

(1914) 11 MAD CK 0017
In the Madras High Court

K. Muthukaruppa Pillai

APPELLANT

Vs

Sellathammal alias Kanakammal and Another

RESPONDENT

Date of Decision : 23-11-1914

Acts Referred:

Citation : AIR 1915 Mad 475 : (1916) ILR (Mad) 298 : (1915) 2 LW 38

Hon'ble Judges : Seshagiri Ayyar, J; John Wallis, J

Bench : Division Bench

Judgement

Seshagiri Ayyar, J.—The property in dispute was given to the first defendant by her father in 1898 before she was married to the plaintiff: she sold the property to the third defendant in 1912. The plaintiff sues for a declaration that the sale is invalid. The Subordinate Judge dismissed the suit.

2. There can be no question that if this property is Saudayika, the first defendant was entitled to deal with it at her pleasure. The main argument, therefore, was directed to showing that the term Saudayika does not include gifts prior to marriage. The nature of stridhanam property and its classification with reference to inheritance have given rise to conflicting views. In the Benares School, Courts may be spared a great deal of discussion if the view of the Mitakshara is fully accepted. Vignaneswara commenting on Yagnavalkya's text in Chapter 2, Section 11, paragraph 2, says: "That which was given by the father, by the mother, by the husband or by a brother; and that which was presented by the maternal uncles and the rest, at the time of wedding, before the nuptial fire; and a gift on a second marriage or gratuity on account of supersession, as will be subsequently explained in the text, "To a woman whose husband marries a second wife, let him give, etc" (and, as indicated) by the word "adya" (and the rest), property obtained by inheritance, purchase, partition, acceptance, finding: all this is stridhanam according to Manu and the rest." From this we might exclude those enumerated in the concluding portion of the paragraph, as the Judicial Committee, though only dealing with a case of property obtained by partition, seem inclined to hold that stridhanam in its narrow sense should be

limited to what is mentioned in the previous portion of the paragraph--Debi Mangal Prasad Singh v. Mahadeo Prasad Singh (1911) 39 I.A. 121. If we regard this restricted class as stridhanam property at the absolute disposal of a woman, we can steer clear of many difficulties. There is however an exception as regards gifts from strangers not given at the nuptial fire or during the marriage procession, and acquisitions made by means of mechanical arts by a married woman. They are subject to the control of the husband because the spirit of the Hindu Law is against a married woman receiving gifts from strangers except at the time of marriage or from making acquisitions during coverture as she is expected to give her time and attention solely to the welfare of her husband and children and to the management of the household affairs. I see nothing in the Mitakshara or in the writings of those whose authority is binding in Southern India against accepting this rule as a workable basis. But Courts have taken into account the subdivisions of stridhanam both in relation to inheritance and the power of disposition as expounded by other commentators. I shall therefore proceed on the same lines and consider whether the property in dispute is subject to any control by the husband.

3. An examination of the various commentaries shows that stridhanam property is divisible into Yautaka and Ayautaka. Yautaka is that which is given at the nuptial fire. That interpretation is in accordance with the etymological significance of the term. In that term, moreover, are included all gifts made during the marriage ceremonies. Ayautaka is gift made before or after marriage. Saudayika includes both Yautaka and Ayautaka not received from strangers. It is defined to be gifts from affectionate kindred. This property can be dealt with by a married woman in any way she likes. Whether Immovable property received from the husband should be excluded from this species of disposable property is doubtful, The better view is against such a restriction.

4. Among the Rishis only Katyayana, Vyasa and Vishnu use the expression Saudayika. The definition by Rishi Katyayana is the basis of discussion by the commentators of the various schools of Hindu Law. According to him, the term certainly includes all gifts by the relations of the bride at, before or after the marriage: Mr. Ghose's translation of the text is: "By a married woman or by a maiden whatever is received from the husband's father's family, from the brothers or from the parents is called Saudayika." Mr. Srinivasa Ayyangar contended that as the author of the Smrithi Chandrika restricts it to gifts made between the time of betrothal of a bride and the time of her entering the house of her husband, the property in dispute is not Saudayika. The author of the Smrithi Chandrika after discussing the texts of the Eishis states his conclusion in Chapter IX, Section 2, placitum 7, thus: "Both the foregoing passages tend to show that Saudayika is the wealth called "Yautaka," or the like received by a woman from her own parents or persons connected with them, in the house of either her father or her husband, from the time of her betrothal to the completion of the ceremony to be performed on the occasion of her entering her lord's house." I agree with the learned vakil that it is not the literal meaning of

