

(1955) 08 MAD CK 0015
In the Madras High Court

Alagammai Achi

APPELLANT

Vs

E.S.Vr.P.L. Veerappa Chettiar and Others

RESPONDENT

Date of Decision : 19-08-1955

Acts Referred:

Citation : (1956) 69 LW 359 : (1956) 2 MLJ 193

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—This is an appeal by one Kumari Alagammai the plaintiff in O.S. No. 57 of 1951, against the judgment and

decree of the Subordinate Judge, Devakottai, dismissing her suit with costs. That was a suit filed by her against her four paternal uncles, defendants

1 to 4, for giving her Rs. 40,000 for her marriage expenses, out of the joint family properties, said to be worth ten lakhs, divided by them among

themselves under two partition deeds, Exhibit A-8, dated 6th May, 1942, and Exhibit A-9, dated 26th May, 1948, making only a provision of Rs.

25,000 for her marriage expenses and dividing it among themselves at Rs. 6,250, each to be paid individually at a later date. The plaintiff alleged

that this provision of Rs. 25,000 for her marriage expenses in Exhibits A-8 and A-9 was not at all adequate and was in fraud of her rights to get

Rs. 40,000 from them jointly at once. She did not, therefore, file a suit for recovering the Rs. 25,000, or for getting that sum deposited into Court

for meeting her marriage expenses, taking advantage of the Privy Council ruling in Mst. Dan Kuer v. Sarla Devi (1946) 2 M.L.J. 420, on the basis

of her being a third party beneficiary under those family arrangements, but filed this suit for recovering Rs. 40,000, at once from them, ignoring

those partitions and family arrangements as not binding on her. She was admittedly a daughter of Chidambara, the brother of defendants 1 to 4.

She was aged 19 when she brought this suit, and is now 23 years old and quite ripe for marriage. The fifth defendant was her mother and the

widow of Chidambara. She was added as a pro forma party, and no relief was claimed against her, but, on the other hand, the plaintiff prayed that

the money decreed to her might be handed over to her mother, the fifth defendant, on her behalf. The plaintiff prayed for interest at 6 per cent, per

annum on the Rs. 40,000 from the date of the plaint, together with a charge for the principal and interest on the moveable and Immovable

properties in the A Schedule, and prayed also for costs against defendants 1 to 4.

2. Defendants 1 to 4 contested the suit on various grounds. The first was that under a custom of the Nattukottai Chetty caste, they were not liable

to pay any marriage expenses to the plaintiff from the properties, they had got at the partition under Exhibits A-8 and A-9, as each girl had to be

married away by her own father or mother. They claimed further that the plaintiff's right, if any, to recover marriage expense from them had

become barred by res judicata by reason of the final decision in O.S. No. 120 of 1942 on the file of the lower Court, a suit filed by her and her

mother for partition and delivery of one-fifth share of the family properties to the mother, and for a marriage provision for the plaintiff, rejecting

both the claims. They contended also that even if the plaintiff was entitled to recover any marriage expenses, the suit was premature, as her

marriage had not been celebrated and the expenses incurred, and as the marriage was not even fixed up and the terms settled. It was also

contended by them that the amount claimed by the plaintiff was extravagant, especially in view of the heavy losses sustained by them in the Malaya

business-since the partition, and in view of their having, therefore only properties worth hardly five lakhs left. They said that at the most a provision

of a maximum of Rs. 10,000, could be made for the marriage expenses of the plaintiff, and this sum too could not be paid over to her till the

marriage was celebrated and expenses to that extent incurred.

3. The learned Subordinate Judge framed the following issues:

(1) Whether the plaintiff is not entitled to a provision for her marriage from defendants 1 to 4?

(2) Whether the claim of the plaintiff for marriage expenses at Rs. 40,000 is proper and necessary, and, if not, what amount should be provided

therefor?

(3) Whether the plaintiff's claim is barred by res judicata in view of the decision in O.S. No. 120 of 1942, Sub-Court, Devokottai?

