

(2006) 03 DEL CK 0261

In the Delhi High Court

Case No : IAs No. 2664, 3054, Criminal M.4066, 4939, 5128, 9370 and 10038 of 2005 and CS (OS) No. 455 of 2005

Sh. Madhu Vijayan and Another

APPELLANT

Vs

Sh. S.G. Ravishankar

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 8 Rule 1
Constitution of India, 1950 — Article 25
Criminal Procedure Code, 1973 (CrPC) — Section 340
Transplantation of Human Organs and Tissues Act, 1994 — Section 2, 5

Citation : (2006) 88 DRJ 217

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Indira Jaising, Jawahar Raja and Ravindra Singh, for the Appellant;
C.A. Sundaram and Rohini Musa, for the Respondent

Judgement

A.K. Sikri, J.—Sh.O.V.Vijayan, a prolific literary writer and political cartoonist , attained great heights and acclaim in his lifetime. He wrote in his native language, Malayalam as well as in English. Following are some of his works which attained immense recognition and erudite critique:

- (a) The Legend of Khasak (1969)
- (b) The Saga of Dharmapuri (1985)
- (c) The Eternity of Grace (1987)
- (d) The Madhura Gayathi (1990)
- (e) The Way of the Prophet (1992)
- (f) The Generations (1997).

2. Apart from the aforesaid books, his literary works are also manifested in the

form of short stories, political essays and other like collections. His cartoons, likewise, attained national and international fame in terms of acceptance and popularity which were regularly published in leading dailies/publications like Shankar's Weekly, The Patriot, The Hindu, The Statesman, The Far Eastern Economic Review and The New York Times. His works were given due recognition in the form of various national/regional awards/prizes conferred upon him. He was awarded the Padma Bhushan Award , second highest civilian honour by the Government of India. Other awards won by him include The Ezhuthachan Puraskaram Award, The Odakkuzhai Award, The Kerala Sahitya Academy Award, The Central Academy Award, The Velar Award and the Muttathu Varkey Award.

3. Everybody has to die one day. Mr. Vijayan also died on 30th March, 2005. You can have money piled to the ceiling but the size of your funeral is still going to depend on the weather. In the case of Mr. Vijayan, because of his celebrity status, it depended on many other factors.

4. It's no wonder then that when Sh.O.V.Vijayan (hereinafter referred to as 'Vijayan') died on 30th March, 2005 at the age of 75 years, that the Chief Minister of Kerala and other dignitaries from that State wanted a State funeral for him which was a form of expression of sentiments of the people of Kerala. His wife and son (who are plaintiffs in this suit) agreed to this request of the State and the mortal remains of Vijayan were given a State funeral. His body was cremated with all the honours which are expected of a State cremation.

5. The person who achieved such milestones and was shown such a respect even after his death by the State, his last remains, namely, the ashes have become a subject of controversy for which present suit is filed by his wife and son. When human beings die, their bodies start to decompose. For this reason, they have to be disposed of after death. Animals don't make a fuss of this fact; they go off and die. Humans, believing they are better than animals, invent religions. They have their beliefs. They have their philosophies. Disposal of human corpses and treatment of mortal remains are aspects of human life that reach from the depths of individual psychology through the necessities of law and community life into the explanatory realms of philosophy and religion.

6. The fight over the ashes of Vijayan has turned out to be more fierce than the struggle for "Ashes" in cricket matches played between England and Australia. The present controversy is one of its kind and probably the first of its kind being litigated before a Court of Law. Unfortunate consequence is that though Vijayan was cremated almost a year ago part of the ashes are still not disposed of and there is a dispute between the plaintiffs and the defendant as to who has right over those ashes and in what manner the ashes need to be disposed of. The plaintiff No. 2 and Vijayan married in the year 1965 at New Delhi under the Special Marriage Act. The plaintiff No. 1 is the only son born out of the said wedlock. The plaintiff No. 2 was a teacher with the Department of Philosophy at Daulat Ram College, University of Delhi, where she taught from 1963 till 1991 and retired as a Professor in that year. She claims to be a noted scholar who has

attained widespread recognition for her Vedanta and Christian theological and other writings. The plaintiff No. 1 is an entrepreneur in the field of information technology, at United States and is residing in the USA. He is presently the president of M/s Calibrated Logistics which is an American and an Indian based BPO company.

7. At the time of Vijayan's death, on 30th March, 2005 at 5.30 AM, at Hyderabad, his son, plaintiff No. 1 was by his bed side. According to the plaintiffs, Vijayan had expressed, on many occasions, that he wanted a quite and very private funeral. Therefore, when the State of Kerala made a request to the plaintiffs for organizing a State funeral for Vijayan, the plaintiffs initially resisted the said request but later on gave in because of the persistent pressure and appeal from the Chief Minister and other dignitaries in the emotional environment which was created due to the said demise of Vijayan.

