



RSA NO.27/2023

1

2025:KER:8548

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

TUESDAY, THE 4TH DAY OF FEBRUARY 2025 / 15TH MAGHA, 1946

RSA NO. 27 OF 2023

AGAINST THE JUDGMENT&DECREE DATED 03.12.2022 IN AS NO.30 OF 2022 OF ASSISTANT SESSIONS COURT, TIRUR ARISING OUT OF THE JUDGMENT&DECREE DATED 29.03.2022 IN OS NO.84 OF 2020 OF MUNSIF COURT ,PARAPPANANGADI

APPELLANTS/APPELLANTS IN A.S/DEFENDANTS IN OS:

- 1 CHAKRAWARTHIGE PREETHI RUPA
AGED 56 YEARS
W/O DEVADAS, KOTTAYIL HOUSE, VALLIKUNNU AMSOM, DESOM, PIN-676304 NOW RESIDING AT SRI LANKA REPRESENTED BY POWER OF ATTORNEY HOLDER SAJEEV, S/O SIVADASAN, PERIKKATHARA HOUSE, P.O.IRINGALLUR, TIRURANGADI TALUK, PIN - 676304
- 2 AKANSHA
AGED 28 YEARS
D/O.DEVADAS, KOTTAYIL HOUSE, VALLIKUNNU AMSOM, DESOM, PIN-676304 NOW RESIDING AT SRI LANKA REPRESENTED BY POWER OF ATTORNEY HOLDER SAJEEV, S/O SIVADASAN, PERIKKATHARA HOUSE, P.O.IRINGALLUR, TIRURANGADI TALUK, PIN - 676304
- 3 APARNA DEVADAS
AGED 22 YEARS
KOTTAYIL HOUSE, VALLIKUNNU AMSOM, DESOM, PIN-676304 NOW RESIDING AT SRI LANKA REPRESENTED BY POWER OF ATTORNEY HOLDER SAJEEV, S/O SIVADASAN, PERIKKATHARA HOUSE, P.O.IRINGALLUR, TIRURANGADI TALUK, PIN - 676304

BY ADVS.
MANU VYASAN PETER
P.B.KRISHNAN
P.B.SUBRAMANYAN
SABU GEORGE
B.ANUSREE



RSA NO.27/2023

2

2025:KER:8548

RESPONDENT/RESPONDENT IN A.S/PLAINTIFF IN O.S:

MALU
AGED 80 YEARS
W/O VELAYUDHAN, KOTTAYIL HOUSE, KADALUNDI AMSOM,
PAZHANCHANNUR DESOM. PO. KADALUNDI, KOZHIKODE DISTRICT, PIN
- 673302

BY ADV Millu Dandapani

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 04.02.2025,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

1. The appellants are the defendants in a suit for partition. They are the widow and two daughters of the deceased Kottayil Devadasan. The plaintiff in the suit is the mother of the said Devadasan for partitioning the plaint schedule properties left behind him.
2. The Trial Court decreed the suit passing a Preliminary Decree declaring that the plaintiff and the defendants 1 to 3 are entitled to get $\frac{1}{4}$ share each in Plaint B Schedule Item No.1 to 4 properties with a reservation regarding the house and the appurtenant land in Plaint B Schedule Item No.1 property in favour of the first defendant subject to payment of owelty to be fixed in final decree proceedings.



3. Though the defendants filed an Appeal before the First Appellate Court, the same was dismissed, confirming the Preliminary Decree passed by the Trial Court.
4. The substantial contention addressed from the side of the defendants before the Trial Court as well as the First Appellate Court is that as per Section 15(2)(c) of the Hindu Succession Act, 1956, which was inserted as per the Hindu Succession (Kerala Amendment) Act,2015 by the State Legislature, the plaintiff will not get absolute right over the property of her predeceased son to claim partition. The Trial Court, as well as the First Appellate Court, found that Section 15 (2)(c) has application only in cases where the mother died intestate after getting the property of the predeceased son and that so long as the mother is alive, Section 15(2) (c) has no application at all.
5. This Regular Second Appeal is admitted on the following substantial questions of law.



