

Rarichan Vs. Perachi and ors.

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Court : Chennai

Decided On : Mar-07-1892

Reported in : (1892)ILR15Mad281

Judge : Arthur J.H. Collins, Kt., C.J. and ;Parker, J.

Appellant : Rarichan

Respondent : Perachi and ors.

Judgement :

1. The judgment of the District Judge appears to be based upon the assumption that, because a community is said to follow Makkatayain, it must be taken to be governed by the Hindu law of inheritance with all its incidents. This is not so. The word 'Makkatayam' is generally used in Malabar to denote the succession of sons in contradistinction to Marumakkatayam or succession of nephews.

2. The case set up in the plaint was that, under the law by which plaintiff's family was governed, the brother succeeded to self-acquired property in preference to the widow. The fourth issue settled was what is the law of succession which governs the parties. The Munsif held that it was proved that by the law of succession governing Tiyars of Calicut, the brother succeeded in preference to the widow.

3. The Judge has treated the succession of the brother as a special custom deviating from the ordinary law. This way of treating the case rests upon the

fallacy abovementioned; that the ordinary law of the Tiyars of Calicut is the Hindu law pure and simple. We must ask the present District Judge to rehear the appeal and return findings on the fourth and fifth issues with reference to the foregoing observations.

4. Finding to be returned within six weeks from the date of the receipt of this order; and seven days, after the posting of the finding in this Court, will be allowed for filing objections.

5. [In compliance with the above order, the District Judge submitted his findings as follows:

(1) The High Court have directed me to submit fresh findings on the fourth and fifth issues in this case.

(2) The parties are Tiyars of Calicut, who follow Makkatayam, and the question to be considered is whether, according to the law or custom followed by such Tiyars, the self-acquisition of a member of an undivided family devolves on his undivided coparceners or is inherited by his widow. The District Munsif, after a careful consideration of all the evidence before him, found that the custom among the Makkatayam Tiyars of Calicut was that the self-acquisition of a member of an undivided tarwad went on his death to the tarwad, and that the widow was entitled to nothing more than maintenance. That finding appears to me to be the only one which the District Munsif could have arrived at on the evidence produced before him. It is also, I may add, in accordance with what I understand is the custom among Makkatayam Tiyars in South Malabar.

(3) I accordingly return a finding on the fourth and fifth issues to the effect that, according to the law of succession which governs the parties, the plaintiff, as the undivided brother of the deceased, is his legal representative in respect of his self-acquired properties.]

6. This second appeal having come on for final hearing, the Court delivered judgment as follows:

7. We must accept the finding of the present District Judge.

8. The evidence is to the effect that the Tiyars of Malabar are not governed by the Hindu law pure and simple, but that their usages, with regard to divorce, re-marriage and inheritance are not entirely in accordance with the Hindu law, though the succession of sons does obtain among them.

9. There is legal evidence that in South Malabar, or, at all events, in Calicut taluk, the brother succeeds to self-acquired property in preference to the widow.

10. The decree of the lower Appellate Court must be reversed, and that of the District Munsif restored. The appellant is entitled to his costs in this and in the lower Appellate Court.

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