

Explanation: kavaru,
as the case may be,



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Explanation:

For the purposes of this section, the interest of a Hindu in the property of a tarwad, tavazhi or illom as the case may be, that would have fallen to him or to her if a partition of that property per capita had been made immediately before his or her death among all members of tarwad, tavazhi or illom as the case may be, then living, whether he or she was entitled to claim such partition or not under the Marumakkattayam or Nambudri law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely. (2) When a Hindu to whom Aliyasanatana law would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of Kutumba or Kavaru, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the Aliyasanatana law.

Explanation:

For the purposes of this sub-section the interest of a Hindu in the property of a Kutumba or Kavaru, shall be deemed to be the share in the property of the Kutumba or Kavaru as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the Kutumba or Kavaru, as the case may be, then living, whether he or she was entitled to claim such partition or not under the Aliyasanatana law, and such share shall be deemed to have been allotted to him or her absolutely. Notwithstanding anything contained in sub-section (1) when a Sthanamdar dies after the commencement of this Act, the Sthanam property held by him shall devolve

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upon the members of the family to which the sthanamdar belonged and the heirs of Sthanamdar as if the Sthanam property had been divided per capita immediately before the death of sthanamdar among himself and all the members of his family then living, and the shares falling to the members of his family and the heirs of the Sthanamdar shall be held by them as their separate property.

Explanation:

For the purposes of this sub-section, the family of a sthanamdar shall include every branch of that family whether divided or undivided, the male members of which have been entitled by any custom or usage to succeed to the Sthanamdar if this Act had not been passed.” Marumakkattayam is a body of customary laws applicable to people living in Travancore-Cochin, Malabar and South Kerala.

It is followed by the non-Brahim community. In South Kerala the system of law applicable is known by the name of Aliyasanta. The outstanding characteristic of Marumakkattayam and Aliyasanta systems is that inheritance is based on matriarchate, that is, the members trace their descent through a common female ancestress, i.

e., through a female line. Both systems like the joint family or coparcenary of the Mitakshara School, have their units “ tarwad”, which is equivalent to the Mitakshara joint family. But the basic difference between the two is that the Mitakshara system is based on patriarchal system while the “ tarwad” or the Marumakkattayam is based on the matriarchal system.

In the words of Myne “ Tarwad is the name given to the joint family consisting of male and females, all descended in the female line from a common ancestress. It is an undivided family governed by the Marumakkattayam, the customary law of Malabar. Its outstanding feature is that for the purpose of inheritance descent is traced through the female line. A tarwad may consist of two or more branches known as tavazhies, each tavazhi or branch consisting of one of the female members of the tarwad and her descendants in the female line.

Every tarwad, in its initial stage, must have consisted of a mother and all her children, male and female, living in commonsality with joint right in property. And as it expands, the tarwad is added to by the descendants both male and female, of the female member thereof.” The tarwad differs from Mitakshara coparcenary in one fundamental respect, that is, in the former every member whether male or female has equal rights in the tarwad by virtue of his being born in that tarwad, while in the latter only the male descendants upto third generation have the right by birth in the family. But in the both the systems the interest of the deceased members devolve on the other members by survivorship. There is nothing like women’s estate in the former system as females acquire absolute right in the estate. In the Madras Marumakkattayam Act, 1933, a tavazhi in relation to the female is defined as the group of persons consisting of that female, her children and all her descendants in the female line.

And a tavazhi used in relation to a male is defined as “ the tavazhi of the mother of that male”. Although the law of succession in Marumakkattayam and Aliyasantana had been changed by the legislative enactments yet it

required important clarifications. Under the Madras Marumakkattayam Act the nearest heirs of a male member dying intestate are: his mother, his widow and his children whereas the nearest heirs of a female member, dying intestate are: her children and the lineal descendants in the female line.

Under both the systems the existing law needed some change. Accordingly Sections 7, and Section 17 were enacted under the present Act of 1956. The sub-section (1) relates to Marumakkattayam and Nambudri laws, which is parallel to Section 6 and Explanation 1.

The interest of a deceased member in the property of a tarwad would now, by operation of this Act, devolve under sub-section 1 and not according to Marumakkattayam or Nambudri law. Sub-section 2 relates to the Aliasantana law. It also gives an enactment parallel to Section 6 and Explanation 1: The apex Court in this connection observed: “ The sub-section makes it abundantly clear that the provisions relating to succession in the Act would apply in case of succession to Aliasantana Hindus. Accordingly when a Hindu governed by the Aliasantana law dies, possessed of a life interest, after his death the property devolves under the present Act and not the Aliasantana Act of 1949. It was also held that the undivided interest of the deceased in the property of the Kutumba or Kavaru would be deemed, by virtue of the Explanation to the sub-section to have been allotted to him on partition as his absolute property. The sub-section (3) relates to Sthanam property and devolution of such property on the death of a Sthanamdar. The Act does not define the expression “ Sthanam”, which has been defined in Moore’s Malabar Law and custom as a station, rank or dignity, the holder of which would be known as a Sthani or Sthanamdar. The Sthanam continues

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till the death of the Sthanamdar and thereafter the Sthanam property devolves on the members of the family to which he belonged and his personal heirs.

The division is to be per capita on the basis of notional partition having taken place immediately before his death. This result is brought about by the legal fiction enacted in this sub-section. The legal fiction, however, has to be confined for the purpose for which it is enacted and not to be extended further so as to include an actual division or partition having been effected in the life time of the Sthanamdar with the result that there was a division or partition for all purposes.