

(1927) 10 MAD CK 0059
In the Madras High Court

Thaliyil Manayil Parameshwara Tirumumpa
Vs

APPELLANT

Valia Narayan Tirumumpa

RESPONDENT

Date of Decision : 13-10-1927

Acts Referred:

Citation : 107 Ind. Cas. 655

Hon'ble Judges : Devadoss, J

Bench : Single Bench

Judgement

Devadoss, J.—Mr. Sivarama Menon for the appellant wants to contest the correctness of the decision in Govindan Nair v. Sankaran Nair 2 Ind. Cas. 183 : 32 M. 351 : 6 M.L.T. 106 : 19 M.L.J. 350. That decision was followed by me and Mr. Justice Spencer in Vazhayil Abuvakkar v. Kunhikuttiyalali 74 Ind. Cas. 27 : 16 L.W. 768 : 31 M.L.T. 389 : A.L.R. 1923 Mad. 153. I am not prepared at this stage to refer the appeal to a Bench on the ground that the decision in Govindan Nair v. Sankaran Nair 2 Ind. Cas. 183 : 32 M. 351 : 6 M.L.T. 106 : 19 M.L.J. 350 should be re-considered.

2. There is another point in the appeal which requires consideration. The parties belong to a class of Nambudiris who have adopted to some extent the Marumakkathayam Law. The appellant asked the lower Court to take evidence on the question of custom obtaining in the class of Nambudiri families to which the parties belong of the self-acquisition of a male member devolving upon the tavazhi and not upon the tarwad in case he dies intestate. This point was neither raised in the pleadings nor in the trial Court and the District Judge who heard the appeal did not think it necessary to call for a finding upon the alleged custom. Considering the fact that this class of Nambudiris has adopted to some extent the Marumakkathayam Law, the question is whether the whole of the Marumakkathayam Law is applicable to them. It is stated that the males in the families contract lawful marriages. Seeing that there is some departure from the ordinary incidents of Marumakkathayam Law in the case of these Nambudiris, I think it would be best in the interests not only of the parties to this litigation but

in the interests of the whole of this class of Nambudiris to call for a finding on the alleged custom. The appellant will pay the costs of this inquiry in any event to the respondents, as he did not raise the point in the trial Court. The District Judge will, there, record a finding on the following issue:

Is there a custom in the Payyanoor Nambudiri families by which the self-acquisition of a male member dying intestate devolves upon his wife and children and in the absence of wife and children upon the tavazhi and not as in the case of ordinary Marumakkathayam families upon the tarwad.

3. Time for return of findings is two months and seven days for objections.

4. In compliance of the order of the Court calling for a finding upon the issue referred to the District Judge of South Kanara submitted the following.

5. Findings--I am directed by the High Court to submit a finding on the issue:

Is there a custom in the Payyanoor Nambudiri families by which the self-acquisition of a male member dying intestate devolves upon his wife and children; in the absence of wife and children upon the tavazhi, and not as in the case of ordinary Marumakkathayam families upon the tarwad?

* * * * * 6. I find, therefore, that it is not proved that there is a custom among the Payyanoor Gramam Nambudiri families by which the self-acquisition of a male member dying intestate devolves upon his wife and children.

7. The next question is whether there is a custom among the Payyanoor Gramam Nambudiris by which the self-acquisition of a male member dying intestate devolves on his tavazhi.

* * * * * 8. On the whole, I have no hesitation in holding that the plaintiff has not proved that there is a custom among the Payyanoor Gramam Nambudiris by which the self-acquisition of a male member dying intestate devolves upon his tavazhi, in the absense of his wife and children, I, therefore, find the issue remitted in the negative.

9. After the return of the finding of the lower Appellate Court the Court, delivered the following.

10. The finding is accepted and the second appeal is dismissed with costs including the costs incurred in the finding proceedings.