

Ratnamala Vs. State of Mysore and ors.

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Court : Karnataka

Decided On : Aug-02-1967

Reported in : AIR1968Kant216; AIR1968Mys216; (1968)1MysLJ599

Judge : M. Sadasivayya and ;D.M. Chandrashekhar, JJ.

Acts : [Constitution of India](#) - Articles 14, 19, 19(1), 31, 31(1), 31(2) and 226; Madras Aliyasantana (Mysore Amendment) Act, 1961 - Sections 3, 35, 35(1), 36, 36(2), 36(3), 36(4), 37-A and 37-A(3); [Madras Aliyasantana Act, 1949](#); [Hindu Succession Act, 1956](#) - Sections 7, 7(2) and 30

Appeal No. : Writ Petn. No. 1085 of 1963

Appellant : Ratnamala

Respondent : State of Mysore and ors.

Judgement :

Chandrashekhar, J.

(1) In this petition under Art. 226 of the Constitution, the petitioner has assailed the constitutionality of the provisions of the Madras Aliyasantana (Mysore Amendment) Act, 1961. The State of Mysore has been impleaded as Respondent-because of the challenge to the constitutionality of the Act passed by the Mysore State Legislature. The learned Advocate-General appeared for the State and

defended the constitutionality of the provisions of the Act.

(2) The petitioner belongs to the section of Jain Community in South Kanara District which is governed by the Aliyasanthana system of personal law. The genealogy of the family is set out in the table below:-

RATNAMALA

(Petr.)

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Padmavati Nagakumar Ratna Kumar Bhaskara alias

ails R. 3 R. 4 Bhagyakumar

Kasturi R.5

R. 2

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Prasantha Unnamed Female

R. 6 R. 7

(3) Respondents 2 and 3 filed a suit O. S. 76/1962 on the file of the then Subordinate Judge, Mangalore, for partition of the properties of the undivided Aliyasantana family. During the pendency of that suit, the present petition was filed. On an application by the petitioner, this Court made an interim order staying further proceedings in that suit. Later, that interim order was vacated. The Civil Judge, Mangalore, (the successor to the Subordinate Judge) proceeded with the trial of the suit and made a decree therein. Against that decree an appeal is pending in this Court.

- (4) The petitioner's contentions are based on Articles 14, 19 and 31 of the Constitution.
- (5) To appreciate the petitioner's contentions as to the constitutionality of the provisions of the Mysore Act, it is convenient to have a brief survey of the customary Aliasantana Law regarding succession, partition and devolution of shares as set out in the two Full Bench decisions of this Court-Sundera Adappa v. Girija, 1962-40 Mys LJ 1= (AIR 1962 Mys 72) and Bhagirathi v. Darakke. 1965(2) Mys LJ 796 and the modifications brought about by successive legislation including the impugned Act.
- (6) As stated in Mayne's Treatise on Hindu Law Aliasantana Law is the customary law governing certain communities amongst Hindus in South Kanara District. 'Kutumba' is the name given to the joint family consisting of males and females, all descended in the female line from a common ancestress. Kutumba may consist of two or more branches known as 'Kavarus', each Kavaru or branch consisting of one of the female members of the Kutumba and her descendants in the female line. The outstanding feature of the Aliasantana Kutumba is that like the Marumakkathayam Tarwad, it is governed by a matriarchal system, the devolution being through female line. In other words, while the children of the female members of the family are members of the Kutumba, the children of the male members are not.
- (7) Under the customary Aliasantana Law, every member of a Kutumba has equal rights in the properties of the Kutumba by reason of his or her birth. On the death of any member, his or her interest in the Kutumba properties devolves on other members of the Kutumba by survivorship as both male and female members have equal right in the Kutumba property. The limited estate of a Hindu woman, so familiar to Mitakshara, is unknown to Aliasantana system.
- (8) Till the passing of the [Madras Aliasantana Act, 1949](#) (hereinafter referred to as the Madras Act), no member of a Kutumba nor even a Kavaru could enforce compulsory partition. A partition in an Aliasantana family could be effected only with the consent of all the adult members of the family. Such partition would ordinarily be binding on minors. Junior members of the family were entitled to be

maintained by the Yajaman or Yajamanti (head of the family). The right to maintenance was the mode in which a junior member enforced his or her right of co-proprietorship in the Kutumba properties. Under certain circumstances, junior members were also entitled to separate maintenance. While awarding maintenance to junior members, the Courts used to divide the family income on per capita basis after making due provision for family expenses like 'Viniyogas'.

(9) In Aliyasantana families, partition was ordinarily made on the basis of Kavarus, that is, on stirpetal basis. But if by common consent of all the adult members the properties of the Kutumba were divided per capita, the minor members of the family, on attaining majority, could not object to such division. Conflict used to arise between Kavarus which had a large number of members and those that had smaller number of members. The former were insisting on division of the Kutumba properties on per capita basis whereas the latter stood by the principle of stirpetal division.

