

Solomon and ors. Vs. Muthiah and ors.

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Court : Chennai

Decided On : Nov-04-1970

Reported in : (1974)1MLJ53

Appellant : Solomon and ors.

Respondent : Muthiah and ors.

Advocate for Pet/Ap. : Mr. Syamalam

Judgement :

ORDER

M.M. Ismail, J.

1. The genealogical tree given above shows the relationship of the parties to Swaminathan. Admittedly, the parties are Syrian Christians who lived in that part of the former Travancore State which now forms part of the State of Tamil Nadu, after the reorganisation of the States. The said Swaminathan died issueless on 29th May, 1960, survived by his widow Muthammal. Muthammal is said to have executed two settlement deeds in favour of the appellants herein, who figured as defendants 1 to 6 in the trial Court, marked as Exhibits B-1 and B-2. She died on 16th September, 1960. The plaintiffs who are the children and grandchildren of Isaac, brother of Swaminathan, instituted O.S. No. 2 of 1961 on the file of the Court of the Subordinate Judge of Nagercoil for partition and possession of their half share in 'A' and 'B' Schedule properties and monies, contending that

Swaminathan was governed by the Travancore Christian Succession Regulation II of 1092 and according to the provisions contained in that Regulation, on the death of Swaminathan, the widow Muthammal got only a life interest and on her death the properties belonged absolutely to the plaintiffs as children and grandchildren of Isaac, and Pakianathan the 9th defendant in the suit and the other brother of Swaminathan, in equal shares and the settlement deeds in favour of the appellants herein were invalid. The 7th defendant was impleaded on the ground that a certain hypothecation amount was due from him and the 8th defendant was impleaded on the ground that certain mortgage, purakkadam and hypothecation amount was due from him. The case of the appellants herein was that 'A' Schedule properties are the properties of Swaminathan, while 'B' Schedule properties did not belong to Swaminathan, but belonged to Muthammal. They also denied that Isaac and 9th defendant were brothers of Swaminathan. Their further case was that the settlement deeds were valid and Swaminathan was not governed by the Travancore Christian Succession Regulation II of 1092, but was governed by the Indian Succession Act and therefore there being no lineal descendant of Swaminathan, Muthammal was entitled to the entirety of the properties and consequently the settlement deeds were valid. The 7th defendant contended that he paid Rs. 1,000 to Swaminathan on 17th May, 1960, in respect of the 'B' Schedule item 1, that Swaminathan passed a receipt and the said receipt was missing, that before executing a release deed, as promised, Swaminathan died on 29th May, 1960, and that therefore nothing was due from him under the hypothecation bond. The case of the 8th defendant was that the mortgage and purakkadam deeds were in the name of Muthammal and only the hypothecation deed was in the name of Swaminathan, that the hypothecation amount was paid to Swaminathan on 25th May, 1960, that before executing a registered release deed, as promised, Swaminathan died all on a sudden on 29th May, 1960, and that therefore nothing was due on the hypothecation bond. As regards the mortgage and purakkadam deeds in favour of Muthammal, his case was that he had no objection to pay the amount to the rightful claimant. The 9th defendant supported the case of the plaintiffs.

2. On these pleadings of the parties, the learned Subordinate Judge framed the necessary issues and by his judgment and decree dated 29th July, 1961, he came