8. The plaintiff No. 2 took the body of her husband to the State of Kerala for funeral. However, the plaintiff No. 1 did not join, ostensibly for the reason that he wanted his grief to remain a private affair. Since son of the deceased Vijayan was not there and dead body was cremated as per Hindu rites, the defendant, nephew of Vijayan, performed those rites.

9. The case of the plaintiffs is that after the funeral the defendant seized the ashes and took them in his possession/custody and refused to hand them over to the widow at the site of cremation. It is averred in the plaint that the defendant came out with the plea that since he had cremated the body of Vijayan, he would retain his ashes and perform the necessary rites and that the plaintiffs were welcome to accompany him whenever he goes to immerse the ashes. He has also stated that only some of the ashes would be immersed and the rest would be placed in a memorial. It would be necessary to quote here paras 21 and 22 of the plaint ascribing such motive on the part of the defendant while alleging his act to be illegal and arbitrary:

Para 21: That the defendant even on request of the plaintiffs herein, refused to hand over the ashes to the plaintiffs. The defendant, informed that since he had cremated Sh.O.V.Vijayan, he would retain his ashes and perform the necessary rites. He has, however, in a press statement stated that the plaintiffs are welcome to accompany him whenever he goes to immerse the ashes. He has also stated that only some of the ashes would be immersed and the rest would be placed in a memorial. The sole motive of the defendant is to extract mileage out of the event. It is for that reason that he is behaving in this most callous manner. It may be pointed out that the defendant and late Shri O.V.Vijayan had very strained relations. Late Shri O.V.Vijayan had not even met the defendant for the last 15 years.

Para 22: That the plaintiffs submit that such an act of the defendant is ex-facie illegal, arbitrary and without the authority of law. The plaintiffs being the legal, natural and class one heirs of Shri O.V.Vijayan are lawfully entitled, recognized

and conferred with appropriate rights to perform the last rites, including the immersion of the ashes, at the holy river, Ganges.

10. The case of the plaintiffs is that since they are the legal heirs of deceased Vijayan, the defendant is obliged to return the ashes to them and it is their legal right to conduct the sacred rituals. Therefore, prayer made in the plaint is to pass a decree of mandatory injunction directing the defendant to return the ashes of the deceased Vijayan to the plaintiffs to enable them to perform their sacred/last rituals as the wife and son of Vijayan.

11. Along with the suit, the plaintiffs have also filed is No. 2664/2005 under Order XXXIX Rule 1 & 2 of the CPC (CPC) seeking ad interim exparte injunction. Order dated 6th April, 2005 was passed in the said application granting ad interim injunction whereby the defendant was directed to preserve the ashes of the deceased Vijayan and not immerse the same till the next date. This order was extended from time to time.

12. After service of summons of the suit and service of the notice of this application on the defendant, the defendant filed two applications. One is is No. 3054/2005 under Order XXXIX Rule 3 CPC seeking vacation of the exparte injunction. Second application is CrI.M. No. 4066/2005 u/s 340 of the Cr.P.C. alleging that the plaintiffs have made false statements and have committed perjury for which they should be prosecuted. Notice in these two applications was issued for 18th May, 2005. On that date, joint request was made by the parties and the case was adjourned to 6th July, 2005. On 6th July, 2005, after hearing the parties for some time, following order was passed:

Heard. The controversy between the parties relates to preservation of ashes of the deceased O.V.Vijayan, father of the plaintiff who expired on 30th March, 2005. It appears that the funeral rites were performed in Kerala by the defendant who is nephew of the deceased. Some part of ashes were immersed in a river in Kerala. Now the controversy remains regarding the right of immersing the remaining ashes in Haridwar.

Having heard learned counsel for the parties for some time, I suggested to the parties to get together and immerse the remaining ashes in Haridwar because there is no property dispute between the parties as learned counsel for the defendant submits that nephew is not interested in the property left behind by deceased O.V.Vijayan.

Learned counsel for the plaintiff seeks some time to have instructions in this regard, At his request, adjourned to 13th July, 2005.

