

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

AS.No. 544 of 2001

OS 964/1996 OF MUNSIF COURT, KOZHIKODE-I

APPELLANT(S)/RESPONDENTS 1-3:

1. **MURINGOLI KRISHNANKUTTY NAIR,
AGED 51 YEARS, S/O.PARVATHY AMMA,
KOTTAYADATH HOUSE NO.37/1349, KARUVASSERY,
P.O.MALIKKADAVE, KOZHIKODE DISTRICT.**
2. **SANISH, AGED 16 YEARS, S/O.KRISHNANKUTTY NAIR,
KOTTAYADATH HOUSE NO.37/1349, KARUVASSERY,
P.O.MALIKKADAVE, KOZHIKODE DISTRICT.**
3. **SANDEEPTHA, AGED 14 YEARS, S/O.KRISHNANKUTTY NAIR,
KOTTAYADATH HOUSE NO.37/1349, KARUVASSERY,
P.O.MALIKKADAVE, KOZHIKODE DISTRICT.**

**(APPELLANTS 2 AND 3 ARE MINORS REPRESENTED BY GUARDIAN FATHER
FIRST APPELLANT).**

**BY ADVS.SRI.G.UNNIKRISHNON
SRI.K.SANEESH KUMAR**

RESPONDENT(S)/PLAINTIFF ADD 4TH DEFENDANT:

1. * **MEETHELE MULLOLI MALU AMMA,
AGED 84 YEARS, D/O.THAYIKUTTY AMMA,
MEETHALE MULLOLI, KARUVASSERI, P.O.MALIKKADAVE,
KOZHIKODE TALUK.**
- * **DEAD APPELLANTS 1 TO 3 ARE THE LRS OF THE DECEASED R1 RECORDED
AS PER IA 3257/99 DT.1/10/99.**
2. **K.T.CHANDRAN, S/O.APPUTTY, AGED 48 YEARS,
PULIYATHAVIL HOUSE, P.O.KARUVASSERY, KOZHIKODE TALUK.**

**R,R BY ADV. SRI.G.GOPALAKRISHNAN NAIR
R,R BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
R,R BY ADV. SRI.R.JAYAKRISHNAN**

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 22/6/2015 ALONG
WITH AS. 545/2001, THE COURT ON 19-08-2015, DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

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A.S.Nos.544 & 545 of 2001

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Dated this the 19th day of August, 2015.

J U D G M E N T

These appeals are preferred against the decree and judgment in O.S.No.964 of 1996 on the file of the Munsiff Court, Kozhikkode. Among the appeals, A.S.No.544 of 2001 is by defendants 1 to 3 and A.S.No.545 of 2001 is by the fourth defendant. Originally, these appeals were preferred before the District Court, Kozhikode and the same were withdrawn to this Court and renumbered as per the order in C.M.P.No.956 of 2001 in S.A.No.208 of 2001.

2. The first defendant is the husband of the deceased daughter of the plaintiff namely, Radhamma. Defendants 2 and 3 are the children of Radhamma. The fourth defendant is the transferee of the plaint schedule property from defendants 1 to 3. The plaint schedule

property measuring 13.5 cents belonged to the plaintiff. She gifted the plaint schedule property to Radhamma on 9.4.1980. Radhamma died on 3.7.1993. After the death of Radhamma, defendants 1 to 3 sold the plaint schedule property as per Ext.B1 document to the fourth defendant on 5.3.1996. The suit was filed thereafter seeking a decree of partition, alleging that on the death of Radhamma, 1/3rd right over the plaint schedule property devolved on the plaintiff. It was also alleged by the plaintiff that Ext.B1 sale deed in favour of the fourth defendant is void and not binding on the plaintiff.

3. Defendants 1 to 3 and the fourth defendant filed separate written statements. The essence of the contention raised by the defendants was that on the death of Radhamma the plaint schedule property devolved on defendants 1 to 3, who are her husband and children as provided for under Section 15 of the Hindu Succession Act and that Ext.B1 deed executed by defendants 1 to 3 in

favour of the fourth defendant is valid and binding on the plaintiff schedule property.

4. The court below, on an appraisal of the materials on record, found that succession of properties in relation to Radhamma would have been governed by the Marumakkattayam Law, if the Hindu Succession Act had not been passed, and therefore, on the death of Radhamma the plaintiff schedule property devolved on the plaintiff and defendants 2 and 3 as provided for under Section 17 of the Hindu Succession Act. The court below also found that Ext.B1 is not binding on the plaintiff. Consequently, a preliminary decree declaring the 1/3rd of the right of the plaintiff over the plaintiff schedule property was passed. As noticed above, defendants 1 to 3 as also the fourth defendant are aggrieved by the said decision and hence these appeals.