to the conclusion that Isaac and 9th defendant were brothers of Swaminathan, that it was the Travancore Christian Regulation II of 1092 that applied to the parties that the hypothecation amounts were due by defendants 7 and 8 and those amounts under Exhibits B-3 and B-5 are the properties of Swaminathan and that the amounts due under Exhibits B-4 and B-6 did not belong to Swaminathan, but belonged to Muthammal, and that since under the Travancore Succession Regulation II of 1092, Muthammal had only a life interest, the settlement deeds were not valid, so far as immovable properties and one half of the hypothecation amounts under Exhibits B-3 and B-5 in favour of Swaminathan were concerned. In the result, he passed a decree declaring the plaintiffs' one half right in respect of 'A' schedule properties and one half of the amounts due under Exhibits B-3 and B-5 (SIC) and holding that the other half belonged to the 9th defendant. As against this judgment and decree, the appellants herein preferred an appeal to the learned District Judge of Kanyakumari at Nagercoil. The learned District Judge by his judgment and decree dated 25th June, 1962 agreed with the learned Subordinate Judge on the principal question as to whether it was the Travancore Christian Succession Regulation II of 1092 that applied or the Indian Succession Act that applied to the parties and held that on the application of the provisions of the Travancore Christian Succession Regulation II of 1092, Muthammal did not have an absolute interest in the immovable properties inherited from her husband Swaminathan, but under Section 17 of the said Regulation, she was entitled to an absolute right in respect of the movables and the debts due under Exhibits B-3 and B-5 being movables, she was absolutely entitled to one half of them. Therefore, in modification of the decree of the learned Subordinate Judge, the learned District Judge granted a decree to the plaintiffs declaring their one half right in respect of 'A' schedule properties and one-fourth in the hypothecation deeds Exhibits B-3 and B-5, and holding that the other half right in 'A' schedule properties and one-fourth right in the amount due under Exhibits B-3 and B-5 belonged to the 9th defendant in the suit. The learned District Judge also provided that the mesne profits should be determined under Order 20, Rule 12, Code of Civil Procedure. Hence the present second appeal by defendants 1 to 6 in the suit.

3. The principal question that arises in this case is, whether the parties were governed by the Travancore Christian Succession Regulation II of 1092 or the

Indian Succession Act of 1925.

4. Mr. Syamalam, learned Counsel for the appellant, contended that by virtue of the provisions contained in the Part B States (Laws) Act, 1951 (Central Act III of 1951), which came into force on 1st April, 1951. it was the provisions of the Indian Succession Act, 1925 that applied to the succession to the property of Swaminathan which opened on his death on 29th May, 1960, and not the provisions of the Travancore Christian Succession Regulation, II of 1092. On the other hand, the Courts below relying on a decision of the Travancore-Cochin High Court in Kurian Augusty v. Devassy Aley A.I.R. 1957 T.C. 1. have come to the conclusion that notwithstanding the provisions contained in the Central Act III of 1951, succession to Swaminathan was governed by the provisions contained in the Travancore Christian Succession Regulation II of 1092 and not by the provisions contained in the Indian Succession Act, 1925. The question for consideration is, whether this view of the Courts below is correct, or not.

5. It is necessary in this context to refer to the historical background of the enactment of the Indian Succession Act as well as the Travancore Christian Succession Regulation. The Indian Succession Act, 1925 is 'an Act to consolidate the law applicable to intestate and testamentary succession'. It has repealed:

1. The Succession (Property Protection Act XIX of 1941.
2. The Indian Succession Act X of 1865.
3. The Parsi Intestate Succession Act XXI of 1865.
4. The Hindu Wills Act XXI of 1970.
5. The Married Women's Property Act III of 1874, last paragraph of Section 2.
6. The Probate and Administration Act V of 1881, Act VI of 1889, Act II of 1890 and Act VIII of 1903.
7. The District Delegates Act VI of 1801.
8. The Succession Certificate Act VII of 1899, except Section 13.

9. The Native Christian Administration of Estates Act VII of 1901 and

10. The Devolution Act, 1920 (XXXVII of 1920).

The Indian Succession Act, 1925 being merely a consolidating Act, the normal rule of interpretation is that its provisions should be construed according to the state of things which existed at a time when it first became law, since the object of consolidation is to collect the existing statutory laws and make them applicable to the existing circumstances. Section 2 of the Indian Succession Act, 1865, provided:

Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.

Section 331 of that Act so far as it is relevant provided:

The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Mahomedan or Buddhist; nor shall they apply to any will made, or any intestacy occurring, before the first day of January, 1866.

Section 29 of the Indian Succession Act 1925, on the basis of the interpretation of which alone, both the Travancore-Cochin High Court in the case referred to above (Kurian Augusty v. Devassy Aley) A.I.R. 1957 T.C. 1. and the Courts below in the present case, have come to the conclusion that it is the Travancore Christian Succession Regulation II of 1092 that applied, is as follows:

29 (1): This Part shall not apply to any intestacy occurring before the first day of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.