(4) Whether the defendants and their share of the family properties are not liable for the plaintiff's marriage expenses?

(5) Whether the custom alleged in paragraph 12 of the written statement of defendants 1 to 4 is true and valid?

(6) Whether the suit is premature and is not maintainable as framed?

(7) To what relief is plaintiff entitled, and against whom?

4. The plaintiff examined on her behalf two witnesses, including herself and filed Exhibits A-1 to A-27. The contesting defendants examined on

their behalf only the first defendant, as D.W. 1, and filed Exhibits B-1 to B-13.

5. After discussing the entire evidence, the learned Subordinate Judge found on issue 1, that the plaintiff was entitled to a provision for her marriage

expenses from defendants 1 to 4, but could claim the expenses only after the marriage had been performed, and the expenses incurred, and not

before the marriage. On issue 2 he held that some amount between Rs. 25,000 and Rs. 40,000, would be the proper amount to be allowed for the

marriage expenses of the plaintiff, considering her status, the various items of expenses which had, by custom to be incurred for the marriage of a

girl of her status in her community, the expenses actually incurred for marriages of some girls similarly situated, etc., but held that he was not giving

final finding regarding this, as the expenses had to be determined and decreed after the marriage had been performed and the expenses incurred.

On issues he found that the decision in O.S. No. 120 of 1942 would not operate as resjudicata against the plaintiff and defeat her claim for

marriage expenses, as that suit was primarily concerned with the claim for partition of the family properties and the delivery of one-fifth share to the

fifth defendant, the plaintiff's mother, and the claim for a provision for the plaintiff's marriage expenses was only incidental to that claim for partition

was dismissed along with it, when the claim for partition was dismissed as not maintainable, and so, the dismissal of the claim for marriage

expenses of the plaintiff would not constitute resjudicata. On issue 4, he held

that the joint family properties of defendants 1 to 4, got by them at partition, would be liable for the marriage expenses of the plaintiff, and that it was too early to decide whether these defendants would also be personally liable, and that they would undoubtedly be personally liable if, with a view to defeat the plaintiff's rights, they had done away with or were to do away with the joint family properties got by them at partition, as they had not earmarked any properties for meeting the expenses of the plaintiff's marriage estimated by themselves at Rs. 25,000, or set apart that amount in cash in any Bank or Trust and had merely stated that they would set apart and pay Rs. 6,250 each from their respective shares. On issue 5, he held that the alleged ancient well-established or torn in their community of not having any obligation to spend for the marriage of a deceased brother's daughter from the properties got by them at partition was not proved. On issue 6, he held that the suit was premature, as the marriage had not been celebrated, or even fixed up and the terms settled and relied on various rulings cited before him by defendants 1 to 4 for that purpose. In the end, therefore he dismissed the suit with costs. Hence this appeal.

6. We have perused the entire records and heard the learned Counsel on both sides Mr. K.S. Ramamurthi, for the appellant, raised several contentions The first was that the lower Court was wrong in holding, on issue 6, that the suit for marriage expenses could be filed only after the marriage was celebrated and the expenses incurred, and that the lower Court had not considered the really relevant rulings regarding the matter, viz., the ruling of a Bench of this Court, consisting of Munro and Sankaran Nair, JJ., in *Bapayya v. Rukhamma* (1909) 19 M.L.J. 666, and the ruling of a Full Bench of this Court, consisting of Ramesam, Jackson and Reilly, JJ., in *Subbayya v. Anantha Ramayya* (1928) 57 M.L.J. 826 : ILR 53 Mad. 84. In *Papayya v. Rukhmma* (1909) 19 M.L.J. 666 the learned Judges have held that the daughter of a Hindu is entitled to be paid her marriage expenses out of her fathers estate in the same way as she is entitled to be paid her maintenance and that this rule is not less applicable to Sudras than it is to Brahmins." They allowed the plaintiffs to recover the actual Katnam (bridegroom price paid, subject to a maximum of Rs. 500, and allowed Rs. 250, for marriage expenses, and Rs. 50 for sari. We called for

