

MAMMIK-  
KUTTI  
v  
PUZBAKKAL  
EDOM.

We are of opinion that the case is governed by article 62 or article 97 of schedule II of the Indian Limitation Act and that the period of limitation is 3 years. The appeal is dismissed with two sets of costs.

## APPELLATE CIVIL.

*Before Mr. Justice Subrahmanya Ayyar and Mr. Justice Benson.*

RAJU GRAMANY (DEFENDANT), APPELLANT,

v.

AMMANI AMMAL (PLAINTIFF), RESPONDENT.\*

1906  
January 18.  
February 15.

*Hindu Law - Mitakshara - Stridhanam, devolution of - Sister takes precedence over sister's son - Nature of right.*

Under the Mitakshara Law, where a woman not married in any of the approved forms dies issueless, her stridhanam property, in the absence of nearer heirs, passes to the sister in preference to the sister's son.

The Mitakshara is the paramount authority in this Presidency and in the absence of a consensus of opinion among the commentators, and where there is no evidence of usage to the contrary, the general doctrine of Mitakshara Law must prevail over the Smriti Chandrika. A woman taking stridhanam property of a deceased female by inheritance will take only a limited interest in such property.

*Muthappudayan v. Ammani Ammal*, (I.L.R., 21 Mad., 58 at p. 62), referred to.

*Salemma v. Lutchmana Reddi*, (I.L.R., 21 Mad., 100 at pp. 103 and 104), referred to.

PLAINTIFF was the sister of one Thayamma who died on 14th March 1902 leaving the plaint property her self acquisition. Defendant was plaintiff's son. Plaintiff claimed the property and the title-deed (sale-deed in favour of Thayamma) in the possession of defendant, by right of inheritance, alleging that she was the next heir to the said Thayamma.

The defendant contended that the plaintiff was not the next heir of the deceased.

The lower Court passed a decree in favour of the plaintiff.

The defendant preferred this appeal.

*V. Masilamani Pillai* for appellant.

*Mr. Joseph Satya Nadar* for respondent.

\* City Civil Court Appeal No. 17 of 1905, presented against the decree of M.R. Ry. C. Jambulingam Mudaliar, City Civil Judge of Madras, in Original Suit No. 242 of 1904.

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JUDGMENT.—The property in dispute, a house, was admittedly the acquisition of the deceased owner Thayammal, a woman of the Sudra class. In the absence of any evidence on the point, the Judge rightly took the property to have been Thayammal's absolute estate descendible as her *stridhanam* in the general and non-technical sense of the term according to the Mitakshara. The Judge in our opinion also rightly held that as between the only relatives of hers surviving her, the plaintiff the sister of Thayammal was entitled to succeed in preference to the defendant who is the plaintiff's son, in the view adopted by the Judge and not seriously controverted in the argument before us, that Thayammal had not been married in any of the approved forms. The paramount authority on a question such as this is of course in this Presidency the Mitakshara, and, according to it, the plaintiff as the daughter of Thayammal's father takes precedence over the defendant, his daughter's son, though the estate which the plaintiff thus takes would be but a limited estate. On behalf of the defendant, our attention was drawn to the text of Brihaspati quoted and explained in *Venkatasubramaniam Chetti v. Thayarammah*(1) and it was contended that according to it the plaintiff has no right to Thayammal's estate as against the defendant who is named in the text while she is not. This text no doubt is cited in Smriti Chandrika, the Madhaviya, the Saraswativilasa and the Vyavaharanirnaya which are of more or less authority in this Presidency. The comments upon the text in the last work show how differently it has been interpreted. In no view does the text seem reconcilable with the rules of descent deducible from the Mitakshara and it is therefore not surprising that Vigneswara omits all reference to it. The reference to the text in the other commentaries does not suggest any consensus among the authors of them as to the precise application of the text. Nor is there anything to show that, as a matter of usage, the text is followed in circumstances like those of the present case in preference to the general mitakshara doctrine as applicable thereto. Having regard to the considerations relied on in *Muthappudayan v. Ammani Ammal*(2) and *Salemma v. Lutchmana Reddi*(3), we think we should hold that the Smriti Chandrika which alone is capable of being understood as giving the relations mentioned in the text a definite

(1) I.L.R., 21 Mad., 263 at p. 267.

(2) I.L.R., 21 Mad., 58 at p. 62.

(3) I.L.R., 21 Mad., 100 at pp. 103, 104.

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place in the line of heirs in the way pointed out by Sir Gurudas Banerjee ('Hindu Law of Inheritance and Stridhana,' 2nd edition, pp. 373 and 389), viz, immediately after the husband or the parents as the case may be, cannot outweigh the Mitakshara, and, as already stated, under the latter the plaintiff as the daughter of Thayammal's father has a better title than the defendant who is only his daughter's son. The appeal fails and is dismissed with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Subrahmania Ayyar, and Mr. Justice Moore.*

RAMASWAMY CHETTY (PLAINTIFF), APPELLANT,

v.

THE MUNICIPAL COUNCIL, TANJORE (DEFENDANTS),  
RESPONDENTS.\*

1906  
February  
16, 23.

*District Municipalities Act (Madras) IV of 1884, s. 45—Contract not signed in accordance with section unenforceable.*

A contract purporting to be made by a Municipality but not signed by the Chairman or Vice-Chairman and a Councillor as required by section 45 of Act IV of 1884 is not binding on the Municipality.

*Radha Krishna Das v. The Municipal Board of Benares, (I.L.R., 27 All., 592), followed.*

Where the contract is not so signed, the Municipality cannot be rendered liable on the ground of executed consideration.

*Young & Co. v. The Mayor and Corporation of Royal Leamington Spa, (L.R., 8 A.C., 517), followed.*

SUIT instituted against the Municipal Council of Tanjore for the balance alleged to be due for work done by the father of the plaintiff in pursuance of a contract with the Municipal Council. The contract was signed by the contractor but was not signed by the Chairman or Vice-Chairman and one of the Councillors as required by section 45 of Act IV of 1884. No objection however was taken on this ground by the Council in the Court of First Instance or on appeal.

\* Second Appeal No. 27 of 1904, presented against the decree of M. R. Ry. T. T. Rangachariar, Subordinate Judge of Kumbakonam, in Appeal Suit No. 1152 of 1902, presented against the decree of M. R. Ry. E. S. Ranganadha Mudaliar, District Munsif of Tanjore, in Original Suit No. 80 of 1901.