1. Whether the mother of a male Hindu dying intestate obtains an indefeasible right over the property of the deceased son notwithstanding the enactment of Hindu Succession (Kerala Amendment) Act, 2015?
2. Whether mother of a male Hindu dying intestate obtains a full estate and a partible interest in the properties in view of Hindu Succession (Kerala Amendment) Act, 2015?
3. Whether the dismissal of I.A.No.6/2022 by the First Appellate Court is legal and proper?
6. Though the Appeal is of the year 2023, the same was taken for final hearing on a priority basis since the Senior Counsel for the respondent Smt. Sumathi Dandapani pressed for an early hearing citing the age of the respondent. The learned Senior Counsel for the appellants, Sri. P.B. Krishnan also expressed that he is agreeable to an early hearing. Considering the facts



that the only question to be considered is the nature of the right of the mother over the property inherited from her predeceased son with reference to the newly inserted Section 15(2)(c) of the Hindu Succession Act and that it is better to finalize the said legal issue at the earliest as it may arise in several other similar cases, this Court allowed early hearing of the appeal.

7. I heard the learned Senior Counsel for the appellant, Sri.P.B.Krishnan, instructed by Adv.Sri.Manu Vyasam Peter and the learned Senior Counsel for the respondent Smt. Sumathi Dandapani, instructed by Adv.Sri.Millu Dandapani.

8. Since the answer to the Substantial Question of Law No.1 will cover answers to Substantial Questions of Law Nos.2 & 3, all of them are considered together. The only question to be considered in this Regular Second Appeal is whether the mother of a male Hindu dying intestate obtains an indefeasible right over the property of the deceased son notwithstanding the



enactment of Hindu Succession (Kerala Amendment) Act, 2015 inserting Section 15(2) (c) to the Hindu Succession Act.

9. The learned Senior Counsel cited the decision of the learned Single Judge of this Court in **Binu and Ors. v. Valsala [2022 KHC 4562]** in which Section 15(2) (c) is considered, and it is found that on the death of the son, the mother inherits a share in his property as a full owner, and a suit for partition is filed by the mother of a predeceased son is perfectly maintainable. The learned Senior Counsel pointed out that even though the said decision is on point, it requires a revisit at the hands of a Division Bench of this Court since certain vital aspects were not considered in the said decision. The learned Senior Counsel pointed out that it is the very same learned Single Judge who rendered the said decision, who admitted the present Second Appeal, subsequently formulating the aforesaid Substantial Questions of Law.



10. Since the arguments are centered around Section 15(2) (c), Section 15(2) (c) is extracted hereunder.

“(c) Any property inherited by a female Hindu from her predeceased son shall devolve, not upon other heirs specified to in sub-section (1) in the order specified therein, but upon the heirs of the predeceased son from whom she inherited the property”.

11. It is apposite to extract the Statement of Objects and Reasons of Hindu Succession (Kerala Amendment) Act, 2015 :

“As per Section 8 of the Hindu Succession Act, 1956 (Central Act of 1956), the property of a male Hindu dying intestate shall devolve firstly upon the heirs, being relatives specified in Class I of the Schedule, such as son, daughter, widow, mother. If the mother, upon whom the property of her predeceased devolved, dies intestate, the property will again be devolved to



the other heirs of the mother as specified in Sections 15 and 16 of the said Act apart from the wife and children of the predeceased son. Thus, the share obtained by the mother from her predeceased son devolves to her other legal heirs, other than the wife and children of the predeceased son. It is an injustice against the wife and children of such a predeceased son. A number of requests have been received to amend the said provision contained in sub-section (2) of Section 15 of the said Act in such a manner that the share obtained by the mother from her predeceased son shall, after her death, devolve only upon the wife and children of the predeceased son. Accordingly, the Government have decided to amend sub-section (2) of Section 15 of the said Act in the above manner.”

12. The learned Senior Counsel for the appellant argued that the very purpose of the amendment is to ensure that the



property belonging to the deceased shall ultimately devolve upon his wife and children. The said provision is inserted with the said sole object, and in such case, the right of the mother over the property inherited from her predeceased son is limited to her enjoyment during his life without any right of alienation. She gets only life interest in the said property. She does not get partible interest in the property.