13. On this date, another is No. 4939/2005 filed by the plaintiffs was also listed for hearing in which notice was issued. In this application, it was, inter alia, stated that the plaintiff No. 2 is not in a position to travel to Haridwar. She also pleaded that the defendant be directed to deliver the custody of remaining ashes to the plaintiffs so that the same can be immersed in a holy river as per wishes

of the plaintiffs and not in Haridwar and the defendant, if so, wishes could accompany the plaintiffs and join them in performing the last rites on a date which shall be notified by the plaintiffs to the defendant. When the matter was listed on 21st July, 2005, another application being is No. 5128/2005 under Order XXVI Rule 9 CPC was filed by the plaintiffs for appointment of a local commissioner with further direction that ashes be handed over to the said local commissioner for safe custody till the plaintiff No. 1 comes to India in the month of October, 2005 and at that time the plaintiffs could immerse the ashes in a holy river in the presence of the local commissioner. Notice in this application was also issued. Thereafter, the case was adjourned from time to time as the parties wanted to have instructions for amicable solution of the dispute.

14. When the parties could not arrive at amicable settlement and it transpired that the matter will have to be heard on merits, the plaintiffs filed is No. 9370/2005 under Order VIII Rule 10 CPC for decreeing the suit on the ground that no written statement was filed.

15. At this stage, the defendant filed the written statement along with the application for condensation of delay which is registered as is No. 10038/2005. This application was contested on the ground that the written statement is not filed within specified period and there is no sufficient cause for condoning the delay. After hearing the learned counsel for the parties, I am of the view that delay in filing the written statement needs to be condoned. As already pointed out above, immediately on receiving the summons of the suit and notice in the injunction application, the defendant filed application for vacation of the injunction. However, before written statement could be filed, order dated 6th July, 2005 was passed by the court giving a suggestion to the parties to go together and immerse the remaining ashes in Haridwar and counsel for the plaintiff sought time to have instructions in this regard. The matter was adjourned thereafter from time to time as the parties wanted to find out an amicable resolution of the dispute that too as the court had also desired so. It is only when, unfortunately, the settlement talks could not fructify and this court also failed in its attempt to persuade the parties to an agreed solution and when the counsel for the plaintiff stated that the plaintiff would go ahead with the matter on merits that the written statement was filed immediately thereafter. Normally, even when the parties are negotiating out of court settlement, it is expected that the written statement should be filed within the prescribed period. However, going by the nature of disputed involved in this case, if the defendant harboured the feeling that the matter would be settled which involves more of an emotional dispute, and the defendant withheld the filing of the written statement so that it is not precipitated due to allegations and counter allegations, affecting the prospects of settlement, benefit can be given to the defendant for this omission under these circumstances. Even otherwise, going by the nature of this dispute, it would be proper to have the written statement on record and decide the case on the basis of the pleadings rather than proceeding under Order VIII Rule 1/ or Order X of CPC. Prayer made in is 10038/2005 is accordingly allowed

and written statement taken on record and is 9370/2005 is rejected.

16. Aforesaid narration of facts makes it clear that the dispute between the parties is about the disposal of remaining ashes. Part of the ashes of Vijayan have already been immersed in a river in Kerala. This task and/or duty was performed by the defendant. As per the plea set up in the suit, the plaintiffs wanted that they should immerse the remaining ashes in the river Ganges at Haridwar. The plaintiffs want some ceremony to be performed. The prayer, Therefore, made is to direct the defendant to return the ashes to the plaintiffs for the aforesaid purposes. They have, however, no objection if the defendant also wants to joint them when the ashes are immersed. It appears that the plaintiffs had some apprehension that the defendant may not start claiming rights in the properties left behind by Vijayan. These apprehensions of the plaintiffs were assuaged by the learned senior counsel for the defendant in the hearing of the case held on 6th July, 2005 which is clear from the following sentence appearing in the order of that date:

There is no property dispute between the parties as learned counsel for the defendant submits that nephew is not interested in the property left behind by deceased O.V.Vijayan.

17. This order also makes it clear that as on that date there was no dispute that remaining ashes were to be immersed in the river Ganges in Haridwar as the order records "now the controversy remains regarding the right of immersing the remaining ashes in Haridwar". Having in mind this limited controversy, the appropriate and rationale solution suggested by the court was that the parties could go together and perform this ceremony. Learned counsel for the plaintiff had sought time to have instructions. However, thereafter, the plaintiffs backed out and insisted that ashes have to be handed over to the plaintiffs by the defendant as the plaintiff No. 2 wanted to conduct a private ceremony at her house in Hyderabad. Even this could not have posed much problem. However, the plaintiffs have taken somersault even qua the core ceremony itself. They do not now want to immerse the ashes in river Ganges in Haridwar, ostensibly on the ground that the plaintiff No. 2 cannot undertake journey from Hyderabad to Haridwar. Other plea, which is not only after thought but unfortunate as well, is that Vijayan was opposed to northern India hegemony and thus immersing the ashes in Ganges would be to perpetuate this hegemony. Therefore, she has desired to immerse the ashes in river Tungbhadra or river Godavari at Hyderabad, after performing a private ceremony at her house in Hyderabad. During arguments, the proposal was amended by stating that the plaintiffs were willing to immerse the ashes in river Periyar at Kerala. This is not acceptable to the defendant and, Therefore, claim over the ashes by both the parties is maintained.

