Thayammal Vs. Annamalai Mudali and anr.

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Court : Chennai

Decided On : Oct-11-1895

Reported in : (1896)ILR19Mad35

Judge : Subramania Ayyar, J.

Appellant : Thayammal

Respondent : Annamalai Mudali and anr.

Judgement :

Subramania Ayyar, J.

1. On the application of the defendants the first issue, which is one of law, was argued under Section 146 of the Code of Civil Procedure. It raises the question whether the plaintiff is, as alleged in the plaint, heir to the stridhanam of the late Seshammal, a married woman.

2. According to the rules of law applicable to the devolution of the stridhanam of a married woman, the property passes in the first place to the lineal descendants, if she left any, in an order to which it is unnecessary here to refer. The course of descent in default of descendants varies according to the form in which the deceased was married. If the marriage was in one of the four approved or superior forms, the husband, if he survives, takes the inheritance and in default those who would be his heirs. But if the marriage was in one of the four unapproved or inferior forms, the deceased's mother succeeds, and if there is no mother, the father. Failing the parents the heirs of the father and in default those of the mother inherit (Mitakshara, chapter II, Section XI; Stokes' Hindu Law Book, page 461).

3. Now the allegation in the plaint relevant to the present question are that Seshammal died, leaving no lineal descendants nor husband nor mother nor father, and that the plaintiff is the widow of Seshammal's brother, who predeceased his sister. As to the form, however, in which Seshammal was married the plaint is silent. The law presumes under the circumstances that the marriage was in one of the approved forms (Mayne's Hindu Law, 5th edition, paragraph 80) and in this view of the matter the plaintiff has to show that she is heir to Seshammal's husband. The learned Counsel for the plaintiff scarcely ventured to assert that a person in the position of the plaintiff can be heir to her sister-in-law's husband. No authority was cited in favour of that proposition and none, I believe, can be found to support it. A man's wife's brother's widow belongs to none of the three well-known classes of relations who are heirs to him. She is neither a sapinda nor a samonodaka nor a bandhu of that man, and so far as the law of inheritance goes there seems to be no difference between her and a complete stranger. It is thus perfectly clear that, on the

hypothesis that Seshammal's marriage was in one of the superior forms, the plaintiff's claim must fail.

4. The case, however, has to be considered with reference to the other hypothesis also, viz., the marriage was in an inferior form. It is true, as observed before, that the presumption is against that hypothesis. But that is a rebuttable presumption, and, as no evidence has been taken, I think the plaintiff is entitled to ask for a determination of the question on the supposition that she will be able to adduce evidence to rebut that presumption. In this view the question is, is the plaintiff heir to Seshammal's mother or father? It is convenient to take first the latter part of the question. On behalf of the plaintiff certain passages in Kutti Ammal v. Radakristna Aiyan 8 M.H.C.R. 88 and Lakshmanammal v. Tiruvengada I.L.R. 5 Mad. 241 were relied upon. Assuming those cases to be among the authorities for the proposition that bandhus need not necessarily be male relations, I fail to see how they afford any support to the claim of the plaintiff, since to enable her to come in as a bandhu of Seshammal's father, his gotra and that of the plaintiff must be different, whereas the contrary is the case here. By her marriage she passed into his gotra; and if she is entitled at all, it can only be as one of his sagotra sapindas. But, unlike under the Mayukha; a female sagotra sapinda of Seshammal's father in the position of the plaintiff is not an heir to him in this Presidency. Balamma v. Pullayya I.L.R. 18 Mad. 168; see as to daughter-in-law, specially, Mayne's Hindu law, 5th edition, paragraph 488, and Dr. Jolly's Lectures on Hindu Law at page 199). The next question is, is the plaintiff heir to Seshammal's mother? The answer to this also must be in the negative. For if Seshammal's mother's marriage was in an approved form, on the hypothesis that she died an issueless widow (on which hypothesis alone the plaintiff can claim), the mother's heir would be her husband's i.e., Seshammal's father's heirs. And I have already shown that the plaintiff is not, his heir. But even supposing Seshammal's mother was married in an inferior form--Bandam Settah v. Bandam Maha Lakshmy 4 M.H.C.R. 180 wherein it was broadly laid down that under the Hindu law a daughter-in-law is not an heir to her mother-in-law, is a direct authority against the plaintiff.

5. I must, therefore, hold that in no point of view the plaintiff's claim, that she is entitled to Seshammal's stridhanam, is sustainable. And finding the first issue against her I dismiss the suit with costs.

6. Branson and Branson, Attorneys for Plaintiff.