(10) The Madras Act defined and amended in certain respects the law relating to marriage, maintenance, guardianship, intestate succession and partition applicable to persons governed by the customary Aliyasantana Law; but did not purport to codify or consolidate the entire law applicable to such persons.

(11) For the purposes of the present case, we need only consider Chapter VI of the Madras Act which deals with partition and devolution of shares. For the first time, a Kavaru was enabled by this Act to claim partition of the Kutumba properties. Section 35(1) of the Act provides that any Kavaru represented by majority of its major members may claim partition of the Kutumba properties. Only Kavarus can claim partition and no individual member of a family as such can claim partition. To the rule that only a Kavaru can claim partition, three exceptions are provided in the proviso to Sec.35(1), namely-

(i) A common ancestress may, on her own volition, bring about a partition;

(ii) Where a Kavaru consists of only 2 persons, the claim for partition may be made by either of them; and

(iii) No Kavaru shall make a claim for partition during the lifetime of any ancestress common to such Kavaru and to any other Kavaru or Kavarus of the Kutumba, who has not completed 50 years of age unless-

(a) she has signified her consent in writing,

or (b) two-thirds of the major members of the Kavaru join in making the claim for partition.

(12) For the purpose of claiming a partition of the Kutumba properties, the term, Kavaru has been given an extended meaning by Explanation to Section 35 of the Madras Act, so as to include not only a group of persons consisting of a female and all her descendants in the female line as understood in the customary law but also a male member of a Kutumba or a female member thereof who has no living descendant in the female line if he or she has no living female ascendant who is a member of the Kutumba. Under the customary Aliyasantana Law, a male did not form a Kavaru himself; he was always considered as belonging to the Kavaru of his mother.

(13) Section 36 of the Madras Act which lays down the mode of ascertaining shares of Kutumba properties at a partition, strikes a compromise between stirpetal division and per capita division during first 15 years from the date of commencement of the Act (the Act received the assent of the Governor General and came into force on 13-4-1949).

(14) Clause (a) of Section 36(2) provides that if any member of the Kutumba is removed by four degrees or more from the common ancestress on the date the partition is claimed, $\frac{3}{4}$ th of the properties of the Kutumba shall be divided on per capita basis among all the members of the Kutumba and the remaining $\frac{1}{4}$ th of the properties shall be divided among the Kavaru per stirpes.

(15) Clause (b) of Section 36(2) provides that in other case, half the Kutumba properties shall be divided among the members of the Kutumba per capita and the remaining half shall be divided among the Kavarus per stirpes.

(16) Clause (e) of Section 36(2) provides that in a partition of the Kutumba claimed after the expiry of 15 years from the date of commencement of the Act (i. e., after 13-4-1964), the division shall be effected only on stirpetal basis.

(17) Thus the Madras Act intended to restore the stirpetal basis of division of the Kutumba properties after a transition period of 15 years.

(18) Section 3 (h) of the Madras Act defines 'Santhathi Kavaru' as a Kavaru of which at least one member is a female who has not completed the age of 50 years. Sec.3 (f) defines 'Nissanthathi Kavaru' as a Kavaru which is not a Santhathi Kavaru.

(19) Sub-section (3) of Section 36 provides that a Nissanthathi kavaru shall take only a life interest in the properties allotted to it at a partition if the Kutumba from which it separates has at least one female member who has not completed the age of 50 years or if at least one of the Kavaru of the Kutumba is a Santhathi Kavaru. otherwise the Nissanthathi Kavaru also takes absolute interest in the properties allotted to it. Sub-section (4) of Section 36 provides that the life interest taken by a Nissanthathi Kavaru at a partition shall enlarge into absolute interest, if the aforesaid two conditions cease to exist subsequently. Sub-section (5) of Section 36 provides that where a Nissanthathi Kavaru takes only a life interest in properties allotted to it, on the death of the last of its members such properties shall revert to the Kutumba, or where the Kutumba has broken up on the nearest Santhathi kavaru or Kavarus.

(20) The [Hindu Succession Act, 1956](#), (Central Act No. 30 of 1956) (hereinafter referred to as the Succession Act) brought about further modifications in the Aliyasanthana law and the provisions of the Madras Act in certain respects.

(21) Section 7(2) of the Succession Act provides that when a Hindu governed by the Aliyasanthana law dies after commencement of this Act, having at the time of his or her death an undivided interest in the property of a Kutumba or Kavaru, his or her interest in such property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the Aliyasanthana law. Explanation to S. 7(2) states that for the purposes of this sub-

section, the interest of a Hindu in the property of a Kutumba or Kavaru shall be deemed to be the share that would have fallen to him or to her, if a partition of that property had been made per capita immediately before his or her death, among all the members of the Kutumba or Kavaru, as the case may be, then living, whether he or she was entitled to claim partition or not under the Aliyasanthana Law. The Explanation further provides that such share shall be deemed to have been allotted to him or her absolutely.

