should be read as not intended to affect paramount questions of public policy or depart from well settled principles of jurisprudence.

> In their Lordships' view it was rightly held by the to Courts below that the murderer was S.A.231/1997.
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> disqualified; and with regard to the question whether he is disqualified wholly or only as to the beneficial interest which the Subordinate Judge discussed, founding upon the distinction between the beneficial and legal estate which was made by the Subordinate Judge and by the High Court of Madras in the case of Vedanayaga Mudaliar v. Vedammal, their Lordships Lordships reject, as did the High Cort here, any such distinction. The theory of legal and equitable estates is no part of Hindu law and should not be introduced into discussion.
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> The second question to the decided is whether title can be claimed through the murderer. If this were so, the defendants as the murderer's sisters would take precedence of the plaintiff, his cousin. In this matter also, their Lordships are of opinion that the courts below were right. The murderer should be treated as non-existent and not as one who forms the stock for a fresh line of descent. It may be pointed out that this view was also taken in the Madras case just cited."

S.A.231/1997.

An interesting question came up for consideration in the decision reported in N.Seetharamaih v. N. Ramakrishnaiah (AIR 1970 Andhra Pradesh 407). There the plaintiff was prosecuted along with others for the offence punishable under Section 302 read with Section 34 IPC. The plaintiff was found guilty of the offence punishable under Section 324 read with Section 34 I.P.C. He was convicted and sentenced to undergo a term of imprisonment. Thereafter the plaintiff instituted a suit claiming the estate of the victim. The contention was that since he was not convicted for the offence of murder, it could not be said that he is disqualified. However, the court concerned found on evidence that the plaintiff did cause injury which ultimately resulted in the death of the victim and even though he was not convicted for the offence of murder in the criminal proceedings, the evidence in the civil proceedings is enough to show that he had committed the S.A.231/1997.

crime of the victim whose estate he intended to inherit. In the said decision it was held as follows:

> "..... Therefore, the question that falls to be considered is whether the plaintiff is disqualified from inheriting the property of his father by virtue of the bar imposed by Sections 25 and 27 of the Hindu Succession Act. Section 25 reads:
>
> "A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder."

It may be necessary to refer to the case in which the plaintiff stood charged along with three other accused for the murder of his father Narayana and his paternal uncle under Section 302 read with

Section 34, I.P.C. The Sessions Judge, Khammam convicted the plaintiff and the other accused in S.C. No.13 of 1959 under S.326 read with S.34, I.P.C. while acquitting them of the charge under Sec.302 read with S.34, I.P.C. S.A.231/1997.

framed against them. They were also convicted under S.324 read with S.34 I.P.C. for robbery of a cart load of paddy from Narayana's possession. The State preferred an appeal against the acquittal of the plaintiff and the other accused of the offence of murder and the plaintiff and the other accused preferred appeals against their convictions. Krishna Rao and Kumarayya, JJ. before whom the connected appeals came up for hearing found having regard to the nature of the injuries inflicted on the two deceased persons, that the only possible conclusion from the evidence on record was that the injuries of both the deceased were sufficient in the ordinary course of nature to cause death, "although unfortunately the prosecution neglected to directly elicit this fact from P.W.9, as they ought to have done. An offence of murder was clearly committed in respect of each of the deceased within the meaning of Cl.3 of Section 300, I.P.C."

Having found thus, the learned Judges then proceed to observe:

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>
> "Having regard to Cl.3 of Section 300, Indian Penal Code, the learned Sessions Judge was in error in the view he took that for a conviction under Section 302 rad with Section 34, I.P.C. the existence of a common intention to beat is insufficient and that a common intention to kill is always necessary. Even if the common intention is merely to beat, if the bodily injury intended to be inflicted by the beating is found to be insufficient to cause death in the ordinary course of nature the mens rea required for liability under Section 302 read with Sec. 34, I.P.C. would be satisfied."

