

(1891) 04 MAD CK 0009
In the Madras High Court

Arumugam Chetti by next friend Saminatha Chetti	APPELLANT
Vs	
Sengamalathachi and Another	RESPONDENT

Date of Decision : 16-04-1891

Acts Referred:

Citation : (1896) 6 MLJ 614

Judgement

1. The plaintiff sued for possession of a house sold to her by 1st defendant,-- alleging that 1st defendant had inherited it from Sivagami Achi who had bought it in execution of O.S. 83 of 1872 on the Kumbakonam District Munsif's file. 1st defendant admitted the sale to plaintiff and claimed to have inherited the house under Sivagami's will 6th defendant alleged that she and Sivagami were the co-wives of one Veeraperumal Pillai and had together purchased the house, that she had enjoyed it exclusively since Sivagami's death and had sold it to 8th defendant, and that 1st defendant had no claim.
2. The District Munsif found that the house was Sivagami's absolute property, but that the will set up was not proved. He however gave plaintiff a decree on the ground that 1st defendant was the sister's son and heir to Sivagami.
3. On appeal the District judge agreed with the District Munsif that the will was not genuine, but reversed the decree on the ground that a sister's son was no heir under Hindu Law.
4. In so holding the District Judge appears to be mistaken. In Smriti Chandrika, Ch. IX, Section 3, vs. 36 and 37 relating to succession to woman's property after the enumeration of secondary mothers, it is said if they leave no (male) issue of their body, nor the son of a daughter, nor

a " daughter, the sister's son and the like shall inherit their property. In West and Buhler's Hindu Law, p. 547, authorities are enumerated for

holding that a sister's son can inherit in the absence of any other heir.

5. Something may, however, depend upon the nature of the property. See Buchha Jha v. Jugmon Jha ILR (1885) C. 818 and Brahmappa v.

Papanna ILR (1889) M. 138 Also Macnaughten's Hindu Law and Colebrooke's Mitakshara, App.34, Seciton 98.

6. As the District Judge merely decided that in no case can a sister's son to be the heir, we must remand the appeal for a decision on the other

issues which arise.

7. The decree of the Lower Appellate Court must be reversed and the appeal remanded for disposal.

8. The appellant is entitled to the costs of this appeal, and the posts in the Lower Appellate Court will abide and follow the resist.