
(1899) 11 MAD CK 0015
In the Madras High Court

Komu Nair

APPELLANT

Vs

Ittiatha Amma and Others

RESPONDENT

Date of Decision : 14-11-1899

Acts Referred:

Citation : (1900) 10 MLJ 57

Judgement

1. The District Munsif finds (paragraph 15 of his judgment) that Ram Nair managed certain property that had been given to him by his natural

father (Putravakasam) that he was also in possession of certain self-acquired property and that it had not been proved that the property to which

this suit relates was acquired out of the profits derived from the Putravakasam" property. The Subordinate Judge in appeal (paragraph 8 of his

judgment) without making any reference to such evidence as there might be in support of the view arrived at by him or giving any reasons for his

decision observes, "" Here it is proved that the property was acquired by Raru Nair with the income of property derived by him as putravakasam.

Further on he holds (para-graph 9, of his judgment) that even if it were proved that the property was the self-acquisition of Raru Nair, it would not

lapse to the Tarwad but that his sister, the plaintiff, and her children, would, on his death, be entitled to enjoy it to the exclusion of the karnavan

according to Marumakkatayam law. This is a mistake into which we are surprised that a Subordinate Judge of such lengthened experience should

have fallen. If Raru Nair had not before his decease disposed of his self-acquisitions they would on his death pass to the Tarwad, Kallati Kunju

Menon v. Palat Erracha Menon (1864) 2 M.H.C.R. 162 followed as to this in Vira Rayen v. Valia Rani I.L.R.(1881) , 3 M. 141 and Ryrappan

Nanibiar v. Kelu Kurup I.L.R.(1881) , 4 M., 150. The Subordinate Judge then goes on to remark that "" Here the case is stronger,"" because it is stated that the property was acquired with the aid of " putravakasam" property. It is no doubt the case that such a contention was raked but what the Subordinate Judge had to decide was whether it was proved.

2. Finally (paragraph 10 of his judgment) the Subordinate Judge holds that the documents produced by the plaintiff show that the plaint properties were acquired by Raru Nair out of the "putravakasam" property. The Subordinate Judge does not state what documents prove this contention.

There are, no doubt, a number of documents which show that Raru Nair was in possession of " putravakasam" property but whether they prove

that the plaint property was acquired out of such property appears to us to be by no means clear, at least as far as can be ascertained from the

arguments advanced here in second appeal. If the Subordinate Judge after a careful consideration of the documents was satisfied that they proved

that the plaint property was acquired out of "putravakasam" property and that the District Munsif was mistaken in holding that such was not shewn

to be the case, he should have referred to the documents that, in his opinion, proved this contention and given reasons for his decision. We of

course do not accept the view arrived at by the District Munsif (paragraph 15 of his judgment) that there is a burden on the plaintiff of proving by

clear and independent evidence that the lands sued for were acquired out of the profits derived from the putravakasam lands. The question is very

much one of probability with respect to which strict proof is from the nature of the case almost impossible, but what we require from the

Subordinate Judge is proof that he weighed the evidence and arrived at the conclusion on a consideration of it with his reasons for his decision.

3. In order to enable us to dispose of this second appeal we must ask the Subordinate Judge to try the following issue on the evidence on record.

Where the plaint properties acquired by Raru Nair by means of the profits derived from " putravakasam" properties, or are they his own self-

acquisitions from other sources?

4. The finding should be submitted within 4 months from the date of the receipt of this order."" Seven days will be allowed for filing objections after

the finding has been posied up in this Court.

5. In accordance with the above order, the Sub-Judge on a consideration of the evidence oral and documentary, returned the finding that there was no proof that the deceased brother of the plaintiff was in possession of any property other than the putravakasam and that plaintiff's property was in his opinion acquired with the aid of "putravakasam property. The Court accepted the finding and dismissed the second appeal with costs.(1)