

(1959) 12 KL CK 0003
In the High Court Of Kerala
Case No : S.A. No. 17 of 1959

George

APPELLANT

Vs

Narayana Pillai and Another

RESPONDENT

Date of Decision : 07-12-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Transfer of Property Act, 1882 — Section 6(d)

Citation : (1960) KLJ 707

Hon'ble Judges : C.A. Vaidulingam, J

Bench : Single Bench

Advocate : P.N. Sankaranarayana Pillai, for the Appellant; S.
Ananthasubramania Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Vaidialingam, J.—The question that arises in this Second Appeal filed at the instance of the third defendant, is as to the nature of the rights in the property taken by a Christian widow, under the provisions of the Travancore Christian Succession Act-Act II/1092. The suit properties belonged to one Sebastian, husband of the first defendant, and father of defendants 2 to 5. After the death of Sebastian, the first defendant executed a promissory-note in favour of one Eliswa and the latter endorsed the promissory-note in favour of the present plaintiff. The latter instituted O. S. 245/1114 District Munsiff's Court, Parur, against the first defendant and her children for recovery of the amounts due under the promissory-note executed by the first defendant. It is seen that ultimately the plaintiff herein, obtained a decree only as against the first defendant in O. S. 245/1114. The present plaintiff also appears to have obtained an attachment before judgment of the properties and proceeded to execute his decree in O. S. 245/1114 and sold in court auction the 1/5 share of the first defendant in the suit properties on 28-1-1124 and he became also the purchaser of that share. Attempts were made to have the sale set aside, but without any success and the plaintiff also claims to have obtained delivery on 16-7-1951.

2. In the present suit the plaintiff seeks partition of the 1/5 share belonging to the first defendant in the suit properties, and of which he has already become the owner by virtue of the execution proceedings in O. S. 245/1114, District Munsiff's Court, Parur. Defendants 6 and 7 were added as parties, as they were claiming certain rights in the suit properties.

3. Defendants 1, 3 and 7 contested the claim of the plaintiff and even among them, the third defendant, one of the sons of the first defendant, was the main contesting defendant. All of them raised the contention that the proceedings in O. S. 245/1114 are vitiated by fraud and as such, they are not binding on any of the defendants. The third defendant in particular, claimed that the first defendant had no saleable or attachable interest in the properties, and as such, the plaintiff could not be considered in law to have purchased anything in execution of his decree in O. S. 245/1114. And as such, the third defendant further contended that the plaintiff has no right to claim a partition in these proceedings. The objections of the defendants that the proceedings connected with O. S. 245/1114 were vitiated by fraud, were over-ruled. The learned District Munsiff held that those proceedings are binding on the first defendant. But according to the learned District Munsiff, the first defendant gets no share in the properties left by her deceased husband and as such there was no share which could have been attached and sold by the plaintiff. The learned District Munsiff, after a consideration of sections 16, 24, and 25 of the Travancore Christian Succession Act 11/1092, was of the view that the first defendant, as the widow of the deceased Sebastian, had no attachable or saleable interest in the suit properties. There are certain other points which are considered by the learned District Munsiff. As they have not been argued before me, it is unnecessary to consider that reasoning of the learned District Munsiff on those points.

4. In view of his finding that the first defendant had no attachable or saleable interest in the suit properties, the learned District Munsiff dismissed the suit directing the plaintiff to pay the costs of the third defendant and also further directing the other parties to bear their respective costs.

5. The plaintiff carried the matter on appeal before the learned Subordinate Judge of parur in A. S. 312/1956. The learned Judge was not prepared to agree with the view of the trial court as to the nature of the right obtained by the first defendant, as a christian widow, under the Travancore Christian Succession Act. The fact that sec. 24 of the Act provides for the widow having only a life-interest terminable at death or re-marriage does not any the less make the interest owned by the widow not saleable or not attachable. Therefore, the learned Subordinate Judge came to the conclusion that the rights of the widow in this case, the first defendant, in the immovable properties of her deceased husband Sebastian, are attachable and saleable in execution of the decree obtained by the present plaintiff against her.

6. In this view, the learned Subordinate Judge passed a preliminary decree for partition in favour of the plaintiff and also directed that the plaintiff's rights in

the properties will terminate on the death or re-marriage of the first defendant. The learned Subordinate Judge directed the parties to bear their own costs incurred till then.

7. It is against this decree and judgment of the learned Subordinate Judge that this Second Appeal has been filed by the third defendant-appellant.