The learned Judges on appraisal of the evidence found:

> "All the accused would therefore, be liable under Section 302 read with Section 34, I.P.C. The benefit of doubt arising from the difference between the the evidence of P.Ws.1 and 2 and that the P.Ws. 3 and 4 must go to the accused, especially as the trial Judge's finding with regard to the events in Lakshminarayana's pasture land S.A.231/1997.
>
> implies that P.Ws.1 and 2 were prone to exaggeration."
>
> xxx xxx xxx "As the formed the plan with the object of overpowering the deceased's party and seizing the paddy, the common intention that may be initially attributed to them would be merely at causing hurt to the deceased and their men. If we found ourselves on the evidence of P.Ws.3 and 4, it would follow that the acts of accused 2 and 4 were in excess of that common intention and accused 2 and 4 alone would be liable under Section 302, I.P.C. for the murder of the 2nd deceased and the 1st deceased (plaintiff's father) respectively, and accused 1 and 2 would be liable only

> under Section 324 read with Section 34, I.P.C. on the charge against them relating to these murders."

It is in that view that the plaintiff, who was the 1st accused in that case, was convicted along with another under Section 324 read with Section 34, I.P.C. Basing on these findings, it is contended by Mr. Madhavarao for the plaintiff S.A.231/1997.

that as the plaintiff was not convicted for the murder of his father, the disqualification prescribed by Sections 25 and 27 of the Hindu Succession Act cannot be made applicable to him. In this connection, it may be pertinent to notice that Section 25 only says that a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, but not that a person must be convicted of murder or of abetment of murder, to be disqualified from inheriting the property of the person murdered. The principal charge, against the plaintiff and three of his associates, was that all of them, in furtherance of the common intention of all, attacked the two deceased and inflicted injuries which proved fatal. The learned Judges held that murder was clearly committed within the meaning of Section 300, I.P.C. having regard to the injuries found by the Medical Officer who conducted the autopsies on the two deceased persons. If the learned Judges did not convict the plaintiff and another under Section 302 read with Section 34, S.A.231/1997.

I.P.C. it was for the reason that he was given the benefit of doubt arising from the difference between the evidence of P.Ws. 1 and 2 and that of P.Ws. 3 and 4 as to what he intended initially when the attack was launched on his father and another. It is for that reason that this Court held that the plaintiff and another only intended causing hurt to the deceased and their men and that the other two accused by reason of their overt acts, rendered themselves liable to punishment under Section 302, I.P.C.

In order to apply the disqualification under Section 25 of the Hindu Succession Act, it is not necessary in my opinion that a person who committed the murder or abetted the commission of murder must also have been convicted of the offence of murder or of abetment of murder under Section 302, Indian Penal Code. That the plaintiff had participated in the murderous attack on his father along with A2 and A4 in that case, who were convicted of murder, is not in dispute. It is because of the nature of injuries inflicted by him on his father and the variations found in the S.A.231/1997.

version of the direct witnesses that this court found it safe to convict him under Section 324, I.P.C. Section 25 of the Hindu Succession Act does not contemplate punishment for murder to disqualify the murderer from inheriting the property of the murdered. The application of this provision ought not to be approached from the point of view of punishment for murder . This court has held that murder was clearly committed within the meaning of Section 300 I.P.C. The fact that he was given the benefit of doubt arising out of the conflicting versions of two witnesses and convicted under Section 324, I.P.C. does not in any way absolve him from the heinous crime to which he had made his own infamy contribution. Section 25 is introduced in the Hindu Succession Act as a matter of high public policy based on principles of justice, equity and good conscience to make it absolutely

impossible for a murderer who deserves to be hanged or to be shut behind the prison bars for life, to derive advantage or beneficial interest from the very heinous act committed by him."

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The issue came up for consideration before the High Court of Madras in the decision reported in Saravanabhava v. Sellammal (1972(2) M.L.J. 49). In the said case the plaintiff was found to have murdered his father and he was found guilty. He was given the capital punishment which was confirmed by the Supreme Court. In the mercy petition before the authority concerned, the sentence was reduced to one of imprisonment for life.

