

(1939) 02 MAD CK 0013
In the Madras High Court

K.P. Madhavi Ammal and Others

APPELLANT

Vs

M. Subramanian Nambudripad and Others

RESPONDENT

Date of Decision : 02-02-1939

Acts Referred:

Citation : AIR 1939 Mad 584 : (1939) 49 LW 413 : (1939) 1 MLJ 487

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is an appeal from the decree of the Subordinate judge of Ottapalam dated the 23rd August, 1935, which dismissed

the suit originally instituted by one Bhavatharathan Nambudripad for partition of his share in the property of his illom. He instituted the suit on 20th

February, 1934. He executed a registered will seven days later leaving all his property including his share in his illom property to his Nair wife and

children. He died on 2nd July, 1935. The Nair wife and children applied to be brought on record as the legal representatives of the deceased

plaintiff, claiming to come in as such under the registered will and also as the heirs of the deceased plaintiff under the Marumakkathayam law. That

application was dismissed, the Subordinate Judge holding that the right to sue did not survive as there was no severance of status by the mere filing

of the suit and that as there was no severance of status, there was nothing to which the legal representatives could lay claim. Not only was the

application dismissed but the suit was also dismissed on the ground that the right to sue did not survive, as the sole plaintiff had died. In other

words, the learned Subordinate Judge appears to have looked upon the suit for partition as if it was a purely personal action which ceased to

survive after the death of the sole plaintiff, and this in spite of the specific provision in the recent legislation giving the right to any member of an illom

to claim his share in the illom property. The Madras Nambudri Act of 1932, which is Act XXI of 1933 was an Act to define and to amend, among

other things, the law relating to partition applicable to Nambudri Brahmins, and Section 23 of the Act provides distinctly as follows:

Any member of an illom male or female may claim to take his or her share of all the properties of the illom over which it has power of disposal and

separate from the illom.

2. This unqualified right which is given to every member of the illom was surely meant to be a right which would vest in the member of the illom

who is making the claim in question, separation being of course a necessary concomitant of the claim. It could not have been intended by the

Legislature that till the Court passed a decree in a suit preferred by any member of the illom, there could be no vested right in the member which

could be transmitted by him either by will or otherwise. It is not seriously disputed that if he had chosen to make an alienation of his share during his

lifetime the alienee would be entitled to maintain his right to recover the particular share that would have fallen to the deceased alienor. There seems

to be no particular reason why the rule of law which applies to the Hindus governed by the Mitakshara law should not apply to Nambudris,

namely, that there is a division of status, and, so to speak, a division of title, and a proprietary interest vested in the person concerned the moment

he makes an unqualified and unambiguous declaration of his intention to claim his share and separate himself from the family even though such

declaration is unilateral.

3. This was the law as laid down by their Lordships of the Judicial Committee in *Girja Bai v. Sadashiv Dhundiraj* (1916) 31 M.L.J. 455 : L.R. 43

IndAp 151 : ILR 43 Cal. 1031 (P.C.) beyond any shadow of doubt, though some previous observations of their Lordships had pointed this way.

In any case when the Legislature was considering this Nambudri Act of 1932, it must be obvious that it had this well-established rule in its mind

when it enacted this Section 23, which gave every member of an illom the right to claim his or her share, that on the making of such a claim he

would have a vested right so far as his share of the property was concerned,

though that share remained to be ascertained later on, either by mutual agreement or by an order of Court. In our opinion a perusal of the whole of the Chapter relating to partition in this Act XXI of 1933 shows that the interpretation placed upon Section 23 by the Court below cannot be accepted. This question has been already considered in more than one previous case, and it is enough to refer to *Kunchi Amma v. Minakshi Amma* (1935) 70 M.L.J. 114 : ILR 59 Mad. 693, *T.M. Subramanyan Tirumurupu and Others Vs. T.E. Naraina Tirumurupu and Another, and V.P. Krishnan Vs. Payankalath Narayanan Nayar*, . These are cases decided by Benches, and the fourth case is one decided by a single Judge and reported in *Madhavi Amma v. Nagappan Nair* (1938) 48 L.W.

868. All these decisions support the view that the rule which is applied to Hindus governed by the Mitakshara law is a rule that should be applied to the Nambudris governed by the Act even though the Mitakshara as such does not apply to the Nambudris. It is not necessary for our present purpose to enter into a historical disquisition on the subject as to whether this rule was laid down as regards Hindus governed by the Mitakshara because of certain texts in the Mitakshara or the Commentaries subsequent to the Mitakshara or because of certain legal principles which have no necessary connection with the Mitakshara and its successors. The fact remains that the rule was known to be applicable to the Hindus in this presidency barring exceptional classes like Nambudris and Marumakkathayees and so on when the Legislature took up the question of amending the law relating to such excepted classes. It is going too far to say in the absence of any clear statement to the contrary that the Legislature intended that a different rule should apply to these excepted classes whose position was brought into line with that of the other Hindus in the Presidency in several respects including the right of partition. The question has been discussed in the judgments in the cases referred to above and it is not necessary for us to say anything except that we agree with the reasoning and with the decisions in those cases. To our minds a perusal of Section 23 in particular and of the whole Chapter VI of the Act in question is itself sufficient to remove any possible doubt on the subject. It follows from what we have said that this appeal must be allowed and the decree of the Court below dismissing the suit must be set aside and the suit remanded

for fresh disposal according to law. In the connected Revision Petition (1722 of 1935) the order sought to be revised is the order dismissing the application of the legal representatives to be brought on record. That revision petition also must be allowed, and it is hereby allowed, and the order of the Subordinate judge dismissing the petition is set aside and the appellants are permitted to come on record as the legal representatives of the deceased plaintiff in the suit. The appellants are entitled to their costs in the appeal. In so far as the costs in the Court below are concerned, they should be provided for in the revised decree of the Court below. The appellants will be entitled to a refund of the court-fee paid on the memorandum of appeal. There will be no order as to costs in the revision petition.