13. The learned Counsel argued that Section 15(2) (c) is to be construed liberally, taking into consideration the object of the said provision. The learned Senior Counsel invited my attention to the general principles regarding the construction of remedial statutes. The learned Senior Counsel referred to the Text '*Principles of Statutory Interpretation by Justice G.P.Singh*' in which, taking note of the judicial precedents, it is stated that "*Remedial statute receives a liberal construction, whereas a penal statute is strictly construed..... In case of remedial statutes the doubt is resolved in favour the class of persons for*



whose benefit the Statute is enacted.....In construing a remedial statute, courts ought to give to it the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedial and falls within the language of enactment. The words of such a statute must be so construed as to give the most complete remedy which the phraseology will permit so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved". Here, the wife and children of the predeceased son form a class of persons to whom the benefit of the provision is given. The provision has to be liberally construed to ensure that the benefit reaches the said class. A literal interpretation of the said provision would defeat the very purpose for which the enactment is incorporated.

14. Learned Senior Counsel tried to distinguish between succession and devolution. According to the learned Senior Counsel, since the word used in 15(2)(c) is 'devolution,' it



indicates a continuous devolution till it reaches the last heir, i.e., it first devolves upon the mother, and thereafter, it ultimately devolves upon the wife and children of the deceased person. If the mother is given absolute estate over the property inherited from her predeceased son, she can very well defeat the further devolution provided under Section 15(2) (c). In such a case, it will be within the hands of the mother to defeat the very purpose for which the amendment is incorporated. Hence, the right of the mother over the property of the predeceased son has to be interpreted as limited estate and not absolute estate.

15. Learned Senior Counsel invited my attention to the meaning of the word 'devolve' in the Law Lexicon, which is extracted as follows.

“Devolve. A term used where an estate devolves upon another by operation of law and without any voluntary act of the previous owner and passes from one person



to another. Devolve means to pass from a person dying to a person living; the etymology of the word shows its meaning (per Leach, M.R, Parr v. Parr, 1 My. and K. 648). An estate is said to devolve on another when, by operation of law and without any voluntary act of the previous owner, it passes from one person to another but it does not devolve from one person as the result of some positive act or agreement between them. The word is itself of intransitive signification and does not include the result of an act which is intended to produce a particular effect. It implies a result without the intervention of any voluntary actor (Francisco v. Aguirre, 29 Pac. 495, 497, 94 Calif. 180).”

16. Citing the said dictionary meaning, the Learned Senior Counsel contended that devolution means passing property from one person to another without any voluntary Act. Since the word ‘devolve’ is used in Section 15(2) (c), it is intended to pass



the property from the mother of the deceased to his wife and children.

17. Learned Senior Counsel cited the decision of the Madras High Court in **Ayi Ammal v. Ubramania Assari And Anr. [AIR 1966 Madras 369]** and **State of Punjab and others v. Balwant Singh and others [1992 Suppl(3) SCC 108]** to distinguish between succession and devolution. On the strength of the said decisions, the learned Senior Counsel argued that Section 15(1) deals with the rule of succession, whereas Section 15(2) deals with the rule of devolution.
18. Learned Senior Counsel relied on the decision of the Hon'ble Supreme Court in **Bhagat Ram v. Teja Singh [(1999) 4 SCC 86]** to substantiate the point that there is a difference between inheritance in Section 15 (1) and 15 (2). It is held in the said decision that the spheres of the two sub-sections are very clearly marked out, that sub-section (1) covers the properties of



a female Hindu dying intestate, that since Sub-section (2) starts with the words 'Notwithstanding anything contained in sub-section (1) what falls within the sphere of sub-section (2), subsection (1) will not apply; that property inherited by a female Hindu from her father and mother is carved out from a female Hindu dying intestate; that the property of a female Hindu can be classified under two heads: Every property of a female Hindu dying intestate is a general class by itself covering all the properties but sub-section (2) excludes out of the aforesaid properties the property inherited by her from her father or mother.