19. One aspect which needs to be noticed in the above decision is that it has been held that mere production of judgment of the criminal court is not sufficient evidence of the factum of murder in a civil proceedings and independent proof will have to be produced. However, the point considered was whether the disqualification under Section 25 is for inheritance and not for testamentary S.A.231/1997.

succession. Considering the above aspects it was held as follows:

> "..... Almost all systems of law have recognized that a person guilty of homicide cannot succeed to the property of his victim. Section 25 of the Hindu Succession Act given statutory recognition to the above proposition.
>
> Mr. Ramaswamy, the learned counsel for the appellant faintly contended that there is a distinction between inheritance and testamentary succession. I do not agree. In Latikabala Dasi v. Anil Bihari, it is observed:
>
> "If Cheru was guilty of particide, he could not take any benefit under the will or inherit to his father. In that case, whatever properties Bendode left, would devolve on his cousin Girish, who was the next reversioner."

20. The issue was considered by the Allahabad High Court in the decision reported in Jamuna Das v. Board of Revenue (AIR 1973 Allahabad 397). Two contentions appear to have been raised in the said case. S.A.231/1997.

One of them was that since the succession had opened in 1954, i.e., prior to the Hindu Succession Act, disqualification does not apply and (ii) if at disqualification is attracted, that is only against the succession as per the provisions of the Act and not succession under a different Act. In the said decision it was held as follows:

> "The rule that a murderer and anyone claiming through him is excluded from succeeding to the estate of the victim which is based on justice, equity and good conscience is not applicable where the succession is not to the estate of the victim of murder but to the estate of a person inheriting from the murdered person. Further,

> where the succession is governed by the provisions of Zamindari abolition Act, the law of succession laid down therein cannot be altered or changed by any rule or principles not contained in the statute itself. Rules of equity, justice and good conscience are applicable when the matter is not governed by statutory provisions."

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21. The word 'murder' occurring in Section 25 of the Hindu Succession Act came up for consideration before the High Court of Bombay in the decision reported in Minoti v. Sushil Mohansingh Malik (AIR 1982 Bombay

68). The High Court took the view that the word 'murder' found in Section 25 of the Hindu Succession Act has a larger meaning and cannot be read in pari materia with the term as contained in Indian Penal Code. In the said decision it was held as follows:

> "In this context a reference could also be made to the following observation in Halsbury's Laws of England, Third Edition, vol 39, para 1315, p. 869:-
>
> "Murder or manslaughter. It is contrary to public policy that a man should be allowed to to claim a benefit resulting from his own crime. Accordingly a donee who is proved to be guilty of the murder or manslaughter of the testator cannot take any benefit under his will."

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It is this principle of public policy that a person cannot be allowed to claim benefit resulting from his own crime which is approved by the Privy Council in Kanchava's case (AIR 1924 PC 209). When the Hindu Succession Act, 1956 was enacted, the legislature had before it the decision of the Privy Council in Kanchava's case and it appears that it is this well established principle of public policy which legislature thought fit to incorporate in S.25 of the Act, so that the person will not be tempted to commit murder to inherit the property of the person murdered.

It is well settled that the word not defined in the Act but a word of every day use must be construed in popular sense as understood in common parlance and not in a technical sense. In popular sense the word "murder" means unlawful homicide or unlawful killing of human being. In popular parlance the word "murder" is not used or understood in the technical sense as defined in S. 300 of the I.P.C. Therefore to construe the said word in a technical sense as defined in S.300 of S.A.231/1997.

the I.P.C. will result in defeating the very object of the legislation. It will also run counter to the well established principles of equity, justice and good conscience, or the paramount principle of public policy enshrined in S.25 of the Hindu Succession Act. I am fortified in this view by the decision of the Madras High Court in Sarvanabhava v. Sallemmal, wherein the Madras High Court has observed as under:

> " Almost all systems of law have recognized that a person guilty of homicide cannot succeed to the property of his victim. Section 25 of the Hindu Succession Act gives statutory recognition to the above proposition."

