Supreme Court of India
Govind Potti Govindan Namboodiri vs Kesavan Govindan Potti & Ors on 22 July, 1987
Equivalent citations: 1987 AIR 2276, 1987 SCR (3) 615
Author: K Shetty
Bench: Shetty, K.J. (J)

PETITIONER:
GOVIND POTTI GOVINDAN NAMBOODIRI

Vs.

RESPONDENT:
KESAVAN GOVINDAN POTTI & ORS.

DATE OF JUDGMENT22/07/1987

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
REDDY, O. CHINNAPPA (J)

CITATION:
1987 AIR 2276 1987 SCR (3) 615
1987 SCC (3) 668 JT 1987 (3) 128
1987 SCALE (2)98

ACT:
Kerala Nambudiri Act, 1958: Malayala Brahmins governed by Hindu Law--Income earned from hereditory profession of Malayala Brahmins--Properties purchased from such income--Whether joint family properties.
Practice and procedure: Court not to be prisoner of indecision-Clarity and promptness in decision of court----Necessity for.

HEADNOTE:
The plaintiffs great grandfather executed a partition deed Ex. P. 1 under which the properties acquired by him were divided into four shares as described in Schedules A, B, C & D and distributed to his sons and grandsons. The plaintiff claimed in a suit for partition that plaint B schedule properties consisting of properties in Schedules A
JUDGMENT:

plaint A schedule and hence they were also the illom proper- ties in which he was entitled to share on per capita basis. Defendants 1 to 10, 24 to 26 and 29 to 33 supported his case. Defendants 11, 13, 16 to 21, 22 and 27 contended that the plaintif's great grandfather had no surplus income from plaint A schedule properties and the acquisitions made by him which were the subject matter of

division under Ex. P. 1 were the separate properties.

The trial Court decreed the suit and held that parties were governed by marumakkathayam Law and Plaint A schedule properties were illom properties, that the plaintiff's great grandfather could get surplus income therefrom which was utilised for purchasing properties dealt with under Ex. P. 1 and, therefore, the illom properties were available for partition, and that, in any event, the parties by their subsequent conduct appeared to have treated the properties as illom properties and passed a preliminary decree for partition on per capita basis.

The matter was taken in appeal to the High Court. Cross Objection was also filed. The High Court held that there was no acceptable evidence to show as to what were the proper- ties allotted to the original testator for his maintenance when he left his illom or the income there-

from and that there was no material to prove that the plaint A schedule properties were given to him for maintenance; nor was there evidence to establish that the plaint B schedule properties were acquired with the aid of surplus income from plaint A schedule properties. With regard to properties allotted to the testator's grandson under Ex. P. 1 and his subsequent conduct to treat the properties as joint family properties, it held that firstly, there was no intention on the part of the testator's grandson to treat his properties as illom properties, and secondly, even if he had such an intention it would be doubtful whether the principle of Hindu Law could be applied to the properties. In appeal before this Court, it was urged that the High Court proceeded on the wrong assumption that there was no proof that the plaint A schedule properties were illom properties that were given to the plaintiffs great grandfa- ther for his maintenance.

Dismissing the appeal by special leave, this Court, HELD: 1. Malayala Brahmins are governed by Hindu Law unless they can be shown to have deviated in any respect and adopted different practices, like local customs, if any. Some of their rights have now been regulated by the Kerala Nambudiri Act, 1958 (Act 27 of 1958) which provides for the family management and partition of illom properties among Nambudiri Brahmin Community and Section 13 confers right on a members of illom to claim partition on per capita basis. [621F-G]

2. Iswara Sevas in temples like Santhi Ceremony and Parikarmam works are said to be the hereditary profession of Malayala Brahmins and the illom to which the parties belong. But the income earned by any member of an illom from such practice would not become the joint family property. It would be separate property of the individual. It cannot become joint family property. The position, however, may be different if a member earns from such practices which exclu- sively belong to the joint family. [622F-G] 3.1 In the instant case, there is no doubt that the plaint A schedule properties are common illom properties which were in possession of the testator under a maintenance arrangement. The plaint B Schedule properties or properties dealt with under Ex. P. 1 are illom properties and they are acquisitions made by the testator from time to time. They could be regarded as illom properties provided it is estab- lished that they have been acquired with the aid of illom properties. But the relevant evidence on record is scanty. The High Court was, therefore, justified in stating that there was no acceptable evidence produced in the case to support the plea of the plaintiff. [622B, C-D] 3.2 Ex. P. 1 is an ancient deed executed at an undisput- ed point of time.

