

**(1938) 08 MAD CK 0012**  
**In the Madras High Court**

Boda Viraraju

APPELLANT

Vs

Vetcha Venkataratnam and Others

RESPONDENT

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**Date of Decision :** 29-08-1938

**Acts Referred:**

**Citation :** AIR 1939 Mad 98 : (1939) ILR (Mad) 226 : (1938) 48 LW 692 : (1939) 1 MLJ 23

**Hon'ble Judges :** Krishnaswami Aiyangar, J

**Bench :** Division Bench

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### Judgement

Krishnaswami Aiyangar, J.—We have found very little difficulty either in the ascertainment of the true principle of law or in the application of

it to the facts disclosed in this appeal. Whether and to what extent a Hindu widow in possession of her husband's estate can make a gift in favour

of a dependant relation or for objects considered meritorious by the Hindu religion was the question discussed before us at the hearing of this

appeal. It is unnecessary for a decision of this question to carry a research into the ancient texts of Hindu Law, or indeed to do anything more than

refer to two decisions of the Privy Council in which the principle has, if we may say so with respect, been clearly and precisely defined. As early as

1861 it was Laid down in *The Collector of Masulipatam v. Cavalry Vencata Narrainapah* (1861) 8 M.I.A. 529 where their Lordships observed

that:

For religious and charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband she (the widow) has a larger

power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last, she must show necessity.

2. The principle received further elucidation by their Lordships in 69 Ind. Cas. 36 (Privy Council) in which the widow had made a gift of a small

fraction of the estate for the observance of bhog (food offerings) to the deity at Puri. The gift was upheld in spite of the fact that she had a sufficient

income available in her hands to provide for it without an alienation. Their Lordships drew a sharp distinction between obligatory religious

ceremonies and those other observances which are merely optional though conducive to spiritual good. They said:

There can be no doubt upon a review of the Hindu Law taken in conjunction with the decided cases that the Hindu system recognises two sets of

religious acts. One is in connection with the actual obsequies of the deceased and the periodical performance of the obsequial rites prescribed by

the Hindu religious law, which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which, although not

essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. In the later cases this distinction runs clearly

through the views of the learned Judges...With reference to the first class of acts the powers of the Hindu female who holds the property are wider

than in respect of the acts which are simply pious and if performed, are meritorious so far as they conduce to the spiritual benefit of the deceased.

In one case, if the income of the property, or the property itself is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the

other case she can alienate a small portion of the property for the pious or charitable purposes she may have in view.

3. These observations have furnished valuable guidance for the Courts in India in approaching the decision of questions relating to a widow's

power of alienation. The principles that emerge from the decided cases may be stated in these terms. A Hindu widow in possession of her

husband's estate is in no sense a trustee for the ultimate reversioner. She is the owner for the time being, fully capable of representing the estate in

her transactions with the outside world so long as she acts bona fide and in the interests of that estate, but it is an ownership qualified by limitations

which are of the very essence of her estate - limitations which the law imposes not out of a tender regard for the right of the reversioner, for none

such exists during her life, but for reasons which are intimately bound up with the ideals of life and conduct considered proper and appropriate for

a person in her position. A simple life of abstemious piety directed to the acquisition of merit for the departed soul of her husband and a cessation from mere sense-enjoyments in the pursuit of pleasure for its sake, lie at the bottom of restrictions on her powers of disposal. It is to be remembered that according to the ancient law-givers, restriction was indeed the rule, absolute power an exception, whether the holder was a female or even a male. For purposes which are purely secular or temporal, her powers are no wider than those which inhere in the manager of an infant's estate. But in respect of those other purposes which the Hindu Law regards as religious or charitable, she possesses, as might naturally be expected, a larger discretion, and a wider authority. Texts collected in *Ram Sumran Prasad v. Gobind Das* I.L.R.(1926) 5 Pat. 646. For obligatory necessary observances essential for the salvation of her husband's soul, she could go the length of disposing of the entirety of the estate, where it is not considerable, and where the requirements of the particular occasion demand it. For other but less peremptory purposes, though in themselves meritorious yet not indispensable, her authority is necessarily circumscribed. She may for such objects, only dispose of a small and no more than a reasonable portion of the estate the quantum to be measured by the custom and sentiment prevalent in the community to which she belongs. It is impossible to define her powers in this behalf with any more precision. The circumstances of the family, the extent of its property, the demands upon it of other legitimate calls, and all those social customs and sentiments which make up what one may call the conscience of the community, must, it seems to us, be among the main factors to be considered. We think that it is the same principle though expressed in different language, which we find laid down in *Cossimant Bysack v. Hurrosoondry Dossee* (1819) 2 Morley's Digest 198 where Lord Gifford said that care might be taken to avoid impressions derived from the English law, and to consider in what way a Hindu Court of Justice would have decided the point.

