A

BHAJYA S/O SHYAMA KANBI

v.

GOPIKABAI AND ANR. ETC.

April 4, 1978

[R. S. SARKARIA, N. L. UNTWALIA AND P. S. KAILASAM, JJ.]

B

Madhya Pradesh Land Revenue Code, (Code II of 1955), 1954 *Section* 151 *r/w S.* 4(2) *of Hindu Succession Act (Act* 30), 1956—*Interpretation of the words 'subject to his personal law' in Section* 151, *which provides "subject to his personal law, the interest of a tenure holder shall, on his death, pass by inheritance, survivorship or bequest as the case may be"—Whether referable to Hindu Succession Act,* 1956—*Legislation by referential incorporation—Categories of such legislation—"Personal law" includes Hindu Succession Act—Hindu Succession Act,* 1956, *Sections* 8, 15 & 16.

C

The suit land which originally belonged to Ghusya, who died before the Settlement of 1918, came into the possession of his son Punjya. On Punjya death in the year 1936, the holding devolved on his widow Smt. Sarji who continued in possession of the same till her death on 6-11-1956. On the death of Sarij the defendants entered into wrongful possession of the land. Smt. Gopikabai, claiming inheritance to the Bhumidari interest of Smt. Sarji deceased, as the daughter of the sister of the last male holder, Punjya, filed a suit for possession of the suit land and also for the value of the crop. The defendants contested the suit claiming that they were Sapindas of the last male holder, Punjya (being his father's brother's son's son), and as such were under the Hindu Law as prevailing on the date of Punjya's death, entitled to succeed to the interest of the deceased tenure holder by virtue of Section 151 of the M.P. Land Revenue Code 1954, the operation of which had been saved by Section 4(2) of the Hindu Succession Act, 1956.

D

The Trial Court decreed the suit; but on appeal the Additional District Judge set aside the decree of the trial Court and dismissed the suit. The High Court, in Second Appeal, restored the trial Court's decree holding that the plaintiff came under Clause (b) of Section 8 of the Hindu Succession Act, and as such, was entitled to succeed in preference to the defendants who are agnatic relatives coming under clause (c) of that Section.

E

Dismissing the appeal by special leave the Court

HELD : (1) From the conspectus of Ss. 2(7), 2(19), 2(20) and Ss. 145, 147, 148, 151, 168, 172 of Madhya Pradesh Land Revenue Code, 1954, the following points emerge clear : (i) A 'tenure-holder' and a 'tenant' have been separately and distinctly defined in clauses (20) and (19) of s. 2 of the 1954 Code. A 'tenant' according to the definition, holds land from a *tenure-holder*, but a 'tenure-holder' holds and *directly from the State.* (ii) A bhumiswami/ Bhumidhari pays land *revenue* to the State and *not rent;* (iii) Tenancy rights and rights of Bhumiswami/Bhumidhari are dealt with in separate Chapters of the Code. Bhumiswami/Bhumidharies have permanent heritable and transferable rights in the land which cannot be taken away, except in certain cases. [565 G, 566 E-F]

F

(2) Even on the assumption, that S. 151 of the 1954 Code is a law for devolution of tenancy rights in agricultural holdings, the section itself, in terms, makes personal law by general reference applicable in the matter of the devolution of the interest of a deceased tenure holder (i.e. Bhumiswami and Bhumidhar).

G

Smt. Indubai v. *Vyankati Vithoba Sawadhu and Ors.*, A.I.R. 1966 Bom. 64 *Kumari Ramlali* v. *Mst. Bhagunti Bai and Ors.* A.I.R. 1968, M.P. 247 and *Nahar Nirasingh and Ors.* v. *Mst. Dukalhim & Ors.*, A.I.R. 1974 M.P. 141 referred to.

