Kesava Kurup Kunjupillai Kurup and anr. Vs. Sebastian Eluprasya Fernandez and ors.

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Court : Kerala

Decided On : Jul-09-1963

Reported in : AIR1963Ker365

Judge : M.S. Menon, C.J.,; S. Velu Pillai and; M. Madhavan Nair, JJ.

Acts : Travancore Christian Succession Act, 1092 - Sections 24, 28, 29 and 30

Appeal No. : Second Appeal Suit No. 526 of 1959

Appellant : Kesava Kurup Kunjupillai Kurup and anr.

Respondent : Sebastian Eluprasya Fernandez and ors.

Advocate for Def. : Joseph Vithayathil and; George Vadakkel, Advs. for Respondent No. 1,;

Advocate for Pet/Ap. : Mathew Muricken and; A.D. Krishnan Asan, Advs.

Disposition : Appeal allowed

Judgement :

Madhavan Nair, J.

1. This Second appeal raises a question of considerable importance to the Latin Catholic Christian Community residing in Central Travan-core and concerns the interpretation of Section 30 of the Travancore Christian Succession Act, which will be referred to hereinafter as the Act. That section reads as follows :

'Sections 24, 28 and 29 shall not be applicable to certain classes of the Roman Catholic Christians of the Latin Rite and also to certain Protestant Christians living in Karunagapally, Quilon, Chirayinkil, Trivandrum, Neyyattinkara, and other Taluks, according to the customary usage among whom the male and female heirs oi an intestate share equally in the property of the intestate.

So far as those Christians are concerned, nothing in the aforeaid Sections shall be deemed to affect the said custom obtaining among them.' (Sections 24, 28 and 29 of the Act exclude daughters and other female heirs from succession to the properties of an intestate.)

2. The plaint properties (A schedule landed properties, and B schedule movables) belonged to the late Sebastian Fernandez and his wife, Gregoria Fernandez, who

were Latin Catholic Christians resident in Karunagapally Taluk- They died intestate leaving behind two daughters, the plaintiff and the 6th defendant, and a son, John Femandez. The 1st defendant is the widow, and defendants 2 to 5 are the children of John Fernandez. The plaintiff claims one-third share in tho plaint properties as her inheritance under the custom referred to in Section 30 of the Act, ignoring the alienations made by John Fernandaz in favour of defendants 8 and 9 as hot binding on her interests.

Defendants into 5, 8 and 9 denied the custom alleged by the plaintiff, and asserted John Fernandez to have inherited the entire plaint properties to the exclusion of his sisters who had been given dowries at the time of their marriage.

The courts below have accepted the plaintiff'scase and decreed one-third share of the plaint Aschedule properties to her. As regards the plaintB schedule movables, their appropriation by JohnFernandez was accepted by the court as theirvalue equalled the dowry paid to each of hissisters, which under Section 33 of the Act, hasto be taken into account in the distribution ofthe estate among the heirs. Defendants 8 and 9have come up in second appeal.

3. The courts below have assumed that the custom set up by the plaintiff has been given, statutory recognition in Section 30 of the Act and therefore requires no proof by parties in particular cases. The Munsif held :

'I do not understand Section 30 to mean that the custom mentioned therein laid down as the custom prevailing among some only of the Latin Christiana residing in the taluks mentioned therein. The correct, interpretation according to me is that among the Latin Christians of Travancore certain classes residing in the taluks mentioned in Section 30 of the Act are stated to be followers of the custom mentioned therein. The full bench ruling reported in Sebastian Fernandes v. Lassar Fernandez, 30 Trav. LJ 470 is to the effect that Section 30 of the Act lays down the custom among 'Roman Catholic Christians of the Latin Rite in the taluks mentioned therein. The ruling reported in A. V. Decruz v. P. Krishnan, 1956 Ker LT 289 (TC) is also to the same effect. The above two rulings do not seem to have suspected for a moment that it laid down the custom among only a sect of the Latin Christians of the taluks mentioned therein. In the face of the statutory recognition of the custom and the nilings reiterating that custom there is no occasion even for discussing the evidence to the contrary adduced by defendants'. On appeal the Subordinate Judge held :

