

Shiva Aithala Vs. Rangappaya Aithala

Shiva Aithala Vs. Rangappaya Aithala

SooperKanoon Citation : sooperkanoon.com/784423

Court : Chennai

Decided On : Jul-31-1925

Reported in : AIR1926Mad233; (1925)49MLJ719

Appellant : Shiva Aithala

Respondent : Rangappaya Aithala

Judgement :

Jackson, J.

1. The short point in this second appeal is, who is to defray the funeral expenses when a widow dies being a member of a divided Hindu family, and not being in enjoyment of any self-acquired property by her husband, the widow being maintained by her husband's nephew and great-nephew each of whom contributed half. The Lower Courts have ruled that they should pay for her funeral in like proportion and this seems logical and equitable. If the family were not divided they would pay at this rate. There is no direct authority on the point, but Sir E.J. Trevelyan has deduced a similar rule from such authority as exists. See Hindu Law, 2nd Edition, page 88. I see no force in the contention that the relation who performs the ceremony under Hindu Law must necessarily pay for it. In a joint family the son does not pay for the funeral of his father. Accordingly I confirm the decree of the Lower Appellate Court and dismiss this appeal with costs.

2. The respondent files a Memorandum of Objections and wishes an issue to be tried which was not previously framed and finds no place in the pleadings, whether under the partition of 1875 defendant was bound to pay the amount claimed irrespective of the receipts upon which until now his claim has been based. I consider that this new point cannot be raised at this late stage. The Memorandum of Objections is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com