

(1892) 04 MAD CK 0009
In the Madras High Court

Muthuvaduganatha Tevar

APPELLANT

Vs

Periasami alias Oodayana Tevar

RESPONDENT

Date of Decision : 25-04-1892

Acts Referred:

Citation : (1892) 2 MLJ 265

Hon'ble Judges : Muthusami Aiyar, J; Best, J

Bench : Full Bench

Judgement

Muthusami Aiyar, J.—The contest in this appeal is as to the right of succession to the Zamindari of Sivaganga. Dorasinga Tevar was the last

male holder, respondent is his son and appellant is the son of Kattama Nachiyar, Dorasinga's predecessor. Appellant is related to the Istimrar

Zamindar as daughter's son and respondent as the son of a senior daughter's son. The question for determination is whether, under the Mitakshara

law, succession is to be traced from the last male holder or the Istimrar Zamindar. The 1st and 3rd to 6th issues recorded in this case relate rather

to the different grounds on, which appellant presses his claim than to independent questions.

2. As regards the 1st issue, viz., whether succession is to be traced from the last male holder or his maternal grandfather, appellant's contention is

that, when a person succeeds to an obstructed heritage, that person is not, whether a male or female, a full owner. There is, however, no warrant

for it in the Mitakshara. The general rule of Hindu law is that, when a male heir succeeds a male owner, the former is as much full owner as the

latter, the principle being, as stated by Manu in Ch. IX, verse 187, that to the nearest sapinda the inheritance belongs. The only recognised

exception to it is that, when a female, such as a widow or daughter, succeeds a male owner, her succession is a case of interposition between him

and his next sapinda on the authority of Katyayana, who directs that, upon the death of such female, the last male owner's (and not her own) heirs

shall take the heritage. This text is referred to and the history of the introduction into the Mitakshara of the widow and daughter among heirs is

explained in the decision of this Court reported at I. L. R 3 M 330, Muthu Vaduganatha Tevar v. Dora Singha Tevar. As for obstructed and

unobstructed heritage (sapatibanda and apatibanda), the distinction is material only to the extent that, in the one case, the nearer male heir

excludes the more remote, whilst in the other, the doctrine of representation excludes this rule of preference. It is founded upon the theory that the

spiritual benefit derived from three lineal male descendants such as son, grandson and great grandson, is the same, though, among collateral male

heirs, the quantum of such benefit varies in proportion to the remoteness of the male heir from the deceased male owner. Hence it is that the text of

Yagnavalkya cited in the Mitakshara, Ch. II, Section 1, verses 2 and 3 premises the death of a male owner without male issue and enumerates his

heirs in the order in which they are entitled to succeed, adding that, on failure of the first in the order in which they are enumerated, the next in

order is the proper heir. Thus the rule that to the nearest sapinda the inheritance belongs applies alike whether the heritage is obstructed or

unobstructed with this difference, viz., that, when the last full owner leaves sons, grandsons and great grandsons, their sapinda relationship confers

equal spiritual benefit on him, though their blood relationship is not the same and that they are all co-heirs within the meaning of the rule. The

decision of the Subordinate Judge on the 1st issue is, therefore, correct.

3. The 3rd issue, is whether, upon the death of Kattama Nachiyar, the Zamindari devolved upon Dorasinga Tevar and appellant as joint family

property and whether, upon the death of the former, it devolves upon the latter by right of survivorship. It is suggested for appellant 1st, that it is

joint family property, and 2ndly, that his right of survivorship excludes respondent from succession.

4. The right of survivorship, as recognised by the Mitakshara presupposes two things, viz, a subsisting coparcenary in respect of the property in