19. Learned Senior Counsel cited the decision of this Court in **Choyi v. Peravan Kutty [1995 (2) KLT 678]** to substantiate the point that if bequeath is made in favour of several persons, one after the death of another, the first prima facie held to take life interest and the second an interest in the remainder and thus the apparent absolute interest of the first being cut down to



accommodate the interest created in favour of the second. The learned Senior Counsel argued that the same principle applies in the case on hand as the devolution is first made in favour of the mother and thereafter it is made in favour of the wife and children of the predeceased son, and hence the right of the mother is cut down to accommodate the wife and children of the deceased who are the ultimate beneficiaries.

20. Learned Senior Counsel cited the decision of the Hon'ble Supreme Court in **V. Dandapani Chettiyar v. Balasubramanian Chettiyar (dead) by LRs and Ors. [2003 (6) SCC 633]** to substantiate the point that it is the source which decides the inheritance under Section 15(2). The said decision approved the decision of the Madras High Court in **Ayi Ammal (supra)**.
21. Learned Senior Counsel cited the Full Bench decision of this Court in **Kunnath Narayani @Thirumalikutty and others v.**



Kunnath Kochan @ Vasu and others [2018(3) KHC 207] to demonstrate that there is no source-based reversion for the inheritance of male Hindu in the Hindu Succession Act, but differential treatment of inheritance is common for the inheritance of female Hindu in the Hindu Succession Act.

22. Learned Senior Counsel cited the decision of the Hon'ble Supreme Court in **Om Prakash and Ors. v. Radha Charan & Ors. [(2009) 15 SCC 66]** in which it is held that as per Section 15(1), the self-acquired property of a female would be her absolute property, but the property inherited by her from her father would not become her absolute property in view of Section 15(2).

23. Section 16(3) provides the manner of devolution in favour of the heirs referred to in Section 15(2). Section 16(3) does not refer to the case of the son coming under Section 15(2) (c), while it covers the cases coming under Section 15(2) (b) & (c).



It also supports the case of the appellants, according to Learned Senior Counsel.

24. Learned Senior Counsel for the appellant concluded the argument by stating that the right of the mother over the property inherited from the predeceased son is only that of a limited ownership with no right of alienation in view of Section 15(2)(c) and that if she is given absolute right over the property, the very purpose for which the provision is inserted will be defeated. Hence, it is to be declared that the right of the mother over any property inherited from her predeceased son is limited to the enjoyment during her life. The decision of this Court in **Binu (supra)** requires reconsideration.

25. On the other hand, the Learned Senior Counsel for the respondent argued that the issue is squarely covered by the decision of this Court in **Binu (supra)**. The law is correctly laid down in the said decision. It does not require any



reconsideration. There is nothing in Section 15(2)(c) to limit the right of the mother over the property inherited from her predeceased son. She takes the inheritance absolutely with full right of alienation. The Courts cannot rewrite something into the provision which is absent in the said provision. If Section 15(2)(c) is interpreted as contended by the learned counsel for the appellant, it will defeat the right of the mother over the property inherited by her from her predeceased son. The learned senior counsel invited my attention to Section 14 of the Hindu Succession Act, which states that any property possessed by a female Hindu shall be held by her as full owner thereof and not as limited owner. In the case on hand, the property is possessed by the respondent mother consequent to the death of her son and hence it could not be treated as a limited owner in view of Section 14. Senior Counsel concluded by contending that there is no substantial question of law in the matter, and the



substantial questions of law formulated are settled by the decision of this Court in **Binu (supra)**.

26. I have considered the rival contentions.

27. The decision of this Court in **Binu (supra)** is on the same set of facts as those of this case. In that case, also, a suit for partition was filed by the mother in respect of the property of the predeceased son against the wife and children of the deceased son. The Substantial Questions of Law formulated in **Binu (supra)** are as follows.

1. Does S.8 r/w schedule to Hindu Succession Act, 1955 survive after the introduction of S.15(2)(c)? If so, does not S.15(2)(c) limit the claim of the mother of a predeceased Hindu son to his property to a life estate and deprive her of a share?

2. Is not the right of the mother eclipsed by the amendment, depriving her of the right to seek a



partition? Consequently, can she enforce a metes and bounds partition of the property as against the wife and daughters of her son?