'The contention that the custom as statute rily recognised (in Section 30 of the Act) is obtained only among certain classes of the Latin Catholics in Karunagapally is without any force. The words 'certain classes' take in all the Latin Catholics, living in the Karunagapally taluk and other taluks mentioned. The words used are intended to mean only that they form a class of the entire Roman Catholic Christians in the State. The words do not afford an interpretation that there are different classes in the Karunagapally taluk itself and that the custom stated is obtained only in some of these classes when such a custom obtained in the whole of the taluk is statutorily recognised and upheld by the decisions of the highest court in the land, it is not necessary to go into any evidence regarding the same to establish a custom'.

4. It may be noted here that the contention that 30 Trav LJ 470 (FB) had construed Section 30 as embodying the customary law was not accepted in Anthony Barbara v. Agasthian, 1962 Ker LT 641 by one of us (Velu Pillai J.) who insisted on the custom

'being alleged and proved in order to attract Section 30'.

5. In a recent decision in A. S. No, 361 of 1959, (Kerala) Raghavan J. has referred to Section 30 and observed :

'This shows that the Roman Catholic Christian of, the Latin Rite or the Protestant Christian, who claims that Section 30 applies to him, must establish that he belongs to a class of the Roman Catholic Christians of the Latin Rite or to the Protestant Christians living in the taluks mentioned in the section and must also prove that the customary usage among the class to which he belongs is that the male and female heirs of an intestate share equally in the property of the intestate. It is therefore in the nature of an exception and the one who pleads the benefit of that section must prove the facts necessary to bring the case within the section.'

6. The following passages from the leading judgment in 30 Trav LJ 470 (FB) delivered by Ver-ghese C. J. will show the point considered in that case and the decision thereon :.

'The suit is one for partition, the parties, being Latin Christians residing in Karunagapally taluk.

'Defendants I to 3, 5 to 7 the plaintiff's deceased mother Antonia, and the deceased Paulina, mother of defendants 8 and 9 were children of the same parents. Plaintiff sued for recovery of his I/8th share belonging to his deceased mother in her father's properties, alleging that according to the custom prevailing in the community, all children are entitled to equal shares in their father's properties.

The Ist defendant admits that sons and daughters are entitled to share equally, but maintains that according to the custom in the community, daughters, who were given any Streedha' nam, are not entitled to claim any share in the family properties ..... 3rd defendant supported the ist defendant .....

Apart from the evidence adduced in this case, the chief ground on which the court below disallowed the plaintiff's claim for I/8th share was based on two rulings by this court in Sahayam Caspass Murayas v. Theresia Gornez, 6 Trav LR 26 and Kochuvava John v. Nasrani Vasthian Elizabeth, 13 Trav LR 215 which held that daughters who have been given Streedhanam are not entitled to a share in the properties of their parents. The Division Bench which heard this special appeal noticed that the above decisions now conflict with Sections 30 and 33 of the Christian Succession Act II of 1092 and accordingly referred the case to a Full Bench for disposal .....

The chief point for consideration in this second appeal is ..... whether among the Latin Catholics of Karunagapally Taluk, married daughters who have been given Streedhanam on marriage are entitled to any share in the properties of their deceased parents. ....

Under Section 33, it is further provided that subject to the provisions of paragraph 3 of Section 28, any Streedhanam paid to a female shall be taken into account in estimating her share, but not so as to compel her to refund anything already received as Streedhanam. This makes it clear that what the law intended was that sisters should share equally with their brothers in the properties of their intestate parents, and that any Streedhanam given to any one of the sisters should be taken into

account in determining her share, she being not accountable for any excess-Streedhanam which she might have received over and above the share due to her. This enactment overrides the previous decisions on the subject, even if 6 Trav, LR 26 and 13 Trav. LR 215 mentioned above did portray what was the actuat customary law then.

Our reply to the point of law referred to us is that the share inherited by the married: daughters of an intestate Latin Christian, of Central Travancore to whom Streedhanam is given or not, is regulated by the Christian Succession Act II of 1092.'

