

(1971) 02 KL CK 0024
In the High Court Of Kerala
Case No : A.S. No. 144 of 1966

Sreedevi Antharjanam, now known as Suhrabi	APPELLANT
Vs	
Narayanan Namboodiri and others	RESPONDENT

Date of Decision : 12-02-1971

Acts Referred:

Kerala Nambudiri Act, 1958 — Section 14

Citation : (1971) KLJ 651

Hon'ble Judges : T.C. Raghavan, J;E.K. Moidu, J

Bench : Division Bench

Advocate : M.M. Abdulkhader and M.M. Pareed Pillai, for the Appellant; P.K. Kesavan Nair, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—A short but nice question of law has been raised and been argued also for some time. But, we feel that the question does not arise in this case. What is required is only a proper understanding and appreciation of the facts of the case. The appellant, a Nambudiri woman by birth, was married to the tenth defendant of the Orozhiyath Illom, also a Nambudiri. On 19th July 1953, a partition under Ex. D2 was effected of the illom properties and three shares (the items in schedule C) were allotted as a sakha to the tenth defendant, his mother and the D appellant. The appellant left her husband and entered into a marriage alliance under Ex. P1 with a Mahomedan on 12th November 1955, and some time thereafter, she embraced Islam too. On her marrying a Mahomedan, the Orozhiyath Illom performed a ceremony called Udakavicchedakarmam (

) by which the appellant's, membership of the illom was severed. The appellant brought the suit giving rise to the appeal for a half share in the properties in schedule C since, by the time the suit came to be filed, the mother of the tenth defendant died leaving only the tenth defendant and the appellant as members of the sakha. She claimed that she had proprietary interest in the properties in schedule C belonging to the sakha and by virtue of Travancore-Cochin Act 20 of

1950 (The Travancore-Cochin Removal of Civil Disabilities Act), which contained similar provisions as in Central Act 21 of 1850 (The Caste Disabilities Removal Act), her apostasy did not take away that right, so that she was entitled to claim a share in the properties of the sakha, since, under Kerala Act 27 of 1958, a member of a Nambudiri illom obtained a right to claim his or her share separately. The contention on the other side was that, on her embracing Islam, she ceased to be a member of the illom and since Kerala Act 27 of 1958 conferring right to compulsory partition came only subsequently, on which date she was not a member of the illom, the right conferred by the Act could not have revived her proprietary right which she lost on her conversion. To be more precise, the contention was that, on her embracing Islam, she ceased to be a member of the illom and the right to compulsory partition conferred by Kerala Act 27 of 1958 benefited only persons who were members of an illom on the date the Act came into force.

2. The Additional District Judge considered this question and, agreeing with the contention of the defendants, dismissed the suit as not maintainable. His reasoning was that, on embracing Islam, the appellant lost her membership of her husbands' illom, so that, when Kerala Act 27 of 1958 came into force, she was not a member of the illom with the result that she could not have claimed her share u/s 14 thereof.

3. Some decisions have been brought to our notice regarding the effect of a Hindu embracing another faith like Christianity or Islam. And some discussion has also taken place at the bar on these decisions. It has emerged during the discussion that, even if a Hindu, on apostasy, lost the membership of his family, he could not lose his proprietary right to the properties of the family, by virtue of the Caste Disabilities Removal Act. He must, therefore, get at least maintenance from the properties of his family not by virtue of his being a member thereof but by virtue of the Caste Disabilities Removal Act, which retained his proprietary right--such proprietary right as he had at the time when that Act came into force or, more precisely, when he became a convert. In the present case, similar provisions became law in the Travancore-Cochin area only in 1950 by Act 20 of 1950, while the appellant was still a member of the Orozhiyath Illom. It may therefore appear that the appellant may be entitled at least to maintenance from the illom though not to a share, since Act 27 of 1958 was passed only after her conversion: and this question was not considered by the lower court.

4. But, as we have already indicated at the very commencement of this judgment, the facts of the case have not been properly appreciated. In this case, the second marriage of the appellant took place earlier than her conversion. Suppose she divorced her first husband (the tenth defendant) and married another Nambudiri (did not change her religion), would she have retained the membership of her first husband's illom even after she divorced him and married another? That is the question which really arises in this case. The appellant became a member of the Orozhiyath Illom only on her having been

married by a member of that illom, the tenth defendant: in other words, she became a member of her husband's illom by virtue of her being the husband's wife. If she divorced him and married another--be a Nambudiri, by reason of her second marriage (of her divorce of her first husband), she must lose her membership of her first husband's illom. Suppose the first husband, after his first wife divorced him, married another Nambudiri woman: the second wife would have become a member of the tenth defendant's illom. Is it the position that both the women--the second wife and the divorced first wife--are members of the tenth defendant's illom? The answer to this question, we feel, must be in the negative. We would add that the above reasoning proceeds on the footing that the appellant was free to divorce the tenth defendant, which is the case of the appellant herself.

5. We shall just, by way of analogy, cite the case of a Hindu married woman. By virtue of her marriage, she becomes a member of her husband's family and also becomes entitled to maintenance from the properties of that family. Suppose she divorces the husband and marries another Hindu: will she thereafter be entitled to maintenance from her first husband's family? The answer is obviously in the negative. We feel that the case before us is similar. The appellant ceased to be a member of her first husband's illom when she divorced him and married another--whether a Hindu or a non-Hindu: and her losing the right to the illom properties of the tenth defendant was not because she became a Muslim, but because she divorced the tenth defendant and married another--not because she married a non-Hindu, but because she married another--to be more precise, but because she divorced her first husband. Thus, she lost both her membership of the Orozhiyath illom and also her proprietary right to the properties of the illom.

6. Another argument advanced before us by the counsel of the appellant is that under Ex. D 2 three separate shares were allotted, one to the mother of the tenth defendant, another to the tenth defendant and yet another to the appellant, so that these three individuals became tenants-in-common; and that, if the appellant was thus a tenant-in-common, her change of religion would not have affected her share which was already defined. This argument has no support from the language of Ex. D 2. Ex. D 2 says that the three shares were allotted as a sakha, a branch. Moreover, the appellant herself claimed a half share in schedule C on the ground that, on the death of the mother of the tenth defendant her share devolved on the sakha, which had thereafter only two members, by reason of the joint tenancy. Therefore, this contention has also to be rejected. The appeal is dismissed. Since the correctness of the reasoning of the lower court is open to doubt, in other words, since we are sustaining the decision of the lower court on a different reasoning, we do not think this is a fit case for allowing costs to the respondents. Therefore, we direct all parties to bear their respective costs.