H

(3) (a) There are no words in section 151 or elsewhere in the Code which limit the scope of the expression "personal law" to that prevailing on February 5, 1955. On the contrary the words "on his death" used in s. 151 clearly show

A that the legislative intent was that "personal law" as amended upto the date on which the devolution of the tenure holders interest is to be determined, shall to the rule of decision. [567 H, 568 A]

(b) The Legislature can legislate on a subject by referential incorporation, if that subject is constitutionally within its legislative competence. Section 151 is an instance of legislation by such method. The State Legislature enacted the 1954 Code in exercise of its power under Entry V in the Concurrent List. The 1954 Code had also received the assent of the President under Art. 254(2) B of the Constitution. [567 E-G]

(c) Broadly speaking legislation by referential incorporation falls in two categories : First, where a statute by specific reference incorporates the provisions of another statute *as of the* time of adoption. Second, where a statute incorporates by *general* reference the law concerning a particular subject, as a genus. In the case of the former, the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. In the C case of *latter* category, it may be presumed that the legislative intent was to include all the subsequent amendments also, made from time to time in the generic law on the subject adopted by general reference. [568 B-C]

(b) Construed in accordance with the above principle, the expression "personal law" referred to in Section 151 of the Code, comprehends the Hindu Succession Act, 1956, which will undoubtedly govern the inheritance to the 'estate' of Smt. Sarji who died on November 6, 1956, much after the coming into force of that Act. [568F-G]

D *Smt. Indubai* v. *Vyankati Vithaba Sawadha and Ors.*, A.I.R. 1966 Bom. 64, *Kumari Ramlali* v. *Mst. Bhagunti Bai and Ors.*, A.I.R. 1968 M.P. 247 and *Nahar Hirasingh and Ors.* v. *Mst. Dukalhin and Ors.*, A.I.R. 1974 M.P. 141; approved.

(4) Reading Section 15 with rule 3, set out in s. 16, the instant case will fall under Cl. (b) Sub-s. (2) of s. 15 because Shrimati Sarji died issueless and intestate. The interest in the suit property was inherited by her from her husband. The suit land will, therefore, under Cl.(b) go to the heirs of her E husband, Punjya. [569 G-H]

(5) The expression "heirs" of the husband used in S. 15 is to be construed with reference to the date on which the succession opens out and not with reference to the date of the husband's death. Once it is found that the case falls under s. 15(2)(b) of the Hindu Succession Act, the fiction envisaged in Rule 3 of Section 16 is attracted, according to which, for the purpose of ascertaining the order of devolution it is to be deemed as if the husband had died intestate immediately after the female intestate's death. [569 A, E, 570 B]

F (6) Section 8 of the Act provides that the property of a male Hindu dying intestate shall devolve according to the provisions of this chapter :—

(a) Firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

(b) Secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;

G (c) Thirdly, if there is no heir of any of the two classes then upon the agnates of the deceased and,

Lastly, if there is no agnate, then upon the cognates of the deceased."

Now, Smt. Gopikabai, Respondent No. 1 is admittedly the daughter of the sister of the last male holder, Punjya; whereas the appellants are his remote agnates. Neither party falls under Class I of the Schedule. 'Sister's daughter' is Item 4 of Entry V in Class II of the Schedule; while agnates do not figure H anywhere in Class III. Thus, Smt. Gopikabai's case will come in Clause (b); Secondly, of S. 8 and, as such, she will be a preferential heir of the husband of Smt. Sarji, if he had died the moment after her death on November 6, 1956. In this view, she would exclude the defendants-agnates from inheritance even

according to 'personal law' which, within the contemplation of s. 151 of the Code, will include the Hindu Succession Act, 1956, in force at the time when Smt. Sarji died and succession opened out. [570 C-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2415 of 1968.

Appeal by Special Leave from the Judgment and Decree dated 10-7-68 of the Madhya Pradesh High Court in Second Appeal No. 3773 of 1962. B

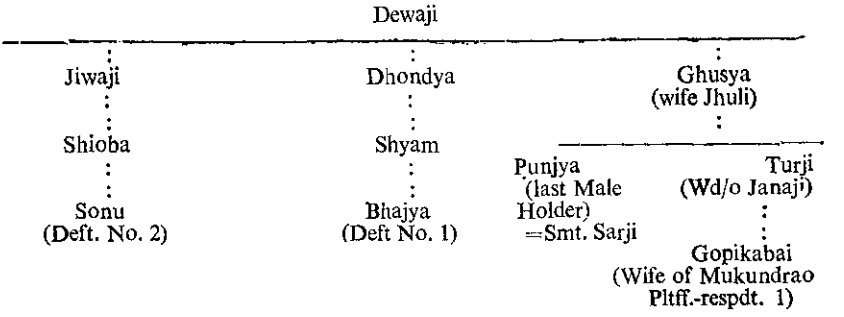
V. K. Sanghi, A. G. Ratnaparkhi and *G. L. Sanghi,* for th Appellant.