Madhavan Pillai J., agreeing with the learned Chief Justice, observed:

'It is evident from Section 30 of the Christian Succession Act (Act II of 1092) that the custom applicable to certain classes of the Roman Catholic Christians of the Latin Rite and also to certain Protestant Christians has been preserved only to the extent of retaining the usage among them for the male and female heirs to share equally in the property of the intestate and not to the extent of excluding female heirs from inheritance--merely because Streedhanam has been received. It is just this latter exclusion that is contemplated by Section 28 of the Act and Section 30 has expressly made Section 28 not applicable to the-classes mentioned in that section. The same idea is almost expressly suggested by the proviso to Section 33, which explains the consequences of the payment of Streedhanam on the right to claim shares by females. The provisions of the Christian Succession Act referred to above are, therefore, repugnant to the continued existence of the custom that women of these particular communities to whom Streedhanam has been paid have no further claim upon their father's estate. The custom accordingly has to be trusted as abrogated by the Act.'

Lukose J., agreeing with the other two learned Judges, observed :

'In my opinion, the logical conclusion deducible from the language of Section 30 of the Act, is that the only customary usage which/wag adopted in the statute of 1092 was the one, inder which the male and female heirs shared if equally in the property of the intestate. The cutstom recognised under the two decisions (6 Trav LR 26. and 13 Trav LR 215) must be taken to have been abrogated by the later statute of 1092'.

It is evident from the above that two customs arose for consideration in that case. The plaintiff set up a custom of sons and daughters faking equal shares in their parents* properties. That was admitted by the defendants. So, no question of its proof or validity came up for decision in the case. The defendant set up a custom of exclusion from inheritance of females who had received Streedhariam at marriage. That was held to have been abrogated by the Act and therefore of no legal force. It has not been decided therein that all the Latin Catholic Christians or Protestant Christians even of the taluks mentioned in Section 30 of the Act do follow the custom referred to in the section as their rule of succession. Nor do we find anything to that effect in 1956 Ker LT 289 (TC). We make it clear that even if any decision has held so, we do not approve it as a correct interpretation of the Section.

7. Section 2 of the Act provides : 'Except as provided in this Act, 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''.

The Act has thus abrogated all custom regarding intestate succession among the Christians except what has been permitted under the Act. Section 30, in recognising as valid a custom among certain classes of Latin Catholic Christians and Protestant Christians, under which the male and female heirs share equally the properties of the intestate, has recognised a custom in derogation of the imperative rules of succession provided in the Act.

8. What Section 30 does is to grant an immunity from the operation of Sections 24, 28 and 29 to all Roman Catholic Christians of the Latin Rite 'according to the customary usage among whom the male and female heirs of an intestate share equally in the property of the intestate'. It follows that in order to obtain the immunity it is not enough if the plaintiff proves that she is a Roman Catholic Christian of the Latin Rite; she must also establish that she be-longs to a class of Roman Catholic Christians ofthe Latin Rite among whom the usage specified Idoes obtain.

The parties concerned live in the Karunaga-pally Taluk, and there is no controversy on that subject. Residence, however, in one of the taluks specifically mentioned in Section 30 -- Karunaga-pally, Quilon, Chirayinkil, Trivandrum and Ney-yattinkara -- is not essential to obtain the im-rminity provided by that section. The words 'and other taluks' occurring in the section show that the enumeration is not exhaustive and that residence in any of the, taluks of Travancore State will suffice.

The view taken by the courts below that Section 30 has recognised a custom, under which male and female heirs share the intestate's properties equally, as the rule of succession among the Latin Catholics resident in Karunagapally taluk is incorrect; and the decision based thereon has to be discharged.

9. In the result, we discharge the decree under appeal and remit the case to the court of first instance for disposal de novo. As there appears to have been some confusion as to the effect of Section 30 of the Act, we think that the parties should be given an opportunity to prove the rule of succession applicable to them. The Munsiff will do the needful,

10. Costs of this appeal, excepting the court-feewhich will be refunded, will be costs in the cause.IG/N/D.V.C.