8. There is no dispute that the first defendant is the mother of defendants 2 to 5; and defendants 2 to 5 are the children of the first defendant and her deceased husband Sebastian.

9. On behalf of the appellant, his learned counsel Mr. P. N. Sankaranarayana Pillai contended that the view of the learned Subordinate Judge that the interest acquired by the first defendant in the estate of her deceased husband is attachable and saleable is wrong. According to the learned counsel, the various provisions of the Travancore Christian Succession Act will clearly show that the interests obtained by the first defendant, as a Christian widow, are neither attachable nor saleable. The learned counsel also urged that the interest acquired by the first defendant cannot be considered to be either a "saleable property" or property over which the widow has a "disposing power" as required u/s 60 of the C. P. C. Mr. Sankaranarayana Pillai also contended that the interest acquired by a Christian widow, like the first defendant in this case, is "an interest in property restricted in its enjoyment to the owner personally" as per the provisions of section 6(d) of the Transfer of Property Act and the first defendant herself could not have transferred such an interest and therefore, the plaintiff could not have attached and purchased such an interest, to entitle him to claim partition in these proceedings.

10. Mr. Sankaranarayana Pillai also referred to certain observations contained in the judgment of Mr. Justice Joseph Vithayathil of the Travancore-Cochin High Court reported in Velayudhan Pillai v Daniel (ILR 1954 T. C. 442) as supporting his contention that a Christian widow has no saleable interest in the property got by her from her husband under the provisions of the Travancore Christian Succession Act. The learned counsel also invited my attention to another decision, of the Travancore-Cochin High Court, of Joseph Vithayathil and Joseph JJ., reported in Nicholas Decosta v Sivasubramania Nadar (1956 K. L. T. 177) where the earlier view of Mr. Justice Joseph Vithayathil has been further reiterated and followed. In fact, at one stage of his arguments Mr. Sankaranarayana Pillai was even prepared to go to the length of contending that the interest obtained by a Christian widow is really as and by way of providing maintenance for her enuring, personally in her favour. In particular the learned counsel laid great emphasis on the provisions of section 24 of the Travancore Christian Succession Act where it is stated that the interest obtained by a Christian widow is terminable on her re-marriage also. All these circumstances, according to Mr. Sankaranarayana Pillai, point to one and only conclusion namely, that a Christian widow has no rights in the properties, which could be either attached or sold.

11. The two decisions of the Travancore-Cochin High Court referred to above and very strongly relied upon by Mr. Sankaranarayana Pillai as also the particular sections of the Act relied upon by him, will be considered by me a little more in detail later in this judgment.

12. On the other hand Mr. S. Ananthasubramania Iyer, learned counsel for the plaintiff-respondent, contended that the two decisions of the Travancore-Cochin High Court relied upon by Mr. Sankaranarayana Pillai had no occasion to consider the nature of the rights obtained by a Christian widow as such, and the two decisions only dealt with the rights of the sons or daughters who take along with the widow. The learned counsel also contended that the provisions of the Transfer of Property Act has no application to court proceedings under which the interest of a person is attached or sold. Mr. S. Ananthasubramania Iyer, in this connection, referred me to the preamble to the Transfer of Property Act wherein it is stated :

Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties;.

Therefore, according to him, the provisions of the Transfer of Property Act will apply only to transfers inter vivos. There is no prohibition for attachment and sale of such interest under the Transfer of Property Act.

13. The learned counsel also contended that in this case, there is admittedly no dispute that even on the contentions of the third defendant that the first defendant has absolute powers of disposal over the income accruing on her share of the interest given to her under the Travancore Christian Succession Act. That circumstance alone is enough to attract the provisions of section 60 of the C. P. C.

14. Even apart from these two aspects, Mr. S. Ananthasubramania Iyer also contended that the first defendant in this case, has absolute rights of disposal of the share obtained by her, at any rate, during her life time. He has also drawn my attention in particular, to section 15 of the Travancore Christian Succession Act which states that the property of an intestate devolves upon the wife or husband, etc. In fact, the learned counsel also contended that if the vested right obtained by the sons or daughters in the properties of the deceased in the hands of the Christian widow could be transferred and otherwise dealt with by them and as held by the two decisions of the Travancore-Cochin High Court referred to above, it will be a great anomaly to hold that the widow, who gets a share and who has absolute rights of enjoyment in the share so obtained by her during her life time, has no saleable interest or has no power of disposal. It may be that any transfer or disposal effected by her of her share as such, may enure only during her life time or till she re-marries. But that cannot certainly be construed to mean that she has no power of disposal whatsoever at least till that contingency arises.

