

(1940) 10 MAD CK 0034
In the Madras High Court

Kannothe Punnonon Krishnan (deceased) and Others	APPELLANT
Vs	
Kanothe Punnnaran Thala and Others	RESPONDENT

Date of Decision : 28-10-1940

Acts Referred:

Citation : AIR 1941 Mad 605 : (1941) 53 LW 452 : (1941) 1 MLJ 508

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—In this appeal the question arises whether the provisions of Section 48 of the Madras Marumakkattayam Act of 1932 shall be applied to the partition of a certain item of property. The property was admittedly purchased in the year 1881 by the husband of one Manikkam in the name of Manikkam and their eldest daughter Choyichi. The first part of Section 48 reads:

Where a person bequeaths or makes a gift of any property to, or purchases any property in the name of, his wife alone or his wife and one or more of his children by such wife together, such property shall, unless a contrary intention appears from the will or deed of gift or purchase or from the conduct of the parties, be taken as tavazhi property by the wife, her sons and daughters by such person and the lineal descendants of such daughters in the female line.

2. The section Concludes with a proviso:

Provided that, in the event of partition of the property taking place under Chapter VI, the property shall be divided on the stirpital principle, the wife being entitled to a share equal to that of a son or daughter.

3. Both the Courts below have held that this property must be divided per capita or in other words, that Section 48 does not apply to its division. Two reasons are given, one by the District Munsif with which the District Judge does not agree and another by the District Judge. The first reason is that Section 48 cannot apply to the property in question because Manikkam cannot legally be called the wife of Kelan, the purchaser. The requirements of a marriage are set forth in

Section 4 of the Act, and it is provided by Section 4 (1) (b) (i) that, if the conjugal union has been openly solemnised in accordance with the customary ceremonies that were prevailing in the community to which the parties or either of them belongs before the date on which this Act comes into force and is subsisting on such date, it becomes a regular marriage. It is admitted that Manikkam died before the Act came into force. It is therefore clear that her union with Kelan was not subsisting on that date and therefore her union with Kelan can never have been a legalised marriage. That being so, she was not Kelan's wife and the language of Section 48 cannot apply to the acquisition of this property. This was the view taken by the learned District Munsif and we think it is a sound view and no, argument has been addressed to us in appeal which will induce us to alter that opinion.

4. The second ground upon which the District Judge relies is that Section 48 cannot be made retrospective. This ground also, we think, is sound. It is argued for the appellant that, since the Marumakkattayam Act has created for the first time the right to partition which did not exist before, it is not unreasonable that such a right should be restricted by the proviso which is found in Section 48. We are unable to see any such reasonableness. There was a right of partition before the Act though it depended upon the consent of all the members of the family. If such a consent were given, the division of property acquired in this way would always be per capita. There have therefore arisen vested interests in the members of a tavazhi who can rightly expect that property should be divided in a certain way in case they should enter into a partition. The right of partition has merely been extended by the Act and we can see no reason at all why that right should be in any way restricted by making a change of this kind retrospective. There is nothing in the language of Section 48 which directly refers to the period before the Act was passed. There is nothing in the language of the section which by necessary implication shows that the section must be applied retrospectively. It is in accordance with principles of natural justice that, when a new enactment effects a change in the law, that change shall date only from the time the Act comes into force. We can see no reason whatever to regard Section 48 as being on any score retrospective and accordingly hold that this Second Appeal must fail. It is dismissed with costs.