

(1915) 12 MAD CK 0022
In the Madras High Court

Raja Rajeswari Ammal

APPELLANT

Vs

Subramania Archakar and Others

RESPONDENT

Date of Decision : 14-12-1915

Acts Referred:

Citation : 32 Ind. Cas. 975(1)

Hon'ble Judges : Phillips, J;Kumaraswami Sastri, J

Bench : Division Bench

Judgement

1. The only question raised in this second appeal is, whether a female heir is disqualified from succeeding to the office of archaka and receiving the

emoluments attached to the office in cases where such office is hereditary in her family. The District Munsif passed a decree in plaintiff's favour but

the Subordinate Judge, who agreed with the District Munsif in all his findings of fact, dismissed the plaintiff's suit on the ground that the decision in

Sundarambal Ammal v. Yogavanagurukkal 23 Ind. Cas. 72; (1914) M.W.N. 286 was authority for holding that females were disqualified from

succeeding to the office.

2. The right of females to succeed to religious offices and perform the duties by proxy where such offices are hereditary has been recognized in

numerous cases. As observed by Justices Ayling and Hannay in Ramasundaram Pillai v. Savundaratha Ammal 27 Ind. Cas. 440; 16 M.L.T. 423;

(1914) M.W.N. 919 (where all the important cases are collected), the rule enunciated by Sadasiva Aiyar, J., in Sundarambal Ammal v.

Yogavanagurukkal 23 Ind. Cas. 72: 1 L.W. 276 runs counter to ideas which have been commonly accepted by parties concerned and given effect

to by Courts for many years, and we think that the present case is one where

Courts should apply the doctrine of stare decisis and not declare to be illegal a practice which has been followed for many years with, so far as we are aware, no serious evil consequences and which has been the foundation of many titles.

3. The hereditary right to succeed to a religious office is itself the creature of custom and the fact that females have been allowed without question to enjoy the emoluments of the office and to get the duties performed by proxy and that Courts have for a series of years given effect to such right, justifies us in holding that female succession is not excluded. The right of females to perform religious duties by proxy is not unknown to Hindu Law usage, the commonest examples being the performance of *sraddhas* and funeral obsequies by female heirs by proxy and cases where a widow makes an adoption.

4. In *Tangirala Chiranjivi v. Raja Manikya Rao* 25 Ind. Cas. 283; 27 M.L.J. 179, Justices Benson and Sundara Aiyar held that there was no basis for the assumption that females are as such disqualified from succeeding to a religious office attached to a temple and that the onus would be on the *dhamakartas* to prove any such disqualification services in temples are often performed by proxies. They were dealing with a case where the service to be performed was the reciting of Vedas in a temple and we can see little difference between such a service and the service performed by *archakas*.

5. The Subordinate Judge was wrong in thinking that any special custom has to be pleaded to enable a female heir to succeed. The onus is on those who deny that right to prove a custom excluding females.

6. In *Mahamaya Debi v. Haridas Haldar* 27 Ind. Cas. 400, which was a case relating to an office in the Kalighat temple similar to that of *archakas* in this Presidency, Justice Mookerjee, after an elaborate review of several authorities, was of opinion that the custom whereby females not only succeeded to the office but also alienated the same was not invalid as opposed to public policy. An alienation was also upheld in *Subraya Kakramaya v. Subraya Padayya* 7 Ind. Cas. 715. It is unnecessary for us in the present case to decide how far the right of alienation extends, though there is authority for holding that a female heir can alienate the office to one next in succession. So far as the authorities go, we do not think

that there is any ground for refusing to recognise the custom of female succession to hereditary religious offices on the ground of such a custom being opposed either to the express text of Hindu Law or to public policy.

7. Following *Ramasundaram Pillai v. Savundaratha Ammal* 27 Ind. Cas. 440; (1914) M.W.N. 919 and *Tangirala Chiranjivi v. Raja Manikya Rao*

25 Ind. Cas. 283, we are of opinion that a female is not, under Hindu Law or custom, disqualified from succeeding to a hereditary religious office

and getting such duties, as she may be disqualified by reason of her sex from performing, performed by proxy.

8. We reverse the decision of the Subordinate Judge and remand the case to him for disposal of the second question raised by him. The

respondents will pay appellants costs in this Court and the costs will abide and follow the result.