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Sundari and ors. Vs. Laxmi and ors.

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Court : Supreme Court of India

Decided On : Aug-28-1979

Reported in : AIR1980SC198; 1980(1)KarLJ1; (1980)1SCC19; [1980]1SCR404

Judge : A.C. Gupta and; P.S. Kailasam, JJ.

Acts : Hindu Law; Madras Aliyasanthana Act, 1949 - Sections 3; Aliyasanthana Law; Hindu Succession Act, 1956 - Sections 7, 7(2), 8, 10, 14, 15, 17, 23, 35(2) and 36(5)

Appeal No. : Civil Appeal No. 1543 of 1969

Appellant : Sundari and ors.

Respondent : Laxmi and ors.

Advocate for Def. : K.N. Bhat, Adv.

Advocate for Pet/Ap. : R.B. Datar and; Lalit Bhardwaj, Advs

Prior history : Appeal by Special Leave from the Judgment and Order dated August 13, 1968 of the Mysore High Court in C.R.P. No. 931 of 1967--

Judgement :

P.S. Kailasam, J.

1. This appeal is by special leave granted by this Court against the judgment and order of the High Court of Mysore in C.R.P. No. 931 of 1967 allowing a revision against the order passed by the Civil Judge, Mangalore, in R.I.A. No. 2266 of 1966 in O.S. No. 91 of 1950.

2. The facts of the case may be briefly stated. The parties to this litigation are governed by the Aliyasanthana law prevalent in the district of South Kanara. They were members of a kutumba descended from a common ancestress by name Manjekke. One Parameshwari and her son and daughter instituted Original Suit No. 91 of 1950 before the Court of the subordinate Judge at South Kanara for partition of properties in accordance with the provisions of the Madras Aliyasanthana Act, 1949, (Madras Act IX of 1949). The suit was dismissed by the Trial Court upholding the defence raised that a certain award decree made in Original Suit No. 314 of 1924 on the file of the District Munsiff, Mangalore, amounted to a partition within the meaning of Sub-section (6) of Section 36 of the Madras Aliyasanthana Act, and therefore another suit for partition was not maintainable. Though the trial court dismissed the suit holding that the suit for partition was not sustainable it proceeded to record findings determining the shares to which the members of several branches are entitled in the event of there being a decree for partition.

3. On appeal by the plaintiffs the High Court of Karnataka reversed the decision of the Subordinate Judge and held that the award decree in Original Suit No. 314 of 1924 on the file of the District Munsiff, Mangalore, did not amount to a partition and that the suit for partition was maintainable. The High Court passed a preliminary decree on 28th June, 1961 and remanded the suit for further proceedings. The Advocates on both sides agreed regarding the shares of the parties and the Court directed a preliminary decree for partition and specified the shares as found by the Trial Court in Paragraph 17 of its judgment. The shares were determined on a joint memo filed by the parties on 25th September, 1963. The shares allotted to defendants 22 to 24 were 85,176 out of a total of 615,264 shares.

4. Defendants 22, 23 and 24 are all male members of the kutumba and are 'nissanthathi kavaru'. The 24th Defendant died before the preliminary decree was passed on 10th June, 1957 and his wife and children were brought on record as legal representatives. The 23rd defendant died on 9th March, 1962, after the passing of the preliminary decree. His wife and children were brought on record as legal representatives. During the final decree proceedings the legal representatives of the 24th respondent filed R.I.A. No. 2259 of 1966 and the representatives of the 23rd defendant filed R.I.A. No. 2266 of 1966 claiming that out of the share allotted to the kavaru of defendants 22 to 24, one-third representing the share or interest of the 24th and the 23rd defendants be allotted to them. This petition was opposed on the ground that each one of the defendants 22, 23 and 24 was a separate nissanthathi kavaru and on the death of each of the defendants 24 and 23 his share or interest devolved upon the santhathi kavarus nearest to him to which defendants 11, 12 and 16 belonged. The plea of the 22nd defendant was that all the three defendants 22, 23 and 24 constituted one single nissanthathi kavaru to which, under the preliminary decree one single or joint share was allotted, and therefore the said share survived to the last surviving member thereof (22nd defendant), and that no devolution on a santhathi kavaru under Sub-section (5) of Section 36 is possible until the last member of the nissanthathi kavaru, viz., the 22nd defendant, dies.

