

(1915) 11 MAD CK 0049
In the Madras High Court

Manjappa Ajri and Another

APPELLANT

Vs

Marudevi Hengsu and Others

RESPONDENT

Date of Decision : 02-11-1915

Acts Referred:

Citation : 32 Ind. Cas. 165 : (1916) 30 MLJ 204

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—The defendants Nos. 5 and 6 are the appellants. They and the plaintiffs and 2nd defendant and 2nd defendant's son, the 4th defendant, all belong to an Aliyasantana family. The 2nd defendant (mother of the 4th defendant) is the maternal aunt of the plaintiffs and of the defendants Nos. 5 and 6 and she is the senior lady in the tavazhi of the 2nd defendant's mother. As such senior lady in the branch of the 2nd defendant's mother, she was the ejamathi or manager of the branch. The 2nd defendant was one of four sisters. Of the four sisters, the 2nd defendant is the only one now surviving. One of the other sisters had a daughter Kusmaji and the finding of the lower Courts is that item 1 of Schedule B out of the plaint properties (and that is the only item in dispute in this second appeal) belonged to Kusmaji as her self-acquired property. Kusmaji died issue less. The 2nd defendant, the maternal aunt of Kusmaji, was alleged by the contesting 1st defendant to be the sole owner of this item 1 of Schedule B, and he attached and brought the property to sale as her exclusive property in execution of a decree obtained by him on a mortgage document executed to him by the 2nd defendant. It has been found by the lower Courts that the mortgage-debt contracted by the 2nd defendant and the mortgage-decree obtained against the 2nd defendant by the 1st defendant are not binding on the plaintiffs and on the defendants Nos. 4 to 6, of whose branch the 2nd defendant is the manager.

2. The Subordinate Judge dismissed the plaintiffs' suit as regards this item 1 of Schedule B on the ground that the 2nd defendant, as the maternal aunt of the

deceased owner Kusmaji, was the sole heir to Kusmaji's self-acquired properties and that the plaintiffs and the defendants Nos. 4, 5 and 6 (Kusmaji's mother's nephews and nieces) being one degree more remote than the 2nd defendant were excluded by the 2nd defendant. The Subordinate Judge deals with this question in paragraph 18 of his judgment and seems to assume without any discussion that when a, female member of an Aliasantana family dies, her heir is her nearest relative (or the nearest relatives standing in an equal distance of her by blood relationship) in the female line, and not the nearest branch of the family in the line to which she belonged including all the members of that branch, without regard to the question which of the members of that branch stand nearest in blood to the deceased intestate. The District Judge on appeal in a very short and rather unsatisfactory judgment says thus: As I understand the Aliasantana Law, the nearest relations succeed first, then the tavazhi, and last the tarwad." [I shall avoid the use of the, words "tavazhi" and "tarwad" though the word tarwad is used in *Antamma v. Kaveri* 7 M.K 575, as they are Malayalam words, which are used in respect of persons governed by the Malabar Marumakattayam Law whereas the parties to this suit are followers of the Aliasantana Law. I shall employ the words "branch." and "family" to denote what correspond to "tavazhi" and "tarwad".]

3. In *Antamma v. Kaveri* 7 M.K 575 Turner, C.J., and Muthusawmi Aiyar, J., held that according to the custom obtaining in South Canara, the self-acquisition of a member of the family governed by the Aliasantana Law devolves upon his death, not: upon all the members of the larger family to which he belonged, but upon the members of his own branch in the larger family. Among the members of, his own branch themselves, no distinction is made between persons nearer in blood to, or remoter in blood from, the deceased acquirer. I have looked into the original records of that case and the only question argued or considered was whether the members of the deceased's branch alone were his heirs (taking as a class) or whether the members of the larger family (including members of other branches also) took as a class. It was never suggested that an individual heir or individual heirs standing in the same degree of blood relationship to the deceased was or were the heirs. I think this case of *Antamma v. Kaveri* 7 M.K 575 is clear authority for the proposition that all the members of the nearest non-extinct branch are the heirs of the self-acquirer. In the present case Kusmaji's, own line and her mother's line are extinct and her heirs must be found among the descendants of Kusmaji's grandmother, who all take as a class belonging to that nearest branch. Hence the 2nd defendant, though nearer in blood relationship to Kusmaji, must take only as belonging to Kusmaji's grandmother's branch and she then takes the inheritance with all the other members of that branch. The view of the lower Courts that the heirship goes to the nearest individual relation or relations by blood and not to all the members of the nearest branch rests on no authority. Mr. Sitarama Rao ingeniously contended that in the Full Bench case, *Krishnan Nair v. Damodaran Nair* 17 Ind. Cas. 769; 48 M.L.T. 160 24 M.L.J. 240, the question whether the nearer blood relations standing in

the same degree to the deceased do not exclude the remoter relations was left an open question. I was one of the Judges who, with Sundara Aiyar, J., made the reference to the Full Bench in that case. The question, we referred, was whether the self-acquisitions of a female member of a Marumakattayam tarward would, on her death, lapse to the tarward of which she died a member or whether they would descend to her nearest heirs or her tavazhi. The language of the referring order was, if I recollect aright, the language of Sundara Aiyar, J. But I am reasonably clear that we had in contemplation only two alternatives, namely, inheritance by all the members of the larger tarwad or inheritance by all the members of the smaller tavazhi and not a third alternative, namely, inheritance by those members only of the smaller tavazhi who were nearest in blood relationship to the deceased. Sankaran Nair, J., however, at page 53 says: "The reference also suggests whether the nearest heirs take. This, if intended to refer to a class of heirs, other than the tavazhi, may raise another question." He, however, did not deem it necessary to decide, that question and his answer to the reference, is: "That the self-acquisitions of a female do not lapse to her tarwad but they descend to her tavazhi: if she has issue, the tavazhi is composed of that issue; if she has no issue, her mother and her descendants form her tavazhi," Sundara Aiyar, J., and Benson, J, did not understand the referring order as raising any third question and Sundara Aiyar, J., uses the expression "nearest heirs" and "tavazhi" indiscriminately to mean the same thing. The decrees of the lower Courts, therefore, so far as item 1 of B Schedule is concerned, must be reversed and the case remanded to the lower Court for a fresh decision in Appeal No. 429 of 1912 on the other questions arising in the case with reference to the above property.

4. Costs will abide.

Napier, J.

5. I agree. The decision in *Antamma v. Kaveri* 7 M.K 575 has remained unchallenged for 30 years as representing the custom of the District of South Canara and I think that it would be most mischievous to re-open this question and institute a fresh enquiry as to custom after the lapse of such a period.