

The provisions of Aliyasanthana law whether customary or statutory will cease to apply, in so far as they are inconsistent with the provisions of the Hindu Succession Act.

[Case Brief] SUNDARI AND ORS. Vs. LAXMI AND ORS.

Case Name: SUNDARI AND ORS. Vs. LAXMI AND ORS.

Case Number: 1980 AIR 198

Court: The Hon'ble Supreme Court

Bench: KAILASAM, P.S., GUPTA, A.C.

Decided on: 28/08/1979

Relevant Act/Sections: Madras Aliyasantana Act, 1949 (Madras Act IX of 1949) Sections 3(b) (i), (ii) (f), (h), 36(3) & (5) read with Section 7(2), 17, 30 of Hindu Succession Act, 1956 (Act 30 of 1956)-Devolution of the property allotted to a 'nissanthathi kavaru' under the Aliyasantana law and its effect on the Hindu Succession Act.

BRIEF FACTS AND PROCEDURAL HISTORY:

1. The parties to this litigation are governed by the Aliyasanthana law prevalent in the district of South Kanara. They were members of a Kutumba descended from a common ancestress by name Manjekke.
2. One Parameshwari and her son and daughter instituted Original Suit No. 91 of 1950 before the Court of the subordinate Judge at South Kanara for partition of properties in accordance with the provisions of the Madras Aliyasanthana Act, 1949, (Madras Act IX of 1949).
3. The trial court dismissed the suit holding that the suit for partition was not sustainable it proceeded to record findings determining the shares to which the members of several branches are entitled in the event of there being a decree for partition.
4. On appeal by the plaintiffs the High Court of Karnataka reversed the decision of the Subordinate Judge and held that the award decree in Original Suit No. 314 of 1924 on the

file of the District Munsiff, 408 Mangalore, did not amount to a partition and that the suit for partition was maintainable.

5. The High Court passed a preliminary decree on **28th June, 1961** and remanded the suit for further proceedings. The Court directed a preliminary decree for partition and specified the shares as found by the Trial Court in its judgment. The shares were determined on a joint memo filed by the parties on **25th September, 1963**. The shares allotted to defendants 22 to 24 were 85,176 out of a total of 615,264 shares.
6. Defendants 22, 23 and 24 are all male members of the kutumba and are 'nissanthathi kavaru'. The 24th Defendant died before the preliminary decree was passed on **10th June, 1957** and his wife and children were brought on record as legal representatives.
7. During the final decree proceedings the legal representatives of the 24th respondent filed R.I.A. No. 2259 of 1966 and the representatives of the 23rd defendant filed R.I.A. No. 2266 of 1966 claiming that out of the share allotted to the kavaru of defendants 22 to 24, one-third representing the share or interest of the 24th and the 23rd defendants be allotted to them. This petition was opposed on the ground that each one of the defendants 22, 23 and 24 was a separate nissanthathi kavaru and on the death of each of the defendants 24 and 23 his share or interest devolved upon the santhathi kavarus nearest to him to which defendants 11, 12 and 16 belonged.
8. The plea of the 22nd defendant was that all the three defendants 22, 23 and 24 constituted one single nissanthathi kavaru to which, under the preliminary decree one single or joint share was allotted, and therefore the said share survived to the last surviving member thereof (22nd defendant), and that no devolution on a santhathi kavaru under sub-section (5) of section 36 is possible until the last member of the nissanthathi kavaru, viz., the 22nd defendant, dies.
9. The trial court found that in the High Court decree dated **20-6-1961** defendants 22 to 24 were allotted shares jointly. It rejected the contentions of both the applicants. The trial court dismissed both I.As. 2259 & 2266/66.
10. The High Court on appeal while agreeing with the conclusion arrived at by the Civil Judge held that when the 24th defendant died he had an undivided interest in the properties of the kavaru of himself and defendants 22 and 23 and that the said undivided interest quantified as provided by the explanation to sub-section (2) of section 7 of the Hindu Succession Act, and would devolve by intestate succession under the said Succession Act. Similarly when the 23rd defendant died he had an undivided interest in the property jointly belonging to himself and the 22nd defendant. That undivided interest

also got quantified under section 7(2) of Hindu Succession Act. The High Court allowed the appeals holding that the property descended according to the rules of intestate succession contained in the Hindu Succession Act.

ISSUE BEFORE THE COURT:

1. Whether the other Kavarus continued to be joint in the Kavaru or not?

RATIO OF THE COURT:

1. The court observed that the Shares of defendants 22, 23 and 24 are mentioned as 85,176 out of total share of 615,264. The court agreed with the conclusion arrived at by the High Court that the shares were allotted to the three defendants jointly and hold that the three defendants were allotted jointly a share in the partition.
2. The court observed that any other law in force immediately before the commencement of Madras Aliyasanthana Act ceases to apply to Hindus in so far as it is inconsistent with any of the provisions contained in the Act and that the provisions of Aliyasanthana law whether customary or statutory will cease to apply, in so far as they are inconsistent with the provisions of the Hindu Succession Act.
3. It later added that the effect of the provisions of the Hindu Succession Act referred to after the coming into force of the Hindu Succession Act an undivided interest of a Hindu would devolve as provided for under sec. 7(2) while in the case of separate property it would devolve on his heirs as provided for in the Hindu Succession Act. Even though a nissanthathi kavaru might have a limited interest as the devolution prescribed for in the Madras Aliyasanthana Act is no more applicable, the devolution will be under the Hindu Succession Act.
4. The court observed that in the case of defendants 22, 23 and 24 who are males the kavaru would mean the kavaru of the mother of that male. The male by himself cannot be a kavaru under the definition.
5. The court opined that when a Hindu governed by the Aliyasanthana law dies possessed of a life interest, after his death the property devolves under the Hindu Succession Act and not under the Aliyasanthana Act and therefore would not revert back to the kutumba.

6. It later added that in this case it is found there is no material to hold that there was division of status as between defendants 22, 23 and 24. In this view the contentions of the learned counsel for the appellants that there was division in status on the filing of the suit for partition or that as the mother was dead there were separate was negatived.
7. The separate property is not enlarged into an absolute estate under sec. 7(2) but on death it devolves on the heirs as provided under the Hindu Succession Act.

DECISION HELD BY COURT:

1. The court held that in this case the property has been found to be undivided as between defendants 22, 23 and 24 and therefore the position is that on the death of each one of the defendants his undivided interest would devolve on his heirs.
2. The court agreed with the conclusion reached by the High Court and dismissed this appeal with costs.