5. The trial court found that in the High Court decree dated 20-6-1961 defendants 22 to 24 were allotted shares jointly. It rejected the contentions of both the applicants i.e. the legal representatives of defendants 23 and 24 as well as the surviving defendant 22 holding that defendants 22, 23 and 24 formed three different nissanthathi kavarus as their mother was dead at the time of the filing of the suit and partition was effected and there was undivided interest in the property when they died so as to attract the provisions of Section 7(2) of the Hindu Succession Act. The trial court dismissed both I.As. 2259 & 2266/66.

6. The High Court on appeal while agreeing with the conclusion arrived at by the Civil Judge that the clear intention of defendants 22, 23 and 24 was that one share be jointly allotted to three of them together held that when the 24th defendant died he had an undivided interest in the properties of the kavaru of himself and

defendants 22 and 23 and that the said undivided Interest quantified as provided by the explanation to Sub-section (2) of Section 7 of the Hindu Succession Act, and would devolve by intestate succession under the said. Succession Act. Similarly when the 23rd defendant died he had an undivided interest in the property jointly belonging to himself and the 22nd defendant. That undivided interest also got quantified under Section 7(2) of Hindu Succession Act. The High Court allowed the appeals holding that the property descended according to the rules of intestate succession contained in the Hindu Succession Act.

7. In this appeal the main contention of the learned Counsel for the appellants is that the High Court was in error in holding that defendants 22, 23 and 24 were male members of one nissanthathi kavaru and that the three defendants did not constitute three different nissanthathi kavarus. On a consideration of the plaint, the written statement, the consent memo and the preliminary decree passed by the High Court we agree with the conclusion arrived at by the High Court. The suit was filed by one Parameshwari and her son and daughter as plaintiffs in O.S. No. 91 of 1950 praying for a partition of the properties and for allotment of her share to her. In the suit defendants 22, 23 and 24 were made parties as they belonged to the kavaru of their mother. In paragraph 10 of the written statement defendants 22, 23 and 24 stated that they have no objection to the partition of the family properties according to the rights of the parties but submitted1 that in the event of partition their share should be allotted to them and further the plaintiffs should be directed to surrender possession of the properties in Schedule I of the written statement. The written statement was filed jointly by the three defendants and their plea was that in the event of partition their share should be allotted to them. The statement clearly Indicates that the three defendants together asked for allotment of their shares in the family properties. There was no dispute as to the quantum of shares to the parties. The trial court has recorded :

The learned Advocates on both sides are agreed that the suit be decreed for partition in respect of the plaint schedule immovable properties; they are also agreed that the shares be divided as indicated in para 17 of the Trial Court's judgment. We direct that a preliminary decree for partition of the plaint schedule immovable properties be drawn up accordingly.

Para 17 of the trial court's judgment reads :

In case this suit is to be decreed, the shares to which the several parties are entitled to will be as set out in the joint memo filed by the parties on 25-9-1963, which are as follows.

8. Shares of defendants 22, 23 and 24 are mentioned as 85,176 out of total share of 615,264. On a consideration of the pleadings the consent memo and the preliminary decree the High Court came to the conclusion that the shares were allotted to the three defendants jointly. We agree with the conclusion arrived at by the High Court and hold that the three defendants were allotted jointly a share in the partition.

9. The learned Counsel for the appellant submitted that this finding of fact would not conclude the appeal. He submitted that in law there was no undivided interest in the property which defendants 24 and 23 owned at the time of their death as required under Section 7(2) of the Hindu Succession Act. The submission on this aspect is twofold.

(1) (a) Defendants cannot claim that they were members of the kavaru of their mother as their mother was dead at the time when the partition suit was filed :

(b) Under the Explanation to Section 35(2) a male member of a kutumba is deemed to be kavaru. Therefore each one of the three members would constitute a separate kavaru and therefore there was no undivided interest as amongst them.

(2) The filing of partition suit by one of the members of the kutumba would have the effect of effecting the severance of the status and therefore there was no longer any undivided interest between the several members of the kutumba.

