

(1911) 03 MAD CK 0019
In the Madras High Court

Anivillah Sundararamaya

APPELLANT

Vs

Cherla Seethamma and Others

RESPONDENT

Date of Decision : 23-03-1911

Acts Referred:

Citation : (1911) 21 MLJ 695

Judgement

1. The plaintiff and his father were-members of an undivided family. The father made a gift of about eight acres of land which formed ancestral

property to the first defendant, his daughter, in 1899, The father died in 1904, and the plaintiff sues to recover possession of the land given to the

first defendant by his father, on the ground that the father was not competent to make a gift of joint family property. The family owned not less than

200 acres at the time of the gift.

2. The lower appellate court was of opinion that the plaintiff's father had intended at the time of her marriage to give some properties to the first

defendant and as he was only carrying out that intention by making this gift, it is valid.

3. The marriage took place about forty years before the gift. There is no evidence that the father then had any intention to give any property to the

first defendant. We are, therefore, unable to accept that finding. Is the gift then valid?

4. The Hindu law texts fully support the proposition that it is competent to a father to make gifts of jewels or other ancestral moveable property to

his daughter on her marriage. In a learned judgment it has been held by the High Court of Calcutta that a widow may make a valid gift of a

reasonable portion of even the Immovable property of her husband to her

daughter on the occasion of the performance of certain ceremonies

which are usual when the wife on the attainment of puberty leaves her parental home for that of her husband - Churamon Sahu v. Gopi Sahu ILR

(1909) C.I. That a gift of land to the son-in-law on the occasion of his marriage is an act warranted by the authorities and customary in this

presidency was held by the Madras High Court in Ramasawmy Iyer v. Vengudusawmi Iyer ILR (1898) M. 113.

5. We see no reason to differ from these two decisions. The father or the widow is not bound to give any property. There may be no legal but only

a moral obligation. It is also true that in the case before us the father did not make any gift and discharge that moral obligation at the time of the

marriage But it is difficult to see why the moral obligation does not sustain a gift because it was not made to the daughter at the time of marriage,

but only some time later. The moral obligation of the plaintiff's father continued in force till it was discharged by the gift in 1899. This question was

raised in the case of Kudnttamma v. Narasimhacharyulu (1907) 17 M.L.J. 528. There, after the death of the father, the brother made a gift of

certain joint family property to his Sister, who was married during the lifetime of the father, who gave her or his husband no property at the time of

marriage. It was found there that the father had expressed no intention at any time of making any gift. He had made no promise either. It was held,

however, that there was a strong moral obligation on the father to make a gift out of the joint family property on the occasion of the marriage either

to the daughter or son-in-law as a provision for them and the gift, which in the circumstances of the case was an eminently reasonable one, was not

in excess of the powers of the brother though he was not even the managing member at the time of her marriage. This case was followed in

Churamon Sahu v. Gopi Sahu ILR (1909) C.I. It is directly in point and is consistent with principle. It was argued that the case of Ramasawmy

Aiyer v. Vengudusami Iyer ILR (1898) M. 113 refers only to a gift to a son-in-law and there is no authority to support gifts to daughters. But the

texts relating to gifts on marriage show that they are made to the bride, and regard being had to the fact that these gifts are intended as a provision

for the married couple and are made by the father probably in lieu of her share of the family property, when by marriage she is leaving it for another

family, it seems more appropriate that such gifts should be made in her name than that of her husband. In both cases, Kudutamma v.

Narasimhacharyulu (1907) 17 M.L.J. 528 and Churamon Sahu v. Gopi Sahu ILR (1909) C.I., the gifts were made to the women.

6. It was also contended that a father is entitled to give only jewels and other moveable property, and the Hindu law texts do not justify any gift of

land on marriage occasions. In all the three cases we have referred to, the gifts were of immovable property and so far as this presidency is

concerned, it is enough to say that gift of land has been common for more than a century and that the payment of money when paid is in lieu of

land. See Ramasawmi Aiyar v. Vengudusawmi Aiyar ILR (1898) M. 113. When the necessity of the gifts is recognized it seems unreasonable in

these days to make its validity depend upon the nature of the property, upon the question whether it is moveable or immovable. It is not suggested

that the alienation in question is unreasonable as in Kamakshi Ammal v. Chakrapani Chettiar I.L.R (1907) M. 452. In the case of Churaman Sahu

v. Gopi Sahu ILR (1909) C.I, the value of the property given away was more than a third of the father's property. Here, if the father had enforced

a partition, he would have admittedly got not less than one hundred acres and it is impossible to say that a gift of eight acres is unreasonable.

7. The second appeal is dismissed with costs.