
(1953) 01 KL CK 0010
In the High Court Of Kerala
Case No : A.S. No's. 49 and 260/52

Lekshmi Amma Kamalakshi Amma	APPELLANT
Vs	
Lekshmi Amma Bhargavi Amma and Others	RESPONDENT

Date of Decision : 08-01-1953

Acts Referred:

Travancore Nair Act, 1100 — Section 34, 36

Citation : AIR 1953 Ker 436

Hon'ble Judges : K.T. Koshi, C.J.;Gangadhara Menon, J

Bench : Division Bench

Advocate : V.G. Sankaranarayana Pillai, in No. 49 of 52 and T.S. Venkiteswara Iyer and C.S. Ananthakrishna Iyer, in No. 260 of 52, for the Appellant; K.N. Narayanan Nair in Nos. 49 and 260 of 52 for Respondent Nos. 1 to 4 and T.S. Venkiteswara Iyer in No. 49 of 52 for Respondent Nos. 5 and 7, for the Respondent

Judgement

Gangadhara Menon, J.—These appeals arise out of the judgment and decree of the learned District Judge of Kottayam in O.S. 224 of 1123. The suit was for partition. On the allegation that Plaintiffs 1 to 3 and Defendants 1 to 5 are the members of an undivided Nayar tarwad the Plaintiffs sued for partition of their 3/8 share of the tarwad properties after setting aside a partition deed executed by Defendants 1 to 5 without the knowledge and consent of the Plaintiffs. The Defendants contended that the members of the tarwad assumed a divided status on the basis of a partition deed on 1105 that the parties to that deed are holding the property thereafter only as tenants-in-common and that consequently Plaintiff 1 alone was entitled to a share. The trial Court repelled the contention and gave a preliminary decree to the Plaintiffs for partition and recovery of 3/8 share of the properties. Defendants 1, 3 and 4 have, therefore, come in appeal. A.S. 49 of 1952 is the appeal by Defendant 4 and A.S. 260 of 1952 is the appeal by Defendants 1 and 3.

2. In both the appeals the only questions pressed is in regard to the share that the plaintiffs are entitled to. Plaintiff 1 and Defendants 1 to 5 are the children

of one deceased Lekshmi Amma. It is admitted that Lekshmi Amma and the other members of her thavazhee divided from the common tarwad under Ex. v. partition deed in the year 1104. An year later Janak Amma the eldest daughter of Lekshmi Amma and her two children wanted their share and the thavazhee of Lekshmi Amma entered into Ex. I partition deed by which the properties were allotted to two groups, one group consisting of Janaki Amma and her children and the other consisting of Lekshmi Amma and all her children except Janaki Amma, i.e., Defendants 1 to 4 and Plaintiff 1 in this case. The former group obtained B schedule properties in Ex. I and the latter group obtained A schedule properties. Subsequent to Ex. I Lekshmi Amma gave birth to Anr. child who is Defendant 5 in this case and Plaintiff 1 gave birth to Plaintiff's 2 and 3. Some time later Lekshmi Amma died.

The contention of the Appellants is that by virtue of Ex. I the A schedule group, with which alone we are concerned here assumed a status of division "inter se" and took the properties severally each having a specific $\frac{1}{6}$ share in them; It is, therefore, argued that Plaintiff's 2 and 3 and Defendant 5 who were born after Ex. I are not entitled to any share at all in the properties and that only Plaintiff 1 is entitled to a $\frac{4}{21}$ share of the properties. In other words what the Appellants contended for is that there was not only a division between Janaki Amma and her children on the one side and the remaining members of Lekshmi Amma's thavazhee on the other, but that the effect of Ex. I partition deed was to make the parties who took A schedule properties in Ex. I tenants-in-common with respect to those properties. We do not think that there is any force in this contention. Under Sections 34 and 36 of the Nayar Act a female descendant and her children can claim partition of their share of the tarwad properties with the consent of the female ascendant. When such a claim is made by one of the female descendants and a partition is effected by which the shares of that female descendant and her children in the tarwad properties are separately allotted to them there is nothing in the rules of Marumak-kathayam law or the provisions of the Nair Act, which prevents the rest of the members of the tarwad from remaining joint and continuing as members of an undivided tarwad.

As observed in the ruling reported in - "1949 Trav LR 263" (A).

There is no presumption that in every case of partition of a tarwad a group of members to whom properties were allotted on partition took such properties as tenants-in-common. It was possible, that such group of persons might have become separate in interest from other groups or individuals, but it did not necessarily follow that because of the partition the members of the group inter se had also become separate in interest. The instrument of partition or in the case of a decree which effects partition the terms of the decree would furnish the best evidence as to the status of the parties in this respect.

We have carefully read Ex. I partition deed and there is nothing in it which indicates that the A schedule group ever intended to effect a division between them inter se. In fact the provisions of Ex. I show clearly that the division that

was intended was only into two groups and that there was no intention whatsoever that the individuals constituting each group should divide from each other. The document shows beyond doubt that the reference in it to the per capita share was made purely for the purpose of indicating how the share of "each group in the tarwad properties was arrived at. It cannot, therefore, lead to the inference that the intention was that the individuals in each group should separate from each other. For the above reasons we do not think that the conclusion of the learned Judge that the Plaintiffs are entitled to 3/8 share of the properties liable for division is open to question.

3. The lower Court's decree directs the parties to suffer their costs. This is objected to by the Plaintiffs in their memorandum of objections in A.S. 49 of 1952. In the circumstances of this case we think that the lower Court's direction regarding costs is proper and does not call for any interference.

4. In the result we dismiss both the appeals with costs. The memorandum of objections filed in A.S. 49 of 1952 is also dismissed with costs.