the original records of this case at the instance of Mr. Alladi

Kuppuswami, for defendants 1 to 4, and the records showed that the payments were directed to be made before the marriage was performed and

of course, there is no evidence as to whether the marriage was actually performed thereafter. In the Full Bench ruling, quoted above, it was held by

the learned Judges that the right of a Hindu daughter to her marriage expenses and maintenance is based on her right to, or interest in, the joint

family property and is not based on the natural obligation of a father to maintain his children and is historically a remnant of an original right to a

share in the property itself, and that this obligation of the family property is not affected by partition between the father and his sons, and that the

sons' shares on partition are liable for the marriage expenses of the daughter of the father in proportion to the sons' shares in the property divided.

It was also held therein and was indeed admitted before the learned Judges, that members of the joint family, who got the property by survivorship

after the father's death, like defendants 1 to 4, would also be liable for the marriage expenses of the daughter, though the liability would be

confined to the extent of the father's share in their hands and would not be a liability on their own shares, apart from the share taken by

survivorship. The learned Judges also fixed the maximum amount for the expenses of the marriage of each daughter that remained unmarried at Rs.

1,500 each, instead of the Rs. 2,000 claimed, as they considered that Courts should not encourage extravagance in the matter of bridegroom

price, dowry, etc., and directed that notice be given to the other side regarding the marriage, when settled, so that it may be satisfied of the

correctness of the dowry, etc., settled, and the expenses incurred or sought to be incurred. In that case, the girls were of tender years, and not

ripe for marriage, as here. In *Naramsetti Venkatappala Narasimhulu and Others Vs. Naramsetti Someswara Rao and Another*, a Bench of this

Court, consisting of Patanjali Sastri and Happeell, JJ., held that the proper way for providing for the expenses for the marriage of a daughter is to fix

the maximum amount and to declare a charge for a proportionate share of such amount on the properties allotted to the sons under a partition

decree, and not to direct a payment of the same forthwith out of the family assets. But the girl in that case was aged only 7, and was not ripe for

marriage like Kumari Alagammai, who was 19 years old at the time of the suit and ripe for marriage. Mr. ALLadi Kuppuswami, for defendants 1 to

4, after perusing the above rulings conceded that Courts could fix the maximum expenses to be incurred and could also, in a case like this, where

the girl is ripe for marriage, direct defendants 1 to 4 to deposit the maximum amount so fixed for her marriage expenses into Court, but prayed that

the amount should not be allowed to be drawn out by the plaintiff or by her mother or power-of-attorney holder till the marriage is settled, and the

terms fixed, and then too only after notice to defendants 1 to 4 about the amount sought to be drawn, so that they might satisfy themselves about

the bona fides of the amounts, etc., claimed in the petitions. He conceded that in view of the above three rulings, and especially the ruling in

Bapayya v. Rukhamma (1909) 19 M.L.J. 666, it was not possible for him to support the lower Court's conclusion that the marriage should be

performed already, and the expenses incurred, before the marriage expenses could be fixed, or claimed, or deposited. Mr. Ramamurthi, on his

part, conceded that, in view of the above rulings and especially the rulings in Naramsetti Venkatappala Narasimhulu and Others Vs. Naramsetti

Someswara Rao and Another, , it was not possible for him to contend that the money fixed by us for the marriage expenses should be paid to the

plaintiff or her mother in cash at once, and that he would be content with an order fixing the maximum amount and directing defendants 1 to 4 to

deposit it into the lower Court forthwith, and making the amount a charge on all the properties got by defendants 1 to 4 at partition and still with

them, and on their other properties also to the extent of their having parted away with the properties got by them at partition. He agreed that the

plaintiff or her mother or power-of-attorney holder should put in petitions in the lower Court for drawing out the amounts when the marriage was

settled and the terms fixed and that notice of such petitions should go to the other side. We are of opinion that the learned Subordinate Judge

would also have come to the same conclusion had the three rulings above been cited before him, instead of the rulings actually cited before him,

which related to a claim for recumbent of expenses incurred after the marriage had been performed. It is obvious that it will be hopeless to expect,

in modern times, persons to spend money out of their own pockets for meeting such marriage expenses and claiming them thereafter. It is also

obvious that unless the bridegroom price is paid as soon as settlement is effected, and the saris and materials bought well in time before the marriage, the marriage itself may fall through. Indeed, the unfortunate plaintiff had such an experience. A suitable young man was ready and willing to marry her, and she willing to marry him, but, owing to money not being available for with to pay the dowry and to meet the expenses, the marriage was called off by the young mart.

