

TRAVENCORE COCHIN HIGH COURT

Kurian Augusty

Vs

Devassy Aley

A.S. No. 137 of 1955, in O.S. No. 98 of 1953

(Joseph Vithayathil and Varadaraja Iyengar, JJ.)

01.08.1956

JUDGMENT

Joseph Vithayathil, J.

1. Plaintiffs are the appellants. The suit is for partition of properties left by one Joseph Kathanar who died intestate on 24-12-1952. Plaintiffs are the sons of a deceased sister of Joseph Kathanar. He had three brothers and two sisters of whom only one brother (defendant 1) and one sister (defendant 2) are now alive. Defendants 3 and 4 are the children and defendants 5 to 9 the grandchildren of a deceased brother, Pylee, and defendants 10 to 12 the children of the other deceased brother, Ithappiri. Defendants 13 to 19 were impleaded as persons in occupation of some of the properties. Defendant 1 died during the pendency of the suit and his legal representatives were impleaded as additional defendants 20 to 23. According to the plaintiffs they are entitled to one-fifth share in the properties, and the suit is for partition of that share.

2. Defendant 2 supported the plaintiffs and contended that she also was entitled to one-fifth share in the properties. Defendants 3 and 11 contended, inter alia, that under the Travencore Christian Succession Act the plaintiffs were not entitled to any share in the properties of deceased Joseph Kathanar. Defendant 5 also contended that the plaintiffs were not the heirs of deceased Joseph Kathanar and that the two sisters of Joseph Kathanar have been married away and given their streedhanam long before the death of Joseph Kathanar. Defendant 21 also contended that the plaintiffs were not entitled to any share in the properties of deceased Joseph Kathanar.

3. The first issue raised in the case was: "Are the plaintiffs heirs of deceased Joseph Kathanar? What is the law that governs the distribution of the assets of Joseph Kathanar?" This issue was tried as a preliminary issue. According to the plaintiffs, the law that governs Succession to the properties of deceased Joseph Kathanar is the Indian Succession Act 39 of 1925, while according to the defendants 3, 5, 11 and 21, the law that applies to the case is the Travencore Christian Succession Act, 2 of 1092.

The Court below held that it was the Travencore Christian Succession Act that applied to the case. The Indian Succession Act is one of the Central Acts extended to the Travencore-Cochin State by the Part B States (Laws) Act, 3 of 1951, which came into force on 1-4-1951. Section 6

of that Act (3 of 1951) provides :

"If immediately before the appointed day there is in force in any Part B State any law corresponding to any of the Acts or Ordinances now extended to that State that law shall, save as otherwise expressly provided in this Act stand repealed.....".

It is not provided in Act 3 of 1951 that the Travencore Christian Succession Act 2 of 1092, will continue in force notwithstanding the introduction of the Indian Succession Act into this State. The question for decision is whether the Travencore Christian Succession Act must be deemed to have been repealed by Act 3 of 1951, and whether Part 5 Indian Succession Act relating to intestate succession has taken its place. If the Travencore Christian Succession Act is law corresponding to the Indian Succession Act there can be no doubt that the former must be deemed to have been repealed by Act 3 of 1951. According to the plaintiffs, the Travencore Christian Succession Act is law corresponding to Part 5 Indian Succession Act relating to intestate succession. According to the contesting defendants the Travencore Christian Succession Act is kept intact by Section 29(2), Indian Succession Act and is therefore not law corresponding to Part 5 of that Act relating to intestate succession.

4. Section 29, Indian Succession Act reads as

"29 (1) This Part shall not apply to any intestacy occurring before the first day of January 1866, or to the property of any Hindu, Mohammadan, Budhist, Sikh or Jaina.
(2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of British India in all cases of intestacy."

According to sub-section (2), Part 5 of the Act relating to the intestate succession will not apply to a case in which there is 'any other law for the time being in force', relating to intestate succession. It follows that if the Travencore Christian Succession Act can be regarded as law in force relating to intestate succession among Christians in Travencore that law is saved under sub-section (2) of Section 29, Indian Succession Act. Sub-section (1) of Section 29 excludes from the operation of Part 5 of the Act cases in which intestacy occurred before 1-1-1866 and intestate succession to the property of a Hindu, Mohammadan, Budhist, Sikh or Jaina. Sub-section (2) excludes from the operation of Part 5 communities which have their own laws relating to intestate succession. It is clear from the section that the Indian Succession Act was not intended to interfere with the personal law of communities which have settled laws of their own as regards intestate succession. Even if Travencore formed part of the former British India, Part 5, Indian succession Act would not apply to Christians in Travencore who were governed by the Travencore Christian Succession Act.

