
(1949) 08 MAD CK 0003
In the Madras High Court

Veeramreddi Subbarami Reddi alias Balakrishna Reddi	APPELLANT
Vs	
Veeramreddi Sankaramma	RESPONDENT

Date of Decision : 10-08-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3

Citation : (1949) 2 MLJ 821

Hon'ble Judges : Mack, J

Bench : Division Bench

Judgement

Mack, J.—The petitioner in Interlocutory Application No. 686 of 1948 in O.S. No. 112 of 1947 on the file of the Subordinate Judge's

Court, Nellore, is the widow of the plaintiff who died after filing a suit against his two sons, his brother and his son. He had two wives one of whom

was the mother of the first defendant and the petitioner who is the mother of the second defendant. On his death the surviving widow applied to be

added as his legal representative and to continue the suit asking for the share to which she is, admittedly, entitled under the Hindu Women's

Property Act.

2. The learned Subordinate Judge quite rightly in my opinion allowed her petition to be added as her late husband's legal representative. The

learned advocate for one of the sons opposes on the ground that the legal representatives of the deceased are his sons and that if the petitioner is

added as a plaintiff the character of the suit will change. Under Order XXII, Rule 3, Civil Procedure Code, the legal representative of the

deceased plaintiff must be added in the event of a sole surviving plaintiff dying and the right to sue surviving. The point which arises is, does the

husband's right to sue survive to anybody? Mr. Vedantachari argues that it does not; that the suit must abate and that the widow must claim her relief of partition in a separate suit. I am quite unable to agree and can see no legal impediment to the widow being added as legal representative of her husband and to ask for the share to which she is entitled in law on the death of her husband in the same suit which he instituted during his lifetime.

3. There appears to be no necessity to drive his widow to a separate suit on which fresh court-fee is payable. In a suit for partition such as this it is sometimes difficult to pick out particular members of a family as legal representatives of a deceased plaintiff. The additional criterion is in such a case to whom the right to sue survives. In this case, there can, in my view, be no doubt that the husband's right to file this partition suit survives to his widow, for it must be remembered that he has filed this partition suit against his own sons who would otherwise be his legal representatives.

4. The petition is dismissed with costs.