10. Before dealing with the contentions it is necessary to briefly refer to the salient features of Aliyasanthana law. In the well-known treatise on Malabar and Aliyasanthana law by P.R. Sundara Aiyar, a distinguished Judge of the Madras High Court, and edited by B. Sitarama Rao, an eminent lawyer of the Madras High Court who hailed from the South Kanara, the Aliyasanthana law is stated to imply a rule of inheritance under which property descends in the line of nephews. The

term 'Aliyasanthana Law' is the exact Canarese equivalent of the Malayalam term Marumakkathayam. Aliyasanthana Law differs but slightly from the Marumakkathayam system. In its main features viz., impartibility, descent in the line of females and non-recognition of marriage as a legal institution it completely agrees with the Marumakkathayam law. In Aliyasanthana law the males are equal proprietors with females and joint management is recognised, while the Marumakkathayam law does not recognise a right to join management. The succession to the separate property of an individual member in Aliyasanthana law is to the nearest heirs and not to the Tarwad as in the Marumakkathayam law. The succession of the heirs of the separate property is, recognised by the Madras Aliyasanthana Act, 1949, Sections 18 to 24. On the facts of the present case it is not disputed that defendants 22, 23 and 24 have enjoyed the interest as nissanthathi kavaru and on partition are entitled only to life-interest in the properties allotted to them under Section 36(3) of the Madras Aliyasanthana Act. The question that arises for consideration is how far the Aliyasanthana Act regarding partition and succession has been affected by the Hindu Succession Act. The Hindu Succession Act came into force on 17th june, 1956. The preamble states that the Act amends and modifies the law relating to intestate succession among Hindus. Though the preamble refers only to 'Intestate succession' as the title 'Hindu Act' indicates it relates to the law of succession among Hindus and not merely to intestate succession as mentioned in the Preamble. The law has brought about radical changes in the law of succession. The law is applicable to all Hindus as provided in Section 2 of the Act. It is made clear that the law is applicable not only to persons governed by Dayabhaga and Mitak-shara law but also to persons governed by Aliyasanthana, Marumakkathayam and Nambudri systems of Hindu Law. Section 4 of the Act gives overriding application to the provisions of the Act and lays down that in respect of any of the matters dealt with in the Act all existing laws whether in the shape of enactment or otherwise which are inconsistent with the Act are repealed. Any other law in force immediately before the commencement of this Act ceases to apply to Hindus in so far as it is inconsistent with any of the provisions contained in the Act. It is therefore clear that the provisions of Aliyasanthana law whether customary or statutory will cease to apply, in so far as they are inconsistent with the provisions of the Hindu

Succession Act.

11. The scheme of the Hindu Succession Act in the matter of succession to the property of Hindu dying intestate is provided in Sections 8 to 13. Sections 15 and 16 provide for the succession to the property of a female dying intestate. Section 17 specifically provides for application of the Hindu Succession Act to persons governed by Malabar and Aliyasanthana law. Section 14 does not relate to succession but provides that any property possessed by a female Hindu whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as limited owner.

12. Section 7(2) is the section which relates to the devolution of an undivided interest in the property of a kutumba or kavaru and may be extracted in full.

7(2) When a Hindu to whom the Aliyasanthana law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of Kutumba or Kavaru, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the Aliyasanthana law.

Explanation-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 in the property of the kutumba or kavaru, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made 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 such partition or not under the Aliyasanthana law, and such share shall be deemed to have been allotted to him or her absolutely.

13. Under the customary law and under the Madras Aliyasanthana Act, 1949 the undivided interest in the property of a Hindu in Aliyasanthana kutumba or kavaru devolved according to the provisions of the Aliyasanthana law but after the introduction of Section 7(2) the devolution by testamentary or intestate succession is under the provisions of the Hindu Succession Act. The Explanation to Section

7(2) provides that the interest in the property of the kutumba or kavaru of a Hindu shall be deemed to be the share in the property of the kutumba or kavaru, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made 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 such partition or not under the Aliyasanthana law, and such share shall be deemed to have been allotted to him or her absolutely. The result of the Explanation is that the undivided interest in the property of the Hindu in the Aliyasanthana kutumba or kavaru shall devolve as provided for under the Hindu Succession Act and that the share of the Hindu shall be deemed to have been allotted to him absolutely. The Explanation to Section 30 of the Hindu Succession Act provides that a member of an Aliyasanthana kutumba or kavaru can dispose of his interest in the kutumba properties by a will. Under the Aliyasanthana law the individual cannot dispose cf his interest in the kutumba by a will. Explanation to Section 30(1) enables the male Hindu in a kutumba or kavaru to dispose of his interest in a kutumba or kavaru which is deemed to be property capable of being disposed of by him. Thus while Section 7(2) provides that when a Hindu to whom the Aliyasanthana law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of kutumba or kavaru, as the case may be, under the Hindu Succession Act, Section 30 enables the male Hindu to dispose of his undivided interest in a kutumba or kavaru by a will. While these two sections relate to un-divided interest in the property of the kutumba or kavaru Section 17 deals with the succession to the separate property of a Hindu male under the Aliyasanthana law. It provides that Sections 8, 10, 15 and 23 shall have effect with certain modifications in relation to persons who would have been governed by the Aliyasanthana law. Section 8 provides that the property of a male Hindu dying intestate shall devolve as specified in the section. The succession to the property of a male Hindu belonging to a kutumba or kavaru of Aliyasanthana law dying intestate would be governed by the provisions of Section 8 as modified by Section 17 the effect being that the succession as provided for under the Aliyasanthana law would not be applicable. Section 10 provides for the distribution of property among heirs in Class I of the Schedule. Section 15 provides the general rule of