The terms of the deed indicate that all the properties divided thereunder were acquired in the name of the father out of the personal exertions of the father and his sons, that the properties were divided into four shares taking into consideration the efforts made by each party to acquire the movable and immovable properties, and that the parties shall enjoy with absolute rights the properties allotted in the respective shares, which clearly go to show that the properties dealt with under Ex. P. 1 were the self-acquisitions of the testator. [622E, H, 623C]

4. Litigants come to Courts for decisions and not for obtaining doubtful opinions. The Court, therefore, should not be a prisoner of indecision. Clarity and promptness in decision making are the need of the hour. That would go a long way to reduce the docket explosion. [620G] Kunji Amma Narayani Amma v. Dhathri Antherjanan, [1954] K.L.T. 155, referred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2114 (N) of 1972.

From the Judgment and decree dated 16.7.1971 of the Kerala High Court in Appeal Suit Nos. 183, 195 and 249 of 1966.

G. Viswanatha Iyer, P.K. Pillai and N. Sudhakaran for the Appellant.

T.S. Krishnamoorthy Iyer, T.S. Padmanabhan, T.T. Kunhi- kannan, S. Balakrishnan, Irfan Ahmed and Ms. Lily Thomas for the Respondents.

The Judgment of the Court was delivered by JAGANNATHA SHETTY, J. This appeal by Special Leave is against the judgment and decree dated July 16, 1971 passed by the High Court of Kerala in Appeal Suit Nos. 183, 195 and 249 of 1966.

The Appellant is the plaintiff and respondents are defendants 1 to 34 in Original Suit No. 35 of 1961 of the Sub Court, Alleppey, Kerala State. It is a suit for parti- tion in which the plaintiff claims 1/33 share in the plaint properties. The plaintiff and defendants 1 to 33 are members of an undivided Malayala Brahmin illom. They are the de- scendants of one Vishnu Embran. (referred to hereinafter as Vishnu (Senior)). The relationship of the parties with Vishnu (Senior) is set out in geneological table annexed to the common judgment of the High Court. Suffice it to state here that Vishnu (Senior) had three sons: Kesavan, Krishnan and Narayanan. The plaintiff is the grandson of Kesavan. One of the sons of Kesavan was given the name of his grand father. To avoid confusion, we may call him as Vishnu (Junior).

Vishnu (Senior) did not remain with the members of his illom. When he was 17, he took some properties of his illom for maintenance and moved out of his native village. He settled at a place called Chambakulam. There he was earning by performing Iswara Sevas like Santhi ceremonies and Pari- karmam works in temples. In the course of time he acquired some properties.

Vishnu (Senior) who went out to eke his livelihood at 17, reached 71. He then thought of peacefully retiring. He wanted that his children after his death should not quarrel over the properties. With their full consent, he executed Ex. P. 1, a partition deed dated October 3, 1074 M.E. corre- sponding

May 15, 1889 A.D. Thereunder the properties ac- quired by him were divided into four shares described in the deed as Schedules A, B, C & D. He gave schedule A to Kesa- van, Schedule B to Krishnan, Schedule C to Narayanan and Schedule D to his grandson Vishnu (Junior). These schedules should not be confused with the plaint Schedule properties. Plaint A Schedule consists of property given to Vishnu (Senior) from his original illom for the purpose of his maintenance. Plaint B Schedule consists of properties under A and D Schedules in Ex. P. 1. The other schedules in the plaint are not much relevant for this case. So they are not referred to.

The case of the plaintiff, to put it shortly is that plaint B schedule properties have been acquired out of the income from Plaint A Schedule and hence they are also the illom properties in which he is entitled to a share on Per Capita basis.

Defendants 1 to 10, 24 to 26 and 29 to 33, supported the plaintiff. Defendants 11, 13, 16 to 21, 22 and 27 contested the suit. The case of the contesting defendant is that Vishnu (Senior) had no surplus in-

come from plaint A Schedule properties and the acquisitions made by him which were the subject matter of division under Ex. P. 1 were his separate properties.

