

(1897) 09 MAD CK 0023
In the Madras High Court

Arunagiri Mudali

APPELLANT

Vs

Ranganayaki Ammal and Another

RESPONDENT

Date of Decision : 18-09-1897

Acts Referred:

Citation : (1898) ILR (Mad) 40

Hon'ble Judges : Arthur J.H. Collins, C.J;Benson, J

Bench : Division Bench

Judgement

1. Two main contentions are urged by the appellant before us. The first is that the money with which Chinnathayammal purchased the house was

derived by her from her first paramour, the father of the first defendant, and that, therefore, as a matter of law, the house devolves on the first

defendant rather than on the plaintiffs who are the woman's daughters by another paramour. In support of this proposition of law, the appellant's

vakil relies on the text in " Manu," chapter 9, Section 191 (see page 369, Max Muller's " Sacred Books of the East "). The text is as follows:

But if two (sons) begotten by two (different men) contend for the property (in the hands) of their mother, each shall take to the exclusion of the

other what belonged to his father.

2. In regard to this we may observe that the Section appears to refer not to the devolution of the property of a concubine or prostitute, but rather

of a woman married in succession to two husbands, and it is so understood by the commentators Kallukha and Nandana. Moreover, it would

seem that Section 191 must be read in connection with the Section which immediately precedes it, and that it should then be understood not as

referring to the self-acquired property of the woman, but to the property of the

deceased father of the children in her hands. Thus it would seem that the text has no application to the present case, where the competition is between the daughters of a prostitute by one paramour and her son by another paramour. We do not, however, think it necessary to discuss the legal question more fully, as we are of opinion that the first defendant has not satisfactorily shown that his mother in fact derived the property from his putative father.

3. The story of the jewels being taken from him when a child is improbable, and there is no documentary evidence, such as might certainly have been expected, to support the allegation of his witnesses that his mother sold a house previously given to her by his father.

4. For all these reasons the first ground urged before us fails.

5. The second ground urged is that the money was borrowed by first defendant as de facto manager of the plaintiff's family and was expended for

their benefit, and the plaintiff's estate is, therefore, bound by the mortgage. Here again we are unable to find the fact on which the argument

depends. Exhibits F.G and J show that, so long ago as 1887, the first defendant claimed the house as his exclusive property, and his claim was

resisted on plaintiff's behalf by their putative father and next friend, and the Collector refused to admit the first defendant's claim. The second

defendant by his own admission knew of this contest and doubted the first defendant's title, yet he says he lent on the security of the house. This,

we think, is highly improbable.

6. The only transaction said to be prior to those documents F, G and J is the promissory note (Exhibit II), but we are not satisfied that it was

executed on the date it bears or that the money was really paid as recited therein. On the whole we conclude that the decision of the Court below

on the fourth issue is right.

7. Both the grounds urged in appeal having thus failed, we confirm the decree of the lower Court and dismiss this appeal with costs.