

Krishnaswami Chettiar Vs. Sankili Chettiar and ors.

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Court : Chennai

Decided On : Mar-09-1955

Reported in : AIR1955Mad702; (1955)2MLJ541

Judge : Rajamannar, C.J. and ;Rajagopala Ayyangar, J.

Acts : Hindu Law

Appeal No. : Second Appeal No. 1174 of 1950

Appellant : Krishnaswami Chettiar

Respondent : Sankili Chettiar and ors.

Advocate for Def. : T.R. Ramachandran, Adv.

Advocate for Pet/Ap. : N.R. Raghavachariar, Adv.

Disposition : Appeal allowed

Judgement :

1. The second appeal has been placed before a Bench id view of a very interesting question of Hindu law regarding Stridhana succession raised by it.
2. The relevant facts are not in dispute. The property in suit was purchased by five persons along with one Vella Ammal with the last of whom alone we are now concerned. It is conceded that under this purchase Vella Ammal was entitled to a sixth share and it is the succession to this share that forms the subject-matter of

these proceedings. Vella Ammal died on 18-5-1941 without issue. As there is no proof that she was married in any un-approved form, the succession, to the property which is admittedly the stridhana property of Vella Ammal would be to her husband and in his absence to his heirs. Vella Ammal was the second wife of her husband and by his first wife her husband Karuppan Chetti had five sons all of whom were dead by the date of Vella Ammal's death.

The plaintiff was a great grandson of Vella Ammal's husband through this elder wife while defendants 1, 2, 3, 4 and 6 are respectively grandsons by three of Vella Ammal's step-sons. Defendant 5 is a daughter-in-law of her step-son. Defendants 1 to 4 and 6 resisted the plaintiff's suit on the ground that he was a remoter heir than themselves and could not claim to succeed in their presence. The learned District Munsif however rejected this defence and held that the son, the grand-son and the great grand-son should also be considered as "sons" on the doctrine of representation, and that they would all take together without the son or the grandson excluding the grandson or the great grand-son respectively.

On appeal by the contesting defendants, the learned Subordinate Judge agreed with this view of the law and dismissed the appeal. Hence the second appeal by the defendants.

3. The argument urged on behalf of the appellants was two-fold. The first was that the theory of representation was based upon the doctrine of spiritual benefit whereas stridhana succession was not based upon spiritual benefit but merely on propinquity. It was next argued that as the son, grandson and great grandson of the propositus himself would not take together but the nearer would exclude the more remote it was illogical to hold that a different rule for determining the heir would apply when one proceeded to the father or the husband. Having examined the matter carefully, we are of the opinion that the contentions raised on behalf of the appellants are well founded and have to be accepted.

4. It is admitted that there is no direct decision governing the point and that the matter has to be decided on principle and on such light as may be gathered from observations in decisions regarding the basis of stridhana succession.

5. There is no direct text bearing upon this question. But it might be useful to set out such of them as might throw some light on the ratio applicable in this type of succession. The test of Yajnavalkya dealing with succession to stridhana is 'Her Kinsmen take it, if she die without issue'. The commentary of the Mitakshara on this text is to be found in Chapter II, Section XI from placitum 9 onwards:

"Placitum 9: If a woman die 'without issue' that is, leaving no progeny in other words, having no daughter, nor daughter's daughter, nor daughter's son, nor son, nor son's son; the woman's property, as above described, shall be taken by her kinsmen, namely, her husband and the rest, as will be forthwith explained.

Placitum 11: Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Brahma, Daiva, Arsha and Prajapatya, the whole property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen (sapindas) allied by funeral oblations....

Placitum 12: In all forms of marriage, if the woman 'leave progeny', that is, if she have issue; her property devolves on her daughters. In this place, by the term 'daughters' grand-daughters are signified; for the immediate female descendants are expressly mentioned in a preceding passage; 'the daughters share the residue of their mother's property, after payment of her debts'.

Placitum 15: On failure of all daughters, the grand-daughters in the female line take the succession under this text if she leave progeny, it goes to her daughter's daughters.'

Placitum 18: On failure also of daughter's daughters, the daughter's sons are entitled to the succession. Thus Narada says, 'Let daughters divide their mother's wealth; or, on failure of daughters, their male issue.'

Placitum 19: If there be no grandsons in the female line, sons take the property;

Placitum 24: On failure of sons, grandsons inherit their paternal grandmother's wealth;

Placitum 25: On failure of grandsons also, the husband and other relatives abovementioned are successors to the wealth.

(The above translation is that of Colebrook)."

6. The other commentators do not materially add to the exact succession beyond the husband.

7. It will be seen from the list of enumerated heirs that in the matter of stridhana succession the woman's own son would exclude her grandson and that the theory of representation that a son includes not merely the son but also the grandson and the great grandson, which obtains in the case of succession to the property of a male, does not apply to the issue of a female propositus.