The trial court accepted the case of the plaintiff. It held that parties are governed by Marumakkathayam Law. Plaint A Schedule properties are illom properties. Vishnu (SeniOr) could get surplus income therefrom. That available surplus was utilised for purchasing properties dealt with under Ex. P. 1. The said properties are, therefore, the illom properties which are available for partition. The Court also said that in any event, the parties by their subsequent conduct appear to have treated the properties as illom properties. Accordingly, it passed a preliminary decree for partition on Per Capita basis.

Against the said decree there were appeals and Cross Objection before the High Court.

The main question urged before the High Court related to the nature of the Plaint B Schedule properties. The High Court on appraisal of the oral and documentary evidence held as follows:

There is no acceptable evidence to show what were the properties allotted to Vishnu (Senior) for his maintenance when he left his illom, or the income therefrom. There is no material to prove that the Plaint A Schedule properties were given to Vishnu (Senior) for his maintenance. Nor there is evidence to establish that the Plaint B Schedule properties were acquired with the aid of surplus income from Plaint A Schedule properties.

With regard to properties allotted to Vishnu (Junior) under Ex. P. 1 and his subsequent conduct to treat the properties as joint family properties, the High Court ob- served:

> "The point is, whether there was any intention on the part of Vishnu (Junior) to treat the properties as illom properties. It is no doubt, a principle of Hindu Law that where a co-parcener throws his self acquisitions into the common hotchpotch with the volition that the self-acquisition should become joint family properties they will

> assume the charac- ter of joint family properties. It is doubtful whether this principle of Hindu Law can be applied to the parties here. As already stat- ed, there is no evidence that Vishnu (Junior) had the volition to throw D Schedule proper- ties into the common hotchpotch."

In other words, it was observed firstly, there was no intention on the part of Vishnu (Junior) to treat his properties as illom properties; Secondly, even if he had such an intention it would be doubtful whether the principle of Hindu Law could be applied to the parties. With these conclusions, the High Court reversed the decree of the trial court but it passed a preliminary decree in regard to plaint A Schedule and some other properties as under:

> "As plaint A Schedule was allotted only for the maintenance of Vishnu (Senior) the posses- sory interest in the properties comprised therein and attributable to the share of Kesavan would devolve on the sons of Kesavan. As regards B Schedule properties excluding the properties comprised in the D Schedule in Ex. P. 1 they being the self-acquisitions of Vishnu (Senior) will be divided equally among the sons of Kesavan. The D Schedule properties in Ext. P. 1 comprised in the Plaint B Sched- ule being the absolute properties of Vishnu (Junior), namely defendants 11 to 21. The income from plaint A Schedule which is at- tributable to the share of Kesavan and the Plaint B Schedule properties except the income from D Schedule in Ext. P. 1 will be distrib- uted among the sons of Kesavan equally. The income from the D Schedule properties in Ext. P. 1 and included in the Plaint B Schedule will be given to the legal representatives of Vishnu (Junior)."

Before we consider the contentions urged before us, it will be better to clear the mental cobweb as to the law applicable to Malayala Brahmins. The trial Court said that they are governed by Marumakkathayam Law. The High Court did not say anything specific. It appears to have doubted the applicability of the principles of Hindu Law to them. A question of this nature should not have been kept in doubt. As a matter of fact no point that comes for consideration should be kept in doubt by Courts. The litigants come to Courts for decisions and not for obtaining doubtful opin- ions. The Court, therefore, should not be a prisoner of indecision. The clarity and promptness in decision making are the need of the hour. That would go a long way to reduce the docket explosion.

Fortunately, for us the problem presents little diffi- culty, in view of the stand taken by Counsel on both sides. Our attention has been drawn to the decision of the Kerala High Court in Kunji Amma Narayani Amma v. Dhathri Antherjanan, [1954] K.L.T. 155. There it was observed at page 158:

> "On behalf of the plaintiff respondent, the learned Advocate General argued that the principles of Hindu Law are not applicable and that the case should be guided by rules of Maramakkathayam Law. In Travancore it has been held from very early times that the Malabar Brahmins are governed by principles of Hindu Law as modified by local custom (6 T.L.R. 143, 19 T.L.R. 241, 34 T.L.R. 262, 19 T.L.J. 441) in Parmeswaran Narayanan v. Nangeli Antharaja- nam a decision of the Royal Court of Appeal of Travancore, 10 TLR 151 and Narayanan Narayan- roo v. Kunjikutty Kutty