18. The plaintiffs stake their legal claims over the ashes on the ground that they are the next of kin of the deceased Vijayan. The plaintiff No. 2 as the wife and companion of the deceased for 40 years and the plaintiff No. 1 as the son of the

deceased are not only the legal heirs but are the proper persons to dispose of the remains of Vijayan who were the only ones attending to him during his long convalescence and at his deathbed. It is also stated that Vijayan had always wanted a quite and very private funeral in keeping with his eclectic spirituality and the plaintiffs are the only persons who knew these last wishes of the deceased. It is claimed that Vijayan was not a Hindu but an eclectic spiritualist who was opposed to all forms of mainstream religion. To allow his mortal remains to be appropriated by any one religion would be anathema to all he stood for. The possession of the ashes by the defendant, Therefore, is in violation of the solemn expressed wishes of the deceased as to the disposal of his remains. It is also contended that even after the death of Vijayan the plaintiff No. 2 was in rightful legal possession of his mortal remains and took the body to Kerala in order to allow a State funeral. However, the defendant muscled his way into the last rites against the express wishes of the plaintiff No. 2 and performed last rites taking advantage of emotional condition of the plaintiff No. 2. Since the plaintiff No. 2 did not want to create a scene, she gave specific instructions that the defendant was to hand over the ashes to Mr. Ravi D.C. The defendant acquiesced and even asked the plaintiff No. 2 to put down her instructions in writing and agreed to hand over the ashes to Mr. Ravi D.C. The defendant, Therefore, at best, is a trustee of the ashes. It is also alleged that in the Will dated 28th April, 2001, executed by Vijayan he has recognized only the plaintiffs and the defendant finds no mention therein. Even aside from his personal wishes, the Ezhava community follows the Makkathayam School which is patriarchal and not matriarchal. The plaintiff No. 1 is his only legitimate heir, along with his wife. The defendant was related to the deceased through the sister of the deceased and is not a descendant of the deceased. It is also contended that keeping with the practice followed among the Ezhava Community of Palghat all the relatives including father, mother as well as grandfather and grandmother of Vijayan were buried and not cremated. Therefore, to immerse the ashes of Vijayan would amount to violation of the customary practice. The plaintiffs have gone to the extent of contending that all his life Vijayan was opposed to northern India hegemony and thus immersing the ashes in Ganges would be to perpetuate the hegemony.

19. It is also contended that as far as the defendant is concerned, he is merely a meddlesome interloper and has no other status or right vis-a-vis the ashes inasmuch as (a) the defendant and Vijayan had strained relations; (b) the defendant had not met Vijayan for last 15 years of his life and, Therefore, could not have known his last wishes or the faith which Vijayan professed or followed; (c) during the long convalescence of the deceased many people from all over the country came to pay their respects but the defendant did not even call him, let alone meet the deceased as relationship between the two were strained and (d) the defendant wants to gain a mileage by performing such ceremonies as he would be projecting his association with the name of Vijayan.

20. It is also contended that common law recognizes the executors' right to

possession of the mortal remains of a deceased person as held in *Williams v. Williams* reported as (1882) 20 Ch.D.659. It is also contended that there is no basis, legal or moral in the claim of the defendant that once he had cremated the body, it was he alone who had the right to dispose of the ashes. Such a claim of the defendant that the ashes were not capable of entrustment would result in absurdity as in that case the persons entrusted with the disposal of the ashes cannot even be bound by the instructions issued even by the deceased. The legitimate right, Therefore, is only of the executors and heirs and not any third person. It is also contended that even in the mortal remains right of possession would be there even if the mortal remains are not treated as property. Learned senior counsel for the plaintiffs had gone to the extent of arguing that the practice of immersion of ashes in the Ganges is one of the customs followed by a large number of people in North India and has no foundation in any of the shastras or other religious texts. It has little relevance of a large majority of the people from South India and certainly has no relevance to the family or community of the late Vijayan or the plaintiff No. 2. Sustenance is also sought to be drawn from the provisions of the Transplantation of Human Organs Act, 1994 by contending that it is in pari materia with the case at hand in these proceedings. Section 5 of the said Act recognizes only the right of the "near relatives" of the deceased to claim dead bodies. "Near relative" has been defined in Section 2(i) as "spouse, son, daughter, father, mother, brother or sister".