(22) Explanation to Section 30 of the Succession Act provides that the interest of a member of a Kutumba or Kavaru in the properties of a Kutumba or Kavaru shall, notwithstanding any other law for the time being in force, be deemed to be the property capable of being disposed of by him or her by will or other testamentary disposition.

(23) The Succession Act brought about four important changes in the customary Aliyasanthana law as modified by the Madras Act-

(i) Even under the Madras Act a Kavaru and only in certain limited circumstances an individual member of a Kutumba or Kavaru, can claim partition. But under Section 7(2) of the Succession Act, on the death of every member of a Kutumba a partition is deemed to take place immediately before his or her death. The undivided share of such deceased member does not pass by survivorship to the surviving members of the Kutumba or Kavaru but devolves by succession on his or her heirs in case of intestacy or devolves by testamentary succession. Thus, the right to claim partition is statutorily extended to individual members of the undivided Kutumba, and such right is deemed to have been exercised immediately before his or her death:

(ii) Neither under the customary Aliyasanthana law nor under the Madras Act, the undivided interest of a member of an Aliyasanthana Kutumba could have been disposed of by testamentary disposition. By Section 30 of the Succession Act, such undivided member is enabled to dispose of such interest by testamentary disposition:

(iii) Under the Madras Act, the mode of division of the Kutumba properties at a partition is partly on per capita basis and partly on stirpetal basis during the first 15 years after that Act came into force and thereafter entirely on stirpetal basis. But in the deemed partition statutorily brought about immediately before the death of an undivided member of a Kutumba, the basis for division is entirely per capita;

and (iv) Under section 36 of the Madras Act, a Nissanthathi Kavaru takes only life-interest in the properties allotted to it, except in certain circumstances. But in the deemed partition under section 7(2) of the Succession Act, a share is allotted absolutely to a deceased member whether or not such member would have been a member of a Nissanthathi Kavaru, if a partition had taken place immediately before his or her death. The distinction between Santhathi Kavaru and Nissanthathi Kavaru is obliterated in such deemed partition.

(24) The Madras Aliyasanthana (Mysore Amendment) Act, 1961 (hereinafter referred to as the Mysore Act), came into force on 11-1-1962. By this Act a new Section, Section 37A, was inserted in the Madras Act. Important changes brought about by this Section are these:

(i) Sub-section (1) of section 37A provides that after the commencement of this Act any undivided member-male or female of Kutumba or Kavaru-shall be entitled to claim a partition of his or her share in the properties of the Kutumba or Kavaru, as the case may be. The right given under the Madras Act to a Kavaru to claim partition has been extended by the Mysore Act to every individual member of a Kutumba or Kavaru;

(ii) Sub-section (2) of section 37A provides that a person claiming partition shall be allotted such share in the properties of the Kutumba or Kavaru that would fall to him or her, if a division of such properties were made on per capita basis among all members of the Kutumba living on the date on which the partition is made. The stirpetal basis of division under the Madras Act (partly in the case of a partition taking place before 13-4-1964 and wholly in the case of a partition taking place subsequent to that date) has been completely substituted by the per capita basis for all partitions that take place after the commencement of the Mysore Act;

and (iii) Sub-section (3) of section 37A provides that the share which a male or a female member takes at such a partition shall vest in him or her absolutely. Thus the distinction between Santhathi Kavaru and Nissanthathi Kavaru is obliterated and there will be no allotment of life interest in partitions that take place subsequent to the commencement of this Act.

(25) The Mysore Act is only prospective in its operation. It does not purport to modify either the shares allotted in a partition that has already taken place prior to the commencement of this Act nor the nature of the interest taken under such partition unless there has been a further partition after the commencement of this Act. If in a partition prior to this Act a Nissanthathi Kavaru has taken only a life interest in the properties allotted to it, this Act does not enlarge such interest into and absolute interest; nor does this Act prevent reversion of the properties to the Kutumba or the nearest Santhathi Kavaru on the death of the last member of such Nissanthathi Kavaru.

(26) Mr. Karanth submitted that the petitioner is adversely affected by the provisions of the Mysore Act in the following manner:

(i) The share which the petitioner would be entitled to get in a partition according to the provisions of the Mysore Act, would be considerably less than what she would have got if the partition had taken place according to the provisions of the Madras Act; and

(ii) The possibility of her getting, as the reversioner, the properties that might have been allotted to the share of Nissanthathi Kavarus if a partition had taken place in accordance with the provisions of the Madras Act, has been put an end to by the Mysore Act.

(27) The ground on which Mr. Karanth has assailed the constitutionality of the Mysore Act are these;

(i) The provisions of the Mysore Act have abridged the vested property rights of the petitioner in the Kutumba properties and hence those provisions infringe Article 19 and 31 of the Constitution; and

(ii) The distinction between the rights of members of an Aliyasantana family who effect partition before the commencement of the Mysore act and the rights of those who effect a partition subsequent to the coming into operation of that Act, offends Article 14 of the Constitution.

