

A MUTHUSWAMI NADAR AND ORS.
v.
RAMAKRISHNAN NADAR AND ORS.

NOVEMBER 30, 1995

B [FAIZAN UDDIN AND SUJATA V. MANOHAR, JJ.]

Hindu Marriage Act, 1956 : Section 26.

C *Unmarried son—Death—Property—Devolution on mother—Death of mother—Devolution of property on her daughters—Sale deed executed by daughters—Held valid.*

D A partition suit filed by the appellants on the basis of two sale deeds executed in their favour by R and M was contested by the respondents on the ground that the sale deeds were invalid. The Trial Court held that sale effected by both the vendors was valid as they had inherited an interest in land from their mother, K. The first Appellate Court held that vendors' mother, who was a christian, could not have succeeded to the property of her son U who died as a Hindu. The High Court affirmed the judgment of the First Appellate Court. Hence this appeal.

E Allowing the appeal, this Court

F HELD : The First Appellate Court had wrongly assumed that vendor's mother K had converted into christianity. It is an admitted fact that she was Hindu till she died in the year 1957. On the death of her unmarried son U his share devolved on her. After her death succession to her property will be governed by the Hindu Succession Act, 1956 which came into force. That being so, her two daughters will be entitled to the property left by their mother because a convert's descendants only are disqualified under Section 20. Therefore, sales effected by R and M would be valid. [13-F-H, 14-A]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1607 of 1981.

H From the Judgment and Order dated 16.12.86 of the Madras High Court in C.A. No. 1977 of 1977.

K.V. Mohan for the Appellants.

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V. Balachandran, K.R. Choudhary, (NP) and S. Arvind for the Respondents.

The following Order of the Court was delivered :

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This appeal at the instance of the plaintiffs has been directed against the judgment dated 16th December, 1986 passed by the High Court of Madras in Second Appeal No. 1977 of 1977, affirming the judgment of the first Appellate Court dated 9.9.1977 whereby the judgment and decree passed by the Trial Court were reversed. The plaintiffs-appellants had instituted the suit for partition of the suit land on the basis of the three Sale Deeds one of which is said to have been executed by Inkupillai and Muthupillai - sons of Perumal in respect of their shares, in favour of the third appellant. The two other Sale Deeds were executed by Rosammal and Mariammal, in favour of the first appellant and the second appellant respectively. The suit was resisted by the respondent on the ground that Rosammal and Mariammal did not inherit any interest in the land and, therefore, Sale Deeds executed by them were invalid. The Trial Court on evaluation of the evidence took the view that the vendors of the plaintiffs had inherited an interest in the land in question and, therefore, the sales effected by them were valid. These findings were reversed by the first Appellate Court on the assumption that Kochammal - the mother of Rosammal and Mariammal was a Christian and, therefore, she could not succeed to the property of Kumaraswami, her sons, who died as a Hindu. But on perusal of the pleadings of the parties, we find that the learned First Appellate Court had wrongly assumed that Kochammal - the mother of Rosammal and Mariammal had converted into Christianity. On the contrary, we find that it is an admitted fact that she was a Hindu till she died in the year 1957.

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In view of the aforesaid facts and circumstances, on the death of Kumaraswami on (23.7.1864) share of Kumaraswami devolved on his mother Kochammal, according to Mitakshara Law because, Kumaraswami died unmarried. After the death of Kochammal in the year 1957 succession to her property will be governed by the Hindu Succession Act which came into force in 1854 and that being so, her two daughters will be entitled to

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- A the property left by their mother because a convert descendants only are disqualified under Section 20 of the Hindu Succession Act. In these facts and circumstances, sales effected by Rosammal ad Mariammal would be valid. In the result, the appeal succeeds and is hereby allowed. The judgment and decree passed by the first Appellate Court and the High Court are set aside and that of the Trial Court is restored. No costs.
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Substitution application is allowed.

T.N.A.

Appeal allowed.