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Court : Chennai

Decided On : Nov-10-1892

Reported in : (1893)3MLJ107

Appellant : Valaravutu Ramaswami

Respondent : Valaravutu Venkatesam and ors.

Judgement :

1. One Kurmi Naidu had six sons,--three by his first wife, namely, 1. Latchem, 2. Vonkatesam (1st defendant), 3. Thammi, and three by his second wife, namely, 4. Appanna (2ud defendant), 5. Ramauna (3rd defendant) and 6. Narayana Doss. The six brothers ' divided in 1872 or 1873. Plaintiff is the natural son of No. 1 Latchem and alleges that he was adopted by Thammi. His case is that Thammi and Narayana Doss re-united after the division ; that Thammi died during his minority and Narayana Doss managed their joint property till his death. Plaintiff now sues for the share of Narayana Doss on the ground that he is the only surviving member of the joint coparcenary.

2. The adoption was disputed, but on this point both courts found in plaintiff's favor. The District Munsif held that plaintiff was entitled to only one-third of Narayana Doss's property on the ground that when reunion takes place among half-brothers the divided full brothers of the deceased take equal shares with the reunited half-brother. He held that plaintiff represented the reunited half-brother while defendants 2 and 3 were separated full brothers, and 1st defendant being a

separated half-brother was not entitled to anything.

3. The plaintiff accepted this decision but defendants 2 and 3 appealed urging that Thammi and Narayaua Doss had not legally reunited and that even if they had, the plaintiff was not entitled to any share.

4. The District Judge held there had been no legal re-union but in any case the living brothers excluded the son of a deceased brother and hence plaintiff had no claim.

5. It is conceded that the judge was in error in allowing the question of reunion to be raised. It was not raised by the parties in the Court of First Instance nor was any issue taken upon it. On the contrary the defendants in their written statement admitted that on the death of Thammi his share devolved on Narayaua Doss.

6. The question then is whether defendants 2 and 3 being divided brothers of the full blood exclude plaintiff who is the son of a reunited half-brother. No cases have been cited on the subject and we must admit that according to the ordinary principles of Mitakshara Law we should have supposed that the reunited nephew in coparcenership would have excluded the separated brother. But the texts that have been quoted show that a different view has been taken in Hindu works of authority and that separated brothers of the whole blood share equally with reunited brothers of the half blood. Reunion is possible between certain relations only, namely, with a father; brother, or paternal uncle.. If a reunited brother dies leaving no male issue and there exists a whole brother, not reunited, as well as a half-brother associated with the deceased, both shall take equally. See Stokes' Hindu Law Books, Mitakshara, Ch. II, Section 9, 3-7. The reason is explained in Sarasvati. Vilasa (Foulkes), page 148, Sloka 769. The rule is founded on a mixed conception. The primary idea is that reunion is a ground of preference. It furnishes the rule of decision when the surviving brothers are either of the whole, or of the half blood. When there is a competition between uterine and non-uterine brothers another idea influences the decision, namely, the superior efficacy of the funeral oblations offered by the uterine brother. That furnishes a ground of preference in his favor. If the reunited parcener is a brother of the whole blood both causes of succession concur. They conflict when there is a competition between a reunited

brother of the half blood and a separated brother of the whole blood. The rule of equal division is the outcome of the desire to give effect to both principles. See also Vyavahara Mayukha, Ch. IV, Section 9, Verse 13 to the same effect, and Mayno, 4th Edition, Sections 542-543.

7. In the present case the plaintiff was himself competent to reunite with his paternal uncle and as Thammi's adopted son he has inherited the status and rights of his adoptive father, (Smriti Chandrika, Ch- XII, 7). The decision of the District Munsif decreeing him. 1/3rd was therefore right.

8. We must reverse the decree of the District Judge and restore that of the District Munsif. The plaintiff is entitled to his costs in this and in the Lower Appellate Court.

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