In the present case defendant No.1 is convicted of the offence punishable under Section 304 Part I of I.P.C. viz., for the offence of culpable homicide. From the findings recorded by the learned Sessions Judge it is clear that as many as eleven incised injuries were inflicted by defendant No.1 with a sharp edged knife on the person of deceased Revati. He chose vital parts of the body for inflicting these injuries and had used S.A.231/1997.

considerable force. He assaulted Revati with intention of causing her death. Therefore it can safely be held that he has committed murder of Revati within the meaning of the said expression as used in S.25 of the Hindu Succession Act, 1956 and therefore, is disqualified from inheriting the property of deceased Revati, the person murdered. Similar view is taken by the Andhra Pradesh High Court in Nannepuneni Seetharamaiah v. Nannepuneni Ramakrishnaiah (AIR 1970 Andrha Pradesh 407) wherein it is observed by the Andhra Pradesh High Court that to apply the disqualification under S. 25 of the Hindu Succession Act it is not necessary that the person who committed murder or abeted commission of murder must also have been convicted of the offence of murder or of abetment of murder under S.302 of the I.P.C. The said Section does not contemplate punishment for murder to disqualify the murder from inheriting the property of the murdered. The application of the Section should not be approached from the point of view of punishment for murder. S.A.231/1997.

In my opinion this is the correct approach for interpreting the provisions of Section 25 of the Act, which incorporates a paramount principles of public policy based on principles of justice, equity and good conscience, so that the person will not be able to take the advantage of his own crime. In this context it is pertinent to note that the words used are "commits murder or abets commission of murder" and not "is convicted of an offence of murder or abets commission of murder" and not "is convicted of an offence of murder or abetment of offence of murder. Therefore, it is clear that the legislature has used the term "murderer" in S. 25 of the Hindu Succession Act not in a technical sense as defined in s. 300 of the I.P.C., but in a wider and popular sense, which must include in its import even culpable homicide of unlawful manslaughter. It is neither possible nor desirable to lay down general rule in this behalf, because to some extent it must depend on the facts and circumstances of each case."

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22. The issue was considered in the decision reported in G.S. Sadashiva v. M.C.Srinivasan (AIR 2001 Karnataka 453). What is relevant for the purpose are paragraphs 9 and 10 which reads as follows:

> "I could have accepted the contentions of the learned advocate for the appellant provided the appellant had placed sufficient material to show that the plaintiff was responsible for the murder of his wife or in other words that Bharathi did not commit suicide and that it was a case of murder. But the appellant has not placed any material before the trial court. No evidence has also been let it. The doctors who were

treating Bharathi were also not summoned and based on the opinion of the defendant No.1, any man of prudence cannot accept the contentions of the appellant.

Now, let me examine S.25 of the Act and whether I can apply the said principle as contended by the learned counsel for the S.A.231/1997.

appellant to the facts and circumstances of this case. Section 25 reads as hereunder:

"Murderer disqualified.- A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder."

From reading of S.25 of the Act, it is clear that the person who commits a murder or abates the commission of murder is disqualified from inheriting the property of the person murdered. Therefore, what is required to be proved by the 1st defendant is that his daughter was murdered by the plaintiff or that the plaintiff has abated commission of murder. Even if the plaintiff is acquitted by the criminal Court, if the 1st defendant is able to satisfy that the plaintiff was acquitted either on any technical ground or extending the benefit of doubt and can show that his daughter was actually murdered by the plaintiff or that the plaintiff was responsible for S.A.231/1997.

abating the crime. In such circumstances, 1st defendant was right in canvassing that in view of S.25 of the Act plaintiff is dis-qualified to inherit or succeed to the properties of his daughter. But in the instant case, 1st defendant is unable to prove that actually his daughter was murdered. When a competent Court has given a finding that the death of Bharathi was due to suicide considering the medical evidence and when the 1st defendant has not placed any evidence before the civil court to prove that Bharathi did not commit suicide, I cannot interfere with the judgment of the trial court. No doubt, while dealing with S.25 of the Act, one has to be liberal in defining the word "Murder" and one should not be too technical. In popular parlance the word "Murder" is not used or understood in the technical sense as defined in S. 300 of IPC. Therefore, to construe the said word in technical sense as defined in S. 300 of IPC, will result in defeating the very object of the Legislature. It will also run counter to the well established principles of equity, justice and good conscience. But S.A.231/1997.

considering the evidence adduced by the parties, I am not in a position to apply the principles of S. 25 of the Act to non-suite the plaintiff. Therefore, judgment and decree of the trial court is required to be confirmed and accordingly, appeal of the 1st defendant in R.F.A. No.716/97 is hereby dismissed and the judgment and decree of the trial court passed against the 1st defendant is confirmed."