15. The learned counsel also contended that, at any rate, she has absolute power of disposal over the income accruing over her share of the properties and it is

open to her to deal with it as she likes and it is idle to contend that the plaintiff in this case has obtained no rights whatsoever.

16. In order to appreciate the contentions of the learned counsel on both sides, it is desirable to refer to the various sections of the Travancore Christian Succession Act-Act II/1092, as that will throw considerable light, in my opinion, on the controversy before me. I may also straightaway mention that apart from this single question as to the nature of the interest acquired by the first defendant in the properties of her deceased husband Sebastian, counsel on both sides have not argued any other points.

17. In my opinion, the nature of the rights obtained by a Christian widow, under the provisions of the Travancore Christian Succession Act 11/1092, must be found and gathered from the enactment itself. It is the Act which gives her a right and it is the Act alone that must govern her rights also.

18. Now I will advert to the relevant sections of the Travancore Christian Succession Act-Act 11/1092 and the same will be referred to as the Act in this judgment. The preamble to the Act states that it was considered expedient to consolidate and amend the rules of law applicable to intestate succession among Indian Christians in Travancore.

Section 2 of the Act provides that except as provided in the said Act or by any other law, the rules contained in the Act shall constitute the law of Travancore applicable to all cases of intestate succession among the members of the Indian Christian Community.

Section 13 states that for purposes of succession, there is no distinction between self-acquired property and ancestral property, or between the property of a male and that of a female.

Section 14 provides that a man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Section 15 states that such property devolves upon the wife or husband or upon those who are of the kindred of the deceased in the order and according to the rules prescribed.

Section 16 provides for cases of a widow co-existing with the children of the deceased. It states:

Where the intestate has left a widow, if he has also left lineal descendants, a share equal to that of a son shall be allotted to her:

Provided, however, when the lineal descendants of the deceased consist only of his daughters or the descendants of any deceased daughter or daughters, the widow's share shall be equal to that of a daughter.

In cases provided for by the main section a share equal to that of a son shall be

allotted to the widow. In cases coming within the proviso, the widow's share is stated to be equal to that of a daughter.

Section 17 provides for cases where a widow co-exists with the father or mother or paternal grandfather or any lineal descendants of his father or such grandfather of the intestates. In those cases, the section states that one-half of the intestate's property shall be allotted to his widow.

Section 18 provides for other cases where the intestate has left none of the kindred mentioned in sections 16 and 17 and in such cases, the widow shall be entitled to the whole of his property.

Section 19 provides for converse cases of the husband succeeding to his wife's property. It states that the husband surviving his wife has the same rights in respect of her property if she dies intestate, as the widow has in respect of her husband's property if he died intestate.

Sections 20 to 23 deal with the rights of the mother of the intestate under various contingencies and it is not necessary to refer to them to any great deal in this case.

Section 24, on which considerable emphasis has been laid by the learned counsel for the appellant, is as follows:

Over any immovable property to which a widow or mother becomes entitled under sections 16, 17, 21 and 22, she will have only a life-interest terminable at death or re-marriage.

On the determination of the limited estate of the widow or the mother, the property over which she had such limited interest shall be distributed among the heirs of the original intestate, as if the holder of the life-estate had not survived the intestate.

Section 24 consists of two parts: first part declaring that the widow or mother becoming entitled under sections 16, 17, 21 and 22 will have only a life-interest terminable at death or re-marriage, the second part of section 24 provides for the distribution among the heirs of the original intestate of the property over which the widow or the mother had limited interest and it also provides that the division will be as if the holder of the life-estate has not survived the intestate.

Section 25 provides for succession by the next of kin in the order set forth in the section after deducting the widow's share, if there is a widow, and also the mother's share if there is a mother who may be entitled to a share under sections 21 to 23.

