

**J. Ramayyan Vs. J. Palayyan and 4 Others**

**J. Ramayyan Vs. J. Palayyan and 4 Others**

**SooperKanoon Citation :** [sooperkanoon.com/795367](http://sooperkanoon.com/795367)

**Court :** Chennai

**Decided On :** Apr-02-1998

**Reported in :** 1998(2)CTC455; (1998)IIIIMLJ745

**Judge :** K. P. Sivasubramaniam, J.

**Acts :** [Succession Act, 1925](#) -- Sections 33 and 33-A; Indian Succession Act, 1951; Travancore Christian Succession Regulation Act

**Appeal No. :** SA No. 1143 of 1985

**Appellant :** J. Ramayyan

**Respondent :** J. Palayyan and 4 Others

**Advocate for Def. :** Mr. A. Anbarasu for;Mr. T. R. Rajaraman, Adv.

**Advocate for Pet/Ap. :** Mr. K. Sreekumaran Nair, Adv.

**Judgement :**

ORDER

1. This second appeal is directed against the judgment of the learned Subordinate Judge in AS No.9 of 1982 dated 13.8.84 confirming that of the learned Additional District Munsif, Padmanabhapuram, in OS No.60 of 1981 dated 8.12.81.

2. The first defendant in the suit is the appellant in the present second appeal.

3. The suit was filed for partition. The plaintiffs contended that the plaintiffs and defendants 1 to 3 are brothers and the fourth defendant is their mother. One Joseph Nadar being the father of defendants 1 to 3. The share of Joseph Nadar on his death devolved upon the plaintiffs and defendants 1 to 3. As per the Subsequent partition deed dated 19.1.1954, the plaintiffs and defendants 1 to 3 got the suit properties. It was also contended that they were in enjoyment and each was entitled to 1/5th share. The defendants are not amenable to effect partition out of court and hence the suit.

4. The suit was resisted by the defendants contending that the allotment of share was made in the partition deed in favour of the fourth defendant and it was as done as the ancestors of plaintiffs and defendants were Hindus and they continued to have a joint family relationships. The allotment was challenged by the sons even after they attained majority. On the other hand they had accepted the allotment by their own conduct and dealings and that on 15.9.1975 the fourth defendant had executed a gift of 20 cents to her daughter, Thankumma, who in turn sold the properties to the first defendant under sale deed dated 19.12.1979 attested by the second defendant. The said Thankamma sold the balance extent of 4 cents also to the second defendant. These transactions were not objected by the plaintiffs and that the first defendant was entitled to 16 cents in item 2 over and above his 1/6th share in the suit properties. The first defendant only contended that he had put up the house bearing door No.2/85 and the plaintiffs were entitled only to 1/6th share each.

5. On the basis of the pleadings, the learned trial Judge after considering the oral and documentary evidence came to the conclusion that the plaintiffs were entitled to the preliminary decree which was passed for portion of 2/6th share of the plaintiffs in the suit property by metes and bounds and that the partition will be done as far as possible in accordance with the possession of the parties. On appeal also, the said judgment of the trial court was confirmed and it is as against the same the present second appeal has been filed.

6. The main issue which is sought before me in this second appeal is as regards the legal issue. As decided by the courts below, namely, both the courts have

proceeded on the footing that it is only the Travancore Christian Succession Act which will apply to the parties. There was a specific issue as to whether Joseph Nadar, the father of the plaintiffs was a Christian or not. Inasmuch as the first defendant had contended that the parties were governed only by the Travancore Christian Succession Act. On the question of applicability of the Travancore Christian Succession Act after coming into force of the Indian [Succession Act, 1925](#), the lower Appellate Court had relied on the judgment of the Division Bench of this court reported in D. Chelliah Nadar and another v. Lalitha Bai and another, : (1977)1MLJ454 . As per the said judgment, the Division Bench of this court held that in respect of Christians of Kanniyakumari District they are governed by the Travancore Christian Succession Regulation Act. The parties to whom the said regulation would apply would be governed only by the said Regulation and not by the provisions of the Indian Succession Act. Further after the rendering of the judgment of the Lower Appellate court, the view of the Division Bench had been reversed by the Supreme Court in its judgment reported in, Mrs. Mary Roy v. State of Kerala, : [1986]1SCR371 , and the view of the Supreme Court is to the effect that after the coming into force of the Indian Succession Act, 1951, the provisions of the Travancore Christian Succession Regulation Act were superceded and that therefore only the provisions of the Indian Succession Act which will apply to the parties.

7. As a result of the said judgment of the Supreme Court, the judgment of the lower Appellate court holding that the parties are governed by the Travancore Christian Succession Regulation Act cannot be sustained. The parties have to proceed only in the manner as provided under the provisions of Indian Succession Act with reference to the right of the fourth defendant being the widow of Joseph Nadar. Her rights have to be determined in accordance with section 33 and 33-A of the Indian Succession Act, which has not been taken into account in view of the conclusion of the courts below that only the Travancore Christian Succession Regulation Act will apply to the parties.

8. One more relevant fact which is necessary to decide the right of parties in terms of the Indian Succession Act would be the actual date of death of Joseph Nadar. If Joseph Nadar had died prior to coming into force of the Indian Succession Act

then the rights of the fourth defendant would be naturally governed by the Travancore Christian Succession Act. Since the said issue did not arise for consideration, both the parties have not let in any evidence to show the exact date of death of Joseph Nadar. Therefore it is necessary to decide the rights of the parties in the context of the date of death of Joseph Nadar as well as the applicability of the provisions of the Indian Succession Act, more particularly as provided under section 33 and 33-A of the Indian Succession Act, and to determine the said issue this appeal has to be remitted back to the trial court for taking evidence as regards the date of death of Joseph Nadar and also to decide the right of parties in accordance with the provisions of either the Travancore Christian Succession Regulation Act or the Indian Succession Act, whichever may be found to apply consequent on the date of death of Joseph Nadar. Therefore the matter is remitted to the trial court to decide the following issues:

(1) To render a finding as regards the date of death of Joseph Nadar.

(2) If the death of Joseph Nadar was prior to the coming into force of the Travancore Christian Succession Regulation Act then the parties will be governed by the said regulation. However, if the date of death of Joseph Nadar was subsequent to the coming into force of the Indian Succession Act then the provisions of the Indian Succession Act shall be made as applicable.

9. Subject to the above observations, the suit is remanded for a fresh trial before the trial court. In as much as the matter relates to the suit which was filed in 1981 the trial court is directed to dispose of the matter within two months from the date of receipt of the copy of the judgment of this court.