23. The issue was considered by the apex court in the decision reported in Vallikannu v. R.Singaperumal (AIR 2005 SC 2587) wherein it was held as follows:

> "The concept of coparcener as given in the Mitakshara School of Hindu Law as already mentioned above, is that of a joint family property wherein all the members of the coparceners share equally. In this connection a reference may be made to a decision of this Court in the case of State of Maharashtra v. Narayan Rao Sham Rao Deshmukh and others reported in (1985) 2 SCC 321, in which Their Lordships have held as follows:
>
> S.A.231/1997.
>
> "A Hindu coparcenary is, however, a narrower body than the joint family. Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of a joint family and his sons, grandsons and great grandsons constitute a coparcenary. A coparcener acquires right in the coparcenary property by birth but his right can be definitely ascertained only when a partition takes place. When the family is joint, the extent of the share of a coparcener cannot be definitely predicated since it is always capable of fluctuating."

Therefore, in view of various decisions of this Court it appears that Defendant No.1 and the plaintiff who was married to Defendant No.1 were members of Joint Hindu Family. If the defendant-appellant had not incurred the disqualification, then they would have inherited the property as per Mitakshara School of Hindu Law. But the question is that when the sole male survivor had incurred the disqualification can he still claim the property by virtue of Mitakshara School of Hindu S.A.231/1997.

Law? If he cannot get the property by way of survivorship, then the question is whether his wife who succeeds through the husband can succeed to the property? Our answer to this question is in negative. In fact, prior to the amendment of the Hindu Succession Act, Sections like 25 and 27 were not there but the murderer of his own father was disqualified on the principle of justice, equity and good conscience and as a measure of public policy. This position of law was enunciated by the Privy Council way back in 1924 in the case of Kenchava Kom Sanyellappa Hosmani and Anr. v. Girimallappa Channappa Somasagar, reported in AIR 1924 PC 209, wherein their Lordships have held as follows :

> "In their Lordships' view it was rightly held by the two Courts below that the murderer was disqualified; and with regard to the question whether he is disqualified wholly or only as to the beneficial interest which the Subordinate Judge discussed, founding upon the distinction between the beneficial and legal estate which was made by the Subordinate Judge and by the High Court of S.A.231/1997.
>
> Madras in the case of Vedanayaga Mudaliar v. Vedammal, their Lordships reject, as did the High Court here, any such distinction. The theory of legal and equitable estates is no part of Hindu Law, and should not be introduced into discussion.

> The second question to be decided is whether the title can be claimed through the murderer. If this were so, the defendants as the murderer's sisters, would take precedence of the plaintiff, his cousin. In this matter also, their Lordships are of opinion that the Courts below were right. The murderer should be treated as non - existent and not as one who forms the stock for a fresh line of descent. It may be pointed out that this view was also taken in the Madras case just cited."

Their Lordships also explained the decision in the case of Gangu v. Chandrabhagabai reported in (1908) 32 Bom 275 and held as follows:

> "It was contended that a different ruling was to be extracted from the decision of the Bombay High Court in Gangu v. Chandrabhagabai. This is not so. In that case, the wife of a murderer was S.A.231/1997.
>
> held entitled to succeed to the estate of the murdered man but that was not because the wife deduced title through her husband, but because of the principle of Hindu family law that a wife becomes a member of her husband's gotra, an actual relation of her husband's relations in her own right, as it is called in Hindu Law a gotraja-sapinda. The decision, therefore, has no bearing on the present case."

Therefore, the principle which has been enunciated by their Lordships is in no uncertain terms totally disinherit the son who has murdered his father. Their Lordships have observed as follows:

> "A murderer must for the purpose of the inheritance, be treated as if he were dead when the inheritance opened and as not being a fresh stock of descent; the exclusion extends to the legal as well as beneficial estate, so that neither he can himself succeed nor can the succession be claimed through him."

This Privy Council decision made reference to the decisions of the High Courts of Madras and S.A.231/1997.

