

Muthala Reddiar and anr. Vs. Sankarappa Reddiar and ors.

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Court : Chennai

Decided On : May-07-1934

Reported in : AIR1935Mad3a

Appellant : Muthala Reddiar and anr.

Respondent : Sankarappa Reddiar and ors.

Judgement :

Varadachariar, J.

1. These second appeals coming on for hearing, the Court delivered the following judgment : These two second appeals arise out of O.S. No. 298 of 1925, on the file of the District Munsif's Court of Turaiyur. Defendant 1 is the appellant in Second Appeal No. 463 of 30 and defendants 2 and 3 are the appellants in S.A. No. 462 of 30. It will be convenient to state a few preliminary facts to elucidate the questions argued before me. The plaintiffs claimed to recover certain properties as reversioners to the estate of one Sankarappa Reddi whose widow Muthammal died in or about July 1922. According to the findings of the Courts below, plaintiffs 1 and 2 are the grandsons of Vridhachala Reddi the brother of Muthu Reddi, father of Sankarappa Reddi. There can be no doubt that they will be entitled to succeed in the absence of a nearer reversioner. Defendant 1 claims that he is the nearer reversioner because he is the son's son of one Krishna Reddi who was the Illatom son-in-law of Muthu Reddi. It was argued before me that though there is no

reported decision which recognises a right of reversionary or collateral succession in the descendants of the Illatom son-in-law and no custom bearing upon this particular question of right has been pleaded or proved, such a right ought to be held to follow from the fact that the Illatom son-in-law is recognised as entitled to the rights of a son. I am unable to accept this argument. Decided cases in this Court have adverted to the anomalous character of this kind of sonship. It has been settled that the Illatom son-in-law is not a co-parcener with his father. Thus he is not on the same footing as a son born. Again the Privy Council have held that the existence of an aurasa son does not preclude the possibility of an Illatom adoption.

2. makes it clear that it is scarcely accurate to speak of an Illatom son-in-law as an adopted son in any sense. I am therefore unable to carry the analogy of sonship to the extent of importing into this relationship all the incidents which attach to recognized sonship under the Hindu law. Mr. Krishnaswami Ayyar, contended that the right of the Illatom son-in-law to claim a share as against his natural or adopted brother clearly puts him in the position of a son whose descendants can claim rights of collateral inheritance to such natural or adopted brother. I put to him the incidents of illegitimate sonship under the Hindu law in respect of which it is recognized that among sudras it makes the son a member of the family entitled to rights of partition and survivorship, as against his legitimate brother and yet cases have unanimously laid down that his sons cannot claim collateral rights of inheritance. This will itself show the danger of extending some of these conceptions and incidents by mere analogy. I may also add that under the early Hindu law, while there were twelve kinds of sons recognized a certain number of them were declared not to be entitled to rights of collateral inheritance. It was pointed out in the case in *Palaniappa Chettiar v. Chockalingam Chetty* 1930 Mad 109 that in dealing with questions of custom, the argument of parity of reasoning or logical extension is scarcely permissible. These considerations preclude the possibility of recognising as matter of law and apart from proof of custom, the claim of collateral inheritance now put forward before me. The plaintiffs are therefore undoubtedly the nearest reversioners to the estate of Sankarappa Reddi.

3. Mr. Krishnaswami Ayyar's next argument related to the title of the last male holder to the items claimed in the suit. As regards Items 6, 15, 16, 17, 20 and 21, I see no reason to interfere with the decision of the lower appellate Court. It is true that there is some difference in the description of some of these items between Ex. C and Ex. E but no point was made of this difference in either of the Courts below. It is contended that as regards some of these items the patta was in Muthalammal's name and not in Sankarappa Reddi's name and Ex. C would suggest that some of them were acquired by Muthalammal and not inherited from Sankarappa Reddi. Here again I must observe that no such point was raised in the Courts below, and I cannot allow the argument to be raised here for the first time, because even if Muthalammal had acquired these items the questions as to the funds with which she acquired them and as to whether they had not been made accretions to her husband's estate would also have to be investigated. It is not as if the plaintiffs can be non-suited merely on the finding that they were acquired by Muthalammal or that patta stood in her name.

4. It only remains for me to deal with Items 11 and 12. As regards these items the learned District Munsif disallowed the plaintiffs' claim and the learned Subordinate Judge has reversed this part of the District Munsif's decision. The reasons given by him for doing so, in para. 6 of his judgment, are not correct in the light of the very documents on which he relies. The statement that the patta stood in Muthalammal's name is not correct because the settlement register shows that the patta for these items stood in the joint names of Muthalammal and Muthu Reddi; and the obvious implication of the, learned Subordinate Judge that Ex. E recognised both these items as belonging to Sankarappa Reddi is again incorrect. Ex. B draws a distinction between what corresponds apparently to Item 11 and what corresponds to Item 12. It is only Item 11 which is there recognised as belonging to Sankarappa Reddi's estate. The learned Subordinate Judge was therefore misled by his misreading of these documents into reversing the decree of the learned District Munsif even as regards Item 12. The result is that S.A. No. 463 will be dismissed with costs and S.A. No. 462 allowed. The suit is therefore dismissed in respect of Item 12 and the corresponding right in Item 21. In S.A. 462, the appellants will recover from respondents 2 and 3 counsels' fee and the court-fee paid on the Memo of Second Appeal. The plaintiffs will pay defendants 2

and 3 costs in the first Court and in the lower appellate Court calculated on the value of Item 12.

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