

Mohamed Ismail Sait Vs. Abdul Hameed Sait and ors.

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Court : Chennai

Decided On : Jan-19-1948

Reported in : (1948)2MLJ87

Appellant : Mohamed Ismail Sait

Respondent : Abdul Hameed Sait and ors.

Judgement :

ORDER

P.V. Rajamannar, Officiating C.J.

1. In the appeal before His Majesty in Council the question has arisen as to the legal representatives of the deceased nth respondent--fifth defendant in the suit. It is necessary that her interests should be represented in the appeal and her legal representatives brought on record in respect of her interest in the subject-matter of the litigation.

2. The matter was referred to the learned Master who has reported to this Court the result of his investigation, his conclusion being that, for the reasons given, the estate of the 11th respondent will escheat to the Province of Madras, the Province of West Bengal and to His Highness the Maharajah of Mysore, in regard to properties forming part of the interest of the 11th respondent situated in those territories.

3. The 11th respondent was formerly a Hindu lady. She was converted to Islam and married a Mr. Yunus, a Muslim who predeceased her. She inherited one-fourth of her husband's estate, pursuant to the provisions of the Muhammadan law. There was no issue of the marriage of the 11th respondent with her husband. The only relations who survived the nth respondent are her uterine brother, her step-mother and the children of her sister. They are all Hindus. It is common ground that the Muslim relations of the nth respondent through her husband, are not the legal representatives of the lady and they are not entitled to inherit her estate upon her death.

4. At this juncture the sole question for decision is whether her natural or Hindu relations can inherit the estate of the 11th respondent and as such are her legal representatives. It is beyond doubt that, according to Muhammadan law, the surviving relations of the 11th respondent do not inherit her estate and are not her legal representatives. The only question for decision is whether the Caste Disabilities Removal Act, 1850, enables those relations to inherit and to represent the 11th respondent as her legal representatives.

5. That question is no longer in doubt. Any doubt there might have been has been set at rest by authority. In *Vaithilinga v. Ayyathurai* (1917) I.L.R. 40 Mad. 1118, it was held that the above statute accords protection only to a person who has renounced or has been excluded from the communion of his former religion or has been deprived of his caste. That decision was referred with approval by their Lordships of the Judicial Committee in *Mitar Sen v. Maqbul Hasan* (1930) L.R. 57 IndAp 313 : 52 Cri.L.J. 551. In those circumstances, it is unnecessary to consider other authorities as it is manifest that the Hindu relations of the deceased nth respondent have no benefit conferred upon them by the provisions of the statute.

6. Since there are no relations to inherit the estate of the 11th respondent it will escheat to the Governments concerned and those Governments, it would seem, are the legal representatives for the purposes of being brought on record, of the deceased lady, in so far as any property lies within their territorial limits which form part of the estate of the 11th respondent.

7. Learned Counsel for the appellant has informed us that part of the estate represented by immovable property, is in Mysore State a portion being situate within the State itself and the remainder within what formerly was, the cantonment area. The latter area has now become part of the State of His Highness the Maharajah of Mysore but that was not the position prior to the recent changes in this country. What the effect of the change may be upon the cantonment property has not been ascertained, but had there been no alternation then the escheat in respect of the cantonment property would have been to the Central Government representing His Majesty.

8. Before coming to a final conclusion in this matter it is necessary to obtain the views and instructions of the several Governments concerned and the learned Government Pleader, appearing for the Province of Madras, has stated that he will communicate with his own Government, the Government of West Bengal, the Government of His Highness the Maharajah of Mysore and the Central Government. In order for him to have full instructions so that the matter can finally be placed before us, this application is adjourned to the 17th November.

9. C.M.P. No. 2731 of 1947 is adjourned to the 17th November along with C.M.P. No. 2878 of 1947.

Govinda Menon, J.

10. I agree.

(This petition coming on for final hearing this day, the Court made the following)

11. The learned Government Pleader has been instructed to state that the Central Government do not claim any interest in any of the properties of the deceased nth respondent. Therefore the Province of Madras, the Province of West Bengal and the Government of His Highness the Maharajah of Mysore will be brought on record as the legal representatives of the deceased nth respondent in P.C.C.M.P. No. 3385 of 1944 and of the respondent in O.S.A. No. 33 of 1946 on the file of the High Court.