(2) Save as provided in Sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of India in all cases of intestacy.'

(Originally, the expression used for the word, 'India' was 'all the Provinces', which was subsequently changed into 'States' which has been finally substituted by the

word 'India', by the provisions of the Central Act III of 1951.)

Section 29 is the first section in Part V in the Indian Succession Act, 1925, which deals with intestate succession. A comparison of the above provisions in the two Acts will clearly show that Sub-section (1) of Section 29 of the Indian Succession Act, 1925, corresponds to Section 331 of the Indian Succession Act, 1865 except to this extent, namely, that Section 29 (1) of the 1925 Act is confined to cases of intestacy alone, while Section 331 of the 1865 Act referred to testamentary succession also. Sub-section (2) of Section 29 of the 1925 Act corresponds to Section 2 of the 1865 Act except that instead of the expression, 'this Act' occurring in the latter, the expression, 'in Sub-section (1)' occurs in the former. The reason for this difference is obvious. Sections 2 and 331 of the 1865, Act are in general terms, while Sections 29 (1) and 29 (2) of the 1925 Act apply only to intestate succession, because the 1925 Act makes different parts of the statute applicable to different circumstances and persons.

6. As I have pointed out already, Section 29 is the first section in Part V in the Indian Succession Act, 1925, dealing with intestate succession, Part VI deals with testamentary succession, Section 57, which is the first section in Part VI, provides for the application of certain provisions of that part, as set out in Schedule III to the Act to a class of wills. Section 58 is significant and the same is as follows:

58. (1) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by Section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jain; nor shall they apply to any will made before the first day of January, 1866.

(2) Save as provided in Sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of India applicable to all cases of testamentary succession.

Thus, it will be seen that the provisions contained in Sections 2 and 331 of the 1865 Act have been split up and incorporated in Sections 29 (1) and (2) and 57 and 58 (1) and (2) of the 1925 Act, in view of the structure of the Act as well as the repeal of the Hindu Wills Act XXI of 1870.

7. It is unnecessary for me to refer to the provisions of either the 1865 Act or the 1925 Act to show that the Act dealt with the entire case of intestate and testamentary succession. On the other hand, the Travancore-Christian Succession Regulation II of 1092 was a Regulation 'to consolidate and amend the Rules of law applicable to intestate succession among Indian Christians in Travancore'. The objects and reasons of that Regulation were:

The law of intestate succession among the various sections of Indian Christians in Travancore is vague and unsettled. The High Court have been complaining about the unsatisfactory state of the law among Christians. Repeated representations were made by Christian representatives about the desirability of enacting a law of succession. The necessity for legislation has therefore long been felt.

The usages of the various sections of the Christian community do not agree in all respects. Separate legislation for the various sections of Christians is neither desirable nor practicable and is likely to lead to much litigation and trouble. It is therefore thought necessary to enact a common law for all the various sections of Indian Christians.

There are some Christians in the State who are Marumakkathayees. These are excluded from the operation of this Bill.

The Bill is drafted on the lines of the Indian Succession Act with such alterations as are considered necessary in the interests of the various sections of Indian Christians in Travancore.

(Vide--The Regulations and Proclamations of Travancore -Published by permission of the Government of Travancore, 1928 Edn, Vol. IV, page 300).

Section 2 of this Regulation is as follows:

Except as provided in this Regulation, or by any other law for the time being in force, the rules herein contained shall constitute the law of Travancore applicable to all cases of intestate succession among the members of the Indian Christian community.

It is unnecessary to refer to the detailed provisions contained in this Regulation and it is enough to state that the provisions in this Regulation constitute a complete enactment dealing with cases of intestate succession among the members of the Indian Christian community of Travancore, as contemplated by the preamble and as shown in Section 2 of the Regulation extracted above. It will be immediately seen that Section 2 of the Regulation is in pari materia with Section 2 of the Succession Act, 1865, except that consistent with the object of the Regulation, it referred to the intestate succession only. Consequently the provisions contained in the Travancore Christian Succession Regulation II of 1092 cover exactly the same field and deal with identical subject matter, as those contained in the Succession Act, 1865, as far as intestate succession is concerned, and in Part V of the Indian Succession Act, 1925. Therefore, the conclusion is irresistible that the Travancore Christian Succession Regulation II of 1092 is a law corresponding to the provisions contained in Part V of the Indian Succession Act, 1925, so far as Christians are concerned.