19. Though Mr. Sankaranarayana Pillai attempted to argue that the interest acquired by a Christian widow is more or less as and for her claims for maintenance, he quite rightly abandoned that line of argument when his attention was drawn by this court to section 19 of the Act which provides for a converse case of a husband succeeding in respect of the estate left by his

deceased wife. Section 19 makes it very clear that he will have the same rights in respect of his wife's property if she dies intestate, as the widow would have had in respect of her husband's property if the latter died intestate. Therefore, any question of maintenance, right or the share taken by the widow in lieu of maintenance arrangement is effectively eliminated by virtue of section 19 of the Act. Then the question is what is the nature of the rights acquired by the widow under the provisions of the Act? In my opinion, the two decisions of the Travancore-Cochin High Court do not, if I may say so with respect, throw much light on the rights of the widow as such. Those two decisions had to consider the rights in the estate taken by the widow during her life-time of the son or daughter who have succeeded to the estate of the deceased along with the widow, their mother. It is this aspect of the matter that has been very elaborately considered by the learned Judges.

The position of the Hindu widow and the reversioners therein was contrasted with a Christian widow and the other heirs in Christian law. The learned Judges, in such circumstances, have held that the son or daughter under the Act gets also a vested interest in the share of the widow even during her life-time and the learned Judges have also held that such vested right of the son or daughter could be transferred or alienated. The matter has been more elaborately considered by Mr. Justice Joseph Vithayathil in *Velayudhan Pillai v Daniel* (I. L. R. 1954 T. C. 442). The main question that the learned Judge had to consider was whether the second defendant in that case had only a spes successionis in respect of a half share in his brother's estate, which was enjoyed by his brother's widow till her death, or whether he had a vested interest in that share even during the life-time of his brother's widow. To find out whether the second defendant in that case had only a spes successionis or a vested right, the learned Judge has referred to certain decisions under Hindu Law and came to the conclusion that the position of a widow under the Travancore Christian Succession Act is entirely different. The learned Judge also held that the position of a person succeeding under the Christian Succession Act to an estate in respect of which a life-interest is created in favour of the widow of the intestate is entirely different from that of a reversionary under the Hindu Law in respect of properties subject to a widow's estate. The learned Judge observes at page 449 as follows:

Under the Christian Succession Act, the heir of the original owner gets a vested interest in the property on the death of the owner whereas under the Hindu Law no vested "interest in the property is created in favour of the reversioner.

Then the learned Judge, after referring to sections 15 and 17 of the Act held, that what the widow gets is only a life-interest terminable at death or re-marriage and that the other heirs of the intestate succeed to the estate, subject to the limited interest in favour of the widow and the learned Judge held that "it is a vested interest and is transferable property. It is property which is capable of being attached and sold in execution of the decree." Mr. Sankaranarayana Pillai invited my attention to the following observations of the learned Judge at page

448 :

But the position of a widow under the Travancore Christian Succession Act is entirely different. u/s 24 of the Act what the widow gets is only a life-interest terminable at death or re-marriage. She can only enjoy the property till her death or re-marriage. She has absolutely no power to alienate the property. In no sense can she be said to be the owner of the property.

In support of his contention that it has been held by the learned Judge that the widow has no power to alienate the property or that she cannot be stated to be the owner of the property.

20. Prima facie these observations of the learned Judge may appear to support the contentions of Mr. Sankaranarayana Pillai. But, if I may say so with respect, the learned Judge was more concerned to find out the nature of the interest of the son, the second defendant in that case, and the learned Judge was not directly concerned with the rights, as such, of the widow. I asked Mr. Sankaranarayana Pillai to refer me to any provision in the Act which so restricts the rights of the widow or to indicate that she has absolutely no power to alienate the property or that she cannot be said in any sense to be the owner of the property. Mr. Sankaranarayana Pillai was not able to refer me to any provisions in the Act from which these conclusions could be arrived at. The learned counsel was only emphasising the fact that section 24 of the Act makes it clear that the widow will have only a life-interest terminable at death or remarriage. In my opinion, section 24 cannot be cut up like that and independently construed as giving an indication that the widow will have no power of disposal. That provision will have to be really understood in the light of the rights referred to in sections 15, 16, and 17.

21. If the learned Judge, in the observations extracted above, was of the view that the widow has no power to alienate the property beyond her life-time or that any alienation or transfer made by her will not enure beyond her life-time, I respectfully agree with that conclusion. But if on the other hand, the learned Judge, by virtue of those observations, intended to lay down that a Christian widow has absolutely no power of alienation at all which will not enure even during her life-time or till her re-marriage, then, with great respect to the learned Judge, I am not able to agree with that proposition, because in my view, there is no warrant for that proposition in the Act itself. Again, with great respect, I am not able to subscribe to the statement of the learned Judge that "in no sense can she be said to be the owner of the property". Even here, there is, in my opinion, clear indication in the Act that the Christian widow will be the complete owner of her share, till her death or till her re-marriage.

