

(1909) 07 MAD CK 0016
In the Madras High Court

Janakisetty Sooryudu alias Sooraya

APPELLANT

Vs

Miriyala Hanumayya

RESPONDENT

Date of Decision : 20-07-1909

Acts Referred:

Citation : (1909) ILR (Mad) 521 : 3 Ind. Cas. 281

Hon'ble Judges : Sankaran Nair, J; Miller, J

Bench : Division Bench

Judgement

1. It was decided in the Court of first instance that Kotamma took a heritable estate and not one limited for her life under the grant from her

brother-in-law; this question though raised in the memorandum of appeal was not argued before the District Judge. Argument was addressed to us

on the question but we think the District Munsif's decision is right.

2. The remaining questions are : (1) whether Lingauma inherited the property as her stridhanam, so that it passes on her death to her heirs and (2) if

she did not, whether the property became her stridhanam under the will of her mother Kotamma.

3. The second of these questions has not yet been decided by either of the Courts below. The District Judge having held that Lingauma inherited

the property as stridhanam, if it came to her by inheritance did not find it necessary to consider the alleged will, and the District Munsif seems to

have decided the suit solely on his finding as to the nature of Kotamma's estate.

4. On the first question the District Judge holds that the property was stridhanam in Lingauma's hands by reason of an exception to the general rule

that property received by a woman by inheritance from, a woman is not stridhanam in the former's hands.

5. This exception is in the case of a maiden daughter inheriting from her mother property which was her mother's stridhanam and this is the present case.

6. The District Judge supports his conclusion by the authority of *Narasayya v. Venkayya* 2 M.L.J. 149 and *Venkatarama Krishna Rao v.*

Bhujanga Rau 19 M.k 107 in which the former case is declared to form an exception to the general rule. But neither of these cases required for the decision of the question in dispute, the decision of this question.

7. In *Virasangappa Shetti v. Rudrappa Shetti* 19 M.k 110 however, this question did actually arise and was decided by Best and Subramanya

Iyer, JJ., in accordance with the general rule and not as an exception. The case of *Narasayya v. Venkayya* 2 M.L.J. 149 was brought to the notice

of the learned Judges but they do not follow it : they accept the view which rejects "Vignaneswara's doctrine that the word 'etc' in the text of

Yajnavalkya relating to what constitutes stridhanam includes property inherited" they note that *Narasayya v. Venkayya* 2 M.L.J. 149 was not

followed in Second Appeal No. 169 of 1893 in this Court and in answer to the contention that that case is in accordance "with the Mitakshara,

they discuss the question and decide that the Mitakshara is not upon this point to be followed. According to this decision inherited property is not

stridhanam. It was argued before us that the learned Judges must have overlooked Mitakshara Chapter II Section XI 30 on which reliance is

placed in *Narasayya v. Venkayya* 2 M.L.J. 149 but we cannot think that this is so. The learned Judges proceed on the broad grounds that the

inclusion by Vignaneswara of inherited property in the definition of stridhanam is not in accordance with other authorities and cannot be accepted

as the law now, that the Courts including the Privy Council have except in Bombay unanimously declined to follow him as to property inherited

from a male.

8. Inherited property then is not stridhanam and if Vignaneswara is not to be followed when he defines stridhanam as including inherited property

what reason is there for holding that he should be followed when" in a passage a little later on in his commentary he follows his own definition in

considering the disposal of such property? There is no solid basis for the exception suggested and the learned Judges in *Virasangappa Shetti v.*

Rudrappa Shetti 19 M.i 110 and which refers to it clearly overlooked the fact that the latter case related to an unmarried daughter, when they say

the succession to a maiden daughter is the sole exception to the rule, and in all other cases quoted, the question has been as to the succession to a

married daughter"" (page 110).

9. Following Virasangappa Shetti v. Rudrappa Shetti 19 M.i 110 we hold that Lingauma had only a limited estate in the property which came to

her from Kotamma if she took it by inheritance, and must ask the District Judge for a finding on the 3rd issue before we can dispose of the appeal.

No oral evidence has been recorded in the Court of first instance on any point, so we must allow evidence to be taken. The finding should be

submitted within six weeks, and seven days will be allowed for filing objections.

10. In accordance with the above order the District Judge submitted the following FINDING.

I. I am directed by the High Court to try the following issue:

Whether the defendant's mother-in-law left the suit property to the defendant's wife by an oral will""?

II. The parties were permitted to adduce evidence on the issue. Defendant exturned six witnesses. Plaintiff examined himself and two other

witnesses. The evidence of plaintiff and his witnesses is untrustworthy. He asserts he executed Exhibit I in favour of Kotamma under coercion. I do

not believe he ever cared much for her. His assertion that he was present at Kotamma's house throughout the day when the oral direction relied on

by the defendant is alleged to have been made incredible. He goes so far as to say that his wife had nursed Kotamma and that the latter's parents

were practically indifferent in the matter. He and his witnesses state that Kotamma's male neighbours never called at her house when she was

seriously ill on the day preceding her death and that the only males then present were themselves, who had admittedly lived far away from her

house and were not really interested in her welfare.

Plaintiff's witnesses Nos. 2 and 3 are closely related to him. I disbelieve the evidence adduced on plaintiff's side.

III. The next question is whether the evidence of defendant's witnesses establishes the truth of the oral will relied on by the defendant. All the

defendant's witnesses were Kotamma's neighbours and they are also disinterested witnesses owning lands in the village. Defendant's first five witnesses state that Kotamma became very ill on the day previous to her death and told her father in their presence that all her property should go after her death to her only daughter and that the latter should be given in marriage to her younger brother the defendant herein. Defendant's sixth witness states that Kolamma said that her estate should go to her younger brother and daughter and that daughter should be married to that brother. The witness states the Kotamma died about 10 days after making that declaration. But the evidence on both sides shows that she died after a short illness and the defendant's sixth witness himself states that he went into the house of Kotamma on that occasion hearing people crying inside that house. It is admitted on both sides that Kotamma died nine years ago and, therefore, defendant's 6th witness might have stated through weak memory that Kotamma died 10 days after the incident he described.

IV. Defendant's witnesses Nos. 1, 3 and 4 state that Kotamma made the declaration above mentioned at about 2 or 3 p.m. of the day.

Defendant's witnesses Nos. 2 and 5 depose that she made that declaration in the morning hours of the same day. From the evidence of those

witnesses who are all neighbours of Kotamma it appears that they were frequenting her house many times on each day of her last illness and the

incidents they speak to occurred about 9 years ago. Therefore," some confusion is probable in their recollection as regards the exact hour when

Kotamma told her father that her father should take her estate after her death and that she should be married to the defendant. The incident, they

describe appears to be extremely probable. Kotamma left an only daughter who was also unmarried. She expected her death one day before she

actually expired according to the evidence on both sides. She must have then thought about the girl whom she was leaving an orphan, about the

girl's marriage and her future protection. It is likely that she would have considered that her brother who was requested to marry the girl would

better care for the girl on account of the property she would get and also as he himself was her maternal uncle.

11. I, therefore, find the issue in the affirmative.

12. This appeal coming on for final hearing after the return of the finding of the

District Judge the Court delivered the following

JUDGMENT

13. Taking into consideration the circumstances under which the will was made, we think it ought to be construed as containing a gift of an absolute estate.

14. We dismiss the second appeal with costs.