

(1971) 06 KL CK 0022
In the High Court Of Kerala
Case No : Second Appeal No. 1516 of 1966

Krishnan and Others

APPELLANT

Vs

Ammalu and Others

RESPONDENT

Date of Decision : 21-06-1971

Acts Referred:

Hindu Womens Right to Property Act, 1937 — Section 3(2)

Citation : AIR 1972 Ker 91 : (1971) KLJ 572

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : Velloor Karunakara Menon, for the Appellant; Venkitakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

P. Subramonian Poti, J.—At one time polyandry was as much prevalent as polygamy in the community to which the parties to the suit belong, namely Thiyyas or South Malabar. They were no doubt, Hindus, governed by their own system regarding the marriage institution. The interesting question that has arisen in the suit concerns the widowhood of a woman who loses one of her three husbands by death. Naturally she continues as the wife of the other two. Can she be said to be the widow of the deceased husband so long as she continues to have the status of wife of the two surviving husbands? On remarriage of a widow she ceases to be one such any more. But where there is no remarriage but all the same she is a married woman by reason of the fact that she has two husbands alive could it be said that she cannot be a widow and a married woman at the same time? This question has arisen in the suit in the following way.

2. Plaintiff was married by three brothers, one Karuppan and defendants 1 and 2. She had three children born out of the union, who are defendants 3 to 5 in the suit. Succession is claimed by the plaintiff in the joint family assets of Karuppan which she claims to be entitled to under the Hindu Women's Rights to Property

Act 1937. Though there is a plea that defendants 1 and 2 were not conducting themselves as husbands of the plaintiff after some years of the marriage, that of course is not very seriously pursued and therefore it can be taken for the purpose of the appeal that she continues to be the wife of defendants 1 and 2. Her claim as the widow to succeed to the joint family interests of Karuppan is opposed by defendants 1 and 2, who contend that she is not a widow within the meaning of Hindu Women's Rights to Property Act, as in spite of the death of Karuppan, she continues to be the wife of defendants 1 and 2.

3. Section 3 of the Hindu Women's Rights to Property Act, 18/1937 as amended by Act 11/1938 is relevant for the purpose of this appeal and I will extract the Section here,

"(1) When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow or if there is more than one widow all his widows together, shall, subject to the provisions of Sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son :

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son;

Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of Sub-section (3), have in the property, the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act 1925 applies."

It is Sub-section (2) which applies to the case as it is the interest in Hindu joint family property that is said to have devolved on the plaintiff. The right under that sub-section is given to the "widow". The term widow is not defined in the Act. It is necessary to refer to the provisions of the Hindu Widows' Re-marriage Act 15/1856 also. Section 1 of that Act provides that:

"No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu Law to the contrary notwithstanding."

Section 2 is also relevant and I will extract the section here:

"All rights and interests which any widow may have in her deceased husband's property by way of maintenance or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same."

According to counsel for the appellants, who are some of the contesting defendants in the suit, the plaintiff does not get any interest in the Hindu joint family property of deceased Karuppan as she is not a widow. This, according to counsel, is indicated by Section 2 of the Hindu Widows' Re-marriage Act, which prohibits any widow from claiming interest in her deceased husband's property upon re-marriage as if such remarriage will operate as death for the purpose of succession.

4. A widow is generally defined as a woman who has lost her husband by death and has not married again. This is the meaning of the term as found in the Webster's Dictionary, the Random House Dictionary of English Language as also in the Chambers's Dictionary. This is quite consistent with Section 2 of the Hindu Widows' Re-marriage Act which refers to the forfeiture by a widow of her rights to her husband's property on her re-marriage. Apparently the definition would indicate that a woman who loses her husband by death and does not marry again continues to be a widow. In the case before me, the woman has lost her husband and it requires no argument to hold that she has not married again. Her marriage with defendants 1 and 2 was simultaneous with the marriage with the deceased husband Karuppan and this subsists. It is entirely different from saying that she took the status of a wife of another after the death of her husband. She continues to have the status which she had even earlier.

5. A widow is a term which is relative. A man is a father in relation to his son or daughter, a brother in relation to his brother or sister, a son in relation to his parents, and a woman is a mother in relation to her children and a daughter in relation to her parents and a sister in relation to her brothers and sisters. Therefore a widow also has to be understood as a relative term just like the case of a wife. A widow necessarily denotes the relationship with a deceased person who, before his death, was her husband. Plaintiff may be a widow of her deceased husband Karuppan and she may continue as the wife of her two other husbands, who had married her along with her deceased husband. There is

nothing strange in this concept. If there is any, that is only as strange as the concept of polyandry and if one could reconcile himself with that, certainly it is possible to reconcile with the concept of a woman being a widow to her deceased husband while continuing to be the wife of the two surviving husbands. I see nothing illogical or irrational in this approach. In fact this appears to me to be the logical construction.

6. There is nothing in the provisions of the Hindu Women's Rights to Property Act or Hindu Widows' Re-marriage Act which would compel me to take a different view. On the other hand the provisions of these Acts indicate to the contrary. There is specific reference to remarriage of the widow as the event on the happening of which she forfeits her rights to the properties of her deceased husband. If I accept argument of counsel for the plaintiff it would mean that notwithstanding the death of her husband the plaintiff never became a widow and would never become one. But to explain this, counsel took up another stand. According to him, she would become a widow on the death of all the three husbands. But then the question would be whose widow she becomes then. As I said earlier she would only be a widow in relation to her deceased husband and therefore naturally if it is to be said that she is a widow of all the three husbands it is as if one should assume and there has been a suspension of her widowhood during the lifetime of the other husbands, a concept which is not warranted by any principle of law and, as it appears to me, one, which is not warranted by the provisions of the enactments to which I have referred.

7. In the circumstances I see no reason to agree with counsel for the appellant. The appeal is dismissed, but in the circumstances of this case, I direct the parties to suffer costs in this appeal.