

**Succession by Female – Prior to Hindu Succession Act – SC answers in Aurnachala Gounder**

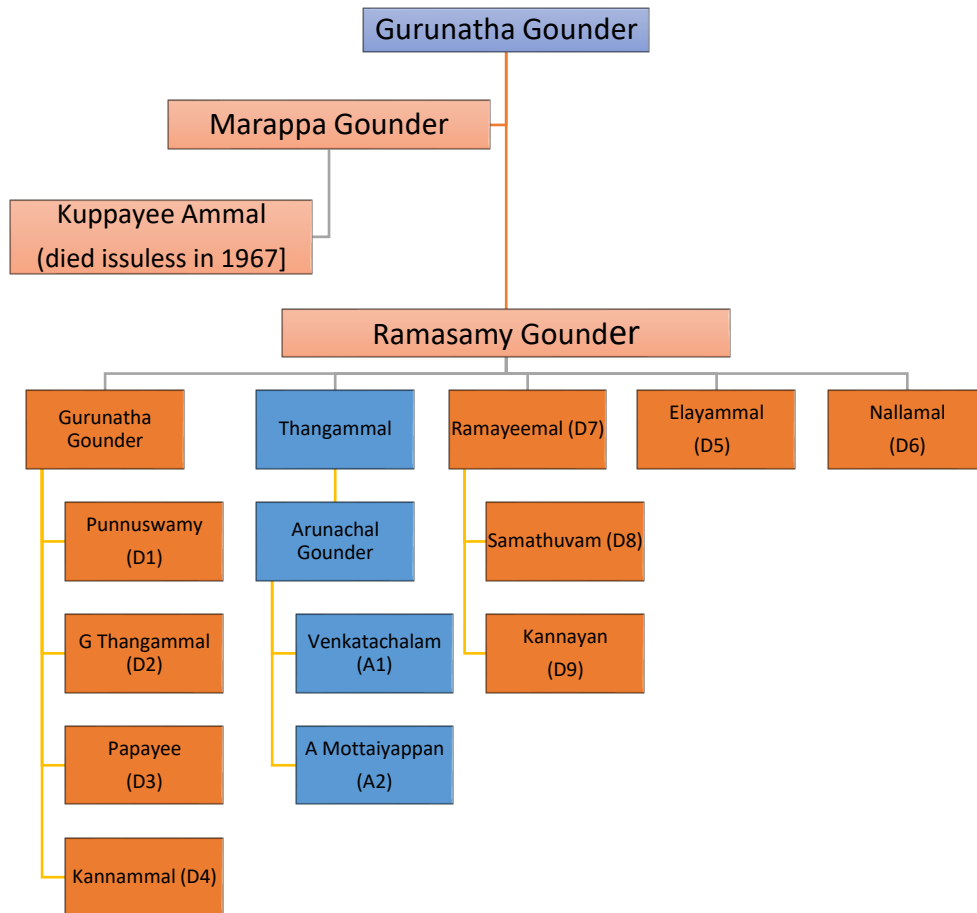
- Contributed by CA Sri Harsha

The recent decision of Honourable Supreme Court in matter of Aurnachala Gounder v. Ponnusamy<sup>1</sup> has reiterated the rights of a female for succeeding to the property in absence of a male issue, though the succession happened prior to the enactment of Hindu Succession Act, 1956. The matter revolves around, who would be the successor to the self-acquired of the father who has only a daughter or brother's son. The trail court and high court have held that the property would devolve by survivorship instead of succession. Since the father does not have any male issue and the daughter has deceased without any issue, the property would devolve by survivorship on the son of deceased brother. The next question that has come up is, if the property is to be devolved by succession to the daughter, how would the succession happen post her demise. The Supreme Court after referring to the various commentaries and judicial precedents has held that the self-acquired property would devolve on the daughter through succession and not to brother's son by survivorship, despite of the fact that the succession happened prior to the enactment of Hindu Succession Act. In this article, we shall analyse the fact, the observations of trail and high court and the ultimate ruling by the Supreme Court.