28. It is useful to extract the relevant parts of Paragraph Nos. 14 to 17 in the said decision in which the questions are answered.

“14..... So S.15(2)(c) would control the right of inheritance of the heirs of female Hindu provided under S.15(1), and it has no impact on the devolution of the property of a male Hindu died intestate provided under S.8. To put it in other words, S.8 is not controlled by S.15(2)(c) or introduction of S.15(2)(c) will not eclipse the right of mother depriving her claim for partition of the property of predeceased son as contended by the learned counsel for the appellant. So the argument to the contrary advanced by the learned counsel for the appellant is not sustained in law.

15. S.14 of the Act also expressly provides that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act,



be held by her as full owner and not as a limited owner. Explanation to S.14 provides that 'property' includes both movables and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, etc. So, a property acquired by a female Hindu by inheritance will also be held by her as a full owner and not as a limited owner.

16. S.15(2)(c) did not intend to provide any limited right of inheritance to a female Hindu of the property of the predeceased son. The property inherited by her as the legal heir of the deceased son as heir under Class I of S.8(a) is her absolute property, and the introduction of S.15(2)(c) will not limit that right to that of life estate especially because there is no such express wording in sub-clause (c) of sub-section (2). What sub-clause (c) intended to introduce is the devolution of property of a female Hindu inherited from her predeceased son upon his legal heirs and not the other heirs provided under S.15 (1). It would only indicate the devolution of property on her death, and it does not limit her right



over the property inherited from her predeceased son as a limited owner.

17. So when a property is devolved upon a female Hindu as per S.8 due to the death of a son as a Class I heir of the Schedule, it is as full owner and not as a limited owner. So, S.15(c) cannot be read independently with S.14 or S.8. As stated earlier, S.8 or S.14 are not controlled by S.15(2)(c). Hence, in the present case, property devolved upon the plaintiff as an heir of the son in Class I as per S.8(a) of the Act is as full owner and not as a limited owner, and the suit for partition filed by her is perfectly maintainable. Hence, judgment and decree passed by the courts below are hereby confirmed.”

29. The learned Single Judge of this Court in the aforesaid decision has specifically held that in view of Section 14 of the Hindu Succession Act, any property possessed by a female Hindu shall be held by her as full owner and hence property acquired by a female Hindu by inheritance also will be held as a full owner and not as a limited owner and that S. 15(2)(c) does



not intend to provide any limited right of inheritance to a female Hindu of the property of the deceased son.

30. If the said decision in **Binu (Supra)** is applied, this Regular Second Appeal is liable to be dismissed. The question is whether the said decision requires reconsideration in view of the arguments advanced before me.

31. It is true that the object of Section 15(2) (c) is to see that the property of the deceased husband, which is inherited by his mother, devolves ultimately upon his wife and children. The provision does not take away the inheritance in favour of the mother. The question is whether the mother can deal with the property as her absolute property or whether the mother should hold the property during her lifetime for devolving the same to the wife and children of the deceased son. As rightly pointed out by the learned Senior counsel for the appellant, if the mother is given absolute right over the property, she can very well defeat



the object of the provision, and in such case, the application of the said provision would be at the will of the mother. At the same time, as contended by the learned Senior Counsel for the respondent, the provision does not in any way curtail the right of the mother over the property inherited by her from her predeceased son.

32. It is true that if the right of the mother over the property is not restricted, the result would be that the wife and children of the predeceased son would be getting only the property available at the time of death of the mother, if any. On going through the said provision, I am of the view that the Section is intended to operate on the death of the mother of a predeceased son from whom she inherited the property. The provision does not have any operation before the date of death of the mother. When the Legislature has enacted a provision for operating on the death of the mother, the Court has no jurisdiction to rewrite the said provision for making its operation before the death of



the mother to restrict the interest of the mother. The provision makes it abundantly clear that it does not want to interfere with the absolute rights of the mother over the property. The only contingency which is contemplated is the inheritance of the said property of the predeceased son, on the death of mother to her legal heirs. The provision is incorporated only to prevent that contingency alone. If the provision is interpreted to mean that the mother is having limited ownership to make the property available for devolution to the wife and children of the predeceased son, it would be defeating the valuable rights of the mother over the property of her predeceased son. The legislature has not intended to restrict the rights of the mother in any way. Such an intention could not be deduced from the Statement of Objects and Reasons of the Hindu Succession (Kerala Amendment) Act, 2015. The provision was intended to take away an injustice that when a Hindu male dies, the legal heirs of his mother get the property through the right of the



mother, avoiding the wife and children of such a Hindu male.