Bombay and their Lordships have approved the ratio contained in those decisions that a murderer should be totally disinherited because of the felony committed by him. This decision of the Privy Council was subsequently followed in the following cases:

> i. AIR (29) 1942 Madras 277 (K. Stanumurthiayya and others v. K. Ramappa and others). ii. AIR 1953 All 759 (Nakchhed Singh and others v. Bijai Bahadur Singh and another) iii. AIR 1956 All 707 (Mata Badal Singh and others v. Bijay Bahadur Singh and others). iv. AIR 1982 Bom 68 (Minoti vs. Sushil Mohansingh Malik and another).
>
> This position of law was incorporated by way of Section 25 of the Hindu Succession Act, 1956 as quoted above, which clearly enunciates that a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the

succession to which he or she committed or abetted the commission of the murder. In fact, the S.A.231/1997.

objects and reasons also makes a reference to the Privy Council judgment (supra). The objects and reasons for enacting Section 25 read as under:

"A murderer, even if not disqualified under Hindu Law from succeeding to the estate of the person whom he has murdered, is so disqualified upon principles of justice, equity and good conscience. The murderer is not to be regarded as the stock of a fresh line of descent but should be regarded as non-existent when the succession opens."

Therefore, once it is held that a person who has murdered his father or a person from whom he wants to inherit, stands totally disqualified. Section 27 of the Hindu Succession Act makes it further clear that if any person is disqualified from inheriting any property under this Act, it shall be deemed as if such person had died before the intestate. That shows that a person who has murdered a person through whom he wants to inherit the property stands disqualified on that account. That means he will be deemed to have predeceased him. The effect of Section 25 read with Section 27 of the Hindu Succession Act, 1956 S.A.231/1997.

is that a murderer is totally disqualified to succeed to the estate of deceased. The framers of the Act in the objects and reasons have made a reference to the decision of the Privy Council that the murderer is not to be regarded as the stock of a fresh line of descent but should be regarded as non-existent. That means that a person who is guilty of committing the murder cannot be treated to have any relationship whatsoever with deceased's estate.

Now, adverting to the facts of the present case, the effect of Sections 25 and 27 is that the respondent No.1 cannot inherit any property of his father as he has murdered him on the principle of justice, equity and good conscience and the fresh stock of his line of descent ceased to exist in that case. Once the son is totally disinherited then his whole stock stands disinherited i.e. wife or son. The defendant- respondent No.1 son himself is totally disqualified by virtue of Sections 25 and 27 of the Hindu Succession Act and as such the wife can have no S.A.231/1997.

better claim in the property of the deceased, Ramasamy Konar."

24. From a reading of the above decisions, it becomes clear that the word murder as contained in Section 25 could not be read or equated to the definition of the offence of murder in IPC and the term in Section 25 stands on a different footing and has a larger, wider purport and meaning.

25. On going through Ext.A3 judgment, which is the judgment in the criminal case, it can be seen that Mohandas was given the benefit of Section 84 of the Indian Penal Code and thereby acquitted. Section 334 of the Code of Criminal Procedure may be of some relevance in this context, which reads as follows:

> "334. Judgment of acquittal on ground of unsoundness of mind.- Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of S.A.231/1997.
>
> mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not."

26. A reading of the above provision shows that when an acquittal is rendered on the basis of unsoundness of mind, the judgment shall state whether the act has been committed as alleged by the prosecution. The act made mention of in the said provision must necessarily relate to the offence concerned or the act or omission which constitutes an offence.

27. It is significant to notice that in paragraph 4 of Ext.A3 it is mentioned as follows:

> "There is thus sufficient evidence on record to show that the mother of the accused had died during the morning of 24.2.1982 by strangulation. There is also evidence to show that it was the accused who killed his mother by tightening M.O.1 belt around the neck."

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It is found in paragraph 6 of the judgment as follows:

> "There is evidence on record to to show that the accused had committed the act of murder of his mother by strangulation."

28. Though in the strict sense judgment in the criminal case is not evidence, in the case on hand for reasons already mentioned, the judgment has become relevant. There is a clear finding in Ext.A3 that Mohandas had committed the murder of his mother.

29. Going by the decisions reported in Minoti's case (supra) and G.S. Sadashiva's case (supra), it follows that the word crime occurring in Section 25 has a wider meaning and cannot be restricted to the meaning as contained in the Indian Penal Code.