Before proceeding with the facts of the case, it is necessary to understand the entire family and then the respective claims put forward by them. Marappa Gounder and Ramasamy Gounder were sons of Gurunatha Gounder (for ease of reference, we shall call him Gurunatha Gounder Senior). Marappa Gounder has only a daughter Kupayee Ammal. On the other hand, Ramasamy Gounder has five off-springs, one male and balance were female. The male issue was Gurunatha Gounder (for ease of reference, we shall call him Gurunatha Gounder Junior). The four daughters were named as Thangammal, Ramayeemal, Elayammal, Nallammal. Kupayee Ammal was dead issueless. Gurunatha Gounder Junior had four offsprings namely Ponnuswamy, G Thangammal, Papayee and Kannammal. Thangammal has a daughter Arunachal Gounder and Ramayeemal has two offsprings Samathuvam and Kannayan. The family chart appears like this:

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<sup>1</sup> 2022 SCC Online SC 72



Marappa Gounder has purchased the suit property independently in the year 1938, through the process of court auction. The suit for partition is brought by Thangammal, daughter of Ramasamy Gounder claiming 1/5<sup>th</sup> share in the suit property on the allegation that her father predeceased his brother Marappa Gounder who died in 14.04.1957 leaving behind the sole daughter Kuppayee Ammal who also died issueless in 1967 and after the death of Marappa Gounder, his property was inherited by Kuppayee Ammal and upon her death in 1967, all the five children of Ramasamy Gounder will be entitled for 1/5<sup>th</sup> share each. After the death of Thangammal, the suit was contested by her daughter Arunachal Gounder, since having died is represented by A1 and A2. The appellant pleaded that the property was purchased by Marappa Gounder using his own funds and accordingly, it becomes his self-acquired property.

However, the respondent's [D1 to D9] contention was that Marappa Gounder died on 11.05.1949 and not on 14.04.1957 as contested by appellant and as per the provisions of the Hindu Law prevailing prior to 1956, Gurunatha Gounder Junior was the sole heir of Marappa Gounder and accordingly, he inherited the suit properties, since according to them, the said property was purchased from family funds and accordingly, it acquires the character of joint family property. Since Marappa Gounder has died prior to enactment of Hindu Succession Act, 1956, the succession opened at the time of his death and the respondent's father, being the sole male heir rightly inherited the property and was in possession and enjoyment of these properties and after his death, the respondents herein, were continuing as lawful owners. The respondent's contention was that by virtue of survivorship, the property would devolve upon Gurunatha Gounder Junior and not on Kuppayee Ammal.

The trial court after considering the evidence brought on record of the case by the parties concluded that Marappa Gounder died on 15.04.1949 and thus, the suit property would devolve upon the sole son of deceased Ramasamy Gounder, the deceased brother of Marappa Gounder by survivorship and the appellant has no right to file the suit for partition and accordingly, dismissed the suit. The High Court agreed with the observations of the Trial Court dismissed the appeal preferred by the appellant. The appellant has finally preferred an appeal before the Supreme Court challenging the decision of the High Court.

**Arguments of Appellant:**

The appellant before the Supreme Court stated that since the property was self-acquired by Marappa Gounder and not a joint property, the said property would devolve onto his daughter, who is closer than his brother's son. The appellant pleaded that as per Law of Mitakshara, the right to inheritance depends upon propinquity i.e., proximity of relationship and Kuppayee Ammal was closer to Marappa Gounder than Gurunatha Gounder Junior, the property would devolve on Kuppayee Ammal and not on the respondents. The appellant further pleaded that as per the Hindu Law, the daughter is not disqualified to inherit in separate property of her father and when a male hindu dies without a son leaving only daughter, his separate property would devolve upon the daughter through succession and the property will not devolve upon brother's son through survivorship.