The question is whether when the text provides that after the father or the husband as the case may be (dependent on the form of marriage) the kinsmen of these succeed, as the next heirs of the propositus, their kinsmen should be determined on the principle of propinquity based on the ordinary rule that "to the nearest sapinda the inheritance next belongs" or on the special theory of representation which applies to cases of succession to the property of a male governed by Mitakshara.

It may be premised that the theory of representation is really a concomitant of a coparcenary and of 'succession by survivorship' -- if such an expression could be used in the case of succession to males. It has no application to collateral succession. For instance between a brother and a brother's son or between a brother's son and his grandson the succession is on the basis of propinquity the nearer excluding the more remote.

8. The question for our consideration now is, when the "next kinsman" of a husband has to be ascertained whether there is any scope for the theory of representation. Of course it has to be conceded that the son, grandson etc., in such a case would not take as coparceners with rights of survivorship. The point is whether the theory of representation could be invoked to any case where the son, grandson, and great grandson do not take the property as coparceners with rights

of survivorship.

9. We shall now set out the observations in the several cases on which reliance has been placed by learned counsel for the appellants. In - 'Karuppai Nachiar v. Sankaranarayanan Chetti', 27 Mad 300 (FB) (A), a Full Bench of this court had to consider, whether, when the stridhana property of a woman devolves on her sons who form an undivided family at the time of their mother's death, the sons take as coparceners or as tenants in common without benefit of survivorship. The learned Judges decided that the property devolved on them as tenants in common.

Dealing with an argument, based on an analogy between succession to the property of a male and that of a woman, the learned Judges said (at p. 308):

"Another argument used by the respondent's pleader is that, as in the case of the grandsons inheriting to the paternal grandfather, so in the case of grand children inheriting to the stridhanam of the maternal or paternal grandmother, they take 'per stirpes' and not 'per capita'.

No doubt there may be this similarity, but as pointed out by the learned pleader for the appellant, there is a dissimilarity in another respect, viz., that where the deceased dies leaving children and grandchildren, the grandchildren do not by representing their deceased mother or father as the case may be, step into their shoes and inherit along with the children of the deceased."

The question that arose for consideration in -- 'Mamdayi v. Doraisami Karambian', 30 Mad 348 (B), was whether among the issue of divided sons the right of representation existed when they succeeded to the property of their divided father and whether in such a case the rule of exclusion of remoter by a nearer sapinda would apply. The learned Judges held that the right of representation was not put an end to by a partition and dealing with the point they stated at page 351:

"It must however be conceded that to allow a rule of succession 'per stirpes' in a separated family is to admit an exception to the rule of Hindu law by which the inheritance devolves on the nearest sapinda; but the exception is one which in our opinion necessarily follows from the exposition given by Vinaneswara ((Mit. 1, 1.3

of the rights of sons and grandsons in the estate of the grandfather.

It is true that the exception does not extend to cognate or collateral relations but that is because they take an 'obstructed' inheritance, whereas the sons and grandsons take an 'unobstructed' inheritance.

The difference is explained by Sir T. Muthuswami Aiyar in *Muttuvadugunatha Tevar v. Periaswami*, 16 Mad 11 at p. 15 (B1) where he says the distinction is material only to the extent that, in the one case the nearer male heir excludes the more remote, while in the other the doctrine of representation excludes the rule of preference. It is founded upon the theory that the spiritual benefit derivable from the three lineal male descendants is the same, though among collateral male heirs the quantum of such benefit varies in proportion to the remoteness of the male heir from the deceased male owner".

10. The next decision which was referred to in his connection was one by the Bombay High Court in -- '*Bhimacharya v. Ramacharya*', 33 Bom 152 (C). The observations relied on occur at pp. 159 and 460 of the report. The case related to, whether a husband of a woman was entitled to preference over a son by another wife. The learned Judges held that he was so entitled and Chandavaikar, J. dealing with the text of *Mitra Misra* which was relied upon before him on behalf of the stepson said:

"But it does not follow from this that *Mitra Misra* intended the son of a co-wife to be heir to the woman's property in preference to her husband. It is true that he says in the placitum in question that in default of the 'aurasa' (born) sons of the woman, their sons, and grandsons, 'the son of a rival wife, his son, and grandson (become heirs in their order); by reason of their being, under the circumstances, the giver of the 'pinda' and the liquidator of debts, and by reason of the text of *Manu*, cited above.

'But he cannot have meant by that, to bring in the son of a rival wife before the husband. For, he goes on to say, that 'on failure of these', that is. the son of a rival wife, his son and grandson, 'the sister's son and the rest alone' take the property".

