

(1954) 01 KL CK 0008
In the High Court Of Kerala
Case No : Second Appeal No. 157 of 1950

Ummini Velu

APPELLANT

Vs

Souriyal Thankanuma

RESPONDENT

Date of Decision : 20-01-1954

Acts Referred:

Citation : AIR 1954 Ker 18

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : K. Ayyapan Pillai, for the Appellant; P. Kochukrishna Pillai, for the Respondent

Judgement

T.K. Joseph, J.—The decision of this second appears depends on the answer to the question whether the widow of a, divided member of Hindu family succeeds to his properties when he (sic) without issue in preference to his mother. The Plaintiff 1 had a son Picha Govindan who died issueless leaving a widow, Defendant 2. The Defendant 1 is Picha Govindan's deceased father's brother. In 1096", Picha Govindan, Defendant 1 and Ors. partitioned their properties and the plaintiff property was allotted to Picha Govindan. After his death, the Defendant 2 (sic)her rights in favour of Defendant 1. The Plaintiff 2 was alleged to be a younger brother of Picha Govindan who was (sic) excluded at the time of partition.

The Plaintiffs sued for declaration of title and recovery of possession of the property described in the plaint schedule. The Defendant 1 contended inter alia that the widow and not the Plaintiff 1 succeeded to Picha Govindan and that the Plaintiff 2 was not a member of Picha Govindan's family. Plaintiff 2's status as a member of the family was concurrently, found against by both Courts. The trial court dismissed the suit while the lower appellate court reversed that decision and gave (sic) to the Plaintiff 1. The Defendant 1 has preferred this second appeal against the decision of the lower appellate Court.

2. The only point pressed in second appeal is that since Picha Govindan was a divided member of the family at the time of his death, his widow succeeded to his properties as he died issueless. According to Hindu Mitakshara Law which governs, the parties this does not admit of any (sic) As stated in Mayne's Hindu Law and Usage (11th Edn., p. 584):

The text of Yajnavalkya is the foundation of the whole law of inheritance in the Mitakshara, jurisdictions. It runs as follows:

"The wife, the daughters also, both parents, brothers and (sic) their sons, , "gotrajas" (agnates), bandhus (cognates) a pupil and a fellow student. Of these, on the failure of the preceding, the next following is heir to the estate of one who has departed for heaven, (sic) no "putra". This will extend to all (males whether or not belonging to the four) classes". It will be observed that this applies only to cases where a man dies leaving no male issue.

3. The law on this point has elaborately discussed in a recent decision of a Full Bench off this Court in - "Neelamma v. Perumal" AIR 1953 TC 518 (A). That was a case of the last male member of a Hindu co-parcenary who died unmarried. The view expressed in a Full Bench decision of the Travancore High Court in - "Ramal Konppoo Ammal v. Ammani Rukmini Ammal" 5 Trav LR 45 (B) was dissented from.

The case of a divided member who dies issueless is one covered by the text of Yajnavalkya (sic) above, Even though there was some controversy in respect of the property of, the last surviving male member who was undivided at the time of his death, that also has now been set at rest by the decision in - Neelamma v. Perumal (A)". In this view the Plaintiff 1 cannot, succeed and The decision of the lower appellate court is unsustainable.

4. In the result, I reverse the decree of the lower appellate court and restore the decree of the trial court. The second appeal is allowed with costs throughout.