succession in the case of Hindu females. The rule as to the succession is also made applicable to Hindu female under the Aliyasanthana law with the modifications provided for under Sub-section (2) of Section 17. Section 23 of the Hindu Succession Act is not applicable to a Hindu governed by Aliyasanthana law. Thus Section 17 which makes Sections 8, 10, 15 and 23 applicable with certain modifications to a Hindu under the Aliyasanthana law provides for succession of the separate property of a Hindu male and a female. After the coming into force of the Hindu Succession Act, the provisions of Section 7(2) are applicable as regards undivided interest of a Hindu governed by Aliyasanthana law 8-531SCI/79 while the provisions of the explanation to Section 30 are applicable in the case of a will relating to his interest in the family property. Section 17 provides that Sections 8, 10, 15 and 23 with modifications will apply to the separate property of a Hindu under the Aliyasanthana law.

14. Section 14 enlarges the property possessed by a female Hindu whether acquired before or after the commencement of the Hindu Succession Act by providing that she will hold the property as in owner and not as a limited owner. This provision is applicable to Hindu females and does not have the effect of enlarging a limited estate in the hands of a Hindu male. The Hindu male will be entitled only to the limited rights as provided for under the law that is applicable to him. But when once the succession opens by the death of the Hindu Section 7(2) provides that the share in the undivided interest of the Hindu would devolve on his heirs under the Hindu Succession Act absolutely. A Hindu u'nder Section 30 of the Hindu Succession Act is also conferred the right to disposing of by will his interest in the kutumba or kavaru. While a Hindu dies intestate his undivided interest devolves absolutely on his heirs, in the case of his separate property the succession is governed by the provisions of Sections 8, 10, 15 of the Act as modified by Section 17.

15. It may be noted that regarding the separate property of a Hindu the Madras Aliyasanthana Act provides that the provisions of sec-lions 19, 20, 21, 22, 23 and 24 of the Act would be applicable. The separate property does not revert back to the kutumba or kavaru ot the Aliyasanthana family. At the time of the partition if any kavaru taking a share is a nissanthathi kavaru, it shall have only a life-interest

in the properties allotted to it under certain circumstances and the property would revert back to a santhathi kavaru if it is in existence. Section 36(3) of the Madras Aliyasanthana Act provides that the properties allotted to a nissanthathi kavaru at a partition and in which it had only a life-interest at the time of the death of the last member, shall devolve upon the kutumba or where the kutumba has broken up, at the same or at a subsequent partition, into a number of kavarus, upon the nearest santhathi kavaru or kavarus. The devolution of the property allotted to a nissanthathi kavaru which has only a life-interest devolves upon a kutumba or the nearest santhathi kavaru. This mode of devolution prescribed by Section 36(5) of the Aliyasanthana Act has to give way to the provisions of Section 8 of the Hindu Succession Act, which prescribed a different mode of succession.

16. The effect of the provisions of the Hindu Succession Act above referred to is that after the coming into force of the Hindu Succession Act an undivided interest of a Hindu would devolve as provided for under Section 7(2) while in the case of separate property it would devolve on his heirs as provided for in the Hindu Succession Act. Even though a nissanthathi kavaru might have a limited interest as the devolution prescribed for in the Madras Aliyasanthana Act is no more applicable the devolution will be under the Hindu Succession Act.

17. In this case the property has been found to be undivided as between defendants 22, 23 and 24 and therefore the position is that on the death of each one of the defendants his undivided interest would devolve on his heirs.

