complete—according to the class of stridhanam to which the particular property belongs, the Mitakshara lays down rules which are easy of application, complete in themselves and on the whole equitable. We think therefore we ought to follow the Mitakshara and hold that the plaintiff is the heir.

It only remains to observe that though, as we have seen, a wife's earnings and gifts to her by strangers are her stridhanam descendible to her heirs, yet a question may arise whether her husband has any and what control over such property. The question however does not arise in this case and it is unnecessary to consider it.

The decree of the Lower Appellate Court is reversed and that of the District Munsif restored. The Appellant's costs in this and in the Lower Appellate Court must be paid by the firstdefendant.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

SRIDEVI (DEFENDANT No. 1), APPELLANT,

v.

KRISHNAN AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 2 TO 4), RESPONDENTS.*

1897. Sept. 30. October 1.

Pensions Act—Act XXIII of 1871, *s.* 12—*Political pension of Zamorin of Calicut—"Payable"—Power of disposition by will.*

The Zamorin of Calicut, whether he be or not a member of a Kovilagom, is entitled to dispose of his separate property by a will.

The Zamorin, by his will, bequeathed to the plaintiff the malikhana due to him from the Government which might be in arrears at the time of his death. The malikhana was a political pension of Rs. 6,000 a month, payable quarterly. The Zamorin died on the 6th of August 1892. The plaintiff having obtained a certificate under Pensions Act, s. 6, now sued the new Zamorin to recover the proportionate amount of the pension for the current quarter up to the time of the Zamorin's death:

Held, that the plaintiff was not entitled to recover the amount sued for.

APPEAL against the decree of A. Venkataramana Pai, Subordinate Judge of South Malabar, in Original Suit No. 22 of 1895.

The plaintiff sued for Rs. 8,391-9-6, together with interest from the 24th February 1893. The nature of the suit appears from the following passage from the judgment of the Subordinate Judge:—

* Appeal No. 125 of 1896.

SRIDEVI v. KRISHNAN.

"The late Zamorin, Maharaja Bahadur of Calicut, died on "6th August 1892. The Zamorin, for the time being, enjoys a "malikhana of Rs. 6,000 a month, payable quarterly. The "late Zamorin died before the quarterly instalment fell due. "Rs. 8,391-9-6 represents the proportionate amount due for the "portion of the quarter up to the date of his death. After the "death of the late Zamorin, the Collector paid the amount, on the "24th February 1893, on the present Zamorin's receipt, to the first "defendant, who is the senior Tamburatti of the Pudiakovilagom "to which the deceased belonged. The plaintiff, nephew of the "deceased, has since obtained a certificate (exhibit G, dated 4th "July 1895) under section 6 of the Pensions Act, 1871, and sues to "recover the amount from first defendant on the grounds (1) that "the deceased has bequeathed it to him by will (exhibit A, dated "3rd August 1892); (2) that even in the absence of the will A, the "amount would go to their Tavazi or branch of the Pudiakovila-"gom, of which he is the present head and manager; and (3) that "such arrears of malikhana are, according to family custom, spent "for the obsequies of the deceased malikhana-holder, and he (the "plaintiff) has performed the obsequies of the late Zamorin at "his own cost. The first defendant denies everyone of these "positions."

The Subordinate Judge passed a decree for the principal sum and interest at 6 per cent., instead of 12 per cent.

Defendant No. 1 preferred this second appeal.

Sundara Ayyar for appellant.

The Acting Advocate-General (Hon. *V. Bhashyam Ayyangar*) and *Govinda Menon* for respondent No. 1.

Govindan Nambiar for respondents Nos. 2 and 3.

Subramania Ayyar for respondent No. 4.

JUDGMENT.—In the Court below, the plaintiff claimed the amount of the pension in dispute in his own right under the will left by the late Zamorin in his favour.

He also claimed the money on behalf of the Tavazi to which he formerly belonged, and of which he was *de facto* manager.