5. Heard the learned counsel on both sides.

6. The short question that falls for consideration

in this appeal is as to the provision of law governing intestate succession of the deceased Radhamma. Section 15 of the Hindu Succession Act prescribes the general rules of succession in the case of female Hindus. Section 15(i)(a) of the said Act provides that the property of a female Hindu dying intestate shall devolve firstly upon the sons and daughters and the husband. Section 16 of the Act provides that among the heirs specified in sub-section (i) of Section 15, those in one entry shall be preferred to those in any succeeding entry. As such, if Section 15 is applied in the case of Radhamma, the case of defendants is to be accepted. But, Section 17 of the said Act provides for a different mode of succession for those female Hindus who would have been governed by the Marumakkattayam Law, if the Hindu Succession Act had not been passed. Section 17 (ii)(a) provides that their properties would devolve firstly on sons and daughters and mother. It is thus clear that if Section 17 is applied in the case of Radhamma, the case of

the plaintiff has to be accepted. Radhamma was a Hindu - Nair who would have been governed by the Marumakkattayam Law, if the Hindu Succession Act had not been passed, is a fact which is not in dispute. As such, the decision of the court below that Section 17 of the Hindu Succession Act was the provision governing intestate succession in the case of Radhamma is in order.

7. The learned counsel for the appellants contended that since Marumakkattayam Law had already been abolished by virtue of the provisions of the Kerala Joint Hindu Family System (Abolition) Act, 1975 and since Radhamma died after the Kerala Joint Hindu Family System (Abolition) Act, 1975 on 3.7.1993, Section 17 cannot be applied in her case. It is seen that a larger Bench of this Court had considered the very same contention in ***Chellamma v. Narayana*** [AIR 1993 Kerala 146 (FB)]. It was held by this Court in that case that what is provided for under Section 17 of the Act is a separate law of succession

for a group of persons mentioned in the section namely persons who would have been governed by the Marumakkattayam Law, if the Hindu Succession Act had not been passed and therefore, the Law of Succession as far as the said persons are concerned, is not affected by the abolition of the Marumakkattayam system of Law by virtue of the provisions of the Kerala Joint Hindu Family System (Abolition) Act, 1975. It was also held by this Court in that case that all those persons who would have been governed by Marumakkattayam Law, if Hindu Succession Act had not been passed, except those who were born after the introduction of the Kerala Joint Hindu Family System (Abolition) Act, 1975, are governed by Section 17 of the Act. Paragraph 50 of the said decision reads thus:

"We may finally summarise as follows:

(1) Section 17 of the Hindu Succession Act, 1956 will govern the law of succession on the death of males or females who were governed by the Marumakkathayam system if such persons were-

(i) living as on 18.6.1956 when the Hindu Succession Act, 1956 came into force and they died before 1.12.1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force.

(ii) living as on 18.6.1956 when the Hindu Succession Act, 1956 came into force and who died on or after 1.12.1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force.

(iii) born on or after 18.6.1956 when the Hindu Succession Act, 1956 came into force and who died before 1.12.1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force, and

(iv) born on or after 18.6.1956 when the Hindu Succession Act, 1956 came into force but before 1.12.1976 came into force but before 1.12.1976 and who died on or after .12.1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force.

(2) Section 17 of the Hindu Succession Act, 1956 will not, however, govern the law of succession of males or females if such persons were born on or after 1.12.1976 and died thereafter. Succession to them would be governed by the provisions of the Hindu Succession Act, 1956 other than the provisions applicable to those governed by the Marumakkathayam system.

(3) We approve the decision of the learned single Judge in

Madhavi Amma v. Kalliani Amma, (1988 2 Ker.LT 964 and of the Division Bench in Bhaskaran v. Kalliani (1990 2 Ker.LT 749. We overrule the observations to the contrary in Saraswathy Amma v. Radhamma, (1990 2 Ker.LT 183 : (AIR 1991 Kerala 86)."

It is beyond dispute that Radhamma was a person born before the Kerala Joint Hindu Family System (Abolition) Act, 1975. As such, the argument raised by the learned counsel is only to be rejected.

In the result, there is no merits in these appeals and are accordingly dismissed.

Sd/-
P.B.SURESH KUMAR,
(JUDGE)

Kvs/-

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PA TO JUDGE

AS.Nos.544 & 545/2001.