Learned counsel for the appellant places strong reliance upon the words in brackets above "become heirs in their order" in the citation from Mitra Misra to show that the son excluded the grandson and that the son and the grandson did not take together but one after the other. The last decision that was referred to by learned counsel was the one in -- 'Raman Bai v. Jagjivandas Kashidas', 41 Bom 618 : AIR 1917 Bom 229 (D). Our attention was invited to the argument of Mr. Jayakar for respondent reported at p. 620 which was accepted by the Court. Learned counsel said:

"The doctrine of survivorship, which is coextensive with the simultaneous succession of sons, grandsons and great grandsons, is confined strictly to the male's property of an ancestral character, It has its basis in the doctrine of spiritual benefit and 'sharadha'. The three constitute an entity because each of them is equally capable of giving the same spiritual benefit to the ancestors whose 'manes' are to be administered to.

This consideration applies only to male ancestral property. It has no place with respect to stridhana property, for the right arises for the first time on the death of the woman. See Smriti Chandrika, Chap. IX, Section 3, pl. 4, 5".

The learned Judges accepted this argument and stated their conclusions at page 624 thus;

"It is pointed out for the respondent that the doctrine of religious efficacy in the offering of sharadha is what governs the inheritance in the case of the property of the father; that the offerings of a son, of a grandson, of a great grandson all have religious efficacy, and all in theory are combined for the benefit of the deceased ancestor, and that is why where inheritance rests upon the basis of religious efficacy, the sons, grandsons and great grandsons will take collectively irrespective of their propinquity to the deceased ancestor.

In the case of the inheritance of a woman's property, it is pointed out that the doctrine of religious efficacy in the administrations to the 'manes' can have no place and it has been so laid down by the Allahabad High Court in 'Mst. Ganga Jat v. Ghasita', 1 All 46 (FB) at p. 50 (E). Moreover, Nilkantha himself in the passage

following that relating to inheritance of non-technical stridhana quotes the well known text of Manu that of the nearest 'sapinda' the wealth shall be declaring propinquity to the deceased as the criterion of the right to take wealth".

11. We consider that the argument of learned counsel for the appellant before us that since religious efficacy is not the basis of succession to stridhana property the rule of representation which applies to succession to the property of a male cannot determine the heir to stridhana property is justified.

12. Though the text writers have not specifically dealt with the question, the inclination of their opinion appears to support the appellants. Thus in Mayne's Hindu law, 11th Edn. para 624 runs thus:

"In default of the above heirs (that is issue of the deceased) succession proceeds in two lines according as she was married in an approved or un-approved form. If she was married in an approved form, succession devolves upon her husband, and after him on the husband's heirs in the order in which they succeed to his property. Her husband's heirs would be her stepson, and his son and grandson, co-wife, step daughter and her son, mother-in-law, father-in-law, husband's brother, husband's brother's son, sapindas, samanodakas and Bandhus".

13. It is pointed out by learned counsel for the appellants that the step-son and his son and grandson are mentioned as 'successive heirs' and not as 'simultaneous co-heirs'. To a similar effect is a passage in Mullah's Hindu law, 11th Edn. para. 147:

"Husband and his heirs; where the marriage is in an approved form, the stridhana goes, in default of issue, to the husband and his heirs, that is to say, it descends in the same way as it had belonged to the husband himself. The husband's heirs are not enumerated in the Mitakshara the successive heirs' to a woman's stridhana, after the husband would be; '

1. husband's son by another wife;

2. his grandson by another wife;

3. his great grandson by another wife",... ..

In other words, the doctrine of representation which renders the son, grandson and great grandson as single in the case of succession to the property of a male is not treated as applicable to determine the heirs in dealing with stridhana succession. We are therefore clearly of the opinion that the rule of representation which is founded upon religious efficacy as also on the theory of unobstructed heritage and of survivorship prevailing between these co-heirs has no application to stridhana succession and that in the latter case it is propinquity and the rule that the nearer excludes the more remote that governs to determine the heir.

14. Only one point remains to be mentioned. The argument urged on behalf of the respondent is that as the succession after the husband is enjoyed "as if the property belonged to the husband", the property should be treated as that of the husband himself and succession determined on such a fiction. We are clearly of the opinion that the application of this principle cannot serve to, constitute stridhana property as coparcenary property of the grandson and great grandson of the husband.

One cannot lose sight of the fact that the propositus is really the woman and that it is to her that succession is traced and the kinsmen of the husband inherit her property because they are also her kinsmen.

15. The result is that the plaintiff has no right to a share in the presence of defendants 1 to 4 and 8 and his suit has therefore to be dismissed. The appeal is accordingly allowed and the plaintiff's suit is dismissed with costs throughout.

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