

Kanniammal Vs. Ammakannu Ammal and ors.

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Court : Chennai

Decided On : Apr-23-1900

Reported in : (1900)10MLJ253

Appellant : Kanniammal

Respondent : Ammakannu Ammal and ors.

Judgement :

ORDER

1. On the main question in this case, viz., whether the house was the property of Munisami at the time of his death, we are clearly 'of opinion that the Judgment of the City Civil Judge is against the weight of evidence.
2. The two witnesses who at the trial said that the house was bought in the name of Munisami, benami told a contradictory story at a previous trial, and it is quite beside the point to say that the precise question now in issue was not then in issue,. The two stories are irreconcilable.
3. The recital in the sale-deed of 29th March 1897 refers to the debts contracted by the vendor's father and makes no reference to any claim to the house as the property of the vendor independently of her father.?
4. The burden of proof was on the defendants, and we are of opinion that the alleged title of Munisami's vendor has not been proved.
5. The question then arises as to the ' terms' of the decree to which the plaintiff is entitled.
6. It is argued on her behalf that the purchaser who has bought from one of two sisters jointly entitled to their father's property under Hindu Law takes nothing by his purchase and cannot ask for a partition against the other sister. This statement of the law which would practically place widows or daughters enjoying property inherited from a husband or father on the footing of the members of a Malabar Tarwad, is not in accordance with the law as laid down in several cases (Ariyaputri v. Alamelu I.L.R. (1889) M. 75. Janoki Nath Mukhopadhyya v. Mothuranath Mukhopadhyya I.L.R. (1883) C. 580. Sundara v. Parvati). I.L.R. (1889) A. 51. Having regard to those authorities, we must hold that while one of two co widows cannot by any alienation alter the character of the co widow's estate so far as concerns the right of survivorship or the rights of reversioners, she may alienate her interest in the property or have that interest taken and sold in execution of a decree against her. She may also subject to the same condition, demand a partition of the property.

7. It is obviously desirable that there should be a partition between the plaintiff and the purchaser who is a stranger to the family.

8. The plaintiff asks for partition, and there must be decree accordingly.

9. We must direct the City Civil Judge to find on the evidence on record to what amount the plaintiff is entitled on account of mesne profits and submit his findings within one month from the date of the receipt of this order. Seven days will be allowed for filing objections after the findings have been posted up in this Court.

The City Civil Judge found that the plaintiff was entitled to Rs. 68 on account of mesne profits and their Lordships accepted the finding and gave judgment accordingly.

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