

# **BOMBAY HIGH COURT**

Hosbanna Devanna Naik

Vs

Devanna Sannappa Naik

(Norman Macleod, Kt.,C.J. Shah, J.)

07.03.1924

## **JUDGMENT**

### **Norman Macleod, Kt., C.J.**

1. The plaintiff filed this suit for partition against the first defendant his father and defendants Nos. 2 to 6 his step-brothers. He claimed one-seventh share in the family lands, house, moveables, ornaments and trade of the joint family. Honamma, the wife of the first defendant, was afterwards added as a party respondent in the appeal. The lower Court passed a partition decree directing that the plaintiff should be declared the owner of the one-seventh share in all the properties of the joint family.

2. In appeal, the question arose whether Honamma was entitled to a share in the partition. In *Jairam Nathu v, Nathu Shamji* (1906) I.L.R. 31 Bom. 54 : s.c. 8 Bom. L.R. 632 a partition suit was filed by a Hindu son against his father and brothers. It was held that the father's wife on partition was entitled to a share equal to that of the son, but from her share the value of any stridhan received by her as a gift from her father-in-law or husband would have to be deducted. The parties were Bhatias and would presumably be governed by the Mayukha. But it seems to have been conceded in the argument that the claim of the mother or step-mother for a share in the partition should be admitted. The provisions of the Mitak-shara, which govern the present case, are perfectly clear: Ch. I, Section 2, pl. 8, is as follows:-Two sorts of partition at the pleasure of the father, namely equal and un equal have been stated. In the ease of equal partition if it makes the allotment equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions.

3. It appears to have been urged by the plaintiff -appellant that as Honamma was his step-mother, she was not entitled to share in the partition. But if plaintiff had been her son, undoubtedly she would be entitled to a share, and it seems to me there can be no reason for depriving her of her share in the partition because the plaintiff was the son of the first defendant by another wife, now deceased. We think the District Judge was right in holding that Honamma was entitled to share in

the partition, and in directing the clause awarding past mesne profits to be deleted. The appeal, therefore, fails and must be dismissed with costs.

**Shah, J.**

4. I agree. I desire to add that this case comes from the District of Kanara and the parties would be governed by the Mitakshara. The case of *Jairam Nathu v, Nathu Shamji*<sup>1</sup> was governed by the Vyavahara Mayukha, But it is sufficient to state that on this point there is no difference between the Vyavahara Mayukha and the Mitakshara, and that this conclusion is based upon the express text of Yajnavalkya.

Cases Referred.

11(1906) I.L.R. 31 Bom. 54 : s.c. 8 Bom. L.R. 632