The Legislature wanted to limit the inheritance of the property that existed at the time of the mother's death within the family of the predeceased son. It is not permissible for this Court to rewrite the provision so as to restrict the right of the mother, which is absent in the provision and never intended by the Legislature.

33. It is true that in the case of remedial statutes, the provisions are to be interpreted liberally for the benefit of a class of persons to whom the benefits are intended. But a statutory provision is not open for liberal construction when it admits no doubt and only one construction is possible. A statutory provision is open for liberal construction only when there is doubt and more than one construction is possible. Going by the Statement of Objects and Reasons of Amendment Act, S.15(2)(c) is enacted for the benefit of the wife and children of the predeceased son. But under the guise of liberal construction of the provision the



Courts are not expected to rewrite the provision to include some benefits to the class of persons which legislature never intended to extend.

34. As rightly contended by the learned Senior counsel for the appellant, Sub Section (2) Of Section 15 is an exception to general rules of succession provided under Sub Section (1) of the said Section. In cases where S.15(2) is applicable, S.15(1) is not applicable as decided in **Bhagat Ram(supra)**. As held in the decision **V. Dandapani Chettiyar**, it is the source which decides the inheritance in Sub Section (2). The non-obstante clause in Sub Section (2) would show that it will prevail over Sub Section (1). Sub Sections (1) and (2) operate in different spheres. But even accepting all these arguments, I am unable to extend the operation of Section.15(2)(c) during the lifetime of the mother to restrict her rights over the property mentioned therein in order to ensure the ultimate benefits to the wife and children of the predeceased son.



35. As rightly contended by the learned Senior Counsel for the appellant, it is the source that determines devolution under Section 15(2). Subsection (2) of Section 15 is based on the principle of source-based reservation. The property has to go back to the same source and should not go into the hands of strangers of such source. Sub Clause (a) of Section 15(2) wants to prevent the property which came from the source of the parents of a Female Hindu from going into the family of the husband, including the husband, in case such a female Hindu dies without any child and including a child of a predeceased child. Sub clause (b) wants to prevent the property which came from the source of the husband of a Female Hindu or his father from going into the family of such female Hindu in case such female Hindu dies without any child and including a child of a predeceased child. The newly inserted Sub-clause (c) wants to prevent the property that came from the source of the son of a Female Hindu from going into the family of such a female Hindu.



If it is found that the interest of female Hindu is limited with respect to the property referred in Sub Clause (c), the same principle will apply for the properties referred in Sub Clauses (a) and (b) also. The legislature did not want to disturb or restrict the interest of a female Hindu referred to in Section 15(2) over the properties therein. Of course in all cases, the Female Hindu can defeat the reversion to the source by her act. She can sell the property or transfer the property to a person belonging to the class which is prohibited from inheritance therein. Even then, the Legislature never intended to restrict the enjoyment of the Female Hindu during her life time as full owner. The legislature only wanted to avoid a situation in which a remainder of the property from going into the hands of strangers to the source. The legislature thought it was an injustice that the remainder of the property was allowed to be enjoyed by strangers when persons were available at the source from which the property originated. The legislature wanted to see that



the remainder of the property shall be reserved for the persons available in the source from which the property originated. As far as Sub Clause (c) is concerned, the Legislature did not want to restrict the rights of the mother over the property inherited from her predeceased son. The legislature did not want to make such property useless to the mother. In such cases, the Courts are not expected to rewrite and include something into the provision that the legislators have never contemplated and intended, even if there is injustice. The sole reason that the mother can defeat the right of devolution by her individual act is not a reason or a ground for this Court to rewrite the provision. The interpretation put forward by the appellant, if accepted, would make the interest of the mother, who inherited property from his predeceased son, a life interest and would definitely infringe on her rights over the property.