(28) Elucidating his first ground Mr. Karanth argued that the petitioner had a vested right to a certain specified share in the properties of the Kutumba, which she could get by claiming a partition, and that vested right has been abridged by the provisions of the Mysore Act, because the share which she can get in a partition after the commencement of the Mysore Act would be smaller than what she would have got in a partition under the provisions of the Madras Act. Vested property rights of individuals, according to Mr. Karanth, cannot be taken away by a legislative enactment. Mr. Karanth argued that in any event where there is no justifiable public purpose for such abridgment of vested property rights, such enactment will be clearly violative of Articles 19 and 31 of the Constitution. He argued that no interest of general public is involved in reducing the shares of certain members of a Kutumba and increasing the shares of certain other members in the Kutumba properties.

(29) The contention of Mr. Karanth that the petitioner's vested right in the Kutumba property is affected by the provisions of the Mysore Act, rests entirely on the premises that the petitioner had vested right to a certain specified share in the undivided properties of the Kutumba even before she claimed a partition of those properties or before partition took place at the instance of other members of the Kutumba. According to Mr. Karanth this conclusion follows from the legal position that any creditor of an undivided member of a Kutumba can attach and bring to sale the undivided interest of such member in the Kutumba properties and the extent of the share so attached is what that undivided member himself would be entitled to get if a partition had taken place on the date of attachment.

(30) It is not always that the undivided interest of any member of a Kutumba was capable of being attached and sold in execution of a decree by a creditor. As held by this Court in S. A. No. 791 of 1959 (Mys), it was only the interest of members of a Kutumba, who constituted a Kavaru and were entitled to demand a partition, that

was capable of being attached and sold in execution. But where an undivided member or members did not constitute a Kavaru or were not entitled to demand a partition under section 35 of the Madras Act, his or their undivided interest in Kutumba properties could not be attached or sold in execution.

(30A) The learned Advocate-General contended that no member not even a Kavaru of an Aliyasanthana Kutumba can claim any specific share in the undivided Kutumba properties so long as that Kutumba remains undivided and that the rights of every undivided member of Kutumba like that of an undivided coparcener of a Mitakshara coparcenary is only the right of co-ownership or co-proprietorship, along with other members of the family in the properties of the undivided family and the right to enjoy those properties along with other members; and that until a partition takes place and the respective shares of individual members of Kutumba are ascertained, no undivided member of the Kutumba can claim exclusive right in any particular property or any specific share in the entire Kutumba properties. The contention of the learned Advocate-General is well-founded as seen from numerous decisions of the Judicial Committee of the Privy Council and of the Supreme Court.

(31) In *Gharibullah v. Khalak Singh*, (1903) 30 Ind App 165 (PC) in considering the question whether a guardian of the properties of an infant can properly be appointed in respect of the infant's interest in the property of an undivided Mitakshara family, their Lordships of the Privy Council held that the interest of a member of such family is not individual property at all and therefore a guardian, if appointed, would have nothing to do with the family property.

(32) In *Kalooram v. Commissioner of Income Tax*, : [1965]57ITR335(SC) Subba Rao, J. (as he then was), speaking for the Court, explained the nature of the interest of coparcener thus;

'The concept (of coparcenary) involves 'community of interest, unity of possession and common enjoyment'. Each coparcener's right extends to the whole joint family property, he has no definite share therein. Partitioning is the ascertainment of individual shares.....'.

(33) Explaining the nature of the coparcenary and effect of a partition of a coparcenary, Gajendragadkar, C. J. said thus in *V. N. Sarin v. Ajit Kumar*, : [1966]1SCR349 :

'.... Partition really means that whereas initially all coparceners have subsisting title to the totality of the property of the family jointly, that joint title is transformed into separate titles of individual coparceners in respect of several items of properties allotted to them separately.'

(34) The legal position about the coparcenary interest has been summed up thus in Mulla's Hindu Law (13th Edition) at Page 244:

'The essence of a coparcenary under Mitakshara law is unity of ownership. The ownership of the coparcenary family is in the whole body of coparceners. According to the true notion of an undivided family governed by the Mitakshara law, no individual members of the family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share, one-third or one-fourth. His interest is a fluctuating interest, capable of being enlarged by deaths in the family and liable to be diminished by births in the family. It is only on partition that he becomes entitled to a definite share. The most appropriate term to describe the interest of a coparcener in coparcenary property is 'undivided coparcenary inter..... The right of each coparcener until a partition takes place consist in a common possession and common enjoyment of the coparcenary property....'

(35) The right and interest of an undivided member of an Aliyasantana Kutumba are, in this respect analogous to those of a coparcener in an undivided Mitakshara family. It is only at a partition that a Kavaru consisting of him becomes entitled to a definite share in the Kutumba properties and until such partition takes place his interest in the Kutumba properties is a fluctuating one capable of being enlarged by deaths in the family and liable to be diminished by births in the family. It is only the partition that crystallises and quantifies the interest of his Kavaru into a definite share in the Kutumba properties.