litigation and the death of the last male owner without male issue. In the case before us, respondent is Dorasinga Tevar's son and even assuming that the estate was common both to appellant and Dorasinga Tevar, no right of survivorship can arise in appellant's favor. Again, coparcenary presupposes a common descent from the same paternal ancestor and community of interest in the property in dispute and as daughters are transferred by marriage to the gotras or the families of their husbands, neither can they nor their sons be said to be coparceners so as to constitute a joint Hindu family in the true sense of the expression. Further, to what extent an impartible estate can be treated as joint family property though it vests in one of its members by the custom of primogeniture and to what extent a right of survivorship can be deduced from impartibility was considered by this Court in *Naraganti Achammagaru v. Venkatachalapati Nayanivaru*, I. L. R 4 M 252 and the decision in that case rests on the view that, before succession can pass from one line of descent to another, the former must be extinct and that the proper heir is not necessarily the coparcener nearest in blood to the original owner, but the nearest coparcener of the senior line. Again, how far is joint family property as between father and son for the purpose of invalidating a mining lease granted by the former was considered in *Beresford v. Ramasubba* I. L. H 13 M 197 and it was held in that case, on the authority of the decision of the Privy Council in *Sartaj Kuari and another v. Deoraj Kuari* I. L. R 10 A 283, that, even as between real coparceners, an impartible estate devolving in accordance with the custom of primogeniture is not joint family property for all purposes. The right of survivorship on which appellant insists was properly held by the Subordinate Judge not to subsist.

5. The 4th issue was raised with reference to the contention that Dorasinga Tevar's interest in the Zamindari was only a qualified interest and that it

consisted only in the right of management subject to appellant's right to succeed to him on his death and the Subordinate Judge was right in

disallowing it also. In the first place, Dorasinga was owner and not a mere manager, and his ownership was that of a male sapinda and not a

qualified heritage as in the case of a widow or daughter. The Smritis from which his right of succession is deduced by the Mitakshara in Ch II,

Section 3, verse 6 are those of Vishnu and Manu. The former says, "In regard to the obsequies of ancestors, daughter's sons are considered son's

sons,"" and the latter observes, ""By that male child whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grand sire of a son's son: let that son give the funeral oblation."" The Smriti on which the Mitakshara rests the daughter's succession is that of Brihaspati, who says, ""as a son, so does the daughter of a man, proceed from his several limbs."" It is then clear that in the case of the daughter, the ground of succession is that she is her father's sapinda, because she proceeds from his limbs like a son, but in the case of daughter's son it consists in the union of blood relationship through the mother with that of sapinda relationship in its spiritual sense as in that son's son or the son of an appointed daughter under ancient Hindu law. Here I may also draw attention to the Vedic texts cited in Smriti Chandrika and to its effect, as discussed in Ch. IV"", verses 4 to 8. Those texts show that there is a passage in the Taittiriya Veda to the effect that females and persons wanting in an organ or sense or member are incompetent to inherit, that accordingly Baudhayana says that females are incompetent to inherit and that the author of the Smriti Chandrika considers that what they take is not Dayam or pure heritage but only an amsom"" or an allotment in the nature of a provision or a qualified heritage. Reading the foregoing passages together, it follows that, when the daughter succeeds, she takes the heritage as an amsom or as a provision for life with power of alienation on exceptional grounds or, as is usually put, as a qualified heritage and that, as she succeeds solely by reason of blood relationship, her succession is constituted into a case of interposition between two consecutive male heirs who are both blood relations and sapindas in a spiritual sense. It is also clear, on the other hand, that, when the daughter's son succeeds, he succeeds as a regular sapinda in the same way in which a son's son or the son of an appointed daughter succeeds, that the Vedic text and the disability consequent upon it do not apply to him, that he inherits from his mother's father though after her death and not from her, that he is a full owner like a son's son or an appointed daughter's son, and that like every regular or male sapinda he also becomes a fresh stock of descent when the right to inherit once vests in him. The appellant's contention which ignores this distinction between the daughter and the daughter's son as heirs at law cannot be supported.

6. As regards the 5th issue, it is sufficient to state that nearness or remoteness of relationship to the Istimrar Zamindar is perfectly immaterial. As

observed by the Privy Council in *Neelkisto Deb Burmono v. Beerchunder Thakoor and Ors.* 12 M. I. A 523 and by this Court in *Achammagaru*

v. Venkatachalapati I. L. R 4 M 267, "it is the nearest in blood to the last male holder that is the pro-per heir and not the senior member of the whole group of agnates.

7. In connection with the 6th issue, it is argued for appellant that like daughters, daughter's sons inherit as a class and that as all the heirs in each

class must be exhausted before the estate devolves on another class, appellant is a preferable heir by right of survivorship. This contention is again,

as observed by the Subordinate Judge, clearly not tenable. It ignores the principle that, when by the custom of primogeniture, the senior male in a

class of heirs excludes the others, the exclusion continues not only during his life, but so long as he leaves lineal heirs competent to succeed to him.