22. The same question again arose in a slightly different form, in the Travancore-Cochin High Court, before Joseph Vithayathil and Joseph JJ, in the decision reported in *Nicholos Decosta v Sivasubramania Nadar* (1956 K. L. T. 177). There again, the question was not about the rights of the Christian widow as such, but

only about the right of a son or a daughter during the life-time of the widow. Mr. Justice Joseph Vithayathil referred to his decision in *Velayudhan Pillai v Daniel* (I. L. R. 1954 T. C. 442) and that decision has been quoted with approved by the learned Judges. But I do not find in the Division Bench ruling any reference to the observations contained in *Velayudhan Pillai v Daniel* (I. L. R. 1954 T. C. 442) and extracted by me above to the effect that the widow has no power of disposal and that she cannot be stated to be in any sense the owner of the property. In my opinion, as mentioned earlier, both the decisions had occasion only to consider the rights of a son or a daughter during the life-time of the widow and not the rights of the Christian widow as such, and I have also expressed my views regarding the observations contained in the Judgment of one of the learned Judges extracted above.

23. In particular, it will be noted that in the decision reported in *Nicholos Decosta v Sivasubramania Nadar* (1956 K. L. T. 177) the learned Judges had to consider the question as to whether the suit instituted by a son in respect of an alienation made by his mother was barred by limitation or not. It will be seen from the facts of that case, as stated in the judgment, that the Christian mother had executed a sale deed of the properties as guardian of her minor son, the plaintiff. The Christian widow, namely, the mother of the plaintiff therein died in 1122; the alienations made by her as the guardian of her son were in 1110 and the suit was instituted by the plaintiff in 1123. The contention on behalf of the defendants therein appears to be that the suit was barred under Art. 44 of the Limitation Act as the plaintiff had not filed the suit within three years of his attaining majority. In that connection, the learned Judges considered the rights of a son in the properties held by his widowed mother as a life-estate, and observed at page 182 as follows:

If the mother was his legal guardian and therefore competent to act on his behalf, the alienation will have to be set aside by him within three years of his attaining majority, under Art. 44 of the Limitation Act and a suit instituted by him for recovering possession of the-property after the expiry of that period will be barred by limitation. The mere fact that the mother was entitled to be in possession of the property till her death and that the plaintiff could get possession only after her death cannot affect the question. If the plaintiff's legal guardian alienated whatever interest he had in the properties that interest will be lost to him if he does not get the alienation avoided within the period prescribed by Article 44.

24. Then the learned Judges consider the question as to whether the plaintiff's mother therein was the legal guardian of the plaintiff. The learned Judges came to the conclusion that the mother, in that case, was the legal guardian of the plaintiff and that she was competent to execute the sale deeds challenged, in her capacity as the guardian of the plaintiff, and in this view, the learned Judges held that the alienations are only voidable and not void and that the plaintiff therein was bound to have them set aside within 3 years after his attaining majority

under Art. 44 of the Limitation Act.

25. The learned Judges have not expressed any opinion on the., question of the validity of the sale, so far as the Christian widow's rights were concerned. In that case, the Christian widow, as guardian of her minor son conveyed the whole properties. I make it clear that I express no opinion at present, on the views expressed in the two decisions on the other point.

26. These two decisions of the Travancore-Cochin High Court will not," in any way, assist the contention of Mr. Sankaranarayana Pillai. I do not think" it necessary to refer to those decisions where it has been held that a personal right of residence given to a Hindu widow or other offices pertaining to individuals in their personal capacity could not be attached, because in my opinion, they have no relevancy to the point in question. Nor do I think it necessary to refer to the decisions, where under a will or settlement a life-estate has been granted to a particular person and those documents themselves contained a prohibition against alienation, it has been held there is no power of disposal.

27. In my opinion, the interests or rights obtained by a Christian widow under the Travancore Christian Succession Act cannot in any way, be considered to be an "interest restricted in its enjoyment to the owner personally". Nor can it be stated that she has no "power of disposal" at least during her life-time or till tier marriage.

28. Section 15 clearly states that the property of an intestate devolves upon the wife or husband or upon those who are of the kindred of the deceased in the order and according to the rules prescribed. Therefore, on the death of the husband intestate, whatever may be the share, it devolves upon the wife. That is, she gets an immediate and automatic right in the property of her deceased husband. Again, Section 16 is to the effect that when a widow exists along with lineal descendants, a share equal to that of a son shall be allotted to her. The proviso states that in the circumstances mentioned therein the widow's share shall be equal to that of a daughter.