> and Others, 20 T.L.R. 65 F.B. it was held that unless Malayala Brahmins can be shown to have deviated in any respect from the interpretation put upon old texts by modern Hindu Sages and adopted dif- ferent practices, they should be held bound by Hindu Law as now understood and acted upon elsewhere. The main object of the Malayala Brahmin Act III of 1106 was to make provision for better management of tarwards, to define and limit the power of Karnavan, to improve the rights of the junior members and to lay down the rules of intestate succession in respect of their self acquired properties. Appropriate provisions were made in the Act to achieve these objects. We do not feel justi- fied in holding that the plaintiff and 1st defendant are governed by principles of Maru- makkathayam law, merely because such safe- guards as are found in Marumakkathayam law have been incorporated in the Malayala Brahmin Act."

No argument has been addressed before us that the view taken in the above case is incorrect. It can, therefore, be stated and indeed not disputed that Malayala Brahmins are governed by Hindu Law, unless they can be shown to have deviated in any respect and adopted different practices, like local customs, if any. Some of their rights have now been regulated by the Kerala Nambudiri Act, 1958 (Act 27 of 1958). The Act provides for the family management and parti- tion of illom properties among Nambudiri Brahmin Community. Section 13 of the Act confers right on a member of illom to claim partition on Per Capita basis.

The law being thus clarified, we may now turn to the conten- tions urged by Shri Vishwanatha, learned counsel for the appel- lant. He urged that the High Court proceeded on the wrong assumption that there is no proof that the plaint A Schedule properties are illom properties that were given to Vishnu (Senior) for his maintenance. We think the Counsel is right. That also seems obvious and causes no difficulty. In fact, it was admitted by all the defendants (see para 19 of the trial court judgment) that the Plaint A Schedule is common illom properties which were in possession of Vishnu (Senior) under a maintenance arrangement. There can, therefore, be no doubt or dispute on this aspect of the matter. The question next to be considered is whether plaint B Schedule or the properties dealt with under Ext. P. 1 are also illom properties. They are undisputedly the acquisi- tions made by Vishnu (Senior) from time to time. They could be regarded as illom properties provided it is established that they have been acquired with the aid of illom proper- ties. That of course is the case put forward by the plain- tiff. But the relevant evidence on record is scanty. The High Court was, therefore, justified in stating that there is no acceptable evidence produced in the case to support the plea of the plaintiff.

The matter also becomes plain if we turn to the terms of Ext. P. 1 on which Shri Krishna Murthy Iyer for the contest- ing respondents mainly depended. It is an ancient deed, executed at an undisputed point of time. The deed at the beginning states that all the properties divided thereunder were acquired in the name of the father "with the assets obtained by the personal efforts and improvements of mine and my children." It means out of the personal exertions of the father and sons. The plaintiff himself has stated that Vishnu (Senior) was doing Iswara Sevas in temples like Santhi Ceremony and Parikarmam works. It is said to be the hereditary profession of Malayala Brahmins and the illom to which the parties belong. But the income earned by any member of a

illom from such practice would not become the joint family property. It would be separate property of the individual. So too the properties purchased out of such income. It cannot become joint family property. The posi- tion, however, may be different if a member earns from such practices which exclusively belong to the joint family. Another significant recital in Ext. P. 1 may now be noticed. It provides that the properties were divided into four shares after taking into consideration the efforts made by each party to acquire the movable and immovable proper- ties. It means the division was as per contributions made by each party. If the properties were illom properties, this recital has no place in the deed. The deed does not refer to undisputed illom properties, that is the plaint A Schedule. It is a deed of partition. If the properties acquired by Vishnu (Senior) were also regard- ed as illore properties, there was no good reason for him to remain silent in respect of the possessory right of the plaint A Schedule. He ought to have, in the context, re- ferred to it as to who should be in possession and what he should do about the income therefrom. Above all the deed finally provides that the parties shall enjoy with absolute rights the properties allotted in the respective shares. These indications clearly go to show that the properties dealt with under Ex. P. 1 were the self acquisitions of Vishnu (Senior). We thus agree with the conclusions of the High Court though not for all the reasons stated. In the result, the appeal fails and is dismissed with costs.

N.P.V. Appeal dis-
missed.