7. The next contention of Mr. Ramamurthi was that the lower Court should have at least fixed Rs. 25,000 as the amount for the marriage expenses and directed defendants 1 to 4 to deposit it into Court, instead of merely observing that it would be reasonable to fix between Rs. 25,000 to Rs.

40,000 but that it was not necessary to fix any amount at all as the suit was premature. Mr. Alladi Kuppaswami urged before us that Rs. 10,000

offered by defendants 1 to 4 would be reasonable. In appeal, Kumari Alagammai claimed only Rs. 25,000 and gave up the claim for the excess.

We are satisfied that Rs. 25,000 would be the reasonable maximum provision to be made for the plaintiff's marriage, considering her status, the

family properties at the time of the partition under Exhibits A-8 and A-9, and the expenses actually incurred for marriages of girls of her status in

Nattukottai Chetty families similarly situated. The lower Court, considered, after discussing the evidence, that stridhanam, mamiar samans, feeding

charges, clothes, and seermurai and other samans would certainly require for a girl of the plaintiff's status and caste, Rs. 25,000 to Rs. 40,000.

The plaintiff herself had given several instances of the expenses actually incurred for the marriages of girls like her. The attempt of the defendants to

show that she could not have attended those marriages, as she had attained puberty and no girl who had attained puberty would be allowed to go

out of the house to attend other people's marriages, sounded hollow and unconvincing, in these modern times, and was rightly rejected by the

lower Court. The lower Court also considered the plaintiff's estimate of the expenses under the above heads, aggregating to a minimum of Rs.

25,000 and a maximum of Rs. 40,000 as reasonable, because she had not been seriously cross-examined regarding those figures, and because

defendants 1 to 4, who were admittedly in possession of accounts, had not produced the accounts of the several marriages in their family, and had

only spoken to one or two marriages contracted with very poor people and not to the marriages, with people of equal status. In Exhibit A-2, the

written-statement in O.S. No. 193 of 1939, on the file of the lower Court, a suit for partition filed against them by the first defendant, defendants 2

to 4 had stated that Rs. 35,000 would be a suitable provision for the marriage expenses of the plaintiff, and the plaintiff and her mother, who were

defendants 5 and 6 in that suit, had stated that a sum Of Rs. 40,000 was needed for such marriage expenses, and the plaintiff's grandmother had

filed a statement in that suit, Exhibit A-4, stating that Rs. 35,000 would be the reasonable amount required for the marriage expenses. In Exhibit A-

7, dated 3rd October, 1941, a will executed by Palanippa, the father of defendants 1 to 4 and Chidambara it was stated that Rs. 25,000 would be

required for meeting the plaintiff's marriage expenses. Indeed, even defendants 1 to 4 had stated in Exhibits A-8 and A-9, the partition deeds, that

Rs. 25,000 should be set apart for those marriage expenses at Rs. 6,250 each. Mr. Kuppuswami contended that after the partition, defendants 1

to 4 had lost nearly three to five lakhs in the Malaya business, as would be clear from the documents filed by them, and that, therefore, the amount

of Rs. 25,000 fixed in Exhibits A-8 and A-9 before such loss occurred should be reduced to Rs. 10,000 or at least to Rs. 15,000. Mr.

Ramamurthi, for the plaintiff, contended that this is unreasonable as the provision for marriage, fixed at the time of the partition, could not be

altered, by the alleged fact of defendants 1 to 4 losing some of their properties after partition, as they would not be liable to increase the Rs.