8. It is against this background, the decision of the Travancore-Cochin High Court referred to already has to be examined. Before I refer to that decision itself, it is necessary to draw attention to the provisions contained in the Central Act III of 1951, on which reliance was placed before me and which was the subject-matter of discussion and decision by the Travancore-Cochin High Court.

9. The Part B States (Laws) Act, 1951 (Central Act III of 1951) was enacted for the purpose of providing for the extension of certain laws to Part B States. Immediately before first November, 1956 Part B States were: Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin. Section 3 of this Act states:

The Acts and Ordinances specified in the Schedule shall be amended in the manner and to the extent therein specified, and the territorial extent of each of the said Acts and Ordinances shall, as from the appointed day and in so far as any of the said Acts or Ordinances or any of the provisions contained therein relates to matters with respect to which Parliament has power to make laws, be as stated in the extent clause thereof as so amended.

Section 6 is as follows:

If immediately before the appointed day (which was 1st April, 1951), there is in force in any Part B State any law corresponding to any of the Acts or Ordinances now extended to that State, that law shall, save as otherwise expressly provided in this Act, stand repealed.

There are two provisos to this section and for the purpose of this case, it is unnecessary to set out those provisos. The Schedule to this Act refers to the Indian Succession Act, 1925 and substitutes the word, 'India' for the expression, 'the State', wherever it occurred in the Act. It also introduces a definition clause in Section 2, that definition being; 'India' means the territory of India excluding the State of Jammu and Kashmir. The effect of Section 3 read with the Schedule to the Act so far as it is relevant for the present case was to extend the provisions contained in the Indian Succession Act, 1925 to Part B State of Travancore-Cochin and the effect of Section 6 was to repeal any law in force in the State of Travancore-Cochin corresponding to the Indian Succession Act, 1925. I have already pointed out that the Travancore-Christian Succession Regulation II of 1092 is a law corresponding to Part V of the Indian Succession Act, 1925 and logically it will follow that with effect from 1st April, 1951 the Indian Succession Act, 1925, including Part V thereof came into force in the State of Travancore-Cochin and the Travancore Christian Succession Regulation II of 1092 stood repealed.

10. It is against the background of these statutory provisions and the prima facie effect thereof, the decision of the Travancore-Cochin High Court referred to above, namely, *Kurian Augusty v. Devasay Aley* A.I.R. 1957 T.C. 1. has to be examined. What the learned Judges in that case held was that the Travancore-Christian Succession Regulation II of 1092 would come within the expression 'any other law for the time being in force' mentioned in Section 29 (2) of the Indian Succession Act, 1925 and therefore it formed part of the Indian Succession Act itself and consequently it was not repealed by Section 6 of the Central Act III of 1951. After extracting Section 29 (1) and (2) of the Indian Succession Act, 1925, the learned Judges stated:

According to Sub-section (2), Part V of the Act relating to the intestate succession will not apply to a case in which there is 'any other law for the time being in force', relating to intestate succession. It follows that if the Travancore Christian Succession Act can be regarded as law in force relating to intestate succession among Christians in Travancore that law is saved under Sub-section (2) of Section 29, Indian Succession Act.

Sub-section (1) of Section 29 excludes from the operation of Part V of the Act cases in which intestacy occurred before 1st January, 1866 and intestate succession to the property of a Hindu, Mohammadan, Buddhist, Sikh or Jaina.

Sub-section (2) excludes from the operation of Part V communities which have their own laws relating to intestate succession.

It is clear from the section that the Indian Succession Act was not intended to interfere with the personal law of communities which have settled laws of their own as regards intestate succession. Even if Travancore formed part of the former British India, Part V, Indian Succession Act would not apply to Christians in Travancore who were governed by the Travancore Christian Succession Act.