**Arguments of Respondents:**

The Respondents argued that suit property was purchased by Marappa Gounder in court auction sale out of the family funds and thus, it was joint property, and on his death, since he had no male heir, the defendant as a coparcener succeeded to the estate. Since the trial court decided and the same was upheld by High Court that Marappa Gounder has died in 1949 prior to enactment of Hindu Succession Act, the appellant and her sisters would not be legal heirs and cannot seek for partition of suit property.

**Observations by Honourable Supreme Court:**

**On Self Acquired vs Joint Family Property:**

The Court expressed that it would not involve in determination of the actual date of death of Marappa Gounder, since it was already settled by two fact finding authorities namely trial court and High Court. The Supreme Court then proceeded to examine the question that, whether the property was an absolute property or joint family property. The Court stated that the respondents in their written submissions have agreed that the suit property is absolute property and nowhere shown any evidence to prove the contrary. Accordingly, the Supreme Court based on the written affidavits submitted by respondents have concluded that the suit property was absolute property of Marappa Gounder and not the joint family property as argued by respondents.

**On Rights of Sole Daughter vis-à-vis Inheritance:**

The Supreme Court then proceeded to frame the important issue, the heart of this article, whether suit property will devolve on to the daughter upon the death of her father intestate by inheritance or shall devolve on to the father's brother's son by survivorship, essentially, Kuppayee Ammal vs. Gurunatha Gounder Junior. The Supreme Court, accordingly, framed three questions:

*What is the nature of property and what would be the course of succession if it is a separate property as opposed to undivided property?*

*Whether a sole daughter could inherit her father's separate property dying intestate? and*

*If so, what would be the order of succession after the death of such daughter?*

The Supreme Court after tracing the origin of the Hindu Law has stated that the Mitakshara law has always been considered as the main authority for all the schools of law, with the sole exception of that of Bengal, which is mostly covered by another school known as Daya Bhaga. The Court referred to the judgment of Pranjivandas Tulsidas vs. Dev Kuvarbai 1 Bomb. HC B 131, wherein it was held that a Hindu owning separate property died without a male issue, leaving behind a widow, four daughter and a brother and male issues of other deceased brothers and Bombay High Court observed that widow was entitled to a life estate in the property and subject to her interest, the property would devolve to the daughters absolutely in preference to the brother and the issue of deceased brothers. The said judgment was followed in the matter of Tuljaram Morarji vs. Mathuradas, Bhagvandas and Pranjivandas ILR (1881) 5 Bom 662 and Chotay Lall vs. Chunnoo Lall 1874 SCC Online Cal 10. The Court referred to the digest of 'Yajnavalkya'<sup>2</sup> states that 'What has been self-acquired by any one, as an increment, without diminishing the paternal estate, likewise a gift from a friend or a marriage gift, does not belong to co-heirs'. The Court then referring to Standish Grove Grady's book on 'Treatise on Hindoo Law of Inheritance', wherein the judgment in matter of Katama Natchiar vs. The Rajah of Shivagunga was discussed to state that failing male issues, a widow takes the self-acquired property of her husband and no doubt, on the failure of male issue and a widow, the daughter would take. By referring to Mulla's Hindu Law the Supreme Court stated that Mitakshara recognizes two modes of devolution of property, namely survivorship and succession and the rule of survivorship applies only to joint family properties. However, for self-acquired property, the rule of succession applies to property held in absolute severalty by last owner. The Court then concluded that, from the above, it is abundantly clear that a daughter was in fact capable of inheriting the father's separate estate. The Court have arrived at the above conclusion by relying on the below judgments:

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<sup>2</sup> The Mitakshara School derives majorly from running commentaries of Smritis written by 'Yajnavalkya'.