(36) In the case of attachment and sale of the undivided interest of a coparcener in a Mitakshara family or of members constituting a Kavaru of a Kutumba during his or their lifetime in execution of a decree against him or them the purchaser becomes entitled to have the debtors' share ascertained as on the date of attachment. Until such attachment, such undivided member or members have only an undefined and fluctuating interest in the family properties.

(37) Whether the petitioner was the common ancestress as contemplated by Clause (III) of Proviso to Section 35 (1) of the Madras Act and was entitled to claim by herself a partition, is a question into which we need not go in this petition. Even assuming that she was entitled to claim a partition, we are unable to accept the contention to Mr. Karanth that she had a vested right to any specific share in the Kutumba properties even before she claimed a partition or a partition took place at the instance of other members or Kavarus; till such partition, what was vested in her was only the right of co-ownership in, the right of common possession and common enjoyment of, the Kutumba properties and the right to claim a partition. If such was the content of her vested right in the Kutumba properties, it is clear that no part of her vested right was taken away or curtailed even after the Mysore Act came into force, and she continued to have all those rights.

(38) What share in the Kutumba properties undivided members would get at a partition that may take place at some future date, would depend on the state of affairs of the family (the number of members and Kavarus in the family and their respective rights) at the time of partition and the law prevailing at that time. The prospect of getting at a future partition a share (in the Kutumba properties), the size of which can be determined only at the time of such partition cannot be regarded as a vested right to any specific or definite share in the Kutumba properties though the right to claim a partition may be a vested right.

(39) Regarding the chance of the petitioner succeeding as reversioner to the properties that might have been allotted to a Nissanthathi kavaru if a partition had taken place according to the provisions of the Madras Act, Mr. Karanth did not contend, and we think rightly that such reversionary interest was a vested right. As stated in Mulla's Hindu Law (13th Edition) at page 193, the interest of a

reversioner is an interest expectant on the death of a limited heir. It is not a vested interest. It is spes successionis or a mere chance of succession within the meaning of the Transfer of Property Act, 1882. Section 6. It cannot therefore, be sold, mortgaged or assigned, nor can it be relinquished.

(40) Thus it is not shown that any vested right which the petitioner had immediately before the Mysore Act came into force, has been taken away or curtailed by the provisions of the Mysore Act Assuming for the sake of arguments that any such vested right has been so taken away or curtailed we shall proceed to examine whether such abridgment violates Articles 19 and 31 of the Constitution.

(41) Clause (1) of Article 31 provides that no person shall be deprived of his property save by authority of law. Clause (2) of this Article deals with compulsory acquisition or requisition of property for a public purpose. After the fourth amendment to the Constitution by which Clause (92) was amended and a new clause, Clause (2A), was inserted, it is clear that unless there is transfer of possession of the ownership, or right to possession, of any property to the State or to a State owned Corporation, there is no acquisition or requisition of that property within the meaning of Clause (2) of Art. 31.

(42) As the impugned provisions of the Mysore Act do not provide for acquisition or requisition of any property, Clause (2) of Art. 31 has no relevance. But any curtailment of the petitioner's share in the Kutumba properties (on the assumption that she had a vested right to a specific share) will attract Clause (1) of Art. 31. The curtailment of such right being by the provisions of the Mysore Act, is under the authority of the law. It is not disputed that this Act relates to partition and succession, which are matters falling within Entry 5 of List III of Schedule VII to the Constitution: in respect of which the State Legislature has legislative competence subject to the previous sanction or subsequent assent of the President. This Act has received the assent of the President. hence this Act is a law enacted by a competent Legislature and is intra vires the legislative power of the Legislature concerned.

(43) In *K. K. Kochuni v. States of Madras and Kerala*. : [1960]3SCR887 the majority decision laid down that a law made depriving a citizen of his property shall

be void unless the law so made complies with the provisions of Clause (5) of Article 19 of the Constitution. As explained in Basu's Shorter [Constitution of India](#) (Fifth Edition) at page-110, until the decision of the Supreme Court in Kochuni's case, the prevailing view was that Art. 19(1)(f) and Art.31 were mutually exclusive: Art. 19(1)(f) would apply so long as a person is not deprived of his property by a law enacted by a competent legislature, under Article 31(1) or 31(2) and that if the property itself is lawfully taken under Article 31, the right to hold or dispose of it perishes with it and Article 19(1)(f) cannot be invoked. But in Kochuni's case the majority of the Supreme Court has held that the 'law' referred to in Art. 31(1) must be a valid law, and must not therefore, contravene any of the fundamental rights.

(44) So it is necessary to examine whether the provisions of the Mysore Act infringe Art. 19 of the Constitution. article 19(1)(f) guarantees that all citizens shall have the right to hold, acquire and dispose of property. But clause (5) of that Article makes such right subject to reasonable restrictions imposed by any law in the interest of the general public.