18. The learned Counsel for the appellants relied on the Explanation to Section 35(2) of the Madras Aliyasanthana Act and submitted that every male member of a kutumba shall be deemed to be a kavaru and cm filing of a suit for partition it must be deemed that every male member of the kutumba got himself separated. Kulumba is defined under Section 3(c) as meaning a group of persons forming a joint family with community of property governed by the Aliyasanthana law of inheritance. Kavaru is defined under Section 3(b)(i) and (ii) as under : -

3(b)(i) 'Kavaru', used in relation to a female, means the group of persons consisting of that female, her children and all her descendants in the female line;

(ii) 'Kavaru' used in relation to a male, means the Kavaru of the mother of that male;

19. In the case of defendants 22, 23 and 24 who arc males the kavaru would mean the kavaru of the mother of that mule. The male by himself cannot be a kavaru under the definition. By virtue of the Explanation to Section 35(2) a male member of a kutumba is deemed to be a kavaru for the purpose of Chapter VI. Chapter VI deals with partition of kutumba. In this case the suit was filed by Parmeshwari and her two children for the partition and separate possession of their share of the kutumba property. When the suit is not filed by a male member the provisions of Chapter VI will not be applicable. The deemed definition is only applicable in considering the right to claim partition. Further, when the plaintiff filed the suit there is no presumption that there was a division in status of all the kavaru that constituted the kutumba. The filing of the suit will no' doubt result in the division of the status of the plaintiff kavaru but the other kavarus may continue to be joint in the kutumba. Whether the other kavaru.s continued to be joint in the kavaru or not is a question of fact. In this case it is found there is no material to hold that there was division of status as between defendants 22, 23 and 24. In this view the contentions of the learned Counsel for the appellants that there was division in status on the filing of the suit for partition or that as the mother was dead there were separate kavarus will have to be negatived. The 'reliance on Explanation to Section 35(2) will not help the appellants.

20. In Jalaja Shedthi and Ors. v. Lakshmi Shedthi and Ors. : [1974]1SCR707 one C and his sister and her sons were members of an Aliyasanthana Kutumba. C executed a will on January 15, 1957 bequeathing his interest in favour of the appellants. On January 25, 1957 the respondents issued a notice to C stating that he was the manager of the divided family, that he was a nissanthathi kavaru while the respondents were santhathi kavarus, as such there were only two kavarus and that they had decided to divide the properties between C and themselves. The respondents demanded a share belonging to their kavaru from out of the entire movable and immovable properties of the family. C replied on January 24, 1957 that there were only two kavarus in the family and both the kavarus were nissanthathi kavarus. C also expressed that he had no objection to the claim for

partition made by the respondents and was prepared to effect it provided the respondents cooperated. C subsequently died on February 13, 1957 after the coming into force of the Succession Act.

21. On March 23, 1957 the appellants gave a notice to the respondents claiming a separate share under C's will. The respondents replied to the notice on the same day denying that the appellants had any share because according to them C was entitled only to a life-interest under the Aliyasanthana law. It was held by this Court that there was neither a kutumba nor can C be a kavaru as the two kavarus after the division in status became only one kavaru, viz. that of respondent No. 1, sister of C. It was held that the C is not a kavaru within the meaning of Section 3(b) of the Madras Act because under Section 3(b) (ii), there being no female line, it is only C's mother who can be a kavaru but not C. If C is not a kavaru there is no property of a kavaru, which can be disposed of under Section 30 of the Succession Act. Even under the explanation to that section, the life-interest which C had on severance of status is not properly capable of being disposed of by a will nor could it devolve by survivorship. As he is no longer a kavaru and had therefore no interest in the property of the kavaru, C's life-interest is also not enlarged under Section 7(2) of the Hindu Succession Act, into an absolute interest. Section 14 of the Hindu Succession Act cannot also be availed of as the life-interest of a male under the Aliyasanthana law cannot enlarge under Section 14.