4. Marriages of girls born in the family and the maintenance of female members stand on a higher footing. For, it is a legal obligation cast on the father, the karta or whoever happens to be in possession of the family estate to defray, out of it, the expenses necessary for these purposes, which

accordingly come under the head of strict legal necessity. How exactly this obligation is to be carried out whether by a mortgage, sale or other

means, is not to be determined by strict rules or legal formulae, but must be left to the reasonable discretion of the party bound. In the absence of

mala fides or extravagance and so long as it is neither unfair, in character nor unreasonable in extent, the Court will not scan too nicely the manner

or the quantum of the alienation. A widow, like a manager of the family, must be allowed a reasonable latitude in the exercise of her powers

provided she acts fairly to her expectant heirs and in a manner conformable with the legitimate wishes of her husband or the prescriptions of Hindu

Religious Law. It may also be observed that, in respect of pious or charitable acts, what a husband might have done, the widow is competent to do

after his death. For according to an ancient text of Brihaspathi I.L.R.(1915) 43 Cal. 574 the husband and wife participate in the effects of good

and evil actions and this mutual relation is not dissolved by death of either partner Khub Lal Singh v. Ajodhya Misser I.L.R.(1915) 43 Cal. 574

and Venkaji Shridhar v. Vishnu Babaji Beri I.L.R.(1893) 18 Bom. 534. Her position will be much stronger if the husband had himself instructed or

directed her to incur the particular charge or specified the objects for which the alienation was to be made. Such directions, though short of the

requirements of a valid bequest, are, we think, a sufficient justification for her acting upon them.

5. Bearing these principles in mind we proceed to refer to the facts found or established in the case. The disputed alienations are all gifts of land

made by Mahalakshmi, a widow who had succeeded to the estate of her husband Sarayya who died on 18th December, 1890, leaving him

surviving besides her, two daughters, Saramma and Mariamma. Both of them were alive at the date of the gifts, though Mariamma appears to have

died later unmarried. The estate consisted of 32 acres of land, out of which 8 acres were conveyed on 7th April, 1891, to Venkamma, the widow

of Nagalingam the paternal uncle of Sarayya. There were four other gifts of 2-19 acres in all made in favour of four Brahmins on 3rd April, 1891,

by separate deeds of gift. The properties originally belonged to the joint family of two brothers Nagalingam and Venkata-chellam the latter being

the father of Sarayya. It is in evidence that it was Nagalingam who acquired the properties for the family. Nagalingam died long ago leaving besides

Venkamma his widow, the donee under the deed of 7th April, 1891, two daughters Venkatasubbamma and Saramma, both of whom were also

alive at the date of the gift, and were probably unmarried and living with their mother. On 27th January, 1901, Venkamma in her turn executed two

deeds of gift giving to each of her daughters a moiety of the lands she had obtained from Mahalakshmi. Venkatasubbamma's moiety has been

purchased by the ninth respondent, and Saramma's is held by respondents 1 to 8 claiming under a bequest made by her on 7th February, 1908.

Respondents 10 to 19 are either themselves donees or persons who claim under the donees under the gifts of 3rd April, 1891.

6. Mahalakshmi died on 19th July, 1930. The appellant claiming to be the son adopted by Mahalakshmi's daughter Saramma and her husband

Seshayya has now succeeded to the estate of Sarayya as his daughter's son. His adoption though disputed in the trial Court, has not been

challenged before us. By the suit out of which this appeal arises the appellant has impugned the gifts as being beyond the powers of Mahalakshmi

and consequently not binding on him and has sought the recovery of the properties conveyed, together with mesne profits. According to him, the

gift to Venkamma is invalid as no necessity for making it has been proved, and as Mahalakshmi had in her hands at the time a sufficient income

from the assets, from which she ought to have met the expenses of maintaining Venkamma. This circumstance is no doubt an element to be taken

into account, but no serious importance can be attached to it, for we find it existed in 69 Ind. Cas. 36 (Privy Council) but made no difference in

their Lordships' decision. As regards the other gifts, it is argued that the purposes for which the gifts were made have not been sufficiently

established, as there was nothing to indicate that the widow acted from motives of religion or piety and apart from this, that such gifts even though

of small portions of the estate cannot be made except on special ceremonial occasions. Now first with reference to the gift of Venkamma, she was

the widow of a coparcener of the family, who was, while alive, entitled to a half of the family property, besides having been the founder of the

family fortune. After his death, his brother Venkatachellam and his nephew Sarayya were both under a legal obligation to maintain her and her two

daughters, and also to provide for the marriage of the latter. This obligation, as we have already pointed out, partakes of the nature of the legal