29. Again, section 17, in the circumstances mentioned therein, states that one-half of the property of the intestate shall be plotted to his widow. In my opinion, section 15 declares the wife or husband as the person on whom also the property devolves by operation of law and it does not depend upon the will of any party. As to what exactly is the interest that devolves upon her. is mentioned in sections 16 and 17. Section 18 does not come in for consideration, because it deals with the cases not provided for by sections 16 and 17 and I. am concerned with a case coming u/s 16.

30. Again section 16 specifically styles the property as a "share", and that share is directed to be allotted to the widow. The proviso to section 16 also refers to the widow's share. Therefore, these sections to my mind, make a Christian widow a complete owner of the share that she becomes entitled to as a Christian widow. They also recognise a right in the said Christian widow to have a separate

allotment of her share. From the date of the death of the intestate, the Christian widow becomes a tenant-in-common along with others, and she becomes specifically entitled to the share specified in those sections, which means, also the income accruing in respect of her share. An allotment of her share, cannot be done unless law recognises a full right in the Christian widow to be in absolute possession and enjoyment of such share at rate till death or re-marriage.

31. Again, even section 24 refers to a widow or mother "becomes entitled under sections 16, 17, 21 and 22". Sections 16 and 17 are sections which relate to the widow. Section 15 contemplates a devolution on the widow; section 16 calls the interest of the widow as a "share" and makes provision for allotment of that share to the widow and section 24 clearly refers to that right as "becomes entitled to". No doubt, section 24 states that in respect of the share allotted to the widow, she will have only a life-interest terminable at death or re-marriage. The fact that it is called a "Life-interest terminable at death or re-marriage" does not in any way, curtail the rights already given to her namely of claiming her share and having a separate allotment of the properties and enjoying them. No doubt, her rights in the property will terminate at her death or re-marriage. There is no provision in the Act which in any way, puts a restriction upon the manner of her enjoyment or dealing with the property allotted to her share, till her life-time or re-marriage. In the absence of any such restriction, the only logical conclusion is that the Christian widow is the absolute owner of her share and of the income accruing from her share during her life-time and till re-marriage and she can deal with it as she pleases till any of those contingencies happens. It is open to her to make transfers, assignments or alienations, but all the rights in the alienee or transferee, based on those assignments made by the Christian widow will come to an end with her death or re-marriage. A transferee or a purchaser, who buys property from a Christian widow, must be considered to be aware of the rights conferred upon such persons under the Act. I do not think that the fact that the widow's right is said to be a life-interest terminable at death or re-marriage, the Act does not contemplate her full ownership in her share till either of those contingencies arise. Reference may also be made to section 25 where again reference is made to the "widow's share". The Act places no restriction whatsoever upon the manner or mode of enjoyment of the share allotted to a Christian widow till her death or re-marriage. The Act only provides for her ownership and enjoyment of the properties coming to an end in two contingencies namely, death or re-marriage.

32. The further fact that the second part of section 24 of the Act provides for distribution among, the heirs of the original intestate of the properties over which the widow or mother has a limited-interest as if the holder of the life-estate had not survived the intestate, does not in any way, in my view, detract from the conclusions that I have already arrived at earlier about the rights of the widow. The fact that such a provision is made cannot be considered to mean that in law, the widow or mother had absolutely no right of disposal of the properties given to them as a life-interest at least during their life-time, especially when the other

provisions of the Act, I have referred to earlier, clearly indicate the right of the Christian widow to enjoy her share of allotment without placing any restriction about the manner or mode of enjoyment during her life-time. Again section 26, in my view, has no bearing, on a consideration of the nature of the right given to the widow under the Act.

33. There is absolutely no dispute that the first defendant is solely entitled to the income accruing during her life-time or till re-marriage from and out of the share given to her under the Act and she has got full disposing power which she can exercise for her own benefit. From what is stated by me it also follows that she has got a saleable interest in the property which could be attached and sold in execution of any decree that may be obtained against her and all those rights will enure to the benefit of the person entitled till the death or re-marriage of the Christian widow. In this case, the widow is still alive and therefore, the plaintiff is entitled to work out his rights by way of partition and otherwise. In the result, the Second Appeal fails and is dismissed with costs. Leave to appeal granted.