
(1926) 04 MAD CK 0014
In the Madras High Court

Varanasi Annapurnamma

APPELLANT

Vs

Kandikuppa Venkamma (dead) and Others

RESPONDENT

Date of Decision : 06-04-1926

Acts Referred:

Citation : AIR 1926 Mad 1017 : 97 Ind. Cas. 604 : (1926) 24 LW 318 : (1926) 51 MLJ 387

Judgement

1. This is an audacious attempt by a Brahmin Judge to invent a new rule of law, namely, that a daughter who is unchaste is under the same rule of exclusion as a widow and cannot inherit her father's or mother's estate. The only colour for such a contention which has throughout been rejected in Western India is to say that a portion of a text of Brihas-pathi is to be treated as a binding rule in Southern India. Now the Dayabhaga has adopted that portion of the text of Brihas-pathi and consequently this rule of exclusion has been applied against the daughter under the Dayabhaga Law in Bengal. The Mitakshara while incorporating a portion of the very passage of Brihaspathi in which this prohibition is contained deliberately omits the passage that insists upon the chastity of the daughter. The only possible conclusion by all rules of construction known to me is that it was deliberately omitted because it was not intended to be reproduced. We are governed by the Mitakshara and by nothing else. Therefore I have come to the conclusion that there is no warrant whatever for making this woman's unchastity, which seems to have been proved as a fact to be a ground of exclusion known to the Hindu Law as administered in Southern India under the Mitakshara. The reason why the learned Judge seems to have stretched the law was that, while apparently he was prepared to admit that ordinary unchastity might not be fatal, cohabitation with a

Muhammadan was such an aggravated form of unchastity that different considerations should apply. He has no right to introduce moral rules which may be very satisfactory as moral rules into the administration of justice. The appeal must be allowed with costs in this Court.