liability binding on Mahalakshmi when she took her husband's estate on his death. It would also have been perfectly proper and legitimate for any of these persons to set apart a reasonable fraction of the estate by way of a provision for the benefit of the daughters, though such an obligation rests on a moral or religious basis, rather than on a legal one. In these circumstances, and in response to a request from her, the gift was made to Venkamma. We have no doubt that though the gift purports to have been in terms made to Venkamma only, it was really intended for the benefit not only of herself but also of her daughters, and in fact, as we have already said Venkamma conveyed away the property to her daughters in 1901. We are further of opinion that the gift is reasonable in extent, and fully supported by the legal and moral considerations which ought to weigh, and did weigh, with, Mahalakshmi in making the gift. The propriety of the alienation appears also from two other circumstances. We find that the deed has been attested by Boda Seshayya the husband of Mahalakshmi's daughter, who later on adopted the plaintiff. At the time, he was certainly interested in preventing the frittering away of the estate, and his conduct in not having objected to it then or at any time thereafter till the institution of this suit, points to the fact that it was not considered an objectionable alienation by him. Besides, the gift was made publicly in the presence of several other relations who appear to have gathered together in connection with the ceremonies that were being performed at the time. Most of these persons have also attested the gift. For nearly 40 years the gift has stood unchallenged; the properties in the meanwhile have changed hands and it is remarkable that no one, neither Mahalakshmi nor any other person, relation or friend, moved in the matter or took any steps to set it aside all this time. Such inactivity in respect of what is now alleged to be a thoroughly bad gift does suggest to our mind that there could not have been any serious objection to it. Further we find that there is a recital in the gift deed to the effect that it was executed in pursuance of the order given to Mahalakshmi by her husband. After the lapse of such a longtime, and the death of almost all the witnesses who were aware of the circumstances in which the gift was made, the recital acquires great force, and it would be proper for us even without any evidence aliunde, to rely on it as proving the propriety of the transaction. Though there is the direct evidence of D.W. 1 Venkataratnam in support of the truth of the

recital, we prefer to act on the well-recognised rule that in such cases, it is permissible to fill in details obliterated by lapse of time for the purpose

of supporting an ancient alienation. The learned Subordinate Judge has on a review of all the facts and circumstances come to the conclusion that

the gift to Venkamma was a proper provision, having regard to the status and property of the family, and we have no hesitation in saying that he

was perfectly right in that view.

7. There remain the four other gifts to be considered. These gifts comprised small, very small pieces of land made in favour of four Brahmins

before the end of the year following the death of Sarayya. The parties belong to the Vysia community well known for their charitable disposition,

who practically copy the Brahmin customs with respect to ceremonial observances, and who regard or have at any rate till recently regarded, a gift

to Brahmins as meritorious. The many religious charities which that community have established all over the presidency bear witness to this

disposition. Gifts of this kind are often made at the funeral rites on the 12th day of the death and on the first anniversary, but it is not to be forgotten

that the whole of the first year after death is regarded as a period of ceremonial activity necessitating the performance of monthly and other

ceremonies for the benefit of the deceased's soul, - a period peculiarly appropriate for gifts for securing religious merit. Though it is not shown that

these gifts were made on the occasion of any particular ceremony, we do not think that this is necessarily an invalidating circumstance. Here again

the learned Judge in the Court below has referred to the recitals in the three deeds produced into Court - the fourth has not been filed or exhibited

- which gave prominence to the directions of the husband in this behalf as authorising the gifts. Even apart from such a specific direction which will,

of course, be a sufficient authority, the law will raise a presumption of authority when the act done is good and proper and has the sanction of the

religious law. Further these deeds also are attested by the relations of the parties including the adoptive father of the plaintiff. It was urged that there

was nothing to indicate that they were made for the express object of securing religious merit to the husband's soul. We think that there is no

substance in this objection, for it is clear in the circumstances that there was no other object that could be regarded as having prompted the gift.

The donees were Brahmins. The plaint itself suggests no other object but a pious consideration in the mind of the donor. Paragraph 7 says:

Shortly after her husband's death, Mahalakshmi who was an illiterate and ignorant woman and who was immersed in grief, was prevailed upon by

Dantu Narasimhalu and other Brahmins of Mandapeta and she was made to execute deeds of gift in favour of several people, containing false recitals.

8. The complaint is not that it was not a pious gift, but that it was brought about in the circumstances which show that the donor was not an

independent agent exercising her own free volition. The appellant's advocate also contended that the burden of proof is on the alienees to justify

the gift and that it has not been discharged by them. Though none of the donees except the 10th defendant actually contested the claim, yet we

must hold that in this case, the burden has been discharged, as there is satisfactory proof appearing in the evidence to show that there was ample

justification for this widow to make the gifts. Concurring with the Subordinate Judge we hold that the gifts to the Brahmins are also valid. The

appeal therefore fails and has to be dismissed with costs of the 25th respondent. We may mention that as between the appellant and respondents

1, 2 and 4 to 8 there has been a settlement by a compromise which has been made a decree of Court on 31st" August, 1937. The 25th

respondent will receive the cost proportionate to his interest in the subject-matter of the appeal.