
(1915) 11 MAD CK 0023
In the Madras High Court

Manjappa Ajri and Another APPELLANT
Vs
Marudevi Hengsu and Twelve Ors. RESPONDENT

Date of Decision : 02-11-1915

Acts Referred:

Citation : (1916) ILR (Mad) 12

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

Bench : Division Bench

Judgement

Sadasiva Ayyar, J.—The defendants Nos. 5 and 6 are the appellants. They and the plaintiffs and the second defendant and the second

defendant's son, the fourth defendant, all belong to an Aliyasantana family. The second defendant (mother of the fourth 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 second defendant's mother, As such senior

lady in the branch of the second defendant's mother, she was the ejamanathi or manager of the branch. The second defendant was one of four

sisters. Of the four sisters, the second 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, 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 issueless, The second defendant, the maternal aunt of Kusmaji, was alleged by the contesting

first 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 second defendant. It has been found by the lower Courts

that the mortgage debt contracted by the second defendant and the mortgage decree obtained against the second defendant by the first defendant

are not binding on the plaintiffs and on the defendants Nos. 4 to 6 of whose branch the second defendant is the manager.

2. The Subordinate Judge dismissed the plaintiff's suit as regards this item (1) of Schedule (13) on the ground that the second 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 second defendant were excluded by the

second 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 Aliyasantana family dies, her heir is her nearest relative (or the nearest relatives standing in an equal distance from

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 inter se. The District Judge

on appeal in a very short and rather unsatisfactory judgment says thus: "'As I understand the Aliyasantana 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 ILR (1884)Mad. 575 as they are Malayalam words which are used in respect of persons governed by the Malabar Marumakkattayam law

whereas the parties to this suit are followers of the Aliyasantana law. I shall employ the words "'branch'" and "'family'" to denote what correspond to

tavazhi'" and "'tarwad'.)

3. In Antamma v. Kaveri ILR 7 (1884) Mad. 575 Turner, O.J., and Muthuswami Ayyar, J., held that, according to the custom obtaining in South

Canara, the self-acquisition of a member of the family governed by the Aliyasantana 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 Antamma

v. Kaveri ILR (1884) Mad. 5715 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 second defendant though nearer in blood relationship

to Kuamaji, 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 heir ship 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 v. Damodaran ILR 38

(1915) Mad. 48 --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 Ayyar, J., made the reference to the Full Bench in that case. The

question we referred was whether the self-acquisition of a female member of a Marumakkattayam tarwad would on her death lapse to the tarwad

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 X

recollect aright, the language of Sundara Ayyar, 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 be 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 Ayyar and Benson, JJ., did not understand the referring order as raising any third

question and Sundara Ayyar, 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 schedule B is concerned, must be reversed and the case remanded to the lower Appellate Court for a fresh

derision in Appeal No. 429 of 1912 on the other questions arising in the case with reference to the above property. Costs will abide.

Napier, J.

4. I agree. The decision in Antamma v. Kaveri ILR (1881) Mad. 575 has remained unchallenged for thirty years as representing the custom of the

district of South Canara and I think that it would be most; mischievous to reopen this question and institute a fresh enquiry as to custom after the

elapse of such a period.