

Madras High Court

Pulavarthi Venkata Subba Rao And ... vs Valluri Jagannadha Rao And Ors. on 18 December, 1945

Equivalent citations: (1946) 1 MLJ 159

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JUDGMENT Yahya Ali, J.

1. This is a revision petition against the order of the Subordinate Judge of Narsapur refusing to add the widow of the deceased first defendant as a party defendant in O.S. No. 52 of 1941 on the ground that she is not a legal representative of her deceased husband. The respondents, the defendants in the suit, are not represented in this Court and the civil revision petition has been heard in their absence. The suit was by the creditors who impleaded the first defendant and his two undivided sons, the second and third defendants. The first defendant died pendente lite on the 17th May, 1943 and an application was made for bringing on record his two sons (defendants 2 and 3) and his widow, as the legal representative of the deceased defendant. The learned Subordinate Judge directed that the second and third defendants should be recognised as the legal representatives of their deceased father but so far as the widow was concerned he dismissed the application holding that she was not her deceased husband's legal representative.

2. The expression 'legal representative' has been defined in Section 2(11) of the Civil Procedure Code and the part of it that is material to the present case is that it means " a person who in law represents the estate of a deceased person". This expression was not defined in the Code of 1882. There was considerable divergence of judicial opinion as regards its true connotation. An authoritative definition was given by the Calcutta High Court in *Dinamoni Ckaudhurani v. Elahadut Khan* (1904) 8 C.W.N. 843. Woodroffe, J., who was a party to that decision pointed out that, although at one time only an executor or an administrator could be treated as legal representative, the Courts began to apply that expression to ordinary cases of succession without strictly confining it to its primary meaning. After a scrutiny of the English and Indian cases Woodroffe, J., observed that where there is an executor or administrator they alone are the legal representatives of a deceased judgment-debtor and that the term is otherwise commonly applied both in the case of heirs as well as in that of executors and administrators. The principle was further extended to the case of a person who without title as administrator, executor, heir, reversioner or surviving coparcener was the de facto possessor of the estate of the deceased Hindu, it having been held that he must be treated for some purposes as his representative and that a judgment obtained against such a representative is not a mere nullity. In the end the learned Judge summarised the legal position thus:

From this review of the authorities it will appear that judicial decisions have extended the sense of the term ' legal representative ' beyond that of its ordinary meaning of ' administrator, executor and heir ' and though such expression has been attended with doubt and has in some cases been the subject of conflicting decision, it appears to me to be too late now to endeavour, however convenient it might be, to secure for the term that which is perhaps its strict and legitimate sense. I agree, therefore, in holding that the term is not limited to administrators, executors and heirs and I am of the opinion that it must now be held to include any person who in law represents the estate of a deceased judgmentf-debtor.

It would be seen that it is this particular dictum, that appears to have been actually adopted in framing that part of the definition of ' legal representative ' which has been extracted above, namely, that a ' legal representative ' means a person who in law represents the estate of a deceased person.

3. The further question is how the enactment of the Hindu Women's Rights to Property Act (XVIII of 1937) affects the position. Under Section 3(2) of that Act as amended by Act XI of 1938, when a Hindu, governed by Mitakshara School of Hindu Law, dies having at the time of his death an interest in a Hindu joint family property, his widow, subject to the provisions of Sub-section (3), gets in the property the same interest as her husband himself had. Sub-section (3) stipulates that that interest devolving on a Hindu widow shall be the limited interest known as a Hindu women's estate, provided, however, that she will have the same right of claiming partition as a male owner. With reference to the repercussions of this enactment on the Hindu law doctrine of coparcenership, Mayne says that as a result of this statutory provision the undivided interest of a coparcener who leaves a widow goes to her as his heir for the limited estate of a Hindu woman, but it does not go by survivorship for the obvious reason that she cannot be in the strict sense a coparcener with the other members, her position will be analogous to that of a member of an undivided family under the Dayabaga law with this possible difference that, as she is only to have the same interest as her husband himself had, the share to which she will be entitled at a partition may be liable to the same fluctuation caused by changes in the family as if she occupied the place of her husband.

The learned author treats the devolution provided by the Act as one in the nature of succession. He treats the widow as in the position of an heir to her deceased husband:

When a widow, "says the author," succeeds to her husband's interest in a joint family, she takes it only by inheritance and not by survivorship.

Again it is said:

To hold that the widow of a coparcener who takes his interest on his death is strictly a tenant-in-common with the coparcenary body is not to give full effect to the words in Section 3(2), according to which she is to have ' in the property the same interest as he himself had ' apart from the grave complications which it will involve. On that view, she will be entitled to an account and for a definite share of the income while the others will not be; more than that, it will lead to anomalies and hardships in connection with the allotment of shares; and even before partition there would be separate management and representation and separate incurring of debt. But evidently the intention of the Act is only to interrupt survivorship and to protect the right of a widow so that she may have the same interest as if she continued the legal persona of her husband till partition." (Mayne's Hindu Law, both Edition, page 721.) In the end the conclusion of the learned author is that the Act confers upon the widow a right of succession notwithstanding any rule of Hindu law and as such an unchaste widow will not be disqualified from inheritance and that she would be entitled to succeed, notwithstanding any ground of disqualification under Hindu law in either school.

4. The lower Court relied on the decision of this Court in Natarajan Chettiar v. Perumal Ammal (1942) 2 M.L.J. 668, where Horwill, J., held that the effect of Section 3, clauses (2) and (3) may be

regarded as recognising a survival of the husband's persona in the wife giving her the same rights as her husband had, except that she can alienate property only under certain circumstances.

The learned Judge held that the widow did not obtain her right by survivorship or by inheritance but she got it as a result of the statutory provision which was based upon the principle, as remarked by Mayne, of the survival of the husband's persona in the wife. The position amounts to the same whether it is called a statutory devolution or success'on, the result being eventually that the widow takes that interest which devolves upon her as a person representing the estate and interest of her deceased husband. I am of the opinion that in these circumstances a widow would be a "legal representative" within the meaning of Section 2 (II) of the Code of Civil Procedure and is as such entitled to be brought on record as a person who in law represents the estate of her deceased husband.

5. The reasons given by the learned District Munsiff for disallowing the costs of the petitioner in civil revision petition No. 1530 of 1943 of this Court are not satisfactory. The result would be that this petition will be allowed with costs here and in the lower Court as well as in C.R.P. No. 1530 of 1943.