The learned Judges then referred to a decision of the Calcutta High Court in *Nabujan v. Paushimoni* 54 Cal.W.N. 2 D.R. 14. and a decision of the Judicial Commissioner, Himachal Pradesh in *Perm Chand v. Lilawati* A.I.R. 1956 Him. P. 17. holding that Section 29 (2) of the Indian Succession Act, 1926 saves the existing custom. Then the learned Judges proceeded to consider the question whether with reference to the language contained in Section 29 (2) of the Indian Succession Act, 1925, the Travancore Christian Succession Regulation II of 1092 must be deemed to have been adopted by reference and after quoting a passage from *American Jurisprudence* Vol. 50, page 57, stated:

If the effect of the saving clause in Section 29 (2), Indian Succession Act is to adopt all laws for the time being in force relating to intestate succession as part of the Indian Succession Act as regards intestate succession, the Travancore Christian Succession Act should be regarded as the law relating to intestate succession under the Indian Succession Act so far as Christians in Travancore are

concerned.

In this view of the matter, the Travancore Christian Succession Act can in no sense be regarded as law corresponding to Part V, Indian Succession Act. It has to be regarded as forming part of the Indian Succession Act. If the Travancore Christian Succession Act cannot be regarded as law corresponding to Part V, Indian Succession Act, it is clear that it will not stand repealed by Section 6 of the Act III of 1951 (Central) .

With very great respect to the learned Judges who decided that case, I am unable to agree either with their reasoning or with their conclusion. The first reasoning appears to be that Section 29

(2) of the Indian Succession Act, 1925, saves all existing law or custom having the force of law relating to intestate succession. Such an effect cannot flow from Section 29

(2) of the Indian Succession Act, 1925. On the other hand, the language of Section 29

(2) of the said Act, in my opinion, makes it absolutely clear that the provisions contained in Part V of the Act are of universal applicability, unless that applicability has been excluded either expressly or by necessary implication by any other law for the time being in force. The expression, 'save as provided in Sub-section

(1) or by any other law for the time being in force' occurring in Sub-section

(2) of Section 29 of the Indian Succession Act, 1925, has to be construed in the context of the provisions contained in Section 29

(1) and the principal clause in Sub-section

(2) itself. Section 29

(1) excludes the applicability of that Part to any intestacy occurring before the first day of January, 1866. It equally excludes the applicability of that Part to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina, irrespective of the

date of occurrence of the intestacy. Sub-section

(2) uses the expression, 'save as provided in Sub-section

(1) or by any other law for the time being in force'. The expression, 'save as provided in Sub-section (1)' specifically refers to the exclusion of the applicability of the provisions of Part V provided for in Sub-section (1). Equally, the expression, 'save as provided--by any other law for the time being in force" must necessarily refer to the exclusion of Part V made by any other law. In other words, so long as any other law for the time being in force has not provided for the exclusion of the applicability of Part V, Part V will apply. If the intention of the Legislature was to save the custom or any other law relating to intestacy, the language of Section 29

(2) would have been entirely different. On the other hand, from the language of Section 29

(2) and the context and setting in which it occurs, it is capable of leading only to one conclusion, namely, that the provisions of Part V are of universal application except in so far as that application has been excluded by Sub-section

(1) or any other law for the time being in force. The mere fact that there is a custom relating to intestate succession or there is some other law dealing with intestate succession will not lead to the exclusion of the applicability of the provisions of Part V of the Indian Succession Act, 1925. From the very nature of the case, a custom cannot exclude the applicability of the provisions of a particular statute. But a statute can do it. So long as an existing statute has not excluded the applicability of Part V of the Indian Succession Act, 1925, the provisions of the said Part V will apply. Therefore, in my opinion, there is no warrant for holding that Section 29

(2) of the Indian Succession Act, 1925, saves an existing custom or existing law relating to intestacy.

