

Ramasami Vs. Venkatesam and ors.

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Court : Chennai

Decided On : Nov-10-1892

Reported in : (1893)ILR16Mad440

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

Appellant : Ramasami

Respondent : Venkatesam and ors.

Judgement :

1. One Kurmi Naidu had six sons--three by his first wife, namely, (i) Latchem, (ii) Venkatesam (first defendant) (iii) Thammi--and three by his second wife, namely, (iv) Appanna (second defendant), (v) Ramanan(third defendant) and (vi) Narayana Doss. The six brothers divided in 1872 or 1873. Plaintiff is the natural son of Latchem, and alleges that he was adopted by Thammi. His case is that Thammi and Narayana Doss reunited 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 favour. The District Munsif held that plaintiff was entitled to only one-third of Narayana Doss' 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 Nos. 2 and 3 were separated full brothers, and first defendant being a separated half-brother was not entitled to anything.

3. The plaintiff accepted this decision, but defendants Nos. 2 and 3 appealed, urging that Thammi and Narayana 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 has been no legal reunion, 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 Narayana Doss.

6. The question then is whether defendants Nos. 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, chapter II, Section IX, 3-7. The reason is explained in Sarasvati Vilasa (Foulkes' edition page 148), sloka 769. The rule is founded in 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 favour. If the reunited parcener is a brother of the whole blood both estates 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, chapter IV, Section IX, verse 13 to the same effect, and Mayne, fourth edition, paragraphs 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, chapter XII, 7). The decision of the District Munsif decreeing him one-third 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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