30. Moreover in Ext.A3 there is a clear finding that the act has been committed by Mohandas and that act resulted in the death of his mother. Even prior to the disqualification brought in by the Hindu Succession Act, as S.A.231/1997.

could be seen from the decision of the Privy Counsel referred to above, the courts were inclined to take the view that the murderer is precluded from inheriting the assets of the victim on the principles of justice, consciousness and also on public policy.

31. Therefore, merely because Mohandas was able to secure an acquittal on the basis of the defence set up under Section 84 of the Indian Penal code, that cannot enure to the benefit of the plaintiffs in the present suit for the reason that there is a clear finding in Ext.A3 that the murder of Karthiyani was infact committed by Mohandas.

32. The contention raised by the learned counsel for the appellants that the word murder contemplated under Section 25 of the Hindu Succession Act should be one for the purpose of inheriting the estate is without any legal basis. The section does not lay down any such qualification. It is absolute in its terms.

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33. It therefore follows that the finding of the lower appellate court that Mohandas had incurred the disqualification contained in Section 25 of the Hindu Succession Act does not call for any interference.

34. As regards the second question that arises for consideration, it would appear that the lower appellate court has not addressed itself properly to the issues that arose for consideration. The lower appellate court relied on Section 27 of the Hindu Succession Act and treating the murderer having died prior to intestate went on to consider the inheritance on the basis that Karthiyani, the mother of Mohandas, became the sole heir of the entire properties.

35. Section 27 of the Hindu Succession Act reads as follows:

> "27. Succession when heir disqualified.- If any person is disqualified from inheriting any S.A.231/1997.
>
> property under this Act, it shall devolve as if such person had died before the intestate."

36. Obviously Section 27 has to be read along with Section 25 of the Act. It necessarily follows that the disqualification made mention of in Section 27 attaches itself only to those assets which belonged to the victim and does not intend to regulate the succession of the estate which independently belong to the assailant.

37. It is true that Section 27 says that the person disqualified will be deemed to have died before the intestate.

38. As already noticed, items 1 to 5 in the plaint schedule stands in the joint names of Karthiyani and Mohandas. Item No.6 which is covered by Ext.A6 document stands in the name of Mohandas alone. The lower appellate court has not considered whether the independent rights which Mohandas had over items 1 to 5 and exclusive right which he had over item No.6 would devolve in the same S.A.231/1997.

manner as the half right which Karthiyani had enjoyed over item Nos.1 to 5 of the plaint schedule properties.

39. It is not in dispute that Karthiyani died in 1983 while Mohandas died only in 1988. Of course it has already been found that in the light of the fact that Mohandas had caused the death of Karthiyani, he incures disqualification under Section 25 so far as the estate of Karthiyani is concerned. But the lower appellate court did not address itself to the question as to what happens to the independent share which Mohandas had over the properties and exclusive right which he had over item No.6. The provision of the Hindu Succession Act which would apply in case it is found that Mohandas had independent rights over item Nos. 1 to 5 and exclusive right over item No.6 and if it is found that the disqualification could not be attracted as far as his rights are concerned, has not been considered by the lower appellate court. The lower appellate court has S.A.231/1997.

gone on to take the view that since Mohandas will be deemed to have died prior to the intestate, that is Kalliayani, by virtue of Section 27 of the Hindu Succession Act, the entire properties will have to be treated as if it had belonged to Karthiyani. As already noticed, the lower appellate court has not addressed itself to the question as to whether Section 27 is attracted in case of independent rights which Mohandas had over items 1 to 5 and exclusive right over item No.6 by the disqualification has not been considered.

In the result, this appeal is partly allowed, the impugned judgment and decree are set aside and the matter is remanded to the lower appellate court for considering the question whether the independent rights which Mohandas had over items 1 to 5 as per the different documents produced by the plaintiffs and exclusive right which he had over item No.6 would devolve as if it belonged S.A.231/1997.

to Karthiyani treating Mohandas having died prior to Kalliyani in respect of the assets which exclusively belonged to Mohandas also. The matter is remanded for the above purpose only. Parties shall appear before the lower appellate court on 27.6.2012. The lower appellate court may make every endeavour to dispose of the appeal within three months from the date of appearance of the parties. Forward a copy of this judgment to the lower appellate court.

P. BHAVADASAN, JUDGE sb.