

We confirm the decree of the Lower Court and dismiss the appeal with costs.

D. Grant, Attorney for Appellants.

Branson & Branson, Attorneys for respondent.

SHAN MAUN
MULL
v.
MADRAS
BUILDING
COMPANY.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice
and Mr. Justice Parker.*

RARICHAN (PLAINTIFF), APPELLANT,

v.

PERACHI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1891.
November 16.
1892.
March 7.

*Malabar Law—Makkatayam rule of inheritance—Custom of Tiyars in
South Malabar.*

A community, following the Makkatayam rule, must not be taken to be necessarily governed by the Hindu law of inheritance with all its incidents.

Accordingly, when a member of the Tiyar community in Calicut following that rule, alleged and proved a custom that brothers succeeded to self-acquired property in preference to widows, it was held that the Court should give effect to it.

SECOND APPEAL against the decree of A. Thompson, Acting District Judge of South Malabar, in appeal suit No. 232 of 1890, reversing the decree of T. V. Anantan Nayar, Principal District Munsif of Calicut, in original suit No. 904 of 1888.

Suit for a declaration that the plaintiff was entitled to the self-acquired property left by his brother (deceased) whose widow was defendant No. 1. The parties were Tiyars, admittedly following the Makkatayam rule, and the plaintiff alleged that his claim was in accordance with the custom governing them. Upon the allegation, the fourth and fifth issues were framed as follows:—

“What is the law of succession which governs the parties.

“Whether, according to the law of succession which governs the parties, the plaintiff, the undivided brother of the deceased or his widow, the defendant, is his legal representative in respect of his self-acquired properties.”

The District Munsif recorded findings on these and the other issues in favour of the plaintiff and passed a decree accordingly.

* Second Appeal No. 1267 of 1890.

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The District Judge reversed this decree for reasons which appear from the judgment of the High Court.

The plaintiff preferred this second appeal.

Sundara Ayyar for appellant.

Ramachandra Ayyar for respondent No. 1.

This second appeal came on for hearing before PARKER and HANDLEY, JJ., who delivered judgment as follows:—

JUDGMENT.—The judgment of the District Judge appears to be based upon the assumption that, because a community is said to follow Makkatayam, it must be taken to be governed by the Hindu law of inheritance with all its incidents. This is not so. The word 'Makkatayam' is generally used in Malabar to denote the succession of sons in contradistinction to Marumakkatayam or succession of nephews.

The case set up in the plaint was that, under the law by which plaintiff's family was governed, the brother succeeded to self-acquired property in preference to the widow. The fourth issue settled was what is the law of succession which governs the parties. The Munsif held that it was proved that by the law of succession governing Tiyars of Calicut, the brother succeeded in preference to the widow.

The Judge has treated the succession of the brother as a special custom deviating from the ordinary law. This way of treating the case rests upon the fallacy abovementioned; that the ordinary law of the Tiyars of Calicut is the Hindu law pure and simple. We must ask the present District Judge to re-hear the appeal and return findings on the fourth and fifth issues with reference to the foregoing observations.

Finding to be returned within six weeks from the date of the receipt of this order; and seven days, after the posting of the finding in this Court, will be allowed for filing objections.

[In compliance with the above order, the District Judge submitted his findings as follows:—

(1.) The High Court have directed me to submit fresh findings on the fourth and fifth issues in this case.

(2.) The parties are Tiyars of Calicut, who follow Makkatayam, and the question to be considered is whether, according to the law or custom followed by such Tiyars, the self-acquisition of a member of an undivided family devolves on his undivided copar-

eners or is inherited by his widow. The District Munsif, after a careful consideration of all the evidence before him, found that the custom among the Makkatayam Tiyars of Calicut was that the self-acquisition of a member of an undivided tarwad went on his death to the tarwad, and that the widow was entitled to nothing more than maintenance. That finding appears to me to be the only one which the District Munsif could have arrived at on the evidence produced before him. It is also, I may add, in accordance with what I understand is the custom among Makkatayam Tiyars in South Malabar.

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(3.) I accordingly return a finding on the fourth and fifth issues to the effect that, according to the law of succession which governs the parties, the plaintiff, as the undivided brother of the deceased, is his legal representative in respect of his self-acquired properties.]

This second appeal having come on for final hearing, the Court delivered judgment as follows:—

JUDGMENT:—We must accept the finding of the present District Judge.

The evidence is to the effect that the Tiyars of Malabar are not governed by the Hindu law pure and simple, but that their usages, with regard to divorce, re-marriage and inheritance are not entirely in accordance with the Hindu law, though the succession of sons does obtain among them.

There is legal evidence that in South Malabar, or, at all events, in Calicut taluk, the brother succeeds to self-acquired property in preference to the widow.

The decree of the Lower Appellate Court must be reversed, and that of the District Munsif restored. The appellant is entitled to his costs in this and in the Lower Appellate Court.