11. This view of mine derives support from the observations contained in a few decisions dealing with Section 2 of the Succession Act, 1965. In *De Souza v. The Secretary of State for India in Council* (1874) 12 Beng.L.R. 423 . Macpherson, J.,

after extracting Section 2 of the Indian Succession Act, 1865, observed:

This shows clearly that we are no longer to look to what is or was the English law, but that, subject to the exception in this section, we must look to the Act itself, and to the Act alone, for the law of British India applicable to all cases of testamentary or intestate succession. In my opinion, an enactment that the law contained in the Act shall constitute the law of the country applicable to all cases of succession, operates as a repeal of the previously existing law just as completely and effectually as if it had been expressly repealed.

12. In *Degree v. Pacotti San Jao* I.L.R.(1895) 19 Bom. 783 . Starling, J., observed:

The sole point for determination in this appeal is whether the provisions of the Indian Succession Act, 1865, apply to those members of the Koli caste who profess the Christian religion, or whether it is open to them to prove that they have governed themselves, in matters of succession, by the Hindu Law or some modification thereof. The Succession Act X of 1865, Section 2, provides that 'except as provided by this Act or by any other law in force, the rules therein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.' It is thus of universal application, unless the person claiming to be excepted can show that by this or some other Act he specifically is excepted from the operation of its provisions.

These two decisions were referred to and followed by a Bench of the Calcutta High Court in *Napen Bala Debi v. Siti Kanta Banerjee* 15 Cal.W.N. 158. The interpretation put in those cases on Section 2 of the Indian Succession Act, 1865 is equally applicable to Section 29 (2) of the Indian Succession Act, 1925. Therefore, I am of the opinion that the language of Section 29 (2) is incapable of being interpreted as saying the existing custom or law relating to intestate succession and the exclusion of the applicability of Part V can be achieved only by a specific provision in that behalf contained in any other enactment. No other enactment was brought to my notice specifically excluding the applicability of the provisions of Part V of the Indian Succession Act, 1925 to the Christian of the former Travancore-Cochin State.

13. I have already referred to the fact that the learned Judges of the Travancore-Cochin High Court relied on a decision of the Calcutta High Court as well as a decision of the Judicial Commissioner of Himachal Pradesh. In *Nabujan v. Paushimoni* 54 Cal.W.N. 2 D.R. 14. learned Judges of the Calcutta High Court posed the question before them as follows:

The question appears to me to be whether the customary law of the Garos is to be held to fall within the expression used in Sub-section (2) of Section 29 'any other law for the time being in force'. If it is, then Garo customary law can be applied to such cases as this to the exclusion of the Indian Succession Act. If it is not, then the Indian Succession Act will apply to the exclusion of the Garo customary law.

and proceeded to state:

I have little doubt, then it would follow on the plain language of the section that the words 'any other law for the time being in force' of Section 29 of the Indian Succession Act should be read as saving of a customary law for the Garos.

The learned Judges did refer to the decision of the Bombay High Court as well as the decision of the Calcutta High Court already referred to, but sought to distinguish the same on facts. Their ultimate conclusion was:

I am not aware of any consideration of general legal principles or of the public policy favouring such a revolutionary upheaval, unless the statutory provision of the Indian Succession Act compelled us to take the narrowest view of the interpretation of the section. I have found nothing arising from the consideration of the present case, which would compel me either in reason or by weight of authority to take the view that the words 'any other law for the time being in force' do not let in customary law; provided this fulfils the recognised conditions requisite before a custom is accorded by a Court of law the force of law.

Here again, with great respect to the learned Judges, I am unable to accept their interpretation of Section 29 (2) of the Indian Succession Act, 1925. The learned Judges, in my opinion, have failed to consider the effect of the expression, 'save as provided by any other law for the time being in force' in the context and setting

in which it occurs. In *Prem Chand v. Lilawati* A.I.R. 1956 Him. Para. 17. the Judicial Commissioner had to consider the question of applicability of the provisions of the Indian Succession Act, where Section 5 of the Punjab Laws Act, 1872, was in force. After referring to certain decisions of the Punjab High Court, holding the Section 2 of the Indian Succession Act, 1865, allows exception in favour of rules other than these contained therein and therefore under Section 5 of the Punjab Laws Act, 1872, the custom, if proved, is the first rule of decision, irrespective of all considerations of nationality and religion, and also after referring to the decision of the Calcutta High Court in *Nabujan v. Paushimoni* 54 Cal. W.N. 2 D.R. 14. concluded that it was open to the first defendant in that case to plead custom in matters of inheritance contrary to the provisions of the Succession Act. For the reasons I have already indicated, I am unable to accept this, conclusion also as correct.