(45) Now we have to consider whether the provisions of the Mysore Act which alter the re-existing law relating to partition and devolution of properties of an Aliyasantana Kutumba and which enlarge the rights and shares of certain members and diminish the rights and shares of other members of the family, can be regarded as constituting reasonable restrictions on property rights in the interest of general public.

(46) The proposition of Mr. Karanth is that the property rights under the existing law relating to inheritance, succession and partition, cannot be altered or curtailed by a new legislation. The acceptance of that proposition would mean that no change can be effected in any law relating to property rights however outmoded, inconvenient, or unjust its provisions might be. Law will become static in a changing world. as stated by Rajagopala Iyengar, J. in Santhamma v. Nellamma, AIR 1956 Mad 642 at p. 658 the Constitution has been designed as an instrument of progress and not to petrify the law and to prevent all social changes. If Mr. Karanth's argument is correct, various enactments like the Hindu Succession Act which have substantially altered customary Hindu law, could not have been validly

enacted. Hence there is no merit in this contention of Mr. Karanth.

(47) Mr. Karanth next contended that no public interest is served by enlarging the rights and shares of certain members of the Kutumba at the expense of other members thereof; nor is there any good reason for so doing. In support of this contention Mr. Karanth strongly relied on the following observations of Subba Rao, J. (as he then was) who delivered the majority judgment in Kochuni's case, : [1960]3SCR887 :

'We cannot see on the materials placed before us that any public purpose will serve by depriving a Sthanee of his properties and conferring title in his properties so deprived, on others.'

(48) The above observations were made in considering the constitutionality of the Madras Marumakkathayam (Removal of Doubts) Act, 1955 (hereinafter referred to as the Marumakkathayam Act). There, his Lordship stated that under the law as it stood before the Marumakkathayam Act, the Senior most member in certain category of Tarwad would succeed to the position of Sthanee and once he so succeeded he would cease to have any proprietary interest in Tarwad properties, that so too the other members of the Tarwad would have absolutely no proprietary interest in the Sthanam properties, and that thereafter the Sthanee and other members would continue to be only blood relations with perhaps a right of succession to the property of each other in certain contingency, such right being nothing more than spes successionis. His Lordship held that the provisions of the Marumakkathayam Act arbitrarily affected the undisputed title of the Sthanee in the Sthanam properties by statutorily conferring retrospectively on the members of the Tarwad rights in Sthanam properties in which they had no rights before and thereby converted Sthanam properties into Tarwad properties.

(49) Therefore, His Lordship rejected the contention that the Marukammathayam Act merely readjusted the rights inter-se between the members of the Tarwad and the Sthanee, and held that the Act was only a legislative device to take the property of one and vest it in another without compensation and was therefore unreasonable. his Lordship also observed that there was no evidence that there was any real or genuine grievance in the particular section of the public belonging

to Tarwads justifying interference by the State and that on the materials placed before the Court, it could not hold that the reform was in public interest.

(50) We think there is material difference between the provisions of the Marumakkathayam Act and those of the Mysore Act, and the decision in Kochuni's case, : [1960]3SCR887 has no application to the provisions of the Mysore Act. The Mysore Act does not seek to confer any rights in Kutumba properties on persons who had no interest therein before the Mysore Act came into force. On the other hand the rights and shares to which members of a Kutumba were entitled to at a partition under the pre-existing law, have been readjusted by the Mysore Act, by altering the mode of division, by extending the right to claim partition to individual members, by removing the distinction between Santhathi and Nissanthathi Kavarus and bringing uniformity as to the nature of the interest allotted at partition. Such re-adjustment of existing rights of the members of a Kutumba cannot be regarded as taking the property of one and vesting it in another, however widely the term 'taking' is understood.

The Mysore Act seeks to regulate and determine the internal relationship that should subsist between the members of the Kutumba. The provision of the Mysore Act cannot be said as not being in the interest of the general public on the mere ground that it concerns only a limited class of persons, namely persons governed by Aliyasantana Act. In Kochuni's case : [1960]3SCR887 the Supreme Court has quoted with approval the observations of Harries C. J. in Iswari Prosad v. N. R. Sen. : AIR1952 Cal273 , to the effect that legislation affecting a limited class of persons or a limited local area might well be legislation in the public interest though the public in other parts of the country might not be directly affected by legislation; that removal of some serious abuse, grievance or discontent is a matter indirectly affecting the public generally; that it is in the public interest that persons should be governed justly, and well; and that the removal of hardship and grievance of a particular class is a matter of public interest.

(51) Mr. Karanth contended that the provisions of the Mysore Act which had introduced radical changes and 'revolutionised' the mode of partition, are not based on any reason, that a Kavaru being the basic unit under the Aliyasantana

Law, partition by stirpes is the normal mode of partition and that the new mode of partition has arbitrarily enlarged the benefits to Kavarus having larger number of members at the cost of Kavarus having smaller number of members. In other words, according to Mr. Karanth, the changes brought about by the provisions of the Mysore Act cannot be regarded as 'reasonable restrictions' as understood in Clause (5) of Art.19.

