

Latchumammal Vs. Gangammal

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Court : Chennai

Decided On : Mar-14-1910

Reported in : (1911)ILR34Mad72a

Judge : Benson and ;Krishnaswami Aiyar, JJ.

Appellant : Latchumammal

Respondent : Gangammal

Judgement :

1. The first issue raised two questions, namely, whether there was an oral will and whether there was an absolute division by the widows. The original Munsif held in the plaintiff's favour on both the questions. Mr. Oldfield held against the will but in favour of the absolute partition. He reversed and remanded the case with instructions to the Munsif to try the question as to the date of the partition. The Munsif having decided in the plaintiff's favour, an appeal was again preferred to the District Court, which now came before Mr. Broadfoot. He held the will proved and dismissed the suit, We are of opinion that he was wrong in going back upon Mr. Oldfield's decision against the will. The order of remand was based upon the decision that the will was not true, Though he held the partition was absolute, he would not dispose of the case finally as he wanted a further question to be decided as to whether it was before or after the Transfer of Property Act.

2. We think that Mr. Oldfield's decision was binding on Mr. Broadfoot on both the points, namely, that the will was not true and that the partition' was absolute. It is now contended that an oral partition by two co-widows, if absolute, must, after the Transfer of Property Act, be by a registered instrument as the property exceeded Rs 100 in value. But we think this view is not right. Adopting the view in Tiruvengadachariar v. Ranganatha Aiyangar : (1903)13MLJ500 , we may say it is not a sale or a gift or an exchange. Partition amongst male members of a Hindu family may, after the Transfer of Property Act, be oral. This is conceded in argument. We do not see any difference in principle where it is amongst co-widows. It is said that if the partition be for life it may be valid though oral, But when the partition operates as a release of the life interest of each in the property assigned to the other each of the parties is only converting the joint interest of both during their life-time into the several interest of each during the life-time of both. We can see no objection to this in the Transfer of Property Act. The decisions in Ariyaputri v. Alamelu I.L.R. (1888) Mad. 304, and Ramakkal v. Ramasami Naickan I.L.R. (1899) Mad. 522, do not deal with the question of an oral partition and are not therefore in conflict with our view, We must dismiss the second appeal with cost.