

(1924) 08 MAD CK 0070
In the Madras High Court

T.M. Narayanan Nambudhri and Another	APPELLANT
Vs	
K. Ravunni Nair and Another	RESPONDENT

Date of Decision : 01-08-1924

Acts Referred:

Citation : AIR 1925 Mad 260

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Appeal from the decree in A.S. No. 25 of 1920 on the file of the Court of the Subordinate Judge, Ottapalam (O.S. No. 326 of 1917, on the file of the Court of the District Munsif of Ottapalam).

2. Plaintiffs sue to recover Rs. 2,917-3-2 due under two hypothecation deeds executed to them in 1905 by one Pappi Antarjanam. The lower Appellate Court decreed the suit for Rs. 1,235-6-9 and defendants 2 and 3 appeal. Defendants 2 and 3 were the minor sons of a Nambudhri, defendant 1, since deceased. He was an idiot and deaf. Pappi Antarjanam is his second wife and step mother of defendants 2 and 3. The plaint sets forth that at the time when she executed these mortgages, Pappi Antarjanam was the "manager" (sic) of the defendants' mana on her own behalf and as guardian of the three defendants. The defendants in their written statement besides alleging fraud contended that Pappi Antarjanam had no authority to execute any document whatever. The minors were not under her guardianship.

3. The only issue framed is whether the suit bonds are valid and supported by consideration. The District Munsiff has assumed throughout his judgment that Pappi Antarjanam had authority to borrow and confines himself to the question of justifiable necessity. The omission to discuss whether she was capable of borrowing is made the second ground of appeal in the lower Appellate Court. The learned Subordinate Judge found that she was in a very necessitous condition and had to incur debts for maintenance and household expenses for a period of eight

months and in any view of the law applicable to the case whether the ordinary Hindu Law obtaining on the East Coast, or the special Nambudri Law applicable to the case of a Nambudri female in management. (as to which the law is not quite settled-see Ramachandra Aiyar's Malabar Law Section 88 and Topics of Malabar Law, 12 M.L.J. 180 such debts would be binding on the defendants.

4. The correctness of these observations is the point for determination in this appeal. There can be no doubt that by the law of the Mitakshara the wife of an idiot has no right to mortgage the estate of his sons in order to provide for the family maintenance. Nor is it altogether correct to say that the special Nambudri Law is not quite settled. The whole question of Nambudri Law is very fully discussed in *Vishnu Nambudri v. Akkamma* (1910) 34 Mad. 496 and *Vasudevan v. The Secretary of State* (1888) 11 Mad. 157. Nambudris are governed by Hindu Law; which, generally speaking is the law laid down by the author of the Mitakshara, except in far as it is shown to have been modified by usage or custom having the force of law. Thus, in dealing with Nambudris, the Courts will apply the ordinary Hindu Law unless either party can show that a special usage or custom unknown to the ordinary Hindu Law has been established by precedent or unless such party can prove such custom in the trial itself. It was therefore open to the plaintiffs in the present case either to cite authority or to adduce evidence establishing their proposition that Pappi Antarjanam had authority to mortgage the estate by virtue of special Nambudri custom. I do not find that when the case, originated this point was even present to their minds. They relied upon the fact that while actually managing the household and looking after the minors, she had no other recourse but to borrow. Therefore no evidence has been led to show (as now argued) that the last efficient member of a Nambudri family, irrespective of sex, assumes the right of management with all the incidents appertaining to that right in Hindu Law. Plaintiffs have, not attempted to prove such special custom in the trial itself, and can only succeed at this stage if they can cite precedents which establish their contention. In *Vasudevan v. The Secretary of State* (1888) 11 Mad. 157, when the contention that the sole surviving female has all the powers of the surviving male was under discussion, Mr. F. Wilkinson, an experienced Judge in South Malabar, had held that a Nambudri widow who is the sole surviving member of her house is in the same position as any other Hindu widow (p. 166) and this opinion was affirmed by a Bench of this Court (p. 171).

5. Nor is there any ruling to the contrary effect (cf. *Sundara Aiyar's Malabar Law*, Section 131, page 219, Edn. 1922). Thus plaintiffs cannot rely upon precedent. It is urged on behalf of plaintiffs that they should be allowed an opportunity at this stage to call witnesses in order to prove the custom which they set up. This would involve an amendment of the plaint (unless much more is read into the English word "Manager" than the parties ever intended. That they did not intend the connotation now pressed is shown by the issues and conduct of the trial). I hold that parties prima facie governed by Hindu Law must make it quite clear in their pleadings and when issues are framed and witnesses are summoned that

they intended to prove special custom; otherwise the trial will be conducted throughout on the assumption that the ordinary Hindu Law applies. I see no reason to allow the plaintiffs to prove this matter of fact at this stage. It is not contended on their behalf that the de facto guardianship of Pappi Antarjanam gave her any right to mortgage the estate. A de facto guardian is scarcely distinguishable from an intermeddler; he may act from the best of motives and in the best interests of the minors and their estate, but he is equipped with no special authority and the validity of his acts depends upon their condonation. Most of the discussions in the Courts below is only relevant as showing that Pappi Antarjanam had moral justification for her acts; it does not show that she had legal authority. I hold therefore that either as guardian or as surviving efficient member she had no power to execute the suit mortgages and the suit must be dismissed with costs throughout. The appeal is allowed.

6. Judgment in S.A. No. 302 of 1922 : For the reasons given in S.A. No. 7 of 1922, this appeal is dismissed with costs. Only one Vakil's fee in this and in S.A. No. 7 of 1922.