(52) The statement of Object and Reasons annexed to the Madras Aliyasantana (Mysore Amendment) Bill, 1961, reads:

'Representations have been received from the Jains governed by the Aliyasantana Law that the provisions of the [Madras Aliyasantana Act, 1949](#), should be amended to enable the members of a Kutumba or kavaru to take their share in the properties of the kutumba or kavaru, as the case may be. The Aliyasantaniga Women's Association of South Kanara and others have also represented that there is urgent need to amend the said Act.

The [Madras Aliyasantana Act, 1949](#) has made provision for partition of the properties of a kutumba among the kavarus of such kutumba. Under sub-section (2) of section 7 of the [Hindu Succession Act, 1956](#) (Central Act 30 of 1956), it has been laid down that when a Hindu who has an undivided interest in such property of a Kutumba or kavaru dies, his or her interest in such property shall devolve by testamentary or intestate succession under that Act and not according to the Aliyasantana law. The explanation to this sub-section indicates that his or her interest in the property will be the share which he or she would have got if a partition per capita of the property of the kutumba or kavaru had been made immediately before his or her death among the members of the kutumba or kavaru then living, and that the share of such person shall be deemed to have been allotted to him or her absolutely. The effect of these provisions is that in the case of a Hindu governed by the Aliyasantana law, his or her heirs will be entitled to his or her share in the property of the kutumba or kavaru only on his or her death; but the person concerned cannot himself enjoy the property by taking it at a partition. In view of the representations made, it is considered desirable to amend the law to enable such Hindu to take their share in the kutumba or kavaru properties by

partition during their lifetime also.'

(53) Though it is not permissible to refer to the Statement of Objects and Reasons annexed to the Bill, for the purpose of construing the provisions of the Act, such statement can legitimately be referred to for a correct appreciation of-

- i) What was the law before the Act was passed;
- ii) What was the mischief or defect for which the law had not provided;
- iii) What remedy the Legislature has appointed; and
- iv) the reasons for the remedy.

(54) As stated earlier, the Hindu Succession Act had brought about the following four important changes in the customary Aliyasantana law as modified by the Madras Act:

- i) The right to claim partition is extended to individual members of a Kutumba and such right is deemed to have been exercised immediately before the death of a member:
- ii) In such deemed partition the mode of division is per capita;
- iii) In such deemed partition the share allotted to the deceased member, goes to his heirs absolutely whether or not the deceased was member of a Nissanthathi Kavaru; and
- iv) The undivided interest of member of a Kutumba becomes capable of testamentary disposition.

(55) What the Mysore Act has done is to carry further the changes (i) to (iii) above. The right to claim a partition is extended to living members of the Kutumba, per capita mode of division is extended to voluntary partitions among living members of the Kutumba, Conferment of absolute estate is extended to shares allotted in such voluntary partitions between living members. The Mysore Act has removed the distinction between the legal effect of a deemed partition on the death of an

undivided member and that of a voluntary partition among living members, and has brought about uniformity.

(56) Mr. Karanth has not stated the basis for his proposition that stirpetal division is the only reasonable and equitable mode of division of the properties of an undivided family. Under Marumakkatayam law which prevails in Kerala which adjoins South Kanara District, the mode of division of Tarwad properties is per capita. Even under the Aliyasantana law while Courts granted decrees for maintenance of junior members of the family, the income of the Kutumba was divided into equal shares among all members after making provision for certain common expenses like family Viniyogas. So long as the Kutumba is undivided all members thereof have equal right in the properties of the Kutumba, there is nothing unreasonable in giving each member of the Kutumba on partition of the Kutumba properties, an equal share irrespective of whether his branch consists of larger or smaller number of members. There is no reason to think that stirpetal division of the Kutumba properties is the only reasonable and equitable mode.

(57) It is also seen from the Statement of Objects and Reasons that the Mysore Act was enacted taking into the public opinion among people governed by Aliyasantana Law and that representations were made to the Government in this behalf by several organisations.

(58) Thus we are unable to accept the contention of Mr. Karanth that provisions of the Mysore Act constitute unreasonable restrictions on the right to hold property and are not in the interest of general public. hence the provision of the Mysore Act are not violative of Article 31 or 19 of the Constitution.

(59) The next contention of Mr. Karanth was that the provisions of the Mysore Act are violative of Article 14 of the Constitution. Explaining this contention, Mr. Karanth argued that if the partition of an Aliyasantana Kutumba had taken place just before the commencement of the Mysore Act, the members of the Kutumba would have taken the property partly on tripletail basis on partly on per capita basis while in the case of a partition that may take place after commencement of this Act, the members of the Kutumba would take the properties entirely on per capita basis. According to Mr. Karanth there is a discrimination between persons

who effected partition before the coming into force of the Mysore Act and persons who effect partition after the coming into force of the Mysore Act. He argued that there was no reasonable classification between these two categories of persons.

