

**(1945) 09 MAD CK 0006**  
**In the Madras High Court**

Chunduru Raja Rattamma

APPELLANT

Vs

Chunduru Ramakrishna Rao and Others

RESPONDENT

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**Date of Decision :** 18-09-1945

**Acts Referred:**

**Citation :** AIR 1946 Mad 75 : (1945) 58 LW 558 : (1945) 2 MLJ 409

**Hon'ble Judges :** Yahya Ali, J

**Bench :** Division Bench

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**Judgement**

Yahya Ali, J.—The order of the lower Court in this case is very cryptic. The petitioner is a Hindu widow and she was declared entitled in a

partition suit to a sum of Rs. 4,896-2-7 being her share out of the sale proceeds of the house belonging to the family. Neither the preliminary

decree nor the final decree imposed any condition on her right to or power over her share. It was not in any of those decrees directed that she

should furnish any security in respect thereof. When however she applied for the issue of a cheque on the execution side, the learned Subordinate

Judge directed her to draw the amount on furnishing proper security and the reason given by him in that order is that she is only a limited owner

under the Hindu Law. By itself this is not a sufficient reason as would appear from the decisions in Boganatham Arunachalam Chetty and Another

Vs. Boganatham Krishnaveni Ammal and Another, and Boganatham Arunachalam Chetty and Another Vs. Boganatham Krishnaveni Ammal and

Another, . In the former case, the learned Chief Justice observed:

A female heir only takes a limited interest, but she is entitled as of right to be placed in possession of her share. Should it transpire that she is

dissipating moneys which have come to her and is thereby defeating the

reversioner he can ask the Court to insist on security being furnished but such a position could only arise after partition.

2. In the latter case, following the decisions referred to therein of the Patna and Allahabad High Courts, the learned Judges found that security

should not be taken from a Hindu widow of a separated Hindu merely on the ground that she is a limited owner. In the ordinary way a Hindu

widow ought not to be called upon to give security at all. But there might be special circumstances for requiring a Hindu widow to give security.

Reference was made to the decision of the Judicial Committee in Boganatham Arunachalam Chetty and Another Vs. Boganatham Krishnaveni

Ammal and Another, , where it was observed that the estate taken by a Hindu widow is not to be regarded as an ordinary life estate because in

certain circumstances she can give an absolute and complete title and within the limits imposed upon her, the female holder has the most absolute

powers of enjoyment. On the other side, attention was drawn to Boganatham Arunachalam Chetty and Another Vs. Boganatham Krishnaveni

Ammal and Another, . The facts of that case were peculiar. They are set out at page 701 of the report and in view of the special circumstances

obtaining in that case, the learned Judge held that there was justification for asking the widow to furnish security.

3. The special circumstances relied upon in the present case are these. The petitioner's interests and attitude are hostile to those of her minor sons.

She is living away from her husband and she is living an unchaste life. Taking all these facts to be true, although some of them are not admitted, it is

impossible to hold that individually or cumulatively they establish that the widow is likely to waste or squander away her share of the sale proceeds

of the house. In some of the cases bearing upon the point, the nearest reversioners have come forward and asked for some restrictions to be

placed upon the powers of disposal of the widow alleging that there was ground for apprehending that the property would be wasted. In the

present case, as pointed out on behalf of the petitioner, the respondent is not even the nearest reversioner. The petitioner was sued as the legal

representative of her deceased son and in that way it was a case of inheritance rather than of survivorship. Lastly, with regard to the alleged hostile

attitude, there is the circumstance that the adult son is not only living with her

but is practically sailing with her in this case. Having regard to all these considerations, I am not satisfied that the order of the learned Subordinate Judge calling for security before the petitioner withdraws the amount is either correct or proper.

4. The petition is allowed and the order of the lower Court is set aside and the application filed in the lower Court for the issue of a cheque is granted. No order as to costs.