

QUEEN-  
EMPERESS  
v.  
VENKATA-  
SAMI.

of law to be decided in such cases. While, however, confirming the conviction, we decline to confirm the sentence of death, and direct that in lieu thereof the appellant be transported for the term of his natural life; and we direct that the evidence in the case and this judgment be brought to the notice of His Excellency the Governor in Council in order that he might, if he think fit, reduce the sentence under the special circumstances of this case.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.*

MAHALINGA (DEFENDANT NO. 1), APPELLANT,

v.

MARIYAMMA AND OTHERS (PLAINTIFFS), RESPONDENTS.\*

*Aliyasantana law—Yajaman—The rights of the senior member of the family being a female.*

The senior member of an Aliyasantana family, if a female, is *prima facie* entitled to the yajamanship: and in the absence of a special family custom or a binding family arrangement to the contrary, the management of the family affairs by another member is to be presumed to be by the sufferance of the yajaman for the time being.

SECOND APPEAL against the decree of J. W. Best, District Judge of South Canara, in appeal suit No. 140 of 1886, confirming the decree of C. Venkobacharyar, Subordinate Judge of South Canara, in original suit No. 37 of 1885.

The plaintiff as senior member of an Aliyasantana family sued to remove her younger brother, defendant No. 1, from the management of the family and to recover possession of the family property.

Both the Subordinate Judge and, on appeal, the District Judge decreed as prayed by the plaintiff. Defendant No. 1 preferred this second appeal.

*Ramasami Mudaliar* for appellant.

*Ramachandra Rau Sahib* for respondents.

The facts of the case and the arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

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\* Second Appeal No. 73 of 1888,

JUDGMENT.—Respondent No. 1 is the senior member of an Aliyasantana family in South Canara and the appellant is her younger brother and has been the *de facto* manager of the family for upwards of 20 years. Respondent No. 1 brought the present suit on the death of her uncle to establish her right to assume management of the family property, and to remove the appellant from possession. She rested her claim on two grounds, namely, that as the senior member of the family, she was the lawful yajaman, and that the appellant was guilty of misconduct. The Subordinate Judge considered that the misconduct imputed to the appellant was not proved. Though the District Judge did not concur in that opinion, yet he preferred to rest his decision mainly on the ground that respondent No. 1 was the lawful yajaman of the family, and that the appellant's management was liable to be put an end to at her pleasure. It is urged in appeal that this view of the case is contrary to law.

MAHALINGA  
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MARIYAMMA.

The first point argued before us is that exhibit K and the appellant's evidence in this case have been misunderstood. In exhibit K the appellant stated that he had been managing according to the instructions of the females of the family, but that his management was not liable to be set aside except for fraud. In his evidence he said that he had been managing the affairs of the family with the consent of respondent No. 1 and the other females and his uncle Teampa Hegade. Though these statements, as urged for the appellant, do not amount to a clear and unequivocal admission that the appellant's management was by sufferance, yet they certainly afford some evidence of it, inasmuch as he distinctly admitted in exhibit B that he had been in management during the lifetime of his uncle, who was both his senior and a male member of the family.

The next contention is that the decision ought to be in accordance with the special usage of the family. The question of a family usage was raised by the first issue in the case, and the finding is that no such usage has been established. It appears further that no special family karar or arrangement has been set up. The substantial question then for decision was whether, according to the general Aliyasantana usage, the senior male excludes from management the senior member of the family when she is a female. We are of opinion that the decision of the Judge on this point is correct. It is in accordance with the decisions of

MAHALINGA  
v.  
MARIYAMMA.

this Court in *Subbu Hegadi v. Tongu*(1), *Devu v. Deyi*(2) and *Govindan v. Kannaran*(3). Though it was considered not yet settled whether the senior female might not exclude the senior member of the family from management if he is a male, still it was never doubted that the senior member, if a female, is entitled to the yajamanship. It is true that females are generally excluded from management in Malabar by reason of their sex, but it is the incident of a special usage which has been recognized to obtain in that district. As observed by the Judge, the Aliyasantana system of inheritance as well as the marumakkatayam usage has probably originated from a type of polyandry which prevailed in ancient times, and the natural result of that system would lead to the senior female being the yajaman of the family. We agree in the opinion of the Judge that the practice obtaining in Malabar whereby females are excluded from management cannot be extended to the Aliyasantana families in South Canara. In the absence of a special family custom or a binding family arrangement, the Judge was right in presuming that the appellant's management was by the sufferance of yajaman for the time being, and that it did not preclude the yajaman from resuming the management at his or her pleasure at any time. It has been held by this Court that such a presumption is legal, with reference to a Malabar tarwad(4), the constitution of which is similar to that of an Aliyasantana family.

We are of opinion that the second appeal cannot be supported and dismiss it with costs.

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(1) 4 M.H.C.R., 197. (2) I.L.R., 8 Mad., 353. (3) I.L.R., 1 Mad., 351.

(4) See *Nambiatan v. Nambiatan* (2 M.H.C.R., 110), Reporter's Note.

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