S No	Judgment	Court	Observations by Supreme Court
1	Katama Natchiar vs. Srimut Rajah Mootoo Vijaya Raganadha Bodha Gooroo Swamy Periya Odaya Taver <sup>3</sup>	Privy Council	<ul style="list-style-type: none"> <li>• The Privy Council noted the arguments of Anga Mootoo Natchiar, where she stated that the Zamindar had been acquired by the sole exertions and merits of her husband and as an issue of law that what is acquired by a man, without employment of his patrimony, shall not be inherited by her brothers and co-heirs, but if he dies without male issue, shall descend to his widows, his daughters and parents, before going to her brothers or remoter collaterals.</li> <li>• The Privy Council after hearing to the above arguments has framed three questions, out of which, the third one, is relevant. The third question is that, if the property is self-acquired and separate, what is the course of succession according to Hindoo Law of such an acquisition, where the family is in other respects an undivided family?</li> <li>• The Privy Council stated that the commentary on Mitakshara affirms in general terms the rights of the widow to inherit on failure of male issue. The said commentary has concluded that a wedded wife, being chaste, takes the whole estate of man, who, being separated from his co-heirs, and not subsequently re-united with them, dies leaving no male issue. The Privy Council however stated that the commentary in the context deals only with cases in which the property in question has been either wholly the common property of a united family, or wholly the separate property of the deceased husband but there was no commentary on the situation in which the property in question may have been in part the common property of a united family, and in part the separate acquisition of the deceased. The Privy Council stated that it cannot be assumed that because widows take the whole estates of their husbands when they have been separated from, and not subsequently reunited with, their co-heirs, and have died leaving no male issue, they cannot, when their husbands have not been separated, take any part of their estates, although it may have been their husband's separate acquisition and accordingly the commentary in the context could not be applied.</li> <li>• The Supreme Court stated that on a complete reading of the judgment of Privy Council, the following legal principals emanate: <ul style="list-style-type: none"> <li>✚ That the general course of descends of separate property according to the Hindu Law is not disputed it is admitted that according to that law such property (separate property) descends to widow in default of male issue.</li> <li>✚ It is upon the Respondent (in the matter before Privy Council) to make out that the property here in question which was separately acquired does not descend according to the general course of law</li> <li>✚ According to the more correct opinion, where there is a undivided residue, it is not subject to ordinary rules of partition of joint</li> </ul> </li> </ul>

<sup>3</sup> (1861-64) 9 Moo IA 539

			<p>property, in other words, if it a general partition any part of the property was left joint, the widow of the deceased brother will not participate, notwithstanding with separation, but such undivided residue will go exclusively to the brother.</p> <ul style="list-style-type: none"> <li>✚ The law of succession follows the nature of property and of the interest in it.</li> <li>✚ The law of partition shows that as to the separately acquired property of one member of a united family, the other members of the family have neither community of interest nor unity of possession.</li> <li>✚ The foundation therefore of a right to take such property by survivorship fails and there are no grounds for postponing the widow's right any superior right of the co-parceners in the undivided property.</li> <li>✚ The Hindu Law is not only consistence with this principle, but is also most consistent with convenience.</li> </ul> <ul style="list-style-type: none"> <li>• The law therefore is that succession in the case of Hindu male dying intestate is to be governed by inheritance rather than survivorship is affirmed. In the absence of male member, the property devolves upon to the widow and thereafter to the daughter.</li> </ul>
2	Sivagnana Tevar vs. Periasam <sup>4</sup>	Privy Council	<ul style="list-style-type: none"> <li>• Following the above case, the Privy Council stated that the palaypat was the separate property of the Dhorai Pandian and on death of Dhorai Pandian, his right, if he had any left undisposed of in the property, passed to his widow, notwithstanding the undivided status of the family.</li> </ul>
3	Ghurpatari vs. Smt Sampati <sup>5</sup>	Allahabad High Court	<ul style="list-style-type: none"> <li>• The question before the full bench is, whether a custom under which daughters are excluded from inheriting the property of their father, can by implication exclude the daughter's issue both males and females, also such from inheritance.</li> <li>• The Court referring to various commentaries stated that the right of daughter and daughter's son to succeed the property was well recognized in the Mitakshara law and the daughter ranks fifth in the order of succession and the daughter's son ranked sixth.</li> </ul>
4	Lal Singh vs. Roor Singh <sup>6</sup>	Punjab & Haryana	<ul style="list-style-type: none"> <li>• The Court has held that daughters and daughters son have a preferential claim to non-ancestral property as against the collaterals.</li> </ul>
5	Gopal Singh vs. Ujagar Singh <sup>7</sup>	Supreme Court	<ul style="list-style-type: none"> <li>• The Supreme Court stated that the daughter succeeds to the self-acquired property of her father in preference to collaterals.</li> </ul>
6	Devidas vs. Vithabai <sup>8</sup>	Bombay HC	<ul style="list-style-type: none"> <li>• In this case, Arjuna died in 1936 and succession opened and while determining the shares during partition, daughter of one pre-deceased sons of Arjuna namely, Vithabai was held entitled for share. However, the name of Vithabai was removed from revenue records. She filed a suit for declaration for claiming 1/3<sup>rd</sup> share with other reliefs. When the matter was carried before High Court, the High Court stated as under.</li> </ul>