14. From Section 29 of the Indian Succession Act, 1925, it was clear to the learned Judges of Travancore-Cochin High Court, that the Indian Succession Act was not intended to interfere with the personal law of communities which have settled laws of their own as regards intestate succession. In my opinion, such an intention can be gathered only from the language of the statute and the Courts are not at liberty to find an assumed intention which was not expressed in the statute itself. It is because of the intention not to interfere with the personal law of certain communities that Sub-section (1) of Section 29 was enacted. The language of Section 29 (2) is clear that except to the extent indicated in Sub-section (1) and any other exclusion specifically provided for by any other law in force, the provisions contained in Part V were meant to be of universal application. If the application of the statutory provisions is likely to cause any hardship or inconvenience sufficient safeguard is provided for in the statute itself for exemption. Section 332 of the Indian Succession Act 1865 provided that the Governor-General of India in Council shall, from time to time, have power, by an order either retrospectively from the passing of that Act or prospectively, to exempt from the operation of the whole, or any part of that Act, the members of any race, sect or tribe in British India or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of that Act or of the part of the Act mentioned in the order. It is pursuant to this provision, the native

Christians in the Province of Coorg were exempted from the provisions of the Succession Act retrospectively from 16th March, 1865. Similarly Khasias and Syntengs in Assam were exempted as having special laws of inheritance incompatible with the provisions of the Indian Succession Act, 1865. Section 3 of the Indian Succession Act, 1925, has taken the place of Section 332 of the 1865 Act. Section 3 of the 1925 Act states that the State Government may, by notification in the Official Gazette, either retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any of the following provisions of this Act, namely, Sections 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe, to whom the State Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order. In my opinion, the existence of such a provision emphasises the universality of the application of the provisions of the Act and if any existing custom or law has to be saved, it can be done so only by an express provision in such law providing for the exclusion of the application of the provisions of the Indian Succession Act or by an order of exemption made under Section 3 of the Act.

15. Hence, on my interpretation of Section 29 (2) of the Indian Succession Act, 1925, it must follow that on the extension of the Indian Succession Act, 1925 to Part B State of Travancore-Cochin, the provisions contained in Part V of that Act became applicable to intestate succession of the Christians of that State, since there was no other Act in force in that State excluding such applicability. I have arrived at this conclusion solely on the language of Section 29 (2) of the Act, without reference to the provisions contained in Section 6 of the Central Act III of 1951. I have already referred to the fact that the learned Judges of the Travancore-Cochin High Court had assumed that Section 29 (2) of the Indian Succession Act, 1925, had adopted the provisions of the Travancore Christian Succession Regulation I of 1032 by reference. Here again, with great respect to the learned Judges, I am unable to accept their reasoning. When the provisions contained in a particular statute are incorporated by reference in another statute, the language used for the purpose is entirely a different and distinct one. This question has been elaborately considered by a Full Bench of this Court in *A.M.J. Mohd. Kasim v. Assistant Collector, Central Excise*¹. With reference to the

language contained in Section 29 (2) of the Indian Succession Act, 1925, it is impossible to hold that the said Act has incorporated the Travancore Christian Succession Regulation II of 1092 as part of it and therefore the said Regulation forms part of the Indian Succession Act, 1925.

16. Then there remains the question as to the effect of Section 6 of the Central Act III of 1951, even assuming that my construction of Section 29 (2) of the Indian Succession Act, 1925, is not correct. I have sufficiently indicated already that the Travancore Christian Succession Regulation II of 1092 is a law corresponding to the provisions contained in Part V of the Indian Succession Act, 1925. Both of them purport to be complete enactments on the question of intestate succession, so far as Christians are concerned. If so, I am unable to see why this Travancore Christian Succession Regulations II of 1092 cannot be said to be a corresponding law in force, with reference to Part V of the Indian Succession Act, 1925, within the meaning of Section 6 of the Central Act III of 1951. The learned Judges of the Travancore-Cochin High Court themselves say:

If the Travancore Christian Succession Act can be regarded as law in force relating to intestate succession among Christians in Travancore that law is saved under Sub-section (2) of Section 29, Indian Succession Act.

