

Case Name	C Masilamani Mudaliar & Ors v Idol of Sri Swaminathaswami Thirukoil & Ors
Topic	Widow entitled to full ownership of property left to provide maintenance
Category	EQUALITY - discrimination; REMEDIES - nullity; WOMEN - discrimination;
Tribunal	Supreme Court
Country	India (Asia)
Case Date	30 Jan 1996
Judge(s)	K Ramaswamy J, S Saghir Ahmad J, G B Pattanaik J

A Hindu man bequeathed certain property to his wife S and his cousin's widow J, for whom he was duty-bound to provide maintenance. The property was to be shared equally by S and J but not sold during their lifetimes. His will further provided that, should one predecease the other, the survivor would have the right to enjoy the property 'in its entirety' and that it should be held in trust after both their deaths for religious and charitable purposes. After J died, a power of attorney holder appointed by S arranged for the property to be sold to the respondents. This was challenged by beneficiaries of the trust on the basis that, at the time of sale, S had only limited rights to the property under s 14(2) of the Hindu Succession Act. Section 14, which provides that 'Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner,' is limited by s 14(2) which provides that, inter alia, 'Nothing contained in sub-section (1) shall apply to any property acquired by way of gift, Will or other instrument.' The High Court held that S did not have full ownership of the property. The respondents obtained special leave to appeal.

In allowing the appeal, it was held that:

1. The constitutional right to equality before the law (Art 14) acts to eliminate previous 'disabilities' suffered by Hindu **women** regarding property rights. 'Personal laws', which derive from religious scriptures, are constitutionally void if they confer inferior status on **women**.
2. The United Nations General Assembly's Declaration on the Right to Development recognises the interdependence of civil, political, economic, social and cultural rights. It also comprehends that development must be fostered without **discrimination**.
3. The **Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)** obliges India to prohibit all gender-based **discrimination** (Art 2) and makes specific mention of property issues (Art 16).
4. The Protection of Human Rights Act 1993 means that the principles in CEDAW and the right to development are enforceable in India.
5. The state has a constitutional responsibility to take positive measures to ensure that **women** enjoy economic, social and cultural rights on an equal footing with men. This is part and parcel of the right to life (Art 21). The Constitution protects the state **against discrimination** claims arising from such measures.
6. Discrimination **against women** violates the principles of equality and human dignity and is an obstacle to **women's** participation on equal terms in the political, social, economic and cultural life of India (*Valsamma Paul v Cochin University* (1996) 3 SCC 545; [1996] 3 CHRLD 314 applied).
7. The Hindu Succession Act is one of a number of Acts designed to eliminate **discrimination** experienced by **women** due to the Sastri Law. It must be read in the light of the guarantees in the Constitution.
8. Section 14(1) of the Act will transform any limited rights to property of a Hindu woman into full ownership provided such rights accrued under a pre-existing law. This is a question of fact in each case.
9. The widow S received her interest in the property in recognition of her pre-existing right to maintenance under Sastri Law but this was transformed into an absolute right under s 14(1). Accordingly, the exception in s 14(2) of the Act does not apply and the respondents are the absolute owners of the property.

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For the Respondents: A V Rangam, Advocate

Citations (1996) 8 SCC 525; AIR 1996 SC 1697; [1996] 3 CHRLD 320