In the appeal here, the Advocate-General put forward another ground, namely, that apart from the will the plaintiff was entitled to the money as the nearest heir to the last Zamorin. This new ground, in order to be considered, would require further enquiry, and we cannot therefore permit it to be raised now.

As to the second of the grounds on which the suit was based in the Lower Court, it is clearly not maintainable, because the certificate granted to the plaintiff under the Pensions Act permitted him to sue only in his own right and under the will. No leave was given to the Tavazi to sue. Even if it had been otherwise, we would have held that the plaintiff was not entitled to sue on behalf of the Tavazi as at the date of the plaint, he had ceased to belong to it, having become a stani. The fact that he was subsequently allowed to manage the affairs of the Tavazi constituted him only its agent. That would, of course, not give him a right to represent the Tavazi, so as to proceed under section 30 of the Code of Civil Procedure, he not having the same interest as the members of the Tavazi, if they had any.

The only remaining point is whether the plaintiff is entitled to the money under the will was impeached on several grounds. It was first contended that the Zamorin was subject to the *Marumakkattayam* Law, and it was therefore not competent to him to execute a will even in respect to his separate property. The right to dispose of separate property by testamentary disposition is a right now recognized as vested in every Hindu, and without evidence of custom or usage to the contrary, among Malabar Hindus, there can be no reason for holding that the general rule is inapplicable to them. We should therefore hold that the Zamorin had the power to will away his separate property, which the amount in dispute admittedly was, even though the Zamorin was also a member of an undivided family—to wit, his Kovilagom. In fact, however, he was not that. His will is, therefore, unquestionably not open to objection on the ground stated. It was next contended that the transfer of the pension money made in the will was null and void under section 12 of the Pensions Act. There is no doubt the pension was a political pension, being an allowance granted by the Government, not in respect of a right, but as a matter of favour to the Zamorin, after his deposition from the Raj, as the engagement between him and the Government clearly shows (*vide* 'Logan's Collection of Treaties and Engagements relating to Malabar,' pages 372 to 376). See also *The Secretary of State for India in Council* v. *Khemchand Jeychand*(1). Section 12 is, therefore, applicable to the case, if the amount bequeathed by the will was "money not payable" at the time of the will became operative.

(1) I.L.R., 4 Bom., 432.

SRIDEVI v. KRISHNAN.

It is not denied that the day appointed for the payment of the quarterly allowance, of which the plaint amount forms part, had not arrived at the time of the Zamorin's death. The money was not disbursable from the Government treasury until a month or more afterwards. If, therefore, the expression "payable" in section 1. means ripe for disbursement or that payment was demandable, the will was doubtless invalid. It was, however, urged by the Advocate-General that the proper construction of the word was that the right to the money had accrued, and hence was "payable," even though the actual payment of it could not be demanded till a later date. We are unable to accept this construction. We think the word payable is used in its primary sense, namely, deliverable in performance of an obligation, in other words that actual payment was demandable by the person entitled. We must therefore hold that the will was invalid under section 12 of the Pensions Act. Further, supposing the transfer did not fall under the prohibition in section 12 of that Act, the case would be governed by clause (9) of section 6 of the Transfer of Property Act, which declares that "political pensions cannot be transferred." There is no conflict between this clause and any provision of the Pensions Act, because there is nothing in the latter Act empowering alienation of a political pension in cases in which section 12 may not be applicable. If such power of transfer existed, it must have been under the general law, and it is expressly taken away by the Transfer of Property Act. It is scarcely necessary to observe that, as the law of testamentary disposition among Hindus has been treated simply as a development of the law of gift *inter vivos* the principles applying to the latter, under section 6 of the Transfer of Property Act, must be held equally applicable to the former, that is to say, that what cannot be given in life, cannot be given by will. For these reasons we find that the plaintiff derived no title to the money under the will. It therefore becomes unnecessary to express an opinion whether, if the plaintiff had a right, his action lay against the Zamorin and not against the first defendant as was contended on behalf of the latter.

The appeal must accordingly be allowed and in reversal of the Lower Court's decree, the plaintiff's suit must be dismissed with costs of first defendant throughout.