This is with reference to their conclusion that Travancore Christian Succession Act has been saved by Section 29 (2) of the Indian Succession Act, 1925. But when they come to consider the effect of Section 6 of the Central Act III of 1951, they state:

The Travancore Christian Succession Act can in no sense be regarded as law corresponding to Part V, Indian Succession Act.

Even assuming that the learned Judges are right with regard to their interpretation of Section 29 (2) of the Indian Succession Act, 1925, that provision can save only such law as providing for the same subject-matter as Part V of the Indian Succession Act, 1925. If that law does not provide for or deal with the same subject-matter, the question of saving it under Section 29 (2) will not arise, because the two, namely, that law and Part V of the Indian Succession Act 1925,

will be operating in two different fields. Therefore, if it is a corresponding law for Section 29 (2), Indian Succession Act, it cannot but be a corresponding law for Section 6 of the Central Act III of 1951. Hence, on the very conclusion of the learned Judges that the Travancore Christian Succession Regulation II of 1092 falls within the scope of 'any other law for the time being in force' occurring in Section 29 (2) of the Indian Succession Act, 1925, it must necessarily follow that the said Regulation will be the corresponding law, as contemplated by Section 6 of Central Act III of 1951. Therefore, my conclusion is that even if I am wrong in the construction I have placed on Section 29 (2) of the Indian Succession Act, 1925, still by virtue of Section 6 of the Central Act III of 1951, the Travancore Christian Succession Regulation II of 1092 stood repealed with effect from 1st April, 1961. Swaminathan having admittedly died on 29th May, 1960, and no case of testamentary succession having been put forward, succession to his property will be governed only by the provisions contained in Part V of the Indian Succession Act, 1925.

17. But this conclusion of mine cannot finally dispose of the second appeal, since the Courts below have not considered as to what the position and the rights of the parties would have been, if the Indian Succession Act, 1925, had been applied. As I have mentioned already, Swaminathan did not leave behind any lineal descendant at all. The plaintiff, and 9th defendant are merely his collaterals, the plaintiffs being children and grandchildren of one brother and the 9th defendant being another brother of Swaminathan. The provisions contained in Chapter II of Part V of the Indian Succession Act lay down the rules in case of intestates and different rules have been provided to meet different contingencies. Section 33-A (1) provides that where the intestate has left a widow but no lineal descendants and the nett value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow. Sub-section (2) of the same section states:

Where the nett value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per

annum until payment.

Section 33 states that save as provided by Section 33-A if the intestate had left no lineal descendants, but had left a widow and persons who are of kindred to him, one half of his property shall belong to his widow and the other half shall go to those who are of kindred to him in the order and according to the rules provided for thereafter. In view of these provisions, the nett value of the assets of Swaminathan has to be ascertained.

18. Under these circumstances, the second appeal is allowed and the judgments and decrees of both the Courts below are set aside and the suit itself is remanded to the learned Subordinate Judge, Nagercoil, for disposal in accordance with law and in the light of this judgment holding that it is the provisions of the Indian Succession Act, 1925 that govern the succession to the estate of Swaminathan. I am making it quite clear that except for reversing the conclusion of the Courts below on the question whether it is the Indian Succession Act, 1935 or the Travancore Christian Succession Regulation II of 1092 that applies to the case in question I am not interfering with the other findings of fact recorded by the Courts below and those findings will stand.

19. It is unfortunate that I did not have the benefit of any arguments on behalf of the respondent, since none of the counsel appeared on behalf of the respondents in spite of my giving more than one opportunity in this behalf.

20. Each party will bear his costs in these proceedings in all the three Courts so far. The appellants will be entitled to a refund of Court-fee paid on the memoranda of appeal in this Court as well as the first appellate Court.