36. It is true that Section 16(3) does not refer to the case of the son referred to in Sub Clause(c), while it covers the devolution



in favour of heirs coming under Section 15(2). It refers to the case of parents referred to in Sub Clause (a) and refers to the case of the husband and his father referred to in Sub Clause (b). At the time when 16(3) was enacted Subsection (2) of Section 15 had only two Sub clauses (a) and (b) – Clause (a) dealing with the property of parents and Clause (b) dealing with the property of husband. While inserting Clause (c), the corresponding amendment was not made in Section 16(3). Hence, the case of the son referred to in Sub Clause(c) was not referred to in Section 16(3). The possible inference is that in the case of the son also, the same principle applies, and the devolution shall be in the same order and according to the same rules as would have applied if the property had been the son's and such person had died intestate in respect thereof immediately after the intestate's death. The absence of reference to the case of the son in Section 16(3) does not



improve the case of the appellant in the matter of interpretation of 15(2) (c).

37. I am unable to accept the argument of the learned Senior Counsel for the appellant that since the word 'devolve' is used in Section 15(2), the intention is to continue the devolution till it reaches the class of persons for whose benefit the provision is enacted. Devolution can be limited to one person to another or persons to persons in progression. The limits of devolution would depend on the rules of devolution, and it could not be said that merely the 'devolve' is used, it should be treated as a continuous devolution or devolution from person to person. In both Sub Section (2) and (3) of Section 15, the term used is 'devolve,' and it could not be said that the term 'devolve' has a different meaning in Sub Section(2). The devolution referred to in Clause (c) happens on the death of the mother and not on the death of a son. Hence, it could not be said that the intention of the legislature is that the property devolves from the son to his



heirs in all circumstances. Clause (c) does not deal with the devolution of property on the son's death. Devolution of the son's property is governed by Section 8. Section 15(2)(c) does not affect or control the devolution of the son's property governed by Section 8.

38. The next contention of the learned Senior Counsel for the appellant is that the terms 'intestate' and 'available for intestate succession' are absent in Section 15 (2), and if the Legislature wanted to see that the provision is applicable only to the property available for intestate succession, that would have been specifically stated. Hence, the devolution could only be for the entire property inherited by the mother and not the property available for intestate succession. It is not permissible to add those words which would negate the very object of the provision. Clause (c) refers to the property of the mother of the predeceased son. The existence of the properties as on the date of death of the mother is to be identified. Then, the question



is whether any property inherited from her predeceased son exists in the hands of the mother at the time of her death. If such property is available as on the date of death of the mother, then only Clause (c) comes into operation with respect to such property alone. Clause (c) is not applicable to all the properties of the mother and all the inherited properties from the predeceased son. The existence of the inherited properties from the predeceased son as on the date of death of the mother alone is the criteria for application of Clause (c), and hence, no reference needs to be made with available property out of the inherited properties from the predeceased son.

39. The learned Single Judge of this Court in **Binu (supra)** held that Section 14 is also applicable to Section 15 (2)(c). It expressly provides that any property possessed by a female Hindu shall be held as a full owner and not as a limited owner. On the death of the son, the mother also becomes the absolute owner of her share and co-owner of the entire property, and



hence, the mother is also possessed with the property. There is no ground or reason to take a different view.

40. In view of the aforesaid discussions, I am in respectful agreement with the view expressed by the Learned Single Judge in **Binu (supra)**, even after consideration of the points raised by the learned Senior Counsel for the appellant. The decision in **Binu (supra)** does not require any reconsideration, and hence, no reference to the Division Bench is required.

41. The decision of this Court in **Binu (supra)** is squarely applicable to the facts and circumstances of the case. The Regular Second Appeal deserves only dismissal.

42. The Substantial Questions of law No.1 and 2 are answered in the affirmative and against the appellants. No argument was advanced in support of the Substantial Question of Law No.3, and hence, I find that the Substantial Question of Law No.3 does



RSA NO.27/2023

37

2025:KER:8548

not arise in the matter. Accordingly, the Regular Second Appeal
is dismissed with costs.

Sd/-

**M.A ABDUL HAKHIM,
JUDGE**

jma