

(1982) 12 KL CK 0004
In the High Court Of Kerala
Case No : S.A. No. 1038 of 1977

Narayana Iyer Mahadevan

APPELLANT

Vs

Narayana Vadhyar and Others

RESPONDENT

Date of Decision : 13-12-1982

Acts Referred:

Citation : (1983) KLJ 794

Hon'ble Judges : P. Subramonian Poti, Acting C.J.

Bench : Single Bench

Advocate : Joseph M. Madathil and S. Sivaraman, for the Appellant; T. S. Venkiteswara Iyer and P. K. Balasubramaniam, for the Respondent

Judgement

P. Subramonian Poti, AG. C. J.

1. The questions of law involved in the case on which notice was ordered by the learned single judge are (1) whether the last owner of family property under Hindu Law, holds it as separate property liable to devolution by succession and inheritance by the heirs and not by survivorship as among the collaterals? (2) Whether the successors of the last owner in possession hold it as tenants-in-common liable to separation or partition by metes and bounds? To understand these questions it is necessary to refer to a few facts. Venkiteswara Wadhyar was the owner of item 1 in plaintiff schedule. I am not concerned with item 2 in this appeal and therefore I am not referring to it. Though in the appeal memorandum item 2 is also claimed, at the hearing it was not pressed. Venkiteswara Wadhyar had 3 sons Subramonia Wadhyar, Venkiteswara Iyer and Narayana Wadhyar. Subramonia Wadhyar died in the year 1100 M.E. Narayana Wadhyar is the first defendant in the suit. The second defendant is the son of Venkiteswara Iyer. Subramonia Wadhyar died in 1090. He had no male issue. He had only a daughter. Plaintiffs are the children of that daughter. The plaintiffs claim that on the death of Venkiteswara Wadhyar item 1 was inherited by his 3 sons and the share of Subramonia Wadhyar has now fallen to the plaintiffs, the grand children of Subramonia Wadhyar. Besides claiming that Wadhyar obtained a share in the

properties by inheritance it is also said that there was a division between Subramonia Wadhyar and his brothers and therefore Subramonia Wadhyar got separate share though not separated by metes and bounds.

2. It has been concurrently found by the courts below that item 1 belonged to Venkiteswara Wadhyar at the time of his death. Evidently what is found is that it is not his family property. The property is therefore inherited by heirs. His heirs were the 3 sons. The 3 sons would inherit the property with the incidents of ancestral property. The property would be joint family property in the hands of the sons. (See paragraph 233 of Mulla's Hindu Law under the head "ancestral property"). If it is held by the sons as ancestral property or joint family property all the incidents of joint family would attach to the property, one such incident being that of survivorship. Therefore on the death of Subramonia Wadhyar prior to the Hindu Succession Act, 1956 the right in the property would survive to the other coparceners. If so there is no question of succession by female heir, of Subramonia Wadhyar to his share in the properties of Venkiteswara Wadhyar. If so the plaintiff would be out. The courts below have concurrently found that the case of notional partition is not proved and it is not one of the questions on which notice has been ordered. In these circumstances the title of the plaintiffs must be found against. Unless it is that Subramonia Wadhyar had an inheritable right in the property on his death his female heir and consequently the plaintiffs would not get any title. He would have heritable right if he had become divided in status in regard to joint family properties inherited from the father. I say joint family properties only because the character of joint family is impressed on the properties under law on inheritance from the father. In that event the plaintiffs must be non-suited. The passage in paragraph 222 of Mulla's Hindu Law has been relied on by the learned counsel for the appellant to show that there is no question of survivorship applying to a property on inheritance on the death of Venkiteswara Wadhyar. Refence is to the following passage:

A Hindu, even if he be joint, may possess separate property. Such property belongs exclusively to him. No other member of the coparcenary, not even his male issue, acquires any interest in it by birth. He may sell it, or he may make a gift of it, or bequeath it by will, to any person he likes. It is not liable to partition, and, on his death intestate, it passes by succession to his heirs, and not by survivorship to the surviving coparceners.

It is true that on his death it passes by succession to his heirs. If no survivorship had applied it would have survived not only to his children and other descendants who succeed but also his collaterals with whom he happens to be join in status and that would be the case even with regard to his individual properties if the law were otherwise. What is indicated is that in respect of self acquired properties there is no question of survivorship as in the case of joint family properties. This does not purport to deal with the character of the properties in the hands of the heirs. In the hands of the heirs it will be joint family property as observed in the next para of the same book. As such the law

of survivorship would apply to the properties in the hands of the heirs. That being the case the decisions of the courts below do not call for interference. Dismissed. No costs.