an original text alone that has to be looked at in the administration of Hindu Law. As pointed out by the Judicial Committee, in *Ranee Parvata Vardani Nachear v. Anandai* (1868) 12 M.I.A. 397, although the commentators may have been wrong in their interpretation of an original text, their opinion should be enforced as having the sanction of usage for it. I do not think there is any force in Mr. Ghose's criticism of this dictum. Those who are conversant with the commentary of Vignaneswara will readily recognise the force of the observations of the Judicial Committee. Yagnavalkya's view is often not traceable in the elaborate discussion carried on by Vignaneswara and in the conclusions at which he arrives³. The fact is that commentators felt that any attempt to prescribe rules of inheritance on their own initiative may not find acceptance among the people. They resorted to the device of justifying their position by a reference to the sayings of the Rishis. This led them not unfrequently to depart from the literal meaning of the texts commented upon. They found a body of usage which was not in strict accordance with the Smritis. They had to recognise the force of such usage; but they preferred to say that the usage was within the meaning of the text. The commentaries indicate an attempt to reconcile the text law with the actual usage of the people. The development of Hindu Law is attributable to this progressive instinct. I am therefore willing to accept the position that the interpretation of Katyayana's text by the author of *Smrithi Chandrika* may be regarded as showing that in his days there was a tendency to put a restrictive interpretation on the term *Saudayika*. Apparently, there was an attempt at this period to put fetters upon the power of disposition possessed by women over their *stridhanam*. It has to be noted that the passage I have quoted from the *Smrithi Chandrika* does not express the positive opinion of the author. The conclusion is stated hesitatingly. Moreover later writers have expounded Katyayana differently. The *Smrithi Chandrika* was written in the thirteenth century. The *Madavya* written in the fourteenth century and the *Saraswathi Vilasa* of the sixteenth century which are recognised authorities in Southern India do not accept the views of the author of the *Smrithi Chandrika*. This shows that the set back in favour of giving the husband larger powers of interference over his wife's property was only temporary. The text itself is clear and its interpretation in works both contemporaneous with and after the "*Smrithi Chandrika*" has been uniform. (See *Madana Parijata*, 13th century), page 530, part 2, Setlur's "*Hindu Law Books on Inheritance*": *Vivadaratnakara* (14th century), chapter VIII, page 189, *ibid.*; *Vivada Chintamani* (15th century), page 255, *ibid.*; *Dayatattva* (16th century), chapter XI, paragraph 3, page 499, *ibid.*; *Viramitrodaya* (17th century), chapter V, part I, paragraph 5, page 442, *ibid.*). I am therefore of opinion that the views of the author of *Smrithi Chandrika* are not binding on us in the present day.

5. It has been argued that as Vignaneswara gives no indication of his opinion regarding the right of disposition possessed by women over *Saudayika*, he must be taken to be against their having absolute dominion over it. On the contrary the fact that he accepts Katyayana without any comment shows that he found no

reason for differing from the sage. The Futvas of Pandits have been consistently in favour of giving women absolute power of disposal over Saudayika of the kind mentioned in Katyayana's test. (Vyvastha Dharpana, page 687 to page 692; Vyvastha Chandrika, Book V, chapter II, Section 2). All the modern text writers are in favour of that view. Dr. Gurudoss Banerjee in his learned treatise on "Marriage and Stridhanam" subjects the texts and the commentaries to a very critical examination and comes to the conclusion that Saudayika is at the absolute disposal of the donee.

6. There are not many cases dealing with this question. Most of the decided cases relate to succession. There is however a direct pronouncement on the point in *Ponnoosawmy Moodelly v. Soobbaroya Moodelly* (1859) 6 SS.D.A. Rep. 7. In *Judoo Nath Sircar v. Bussunt Coomar Roy Chowdhry* (1873) 19 W.R., 264, to which our attention was drawn by Mr. Ranga Achariyar, it was held by Mr. Justice Mitter that a legacy taken under the will of her father by a woman before her marriage was Saudayika. There is no reason why this principle should not be extended to gifts inter vivos. In *Bhau v. Raghunath* ILR (1906) Bom. 229, the property in dispute was a Vritti inherited from the husband; and it was held that it was not Saudayika. Sir Lawrence Jenkins quotes the text of Katyayana and says that Saudayika as defined by the sage is at the absolute disposal of a woman. In *Dantuluri Rayapparaz v. Mallapudi Rayudu* (1865) 2 M.H.C.R. 360 the actual decision related to the power of a relation to compel a woman to carry out a promise to make a gift of her property. The learned Judges held that "the taking of the woman's property by the plaintiff her kinsmen, is wholly repugnant to the Hindu Law." They also expressed a doubt whether a woman had independent power of disposal during coverture over her stridhanam. The texts bearing upon the subject were not examined and the pronouncement proceeds upon the general theory of the dependence of women in India. With all respect, the learned Judges have not realized that the power of disposition over property given to women under the Hindu Law is greatly in advance of the views held regarding it by other civilized communities. The Hindu Law deals with the dependence of women more as a right inhering in them for protection and as a duty resting upon men than as a disqualification for dealing with property.

7. Mr. Bhashyam Ayyangar contended that the terms of the deed of gift showed that the property was given only conditionally and consequently it was not Saudayika. He referred to a passage in *Viramitrodaya* to the effect that conditional and collusive gifts are not stridhanam. No other commentator has been quoted in