21. Learned senior counsel for the defendant, on the other hand, submitted that the case now projected/argued is not even pleaded in the plaint and the plaintiffs have shifted the stand repeatedly with the passage of time. In the plaint, the plaintiffs had admitted that the remaining ashes were to be immersed in the river Ganges and the only dispute raised was that it was the right of the plaintiffs to do so. The plaintiffs have now totally backed out and do not even want the immersion of ashes in the river Ganges. It is not disputed in the plaint that on the death of Vijayan, it was decided to cremate his body. There was no issue raised about burying the body or the customs in their family. The case set up in the plaint is that Vijayan wanted private and simple funeral and not a public funeral. Now a totally different case is set up by alleging the customs of Ezhava community of Palghat and that the close relatives of the deceased were buried. Furthermore, in para 19 of the plaint, what is stated is that "in the absence of the plaintiff No. 1, the necessary rites were performed by the defendant herein". There is no allegation that the defendant muscled in or forcibly performed those rites.

22. In so far as right over the ashes is concerned, Mr.Sundaram, learned senior counsel for the defendant argued that the dispute today was not over the body of the deceased and who had to cremate that body. Had that been so, he conceded that it was the right of the plaintiffs and particularly the plaintiff No. 1 as son of Vijayan to cremate his body. However, for reasons best known to him, the plaintiff No. 1 did not come to Kerala to perform cremation ceremony and in his absence, as nephew of the deceased, he did the last rites. After having cremated

the body, the question is over the disposal of ashes. He submitted that Vijayan was a Hindu by religion and he was cremated as a Hindu. After his cremation, which was got done at the hands of the defendant, it is only the defendant who could, as per the Hindu religion and customs, immerse the ashes of the deceased. For this purpose, he referred to Garudapuram of Maharsi Vedavyasa and also the commentaries on the Hindu Law of Inheritance.

23. Before coming to the heart of the problem, let me first deal with some of the arguments of the plaintiffs as clarity on these aspects would pave way for further course of action.

24. The plaintiffs have claimed that Vijayan was not a Hindu but an eclectic spiritualist. He wanted, on his demise, a quite and very private funeral in keeping with his eclectic spirituality. He was opposed to all forms of mainstream religion and, Therefore, his mortal remains cannot be appropriated by any one religion as that would be an anathema to all he stood for. It is also claimed that aside from his personal wishes, as per practice followed in Ezhava community all the close relatives of the deceased were buried and not even cremated and, Therefore, immersion of the ashes of Vijayan would amount to violation of the customary practice of his community and his family.

25. India is a pluralistic society in which people have faith in their respective religions, beliefs or tenets propounded by different religions or their offshoots. There are many ways that human bodies have been disposed of, in ways that range from reverent to expedient. Practices relating to the disposal of corpses vary widely depending on culture, religion and jurisdiction. Disposal of a dead body makes a very important ritual in each culture. Therefore, the plaintiffs had a right to dispose of the mortal remains as per their belief. It is asserted by the plaintiffs that the deceased had renounced all religion and described himself as being an eclectic spiritual.

[The word "Eclectic" is defined in the Oxford English Dictionary as `deriving ideas or style from a broad and diverse range of sources.'"]

The Constitution of India guarantees the right to freedom of religion under Article 25. This right carries with it a right not to believe in or practice any religion. [See: H.M.Seervai, Vol.II, Pg.1271]

26. However, the aforesaid submissions are not only beyond the pleadings, not only contradictory but totally irrelevant at this stage. The case set up by the plaintiffs themselves in the plaint is that the mortal remains in the form of ashes are to be immersed. In the plaint, the plaintiffs have even not disputed that these ashes are to be immersed in river Ganges at Haridwar. The only case set up in the plaint is that it is the plaintiffs who have right to possess these ashes and immerse the same in river Ganges and further that before immersion the plaintiffs want a private ceremony at their residence. It may also be noted that though it is claimed in the plaint that Vijayan had expressed his desire for "a quite and very private funeral be organized" and that he was opposed to public

functions, it is nowhere pleaded that he had expressed his desire to be buried. It is accepted that Vijayan was to be cremated and that he wanted a funeral and the only averment is about private/quite versus public funeral without any quarrel on the issue of cremation versus burial. That apart, fact remains that even if it is presumed that Vijayan wanted a simple and private affair and he had expressed this desire to the plaintiffs, they yielded to the request of the State of Kerala and allowed a State funeral. They did not insist, at that time, that as per the custom of Ezhava community and the tradition in the family, Vijayan should be buried. Not only cremation was allowed, this cremation was allowed with all pomp and show where public at large participated. Therefore, according to me, these issues raised by the plaintiffs are totally irrelevant and are relegated to insignificance simply because the plaintiffs themselves did not honour such a wish of the deceased if he had any such wish.

