
(1959) 12 MAD CK 0033
In the Madras High Court

Palaniathal

APPELLANT

Vs

R. Udayappan and Others

RESPONDENT

Date of Decision : 04-12-1959

Acts Referred:

Madras Hereditary Village Offices Act, 1895 — Section 10, 10(2)

Citation : (1960) 73 LW 333 : (1960) 1 MLJ 478

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—The question arising in these petitions is whether a woman is disqualified for being appointed as the headman of a village under the Madras Hereditary Village Offices Act, 1895, by reason of her sex.

2. One Deivasikamani Gounder was the viljage headman of Chitravuthampalayam in Dharapuram taluk in Coimbatore district. The office which he held was a hereditary one governed by the provisions of Madras Act III of 1895. He died in May, 1953, leaving no male issue but only four daughters. The petitioner is the eldest of these daughters. After the death of the petitioner's father was notified to the authorities, the name of the petitioner who was a minor on that date was registered on 17th July, 1954, in accordance with the provisions of Section 10(5) of the Act by the Revenue Divisional Officer, and one Udaya Gounder was appointed as the deputy to do the duties of the office pending the minor attaining majority. By an order, however, of the Collector, dated 11th November, 1955, passed without notice to the petitioner's guardian, the registration of the petitioner u/s 10(5) was cancelled for the reasons thus stated,

There is no provision for registering the lavanam office in the names of female heirs.

3. By the same order the Revenue Divisional Officer was directed to deal with the matter, de novo and this officer registered by order, dated 23rd February, 1956,

one Udayappan a brother's son of Deivasigamani Gounder as the minor office-holder, the deputy Udaya Gounder however being continued.

4. The petitioner who had by then attained majority came to know in November, 1957, of the cancellation of the registration of her name and the appointment of Udayappan, her cousin, in her place and she thereupon filed an application to the Collector to review and set aside his previous order. This was rejected by him in his order, dated 12th December, 1957. The reason for the dismissal of this application was stated to be that

there was no provision for the registration of a female as hereditary village officer under Madras Act III of 1895.

Thereafter the petitioner filed W. P. No. 147 of 1958 for the issue of a writ of certiorari to quash the order of the Tahsildar, dated 23rd December, 1956, appointing the petitioner's cousin Udayappan as the next in succession to her deceased father, and W.P. No. 148 of 1958 against the order of the Collector, dated, nth November, 1955, cancelling her registration as the next in succession.

5. The point arising in these petitions is, therefore, whether a woman is disqualified by reason of her sex from being appointed to the office under the Madras Hereditary Village Offices Act. Section 10 of the Act is the relevant provision dealing with the rules to be observed in making appointments, on vacancies arising. As originally enacted Section 10 read,-

When a vacancy occurs in any of the village offices forming class (1) in Section 3, the Collector shall fill up the vacancy in accordance with the provisions of the following Sub-sections:

(1) No person shall be eligible for appointment...(ii) to any of the offices forming class (1) in Section 3, if such person (a) is not of male sex.

Sub-clauses (b) to (f) refer to other qualifications or disqualifications which are not relevant. Section 10(2) of the Act read,

The succession shall devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamindaris in Southern India.

The other provisions of this section are not of immediate relevance.

6. Article 16(2) of the Constitution enacts,

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Clauses (3) to (5) of the Article enact exceptions to the rules contained in Article 16(2) but they do not touch the discrimination based upon sex or in any way qualify that provision. After the Constitution came into force, laws in force in India were adapted. Article 372(2) of the Constitution provided:

For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any Court of law.

By virtue of the power thus conferred the Adaptation of Laws Order, 1950, was promulgated and under it the provision in Section 10(1)(ii)(a) containing the disqualification because a person was not of the male sex was deleted. The question, therefore, is whether in the face of the provision in the Constitution¹, Article 16(2), coupled with the amendment effected by the Adaptation of Laws Order, 1950, it would be possible to hold that women are since 1950 disqualified from holding public offices dealt with by Madras Act III of 1895.

7. Having considered the matter with care I am clearly of the opinion that there is and can be no such disqualification. In the orders now impugned the words used are "there is no provision for registering the lavanam office in the names of female heirs". Undoubtedly there is no specific provision declaring the competency of female heirs to succeed to village offices, in the sense that they are specifically mentioned. But the question is whether when Section 10(1), speaks of "a person" being eligible for appointment and when Section 10(2) speaks of "the heir" they should be held to exclude "persons of the female sex" and "female heirs" respectively. When Section 10(1)(ii)(a) was part of the enactment - before the Adaptation of Laws Amendment Order, 1950 "persons of the female sex" were specifically excluded, presumably because in the absence of such a prohibition, the next "heir" u/s 10(2) would include "female heir" and the expression "person" in the opening words of Section 10(1) would include a "person of the female sex".