<sup>4</sup> ILR (1878) 1 Mad 312

<sup>5</sup> AIR 1976 All 195

<sup>6</sup> PLR 55 P&H 168

<sup>7</sup> AIR 1954 SC 579

<sup>8</sup> (2008) 5 Mah LJ 296

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|  |  | <ul style="list-style-type: none"><li>• When Zolu died in 1935, he was joint with his father and brothers and his share in coparcenary would devolve by survivorship and not by succession. Since Zolu did not hold any separate property admittedly and therefore, there was no question of property passing over by succession and accordingly Vithabai would not be entitled for share.</li></ul> |
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The Court stated that, from the decisions and discussions, it is clear that the ancient text as also the smritis, the commentaries have recognized the rights of several female heirs, the wives and the daughter's being the foremost of them. Accordingly, it held that if a property of a male hindu dying intestate is a self-acquired property or obtained in partition of a co-parcenary or a family property, the same would devolve by inheritance and not by survivorship, and a daughter of such male hindu would be entitled to inherit such property in preference to other collaterals. Since, in the instant case, it is concluded that the property is self-acquired by Marappa Gounder, despite the family being in state of jointness, upon his death intestate, his sole surviving daughter Kuppayee Ammal, will inherit the same by inheritance and the property shall not devolve by survivorship.

As far as the question, who would succeed after Kuppayee Ammal, the Supreme Court stated that there are contradictory opinions in respect of order of succession to be followed after the death of such a daughter inheriting the property from his father. One school is of the view that such daughter inherits a limited estate like a widow, and after her death, it would revert to heirs of the deceased male who would be entitled to inherit by survivorship. While the other school of thought is exactly opposite. However, the Court stated that this would not be a challenge in the current set of facts, since, Kuppayee Ammal has deceased in 1967 after the enactment of Hindu Succession Act, 1956 and hence, guided by Section 14 of the said act instead of the situation prior to the said enactment. The Court stated that after the introduction of Section 14, the women acquired absolute interest in the estate and not limited interest as existed earlier, and the succession of those properties would happen in accordance with Section 15. The scheme of Section 15(1) goes to show that the property of Hindu females dying intestate is to devolve on her own heirs, the list is enumerated in clauses (a) to (e) of Section 15(1). Section 15(2) carves out exceptions is confined to the property inherited by a Hindu female either from her father or mother, or from her husband or father-in-law and the exception shall operate only in the event of Hindu female dies without leaving any direct heirs, her son or daughter or children of the pre-deceased son or daughter.

The Court concluded stating that since in the present case, since the succession of suit properties opened in 1967 upon the death of Kuppayee Ammal, the 1956 Act shall apply and thereby Ramasamy Gounder's daughters being Class – I heirs of their father too, shall be heirs and entitled to 1/5<sup>th</sup> share each in suit properties.