27. The undisputed facts are that Vijayan was born a Hindu. May be he was an eclectic spiritualist as claimed by the plaintiffs. The case set up by the plaintiffs in the plaint itself is that it was Vijayan's desire that he should be cremated and cremation should be a simple affair. He was ultimately cremated. It is also accepted by the plaintiffs that though the plaintiff No. 1 is the son of Vijayan and was present when Vijayan breathed his last, he did not accompany the plaintiff No. 2 and the mortal remains of deceased Mr. Vijayan to Kerala. Even if he is not a believer in a particular faith he knew fully well that Vijayan was going to be cremated according to Hindu rites and he had consented for the same. He knew that as per the Hindu tradition, pyre is lit by the son, and the eldest son if they are more than one. He still chose not to do so and allowed these honours to be bagged by the defendant. While performing these rites, all the rituals which are performed when the body of a Hindu is cremated, were followed.

28. Different religions and cultures have various funeral rites that accompany the disposal of the body. One author has remarked that funeral customs are not tributes to the dead but to the living. But perhaps it is not quite so indefensible to pay tributes to the living. Further, it is difficult to say whether religion has complicated human customs or simplified them. Be as it may, Hindu ceremonies are closely tied to a belief in reincarnation. Thus, an elaborate set of rituals is conducted, mostly by relatives, to ensure a proper rebirth. Such rites may serve to mark the passage of a person from life into death, to secure the welfare of the dead, to comfort the living, and to protect the living from the dead. Since the dead body of Vijayan was cremated as per Hindu rites, it ought to follow that the remaining last rites also be performed in accordance with Hindu rites alone.

29. When the matter is looked into from this perspective, it is not difficult to find out an answer subsisting issue i.e. how the ashes are to be disposed of.

30. The defendant is Vijayan's sister's son. As per Benares School, he was competent to perform these rituals called "Sraddha rites" which gives the list of the following persons competent to celebrate Sraddha rites:

1. Son
 - a. Eldest son.
 - b. Second son, & c.
 - c. Adopted son.
2. Grandson.
3. Great Grandson.
4. Widow.
5. Daughter.
 - a. Married.
 - b. Unmarried.
6. Daughter's son.
7. Brother.
 - a. Whole brother.
 - (1) Younger.
 - (2) Elder.
 - b. Half-brother. < /p> (1). Younger.
 - (2). Elder.
8. Brother's son.
9. Father.
10. Mother.
11. Son's widow.
12. Sister.
13. Sister's son.
14. Sapindas ex parte paterna.
 - a. Uncle.
 - b. Uncle's son & c.

[Source: Tagore Law Features-1880,

The Principles of The Hindu Law of Inheritance by Rajkumar Sarvadhikari, B.L.]

31. Same legal position is described in other schools.

32. Garudapuram of Maharsi Vedavyasa gives a detailed account as to how the

last rites of a dead person are to be performed. In Chapter 10 of the said book, following procedure is prescribed:

It is the son who has to do the Pindha-karmas. If there is no son then the wife or the brothers should do the karma. If it is a Brahmana who chants the vedhas, the sapindhi or a shisya can do it. The elder brother's sons or grandsons, or the younger brother's sons etc can do the dasagaathra vidhi. If one of the sons of a man has a son, then all the sons of that man can be considered to be having sons is the veda vidhi. If a man has many wives and one wife has a son, then all the wives have children. A person who does not have anyone, but at least a friend, then, that friend has the right to do this Seshakriyas (kriyas after death). Even a person who cremates an ownerless corpse will be blessed by the Puniya which can be obtained only by doing one crore Yagnas. If the eldest son of a man dies, the father has to see that the Sheshakriys of that son is done. If the father does not do it then one of the younger brothers have to do it. The person who does the first karma itself should do the karmas in the subsequent months and years. Those who have taken the share of the father's wealth, then each of them should separately do the yearly karmas. The son who does the father's and mother's Seshakriyas with faith and devotion is blessed with the result equivalent to that of going round the earth 7 times. The son who does the Yearly karmas from the Dasagathra onwards without break will receive the Gayaa Shratha Phala.