8. The learned Additional Government Pleader informed me that the Government took the view that female heirs were excluded because of two reasons. The first was that in a judgment rendered by me in W.P. No. 273 of 1957, I had observed, "The Statute (Act III of 1895) does not contemplate the appointment of females to the hereditary village offices". I have examined this judgment of mine and I am now satisfied that these observations which were by way of obiter are incorrect. On that occasion the existence of a disqualification against females enacted by Section 10(1)(ii)(a) and the amendment brought about by the deletion of this provision by the Adaptation of Laws Order, 1950, was not brought to my notice; nor did I bear in mind the provision in Article 16(2) of the Constitution.

9. The second reason mentioned by the learned Additional Government Pleader was that the provision in Section 10(2) regarding "devolution on a single heir according to the rule of primogeniture" might itself be sufficient to effect exclusion, of female heirs. The submission, however, is not well founded. As

observed in *Anant v. Shanker* (1943) 2 M.L.J. 599 : L.R. 70 Ind. App. 232.

It (an impartible estate) may devolve as joint family property or as separate property of the last male owner. In the former case it goes by survivorship to that individual among those male members who in fact and in law are undivided in respect of the estate, who is singled out by the special custom, e.g., lineal male primogeniture. In the latter case jointness and survivorship are not as such in point; the estate devolves by inheritance from the last male owner in the order prescribed by the special custom or according to the ordinary law of inheritance as modified by the custom.

As laid down by the *Sivaganga Case* (1863) 9 M.I.A. 539, (which was itself the case of a female succeeding to an impartible estate) and as explained by Sir Richard Couch in *Raja Jogendra Bhupati Hurri Mahapatra v. Nityanund Mansingh* (1890) L.R. 17 Ind. App. 128 : ILR (1890) Cal. 151, the fact of the Raj being impartible does not affect the rule of succession.

10. If the office of the village headman should be conceived of as the joint property of the holder and his undivided coparceners, succession would devolve by survivorship. If on the other hand the office were conceived of as the separate property of the office holder, the devolution would follow the rule relating to partible property modified by the special custom by which it is vested in a single heir. In *Subramania Pandia Chokka Talavar Vs. Siva subramania Pillai and Others*, , *Muttuswami Iyer and Best, JJ.*, laid down the law in the following terms; which has received the approval of the Privy Council in *Parbati Kunwar v. Chandrapal Kunwar* (1909) 19 M.L.J. 605 : L.R. 36 Ind. App. 125. The learned Judges said dealing with the principles applicable to succession to impartible property:

The first of them is that a rule of decision in regard to succession to impartible property is to be found in the Mitakshara law applicable to partible property, subject to such modifications as naturally flow from the character of the property as an impartible estate. The second principle is that the only modification which impartibility suggests in regard to the right of succession is the existence of a special rule for the selection of a single heir when there are several heirs of the same class who would be entitled to succeed to the property if it were partible under the general Hindu Law....In determining who the single heir is according to these principles, we have first to ascertain the class of heirs who would be entitled to succeed to the property if it were partible, regard being had to its nature as coparcenary or separate property, and we have next to select the single heir by applying the special rule indicated above.

So far as village offices are concerned it must now be taken as settled law that they should be dealt with, in so far as it partakes of the character of property, as the separate property of the office holder, by virtue of the principle laid down in the decision of the Privy Council in *Venkata Jagannatha v. Veerabhadrayya* (1921) 41 M.L.J. 1 : ILR (1921) Mad. 643 : L.R. 48 Ind. App. 244. If the

succession has to be traced on the basis that it is the separate property of the last holder, a daughter would certainly not be excluded, and applying the rule as to the single heir and primogeniture, the eldest of the daughters would certainly be the heir who would have succeeded to the office if it were of the nature of impartible property which was the separate property of the last holder.

11. In my judgment, therefore, Section 10(2) far from negating the claim of the petitioner, would appear to support it. There is no exclusion of female heirs under the Mitakshra Law for succeeding to separate property of the last owner even if such property were an impartible estate, and if that rule applied, the petitioner would be within the class of heirs entitled to succeed.

12. In my judgment the petitioner is entitled to the reliefs which she seeks in these petitions. The petitions succeed and the rules nisi are made absolute and the orders impugned are set aside. There will be no order as to costs.