22. Jalaja Shedthi and Ors. v. Lakshmi Shedthi and Ors. (supra) relates to a will executed on 15th January, 1958 by Chandayya Shetty bequeathing his interest in favour of his wife and children. A week after the execution of the will on 22nd January, the first respondent i.e. the sister of Chandayya Shetty and her children issued a notice to Chandayya Shetty stating that they had decided to divide the properties between Chandayya Shetty and themselves and demanded a share belonging to their kavaru. Chandayya Shetty subsequently died on 13th February, 1957. On 23rd March, 1957 Chandayya Shetty's wife and her children gave notice claiming a separate share under the will of Chandayya Shetty. It was found that on a demand for partition there was a division of status though partition by metes and bounds had not taken place. There was only two kavarus and in the circumstances it could not be pleaded that joint status between other kavarus continued. There

was therefore no undivided interest of a coparcener, within the meaning of Section 7(2) of the Hindu Succession Act. If there was no undivided interest it is clear that provisions of Section 7(2) of the Hindu Succession Act cannot apply. In considering the effect of the will the Court agreed with the view of a full Bench of the High Court of Mysore in Sundara Adappa and Ors. v. Girija and Ors. A.I.R. 1962 Kar 72

23. It was contended before the full Bench that by virtue of Section 30(1) of the Hindu Succession Act the right of the first defendant who had obtained a preliminary decree for his 75/360th share of his properties became capable of being disposed of by will and therefore the children of the first defendant would be entitled to the share in accordance with the, terms thereof. The Mysore High Court held that the benefit referred to in the Explanation to Section 30(1) is confined to the interest of a male Hindu in his kutumba and would not apply to the property obtained by him as his share in the preliminary decree. this Court in approving the above observations observed. 'The above statement of the law which meets the several contentions raised before us is in consonance with our own reading of the provisions of the Madras Act and the Succession Act'. this Court rejected the pleas that the effect of Section 17 of the Succession Act was not considered in the Mysore case, holding that the question was not relevant in the case before them or in the Mysore case because Section 17 of the Succession Act applies to provisions of Sections 8, 10, 15 and 23 which dealt with intestacy. As we are concerned in the present case with the intestate succession to the estate of defendants 24 and 23, the decisions are not applicable to the facts of this case.

24. The plea of the learned Counsel for the respondents that even if the property of the defendants 24 and 23 were held to be separate property the succession would be in accordance with Hindu Succession Act by virtue of the provisions of Section 17 of the Hindu Succession Act will have to be considered. Chapter II of the Hindu Succession Act which deals with the intestate succession is applicable to the property of Hindus and the provisions of this Chapter would prevail over any law which was in force immediately before the commencement of this Act. Therefore the provisions relating to succession of Aliyasanthana Hindus would be by the provisions of the Hindu Succession Act and, not by the Aliyasanthana law.

Section 7(2) and Section 17 of the Hindu Succession Act deal specifically with succession of the property of a Hindu belonging to Aliyasanthana family. While Section 7(2) relates to devolution of undivided interest in the property of a kutumba or kavaru of a Hindu belonging to an Aliyasanthana family Section 17 makes the provisions of Sections 8, 10, 15 and 23 with the modifications specified in Section 17 to the devolution of separate property of a Hindu under the Aliyasanthana law. According to the provisions of Section 36(5) the property allotted to nissanthathi kavaru at a partition is enjoyed by it only as a life-interest and at the time of the death of the last of its members shall devolve upon the kutiimba. This devolution of the life-interest is according to Section 36(5). When a Hindu governed by the Aliyasanthana law dies possessed of a life-interest, after his death the property devolves under the Hindu Succession Act and not under the Aliyasanthana Act and therefore would not revert back to the kutumba. this Court, in Jalaja Sluedthi and Ors. v. Lakshmi Shedthi and Ors. (supra) while deciding the rights of the parties under a will executed by a Hindu governed by Aliyasanthana law held at p. 719 : 'Similarly on the same parity of reasoning, when there are two kavarus, a demand for partition would disrupt them and Chandayya Shelly could no longer claim that he had an undivided interest within the meaning of Section 7(2) of the Succession Act. and if he has no undivided interest in the property, his interest cannot be enlarged into an absolute estate nor can his interest in the proper devolve upon his heirs by intestate succession.' The words underlined by us relate to intestate succession and the Court has specifically stated that it was not referring to the provisions of Section 17 of the Hindu Succession Act as it related to in testate succession. These observations relating to intestate succession arc therefore in the nature of obiter. The separate property is not enlarged into an absolute estate under Section 7(2) but on death it devolves on the heirs as provided under the Hindu Succession Act. Therefore it will not revert back to the clumber but only to the heirs as provided for under the Hindu Succession Act. Similarly in the observations at p. 721 of the Reports where it has observed : 'In this case also as already stated, there is no kavaru of Chandayya Shetty, and on separation he had only a life interest which is not a heritable property and cannot be disposed of by a will, nor could it devolve as on intestacy.' The reference to devolution on intestacy is again in the nature of obiter dicat.

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