33. As per Garudapuramam, thus, in the absence of son or wife or brothers or their children etc. even a friend has right to do the kriyas after death. It is treated as puniya i.e. sacred task if a person cremates an ownerless corpse. It is also believed that the person who has lit the pyre should disperse/dispose of the ashes as well. These ashes are to be immersed and it is the belief among Hindus that only when the ashes are immersed and pulapind done with sapindhi that the soul leaves its body and reaches the pitralok (heaven). As per Garudapuramam the ashes are to be collected on the fourth day and thereafter to be immersed in the Ganga or any other punyatirtha. It also says that whoever is fortunate to have his bones immersed in Ganga goes to the Brahmaloaka (heaven) and does not have punarjanma (rebirth). Entire procedure is described in the following manner:

On the 4th day the sanchayana karma should be done. It can be done on the 2nd or the 3rd day also. There is no harm. The person who has to do this, has to , after taking his bath, do a maashabali along with the "yamathwethi" mantras. Milk and then water should be sprinkled on to the pyre, the bones should be collected on palaasa leaves and then wished and cleaned in milk and water and kept in mud containers. After that Sraadha Karmas should be done as per rules For that a triangular platform should be made on the earth and rubbed with cow-dung, it turning towards the South, and keep three pindas one each on the Southern, western and Northern sides. The Ashes should then be brought together and in the middle of that a small hearth should be made and in a

container, rice and water should be mixed and cooked without closing the container and then mixed with ghee, curd and water and rolled into a ball and balidhana should be given to the pratha (dead person). From that spot walk 15 feet towards the North and then dig a hole into the earth and keep the container. On top of that keep a pinda for satisfying thirst and hunger. After sometime take only the bones and go to the water and clean the bones with water and milk, and apply sandal paste, kumkumam and keep it on the floor and namaskara should be done. After that keep it on the head and immerse it in the Ganga or any other punya thirtha. Whoever is fortunate to have his bones immersed in the Ganga goes to the Brahmaloaka and does not have a purnajanma (rebirth). Even if the breeze which has touched the water of the Ganga touches the corpse, all his sins are immediately destroyed. The story of how Bhageeratha brought down the Ganga from the heavens by his extreme penance is famous. Sons of Sagara obtained Moksha at the touch of Ganga-water. Even if persons who have committed sins have their bones immersed in the Ganga, they are freed from sins and they reach heaven. There is a story where even a kaatala (robber in the forest) who used to kill all living beings could reach the heavens. A lion killed him. He was on the way to hell when one of his bones fell into the Ganga by chance. As a result he was taken to heaven. From this story understand the result if good sons immerse the bones of their fathers into the Ganga. If a person dies in a foreign land or in the forest and the corpse is not obtained, as soon as the news of the death is received, immediately a corpse should be made using dharbha and it should be burnt as described above. After that the ashes should be taken from it and put in the Ganga and bhasagaatharaathi karmas should be done. The yearly bali, monthly bali etc. can be calculated from the date of the cremation.

34. From the aforesaid discussion, it would follow that the remaining ashes of Vijayan are to be immersed in the Ganges at Haridwar. That is the only ceremony which even the plaintiffs had originally conceived of, though the plaintiffs have taken somersault thereafter which is nothing but an after thought. In view of the plaintiffs' own case in the plaint about the immersion of ashes in the holy river Ganges, they cannot now be permitted, that too without even amending the plaint, to contend that the ashes be immersed in some other river. After the cremation of Vijayan, when the ashes were collected, they were kept in two urns. The ashes contained in one urn have already been immersed in a river in Kerala. It is common practice to immerse ashes in more than one rivers and also sprinkle the ashes at certain conspicuous places when the mortal remains happen to be of high dignitary. However, one of the rivers is always Ganges at Haridwar.

35. Since the defendant lit the pyre and also immersed part of the ashes in a river in Kerala, without any objections from the plaintiffs, disassociating the defendant from immersing the remaining ashes, would not be proper either legally or morally. Learned senior counsel for the defendant is also right in his submission that the dispute today is not as to who has to cremate the body. Had

that been so, indubitably, the plaintiffs had every right, rather exclusive right to cremate the body. The plaintiff No. 1, however willingly gave away this right to the defendant. Though the plaintiff No. 2 was present and could have exercised this right in the absence of the plaintiff No. 1, even she did not do so. She allowed the defendant this privilege. Thus reliance on Williams (*supra*) or the provisions of Transplantation of Human Organs Act, 1994 is of no avail.

36. Once the last rites were permitted to be performed by the defendant, today, the question is about the disposal of the ashes. Even the part ashes have been immersed by the defendant in a river in Kerala. To complete the ceremony, remaining part has also to be performed by him which right he has acquired by cremating the body and which right the plaintiffs have lost by not lighting the pyre and allowing the defendant to do so. This is the position when the Hindu law in its strictest form is applied. In my view the defendant considers that he is under a paramount obligation to perform, until completion, all rites related to the disposal of the mortal remains of the deceased by reason of the fact that he had performed the necessary rites with respect to the cremation of the deceased's body. I give the defendant credit for the best of motives.