If an impartible estate devolves on the eldest of three sons by the custom of primogeniture to the exclusion of the rest, the preference due to

seniority of birth is not a mere personal privilege, but a heritable interest which descends to his lineal heirs as his representatives. The doctrine of

representation as between the father and his three lineal descendants consequent on the notion that he is reborn in them obtains on each occasion

the succession opens up and the eldest son's right to exclude his brother is continued to his lineal male heirs. It is then said that when an impartible

estate devolves on the eldest of several daughters, the other daughters take by right of survivorship. Each daughter's succession is only a case of

interposition and as she dies, the next in seniority is her father's heir and thus inherits the estate as heir and not by right of survivorship as

recognised by the Mitakshara.

8. As regards the 2nd and 7th issues, I agree in the opinion of the Subordinate Judge that there is no estoppel in either case for the reasons

assigned by him. As the appeal fails on the merits, it is not necessary to consider the 8th, 9th and 10th issues.

9. I would dismiss this appeal with costs.

Best, J.

10. This is an appeal by the plaintiff against the Subordinate Judge's decree

dismissing his suit for possession of the Zamindari of Sivaganga to which plaintiff claims to be entitled to succeed on the death of the late Zamindar Dorasinga Tevar, in preference to the defendant who is the son of the said Dorasinga Tevar.

11. The Istimrar Zamindar was Gouri Vallabha Tevar who died in 1829, Thereupon his brother Muthu Vaduga Tevar took possession, and he and his descendants retained the same till 1864, when Kattama Nachiyar, daughter of the Istimrar Zamindar, recovered the same under the decree of

the Privy Council following on the judgment of their lordships which is reported in 9 M. 1. A 543, Katama Natchiar v. The Rajah of Shivagunga.

Kattama Nachiyar died in 1877 when a contest arose as to the right of succession between her son, the present plaintiff and Dorasinga Tevar, the

son of her elder sister (deceased) Vellai Nachiyar, which resulted in favor of the latter, on the ground that the estate taken by Kattama Nachiyar as

a daughter was a limited estate, and that on her death it devolved not on her own heir but on her father's heir and that Dorasinga Tevar as senior

grandson was that heir: Mutta Vaduganadha Tevar v. Dorasinga Tevar L. R 8 I. A 99. Dorasinga Tevar succeeded, therefore, and held the

Zamindari, till 1883 when he died.

12. Hence this suit in which the plaintiff--appellant--seeks to get possession as grandson of the Istimrar Zamindar and, therefore, more closely

related to him than defendant who is a great grandson.

13. The question, therefore, is whether, on the death of Dorasinga Tevar, the succession is to be traced from the Istimrar Zamindar as contended

by the plaintiff or from Dorasinga Tevar himself as urged on behalf of the defendant. The Subordinate Judge has upheld the defendant's contention

and I am of opinion that he is right in so doing.

14. It is urged on behalf of the plaintiff that Darasinga Tevar's possession was as manager of the estate by reason of its impartibility and that, the

estate having been the joint family property of himself and plaintiff, the latter is entitled to the same by right of survivorship.

15. As was observed in the Naragenti case I. L. R 4 M 250, ""The impartibility of the subject does not necessitate the denial of the right of

survivorship, and there are not wanting in the admitted rules which govern the enjoyment of such property and the succession to it, indicia of co-

ownership and consequent survivorship."" But can the plaintiff be held to have been a co-owner of the Zamindari with Dorasinga Tevar, for it is only

in case of co-ownership that there can be a right of survivorship. As pointed out by the Subordinate Judge, plaintiff and Dorasinga Tevar are the

sons of different fathers and consequently members of different Hindu families and therefore not coparceners within the meaning of the Hindu law.

The claim by right of survivorship has, therefore, been rightly rejected; and as the last male owner from whom the right of succession is to be

traced is Dorasinga Tevar, the Subordinate judge is right in holding that the son, the defendant, and not the plaintiff, is the person entitled to

succeed to the Zamindari.

16. This appeal fails, therefore, and is dismissed with costs.