(60) It is well settled that Article 14 does not ensure absolute uniformity as between all persons. It only provides for equal treatment for persons similarly circumstanced. It permits of reasonable classification and separate treatment for different classes of persons. The classification permitted by Article 14 may be according to difference in time.

(61) In *Hathisingh . v. Union of India*, : (1960)11LLJ1SC a similar contention was advanced. By the Industrial Disputes (Amendment) Act, 1957, Section 25-FFF was inserted in the Industrial Disputes Act, 1947, and that Section provides that employers who close their undertakings after 27-11-1956 are liable to pay compensation at prescribed rates. It was argued that section 25-FFF made a distinction between employers who closed their undertakings on or before 27-11-1956 and those who close their undertakings after that date and such distinction was violative of Article 14. Repelling that contention, the Supreme Court stated thus:

'The State is undoubtedly prohibited from denying to any person equality before the law or the equal protection of the laws, but by enacting a law which applies generally to all persons who come within its ambit as from the date on which it becomes operative, no discrimination is practised. When Parliament enacts a law imposing a liability as flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are covered by the Act, because they were completed before the date on which the Act was enacted. This differentiation, however, does not amount to discrimination which is liable to be struck down under Art. 14..... Article 14 strikes at discrimination in the application of the laws between persons similarly circumstanced; it does not strike at a differentiation which may result by the enactment of a law between transactions governed thereby and those which are not governed thereby. If the argument that discrimination results when by statute a Civil liability is imposed upon transactions which were not otherwise subject to such liability be accepted, every law which

imposes civil liability will be liable to be struck down under Article 14 even if it comes into operation on the date on which it is passed, because immediately on its coming into operation, discrimination will arise between transactions which will be covered by the law after its coming into force and transactions before the law came into force which will not naturally be hit by it.' (See page 931).

(62) Thus the distinction between a partition that took place before the Mysore Act came into force and one that takes place thereafter cannot be said to be violative of Art.14.

(63) It was also argued by Mr. Karanth that the Mysore Act has brought about discrimination as between a Nissanthathi Kavaru having only one member and that having two more members, where partitions of Kutumba properties had taken place prior to the commencement of the Mysore Act, and hence the Mysore Act is violative of Article 14. Amplifying his contention. Mr. Karanth argued that though both the above categories of Nissanthathi kavarus had got only life interest at partitions (effected before the commencement of the Mysore Act), members of the later category of Nissanthathi Kavaru can enlarge their respective interest into absolute interest by effecting a further partition amongst themselves after the commencement of the Mysore Act, while such enlargement of life interest into absolute interest is not possible in the case of former category of Nissanthathi Kavaru as there can be no partition of such Kavaru consisting of the sole member.

(64) On the other hand, the learned Advocate General argued that if in a partition that took place before the commencement of the Mysore Act, a Nissanthathi Kavaru took only a life interest in the properties allotted to its share, a subsequent partition between the members of such Nissanthathi Kavaru after the commencement of the Mysore Act, will not have the effect of enlarging the life interest of the Nissanthathi Kavaru an absolute interest; but that each member of the Nissanthathi Kavaru, on such partition, would take such absolute interest as is capable of being taken in the properties of the Nissanthathi Kavaru, that is, such absolute interest will be within the life interest of that Kavaru.

(65) For the purpose of this petition, we think it is unnecessary to decide whether in a partition subsequent to the commencement of the Mysore Act among the

members of a Nissanthathi Kavaru which had taken a life interest in the properties allotted to it at a partition that took place before the commencement of the Mysore Act, the life interest of the Nissanthathi Kavaru gets thus enlarged into absolute interest or whether each member of such Kavaru, on partition of such Kavaru, takes only an absolute interest within such life interest of such Kavaru. Even if we assume for the sake of argument that true position is as contended by Mr. Karanth, it is consequence incidental to partition among the members of Nissanthathi Kavaru. Such partition not being possible where the Nissanthathi Kavaru consists of a sole member, the two categories of Nissanthathi Kavaru cannot be said to be similarly circumstanced and any differentiation between them arising out of incidents of partitions, cannot be said to be violative of Article 14.

(66) Moreover, we think the question of the alleged discrimination between these two categories of Nissanthathi Kavarus, is only academic because the petitioner is not the sole member of a Nissanthathi Kavaru. Even according to her own allegations, there was no partition of her Kutumba before the Mysore Act came into force. She has not complained of any hostile discrimination against herself. We need not consider a question arising out of a purely hypothetical set circumstances.

(67) Thus all the grounds based on Articles 14, 19 and 31, urged by Mr. Karanth in challenging the constitutionality of the Mysore Act, must be rejected. The result is that this petition fails and is dismissed with costs of Respondent No. 1 Advocate's Fees Rs. 250/-.

(68) Petition dismissed.