25,000 fixed at partition, if they had profited instead of lost. We agree. Taking all the evidence into consideration, we fix the maximum amount for

the marriage expenses of the plaintiff at Rs. 25,000 and direct defendants 1 to 4 to deposit the said amount in the lower Court within one month of

the receipt of the records there.

8. Mr. Alladi Kuppuswami urged that the claim of the plaintiff was barred by resjudicata by reason of the decision in O.S. No. 120 of 1942, even

though the lower Court had found against it. We are satisfied that the lower Court was right in its finding against res judicata. The question of the

plaintiff's marriage expenses was not directly and substantially in issue in that suit, and was raised only incidentally in connection with the partition

claim by her mother, the fifth defendant. That claim for partition was disallowed because all the properties-were found to be ancestral and, when

that claim was dismissed, the incidental claim for the marriage expenses of her daughter, the plaintiff, before such partition, was also dismissed. The

Court did not go into the question of the marriage expenses of the plaintiff, by itself on merits, and decide it, when alone res judicata could operate.

9. Mr. Alladi Kuppuswami did not press the point regarding the Nattukottai Chetty custom set up by defendants 1 to 4 in the lower Court and

found against by the lower Court. He was right in not doing so, as such a custom was not proved. But he urged that we should divide the above

liability of Rs. 25,000 found by us as the proper maximum amount required for the marriage expenses of the plaintiff, into four separate shares, and

allot each share as the liability of each of defendants 1 to 4, and charge the respective amounts, on the immovable properties got by them towards

their shares under the partition deeds in Exhibits A-8 and A-9, and relieve them from all personal liability. Mr. Ramamurthi conceded that he had

no objection to dividing the liability in the first instance among defendants 1 to 4, equally, at Rs. 6250 each, as in the partition deed, but wanted the

charge to be on all joint family immovable properties with defendants 1 to 4 in order to secure the plaintiff's, interests, in case the Rs. 25,000 are

not deposited within the time fixed by the Court, and also wanted the question of personal liability to be reserved and decided after seeing whether

the deposit is made or not, and whether the amount of Rs. 25,000 could be recovered by proceeding against the joint family properties still with

defendants 1 to 4, especially as the lower Court had found that defendants 1 to 4 would undoubtedly be personally liable if they had done away

with such properties. We agree with Mr. Ramamurthi's contention.

10. In the end, therefore, we set aside the judgment and decree of the lower Court, dismissing the suit with costs and decree the suit in part. We fix

the maximum amount allowable for the marriage expenses of the plaintiff at Rs. 25,000, and direct defendants 1 to 4 to deposit, in the first instance

Rs. 6250 each in the lower Court towards such marriage expenses within one month after the receipt of the records in the lower Court, and make

the entire Rs. 25,000 a charge on all the joint family Immovable properties in the hands of defendants 1 to 4, got by them under the partition deeds

Exhibits A-8 and A-9. In case any of defendants 1 to 4 do not deposit the Rs. 6,250 directed by us within the time fixed, the plaintiff will be free to proceed against the charged properties in his possession for recovering the said amount, with interest at 6 per cent, per annum from the date when the deposit should have been made. In case the amount due from the defaulting defendant cannot be recovered by the sale of the charged properties in his possession, the plaintiff will be entitled to proceed against the charged properties in the possession of any other defendants, proceeding first against the charged properties of another defaulting defendant, and finally against the charged properties of the non-defaulting defendants in order to recover the balance of the sum due by defaulting defendant Or defendants. In the circumstances, we direct defendants 1 to 4 to pay proportionate suit costs to the plaintiff, calculated on Rs. 25,000. The defendants will bear their costs themselves. The plaintiff will bear her remaining costs herself. In this appeal, the appellant will get her cost from respondents 1 to 4 (defendants 1 to 4) and the defendants (respondents) will bear their costs themselves. If the amounts are deposited, the plaintiff or her power-of-attorney can put in ordinary petitions (not E. P.'s) to draw them out for reasons given, and the lower Court can after hearing the other side, direct suitable amounts to be paid out without security.