



REAL ESTATE

Devolution of Self-Acquired Property under Pre-1956 Mitakshara Law: Exclusive Succession of Male Issue Affirmed

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PUBLISHED 8 October 2025

Introduction

This judgment, delivered by the Honorable High Court of Kerala carefully addresses the complex and historically significant question of how a Hindu male's self-acquired property devolved under the Mitakshara School of Hindu Law before the far-reaching commencement of the Hindu Succession Act, 1956 ("the Act"). The ruling affirms the traditional, patriarchal rule that the male issue succeeded exclusively to the separate property of the father when the death occurred prior to the Act's commencement. In doing so, the Court draws a sharp and clear demarcation between the rights of sons and daughters under the pre-1956 regime, reinforcing the principle that in the absence of a specific statutory provision (like the one introduced in 1956), the Mitakshara order of succession prioritized the male line, thereby excluding a daughter from inheritance when a son was present. The decision stands as a crucial restatement of the legal position governing property rights that crystallized in the pre-independence era and before the reforms intended to ensure gender equality in Hindu succession.

Case Origin and Factual Matrix

The origin of the matter lies in the judgment of the Additional Sub Court, Irinjalakuda^[1], where a partition suit was dismissed on the finding that the property was not partible. The suit property, an extent of 2.15 acres of land in Kodungallur Village, was the self-acquired property of one Rama Pai, a Hindu governed by Mitakshara law. Rama Pai had a son, Hari Pai, and a daughter, Yasodamma. Hari Pai, along with his wife and children, sold the property in 1965 to a firm and its partners (Defendant Nos. 1 to 3) through a registered sale deed. The appellants, as legal heirs of Yasodamma, contested the sale, arguing that they were entitled to a half share.

Competing Contentions and Timeline

The appellants argued that the property should have devolved jointly upon Hari Pai and Yasodamma, as the rule of survivorship was inapplicable to self-acquired property, thus entitling them to a half share. They also initially contended that Rama Pai died after 1956, making the Hindu Succession Act, 1956, applicable. The respondents countered that Rama Pai died before 1956 and that, under the pristine Hindu law, the separate property devolved solely upon his male heir, Hari Pai, making the 1965 sale valid. The Court upheld the trial court's finding that Rama Pai had died before 17.06.1956, based on the unchallenged oral testimony of a witness stating the death occurred in 1950 and the execution of a mortgage deed by Hari Pai alone in 1954, an act suggesting his father was already deceased.

Inapplicability of the Hindu Law of Inheritance (Amendment) Act, 1929

The appellants' reliance on the Hindu Law of Inheritance (Amendment) Act, 1929 ("the 1929 Act") was rejected. The Court strictly construed the 1929 Act, noting that its operative Section 2 merely introduced a limited set of female heirs (daughter's daughter, sister, etc.) and ranked them in the order of succession "next after a father's father and before a father's brother". In the Supreme Court's ruling under *Arunachala Gounder's case*^[2], the High Court emphasized that the 1929 Act made "no modifications in the fundamental concepts underlying the textual Hindu Law relating to inheritance" and did not confer on a daughter the same status as a son when a son was present. The statute's effect was limited to enlarging the circle of heirs who could succeed in default of male issue. The 1929 Act, therefore, did not alter the son's superior right to inheritance.

Governing Rule of Pristine Mitakshara Law

The core legal principle addressed was the devolution under the pristine Mitakshara law applicable prior to the 1956 Act. The Court unequivocally held that under this system, the self-acquired property of a male devolved exclusively upon his male issue. A female heir could succeed to the property only in the absence of a male child.

This principle was supported by authoritative precedents. The Privy Council's decision in *Katama Natchiar v. Srimut Rajah Moottoo Vijaya Raganadha Bodha Gooroo Sawmy Periya Odaya Taver*^[3] confirmed that the general course of descent of separate property was to the male issue. Furthermore, Mulla's Principles of Hindu Law noted that in the order of succession under Mitakshara law, the Daughter was placed at serial no. 5, after the son, grandson, great-grandson, and widow, thereby confirming the son's primary and exclusionary position as an heir.

Judicial Conclusion and Final Disposition

The Court concluded that since Rama Pai was governed by Mitakshara law and died before 1956, his self-acquired property devolved entirely upon his son, Hari Pai. Hari Pai thus acquired absolute title and validly conveyed his rights to the contesting defendants via the 1965 sale deed. Consequently, the Court found no legal justification to interfere with the impugned judgment, which correctly held that the property was not partible. The appeal was accordingly dismissed. This judgment stands as a powerful restatement of the clear legal demarcation concerning inheritance rights established under the patriarchal Mitakshara law before the far-reaching reforms of the Hindu Succession Act, 1956.

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[1] O.S. No. 602 of 2006

[2] AIR 2022 SC 605

[3] MANU/PR/0010/1863

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