5. In *Nabujan v. Paushimoni*¹, the Calcutta High Court held that the customary law of the Garos community would fall within the expression "any other law for the time being in force" in sub-section (2) of Section 29, Indian Succession Act and that if the requisites of a valid custom having the force of law were established the Garos would be governed by that custom and not by Part 5, Indian Succession Act as regards intestate succession. To the same effect is the decision in '*Prem Chand v. Lilawati*,²' There can therefore,

be no doubt that the Travencore Christian Succession Act is saved by sub-section (2) on Section 29, Indian Succession Act.

6. There is another way of approaching the question. The Indian Succession Act must be deemed to have adopted by reference all laws for the time being in force relating to intestate succession which will include the Travencore Christian Succession Act so far as Christians in Travencore are concerned. The following passage in American Jurisprudence, Vol. 50, page 57, shows that the law governing a particular subject may be adopted by reference in a statute :

"Statutes which refer to other statutes and make them applicable to the subject of the new legislation are called 'reference statutes'. The purpose of such practice is to incorporate into the new Act the provisions of the other statutes by reference and adoption and thereby to avoid encumbering the statute books by unnecessary repetition. In the absence of constitutional restrictions reference statutes are frequently recognized as an approved method of legislation.

It is however, reasonable to suppose that when the legislature undertakes to legislate specifically on a subject it does so fully and it cannot be deemed to have incorporated into the law parts of a former law unless the language employed is such as to indicate with a reasonable degree of certainty that that was the legislative intention. Reference-statutes generally adopt all or a part of another statute by a specific reference thereto, and a descriptive reference thereof. Sometimes, however, the reference is not merely to a particular statute, but to the law generally governing a certain subject, or to the laws generally covering a certain subject with the exception of those for which specific provision is otherwise made. Similarly, a Code or compilation of laws need not be embodied in the Act adopting it; a reference in such Act to the Code or compilation adopted is sufficient. The adoption of an earlier statute by reference makes it as much a part of the later Act as though it had been incorporated in full length". If the effect of the saving clause in Section 29 (2), Indian Succession Act is to adopt all laws for the time being in force relating to intestate succession as part of the Indian Succession Act as regards intestate succession, the Travencore Christian Succession Act should be regarded as the law relating to intestate succession under the Indian Succession Act so far as Christians in Travencore are concerned. In this view of the matter, the Travencore Christian Succession Act can in no sense be regarded as law corresponding to Part 5, Indian Succession Act. It has to be regarded as forming part of the Indian Succession Act. If the Travencore Christian Succession Act cannot be regarded as law corresponding to Part 5, Indian Succession Act it is clear that it will not stand repealed by Section 6 of the Act 3 of 1951 (Central). We therefore, agree with the opinion of the Court below that the Travencore Christian Succession Act has not been repealed by reason of the introduction of the Indian Succession Act into the Travencore-Cochin State by Act 3 of 1951.

7. As a result of the above finding on issue No. 1 the Court below dismissed the suit on the ground that under the Travencore Christian Succession Act the sister of a deceased person is not his heir when he has left behind a brother. Although both brothers and sisters are included in group (3) of Section 25 of the Act, Section 29 provides that :

"The female heirs or the descendants of the deceased female heirs mentioned in groups (3), (5), (6) and (8) in Section 25 will be entitled to share in the intestate's property only in

the absence of the male heirs mentioned in the respective groups or the lineal descendants, if any, of such male heirs who may have pre-deceased the intestate".

It follows that the plaintiffs are not entitled to claim any share in the estate of deceased Joseph Kathanar.

8. We, therefore, confirm the judgment and decree of the Court below and dismiss the appeal. The appellants will pay the costs of respondent 20 (defendant 21) in this Court.

Appeal dismissed.

Cases Referred.

¹54 Cal WN 2 DR 14

² AIR 1956 Him-P. 17