37. Having said so, we cannot lose sight of the rights of the plaintiffs as son and widow of the deceased. No doubt as far as son is concerned, he did not go to Kerala for the last rites of Vijayan. However, it is the plaintiff No. 2 who had taken the body to Kerala. Since it was a State funeral and though under Hindu law widow could have performed Sraddha rites normally it is the male member who does this job. Keeping by this tradition and the fact that it was a State funeral, she perhaps allowed the defendant to cremate the body of Vijayan. It is also not to be ignored that the plaintiff No. 2 is a Christian and probably for this reason also when it was decided to cremate the body, she allowed the defendant to do the same. Therefore, her aspiration, her desires and her emotions cannot be allowed to be totally overlooked and ignored. She wants ashes so that she can, along with her son, perform "sacred/last rituals, as the wife and son of Sh.O.V.Vijayan". During arguments, learned senior counsel for the plaintiffs explained that the plaintiffs would perform some prayers. The plaintiffs have stated that they wanted a quite and private funeral for Vijayan keeping in view his wish and desire in tune with his ideology. May be because of the persuasion and sentiments expressed by the Chief Minister, Kerala and other dignitaries, the plaintiffs succumbed to their appeal and allowed public funeral. Because of non-participation by the plaintiff No. 1 and allowing the defendant to perform necessary rites in this behalf, they have themselves given some right to the defendant. At the same time, it cannot be said that the plaintiffs, even when they are son and widow of Vijayan, have no right of any nature whatsoever over these ashes.

38. I am, Therefore, of the view that the plaintiffs should be allowed to perform the ceremony which they want with the ashes of late Vijayan. The equitable solution of the problem, though according to me created unnecessarily by the

parties, would thus, be the following:

(I) The plaintiffs shall inform the defendant about the place where they want to perform the ceremony. It shall not be the residence of the plaintiffs, as after the death of a person when his body is taken out of the house and is cremated, the ashes are never taken back to the house as that is treated as inauspicious. Maybe it is an orthodox view. However, it is to be respected once the body is allowed to be cremated by the plaintiffs in accordance with the Hindu rites and, Therefore, endeavor is to find a solution which satisfies the emotional and other feelings of both and at the same time, does not offend the feeling of other. Such a ceremony, Therefore, can be organized by the plaintiffs by hiring some auditorium/hall etc. Fortunately, it is agreed to by the plaintiffs.

(II) On the plaintiffs' informing the place and time for performance of such ceremony, the defendant shall take the ashes of the deceased Vijayan to that place at the appointed time where the plaintiffs shall be allowed to perform the ceremony as per their choice and the manner in which they want.

(III) After the aforesaid ceremony is over, the ashes shall have to be taken by the defendant to Haridwar for immersion in the river Ganges. The plaintiffs shall be entitled to accompany the defendant. It would be an ideal situation if all three could go together to Haridwar with joint custody of the ashes. If the plaintiffs want the ashes to be taken in this manner to Haridwar, the defendant shall not be entitled to raise any objection. However, if the plaintiffs have any reservations, the defendant shall take the ashes to Haridwar and the parties shall fix the time when the ashes are to be immersed in the river Ganges.

(IV) While immersing the ashes, the rituals which are required to be performed with the assistance of a 'Panda', shall be performed by the plaintiffs and the defendant together and the defendant shall have same right of participation and no one will be entitled to exclude the other. Further, the plaintiff No. 1 shall also be entitled to take part and perform all those acts which are performed by a son while doing the last rites with the mortal remains of a father. What is clarified is that the defendant will not have right to exclude the plaintiffs on the ground that since he had cremated the body, he would exclusively perform these rites and the plaintiff No. 1 could only join him at that time.

39. The aforesaid solution, in my estimation, is an appropriate blend ensuring the rights of both the parties and it is hoped that this denouncement shall be acceptable to both sides and the ceremonies shall be performed in the manner aforesaid to give it a quietus. It is to be borne in mind by the parties, who are all educated and enlightened persons that Vijayan died almost a year ago on 30th March, 2005. He was cremated on 31st March, 2005. The ashes are, normally, immersed on the fourth day. It is going to be a year and the urn carrying ashes is spinning its wheels. As per the belief of Hindus, the soul would reach the heaven only after the completion of ceremony, i.e. immersion of the ashes. Even as per other religions, the mortal remains (which is now the ashes) are to be

disposed of quickly. Therefore, emancipation of Vijayan should not be delayed because of the feud between the parties.

40. After the aforesaid arrangement is prescribed, nothing further remains to be decided in the suit or pending applications. Therefore, with this order, all applications as well as suit are also disposed of.