

Balamma and anr. Vs. Pullayya and anr.

Balamma and anr. Vs. Pullayya and anr.

SooperKanoon Citation : sooperkanoon.com/787122

Court : Chennai

Decided On : Sep-27-1894

Reported in : (1895)ILR18Mad168

Judge : Muttusami Ayyar and ;Best, JJ.

Appellant : Balamma and anr.

Respondent : Pullayya and anr.

Judgement :

Best, J.

1. The land in question belonged to one Aswartha Rau, and on his decease devolved on his widow, and then on his daughter Onkamma, the wife of Govindappah (by whom the property was mortgaged to the plaintiff in this suit), who is the present first respondent. The Judge has found the will by Onkamma in favour of her husband Govindappah to be true.

2. The appellants are (i) the widow of one Seshayya, great-grandson of the, great-grandfather of Aswartha Rau, and (ii) the alleged adopted son of the said Seshayya.

3. Both the Courts below have found the alleged adoption of second appellant to be untrue. This is a finding of fact; but it is contended that it is open to objection in

consequence of the wrongful admission of Exhibits B and C which are decrees in suits to which this plaintiff was not a party. The finding against the alleged adoption rests not alone on B and C, but also on a consideration of the other evidence in the case including that of the appellants witnesses which is rejected for very good reasons. We must, therefore, accept the finding of the Lower Appellate Court that the adoption is not true.

4. Such being the case, has third defendant, as widow of Seshayya, any locus standi for opposing the plaintiff's claim? The law as settled in this Presidency is that a widow can only succeed to her husband's property which was actually vested in him either in title or in possession at the time of his death. As observed by Mr. Mayne, she must take at once at her husband's death, or not at all. No such right can accrue to her as widow in consequence of the subsequent death of any one to whom her husband would have been heir if he had lived. Cf. *Peddammattu Viramani v. Appu Rau* 2 M.H.C.R. 117

Muttusami Ayyar, J.

5. I come to the same conclusion. My learned colleague has stated the facts found by the Courts below. The District Munsif has also found that Onkaramma died eight or ten years before the suit, and the District Judge has not expressed a different opinion on the subject. It was argued in second appeal that a cousin's widow is a relative, and that as such, the third defendant was an heir to Aswartha Rau, while Govindappah, who was his son-in-law, was on heir at all. In support of this contention, reliance was placed on *Kutti Ammal v. Radakristna Aiyar* 8 M.H.C.R. 88 and *Lakshmanammal v. Tiruvengada* I.L.R. 5 Mad. 241 I may refer also to the decision in *Venkata Subbaiya v. Narasingappa* 3 M.H.C.R. 117

6. Under the Mitakshara law, as administered in this Presidency, a cousin's widow is a female gotraja sapinda, and the last case is an authority for the proposition that as between her and her husband's co-parcener or male sapinda, she is not entitled to succeed to another co-parcener or sapinda. As pointed out by my learned colleague, she can only succeed to property vested in her husband prior to his death as his widow, and not to a sapinda who survives her husband, as a

female gotraja sapinda. As regards the decision in *Lakshmanammal v. Tiruvengada* I.L.R. 5 Mad. 241 it was held there that a sister's son excludes a sister, that he has a preferential right as a bhinna gotra male sapinda. In *Kutti Ammal v. Radakristna Aiyar* 8 M.H.C.R. 88 it was held that a sister was entitled to succeed as a bandhu. This decision proceeds on the view that any relative who is also a cognate may be treated as coming within the definition of bhinna gotra sapinda, and that the term sapinda, as used in chapter 2, Section 6 of the *Mitakshara*, includes females. A cousin's widow, who is a gotraja sapinda, cannot be also a bhinna gotra sapinda, for her gotra is by marriage that of her husband. She is therefore not among the relatives who are contemplated as being among bandhus. A cousin's widow, if she is an heir at all, must be an heir as a gotraja sapinda, and all female gotraja sapindas such as brother's and paternal uncle's widows are excluded from the table of heirs prescribed by the *Mitakshara*. The decision of the District Judge is right, and I would also dismiss the appeal with costs.

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