U. R. Lalit, V. N. Ganpule and *Veena Devi (Mrs.) Khanna,* for the Respondent No. 1.

The Judgment of the Court was delivered by

SARKARIA, J.—This appeal is directed against a judgment of the High Court of Madhya Pradesh. C

The following is the genealogy of the parties :



D

E

Smt. Gopikabai wife of Mukundrao, shown in the above pedigree-table, filed a suit in the Court of the Civil Judge, Multai, against the defendant-appellant, Bhajya, and Sonu, respondent 2, for possession of Bhumiswami rights in the land comprised in Khasra Nos. 31 and 166 in the area of Village Kuthkhedi, Tehsil Multai, District Betul, Madhya Pradesh. F

The suit land originally belonged to Ghusya son of Dewaji. Ghusya died before the Settlement of 1918 and thereafter, this land was held by his son, Punjya, who died in the year 1936. On Punjya's death, the holding devolved on Punjya's widow, Smt. Sarji. Smt. Sarji died on November 6, 1956, and thereupon this dispute about the inheritance to the land left behind by Smt. Sarji, has arisen between the parties. Both the parties claim on the basis of Hindu Law. G

The plaintiff-respondent, Smt. Gopikabai, claims that she being the daughter of Smt. Turji, a sister of the last male holder, Punjya, is an heir under Section 15 read with Section 2(II) (4)(iv) of the Schedule referred to in Section 8 of the Hindu Succession Act, 1956, whereas the defendants claim as *sapindas* of the last male holder under Mitakshra Law. H

It is alleged by the plaintiff that Bhajya and Sonu, defendants, took forcible possession of the suit land after the death of Smt. Sarji.

A Apart from possession, the plaintiff claimed Rs. 180/- as damages for the crop removed by the defendants.

The defendants' case, as laid in the written statement, was that the suit property being an agricultural holding, in view of Section 4(2) of the Hindu Succession Act, the inheritance to the estate of Smt. Sarji who died on November 6, 1956, will not be governed by the provi-
B sions of that Act, but by Mitakshra School of Hindu Law, according to which the defendant-*sapindas* are entitled to suit land to the exclusion of the last male holder's sister's daughter, the plaintiff.

The trial court decreed Smt. Gopikabai's claim. On appeal, the Additional District Judge set aside the decree of the trial court and dismissed the respondent's suit.

C In second appeal by the plaintiff, the High Court following its earlier decision in *Kumari Ramlali* v. *Mst. Bhagunti Bai*(1), held "that Bhumiswami and Bhumidhari rights are not tenancy rights and Section 151 of the Madhya Pradesh Land Revenue Code, 1954, which deals with the devolution of interest of a Bhumiswami or a Bhumidhari tenure-holder, cannot be regarded as a provision dealing with the devolution of tenancy rights. Section 4(2) of the Hindu Succession
D Act, 1956, in no way saves Section 151 of the Madhya Pradesh Land Revenue Code and it cannot be held that Section 14 of the Hindu Succession Act does not affect the personal law according to which the devolution of the interest of a tenure-holder passes under Section 151 of the Code." The High Court further held that the expression "heirs of the husband" in Section 15(1)(b), as also in Section 15(2)(b), refers to the heirs of the deceased husband, who would
E have succeeded under the provisions of the Hindu Succession Act, 1956, if the husband had died on the date on which the female intestate actually died. On these premises, the High Court held that the plaintiff, Smt. Gopikabai, falls within clause (b) of Section 8, and, as such, is entitled to succeed in preference to the defendant-agnates coming under clause (c) of that Section. In the result, the plaintiff's appeal was allowed and the decree of the trial court was restor-
F ed.

Hence, this appeal by special leave.

The contentions canvassed before us by Mr. Sanghi, learned counsel for the appellants, are as under :

(i) Section 151 of the Madhya Pradesh Land Revenue Code,
G 1954 (in short, the Code) was a law for the devolution of tenancy rights in agricultural holdings, because under the scheme of the Code, Bhumiswamis and Bhumidaris were tenure-holders who could be included in the term "tenants". [*Nahar Hari Singh* v. *Dukallun*(2) and *Sitabai* v. *Kothulal*(2) were cited].

(ii) In view of the position stated at no. (i), Section 4(2) of
H the Hindu Succession Act, 1956, (for short called 'the Act') saved

(1) L.P.A. 6 of 1965 decided on April 20, 1968.
(2) A.I.R. 1974 M.P. 141 (F.B.).
(3) A.I.R. 1959 Bom. 78.

Section 151 of the Code. Therefore, devolution of the agricultural holding left behind by the deceased tenure-holder, will be governed by Section 151 of the Code and not by anything provided in the Act. A

(iii) The expression 'Personal Law' in Section 151 of the Code means the Hindu law which was in force before the enactment of the Act, when the Code was enacted on February 5, 1955, because the words "any law for the time being in force" in sub-section (2) of Section 4 of the Act cannot be construed to mean any law which came into force subsequently. B

(iv) In view of no. (iii), under Mitakshra Law (*Sans* the Act) the respondent being the daughter of the sister of the last male-holder, will be excluded from succession by the appellants who are agnates of the husband of Smt. Sarji, deceased. C

(v) Even if the Act applies, the expression "heirs of the husband" in Section 15, means heirs in accordance with the general Hindu law in force when the husband died, and not the heirs ascertained under Section 8 by fictionally postponing Punjya's death of 6th November, 1956, when Smt. Sarji died (*Kampiah* v. *Girigamme*(1) relied upon).

As against this, Mr. Lalit submits that— D

(a) Section 151 of the Code is not a law dealing with devolution of tenancy rights in agricultural holdings and, as such, is not covered by the saving clause in Section 4(2) of the Act. Section 151 is confined to the devolution of the interest of a 'tenure-holder', the concept of which under the scheme of the Code, is different and distinct from a 'tenant'. Chapter XI of the Code deals with 'tenants', while Chapter XII (in which Section 151 is placed) deals with 'tenure-holders'. E

(b) Even if a 'tenure-holder' includes a 'tenant', then also, Section 151 of the Code by reference makes the devolution of the interest of a deceased tenure holder "subject to his personal law" *as on his death*. Since Smt. Sarji died on November 6, 1956, the 'personal law' which will govern the inheritance to her estate, is Hindu law as modified by the Hindu Succession Act, 1956. Under Section 15 read with Section 8 of the Act, Respondent no. 1 being a preferential heir, will exclude the appellants from inheritance to the estate of Smt. Sarji. F

Before dealing with these contentions, it will be profitable to have a look at the relevant provisions of the Madhya Pradesh Land Revenue Code, 1954. G

Section 2(7) of the Code defined a 'Holding' to mean, *inter alia*, "a parcel of land separately assessed to land revenue". Section 2(20) defined a 'Tenure-holder' as "a person holding land from the State Government as a Bhumiswami or a Bhumidhari". Section 2(19) defined a 'Tenant' as "a person holding land from a tenure-holder as an ordinary or an occupancy tenant under Chapter XIV".

Chapter XII dealt with tenure-holders. In that Chapter, Section 145 provided that there shall be two classes of tenure-holders of H

(1) A.I.R. 1966 Mysore 189.

A lands held from the State, namely, (i) Bhumiswami and (ii) Bhumidhari. Sections 146 and 147 indicated the persons who could be described as Bhumiswamis and Bhumidharis. Section 148 provided that every person becoming a Bhumiswami or Bhumidhari, shall pay as land revenue—

(a) if he was paying land revenue in respect of the lands
B held by him—such land revenue,

(b) if he was paying rent in respect of the land held by him—an amount equal to such rent.

It may be noted that Chapter XII of the Code further contains provisions for transfer of Bhumiswami or Bhumidhari rights and partition of Bhumiswami and Bhumidhari holdings when there are
C more than one tenure holder. Tenancy rights are not dealt with in this Chapter, but separately in Chapter XIV Sections 168 and 172 in Chapter XIV deal with the devolution of rights of an ordinary tenant and an occupancy tenant. Those rights also pass on the death of a tenant in accordance with the personal law of the deceased.

Section 151, which is in Chapter XII, runs thus :

D "Subject to his personal law, the interest of a tenure-holder shall on his death pass by inheritance, survivorship or bequest, as the case may be."

From the above conspectus, the following points emerge clear :

(i) A 'tenure-holder' and a 'tenant' have been separately and distinctly defined in clauses (20) and (19) of Section 2 of the 1954 Code. A 'tenant' according to the definition, holds land *from a*
E *tenure-holder,* but a 'tenure-holder' holds land *directly from the State.*

(ii) A Bhumiswami/Bhumidhari pays land *revenue* to the State and *not rent.*

(iii) Tenancy rights and rights of Bhumiswami/Bhumidhari are dealt with in separate Chapters of the Code. Bhumiswamis/Bhumi-
F dharies have permanent heritable and transferable rights in the land which cannot be taken away, except in certain cases.

There is a conflict of judicial opinion as to whether Chapter XII in general and Section 151 in particular, is a law "for the devolution of tenancy rights in respect of agricultural holdings" within the saving clause in Section 4(2) of the Hindu Succession Act, 1956.

G A Division Bench of the Bombay High Court (at Nagpur) in *Smt. Indubai* v. *Vyankati Vithoba Sawadha & Ors.*(1), held that the aforesaid provisions in the 1954 Code are not such a law and the exception made in Section 4(2) of the Act, cannot apply to them.

In view of the distinctive features of the rights of a tenure-holder, a Division Bench of the Madhya Pradesh High Court, also, in *Kumari Ramlali* v. *Mst. Bhagunti Bai & Ors.*(2), took the same view, and
H held that Section 151 of the Code, which deals with devolution of

(1) A.I.R. 1966 Bom. 64.
(2) A.I.R. 1968 M. P. 247.

the interest of a Bhumiswami or Bhumidhari tenure-holder, is not a provision dealing with 'devolution of tenancy rights' within the contemplation of Section 4(2) of the Act. A

A Full Bench of the Madhya Pradesh High Court in *Nahar Hirasingh & Ors.* v. *Mst. Dukalhin & Ors.*(1), by a majority of two against one, however, over-ruled *on this point,* the decision in *Kumari Ramlali* v. *Mst. Bhagunti* (ibid) and dissented from the Bombay view. But the Full Bench was not concerned with the interpretation of Section 151 of the 1954 Code. The provision, the interpretation of which was in question before the Full Bench, was Section 164 of the Madhya Pradesh Land Revenue Code 1959 as it stood before its amendment in 1961. Whereas Section 151 of the 1954 Code, in terms, provided that personal law would be applicable in the matter of the devolution of the interest of a tenure holder (*i.e.* Bhumiswami and Bhumidhari), Section 164 of the Code of 1959 (which had repealed and replaced the Code of 1954), as it stood at the material time, commenced not only with a *non-obstante* clause militating against the application of personal law, but also provided its own list of heirs and order of succession, which was different from that laid down in the Hindu Succession Act, 1956. B C

Be that as it may, for the purpose of deciding the case before us, it is not necessary to pronounce one way or the other, on the question whether Section 151 of the 1954 Code is a law for devolution of tenancy rights in agricultural holdings, because even on the assumption that it is such a law, Section 151 of the 1954 Code, itself, in terms, makes personal law applicable in the matter of the devolution of the interest of a deceased tenure holder. Well then, does the expression "personal law" mentioned in Section 151, in the case of Hindus, mean—as is contended by Mr. Sanghi—Hindu law as obtaining on February 5, 1955 when the 1954 Code came into force? Or, does it mean Hindu law, as amended by the Hindu Succession Act, prevailing on November 6, 1956, when Smt. Sarji died? D E

It is well known that a Legislature can legislate on a subject by referential incorporation, if that subject is constitutionally within its legislative competence. Section 151 is an instance of legislation by such method. The State Legislature enacted the 1954 Code in exercise of its power under Entry 5, in the Concurrent List (*i.e.* List III), which reads as under : F

> "5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law." G

The 1954 Code had also received the assent of the President under Article 254(2) of the Constitution.

The questions posed above turn on an interpretation of the language of Section 151. There are no words in that Section or elsewhere H

(1) A.I.R. 1974 M.P. 141

A in the Code, which limit the scope of the expression "personal law" to that prevailing on February 5, 1955. On the contrary, the words "on his death" used in Section 151, clearly show that the legislative intent was that 'personal law' as amended upto the date on which the devolution of the tenure holder's interest is to be determined, shall be the rule of decision.

B Broadly speaking, legislation by referential incorporation falls in two categories : First, where a statute by *specific* reference incorporates the provisions of another statute *as of the time of adoption.* Second, where a statute incorporates by *general* reference the law concerning a particular subject, as a genus. In the case of the *former,* the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. In the case of C *latter* category, it may be presumed that the legislative intent was to include all the subsequent amendments also, made from time to time in the generic law on the subject adopted by general reference. This principle of construction of a reference statute has been neatly summed up by Sutherland, thus :

> "A statute which refers to the law of a subject generally D adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted."
>
> (Vide, Sutherland's Statutory Construction, Third Edition, Article 5208, page 5208).

E Corpus Juris Secundum also enunciates the same principle in these terms :

> "....Where the reference in an adopting statute is to the law generally which governs the particular subject, and not to any specific statute or part thereof, ...the refer- F ence will be held to include the law as it stands at the time it is sought to be applied, with all the changes made from time to time, at least as far as the changes are consistent with the purpose of the adopting statute."

Construed in accordance with the above principle, the expression "personal law" referred to in Section 151 of the Code, comprehends G the Hindu Succession Act 1956, which will undoubtedly govern the inheritance to the 'estate' of Smt. Sarji who died on November 6, 1956, much after the coming into force of that Act. If we can say so with due deference, the view taken on this point by the Bombay High Court in *Smt. Indubai's* case (ibid) and by the Madhya Pradesh High Court in *Kumari Ramlali's* case (supra) and by Tare C.J. in *Nahar Hirasingh's* case (ibid) is correct.

H The further question to be considered is : which of the parties is entitled to succeed to the interest of Smt. Sarji deceased under the Hindu Succession Act, 1956 ?

A

The General Rules of succession in the case of a female Hindu dying intestate are given in Section 15 of the Act, which so far as it is material for the purpose, reads as follows :—

> "15(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,— B
>
> (a) upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;
>
> (b) upon the heirs of the husband;
>
> (c) to (e) C
>
> (2) Notwithstanding anything contained in sub-section (1),—
>
> (a) .....
>
> (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband." D

This Section should be read along with the Rules set out in Section 16, the material part of which runs as under : E

> "The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely :—
>
> "Rule 1 ..... F
>
> Rule 2 .....
>
> Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of Section 15 shall be in the same order and according to the same rules as would have applied *if the property had been* the father's or *the husband's* as the case may be, *and such person had died intestate in respect thereof immediately after the intestate's death.*" G
>
> (Emphasis supplied)

The instant case will fall under clause (b), sub-section (2) of Section 15, because Smt. Sarji died issueless and intestate. The interest in the suit property was inherited by her from her husband. The suit land will, therefore, under clause (b), go to the heirs of her husband, Punjya. H

A The next question is, whether "the heirs of the husband" in Section 15 are to be ascertained with reference to the date of Punjya's demise in 1936, or with reference to the date of Shrimati Sarji's death on November 6, 1956, when succession opened out.

There appears to be some divergence of opinion among the High Courts on this point. We are however of opinion that once it is B found that the case falls under Section 15(2)(b), the fiction envisaged in Rule 3 of Section 16 is attracted, according to which, for the purpose of ascertaining the order of devolution, it is to be deemed as if the husband had died intestate immediately after the female intestate's death. Bearing this fiction in mind we have then to go to the Schedule under Section 8 of the Act to find out as to who would be the heirs of Smt. Sarji's husband on *the date of her death.* Section C 8 of the Act provides that the property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :—

"(a) Firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

(b) Secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the D Schedule;

(c) Thirdly, if there is no heir of any of the two classes then upon the agnates of the deceased; and

Lastly, if there is no agnate, then upon the cognates of the deceased."

E Now, Smt. Gopikabai, Respondent 1 is admittedly the daughter of the sister of the last male holder, Punjya; whereas the appellants are his remote agnates. Neither party falls under Class I of the Schedule. 'Sister's daughter' is Item 4 of Entry IV in Class II of the Schedule; while agnates do not figure anywhere in Class II. Thus, Smt. Gopikabai's case will come in clause '(b) Secondly', of Section 8 and, as such, she will be a preferential heir of the husband of Smt. F Sarji, if he had died the moment after her death on November 6, 1956. In this view, she would exclude the defendants-agnates from inheritance even according to 'personal law' which, within the contemplation of Section 151 of the Code, will include the Hindu Succession Act, 1956, in force at the time when Smt. Sarji died and succession opened out.

G In the result, we affirm the judgment and decree of the High Court and dismiss this appeal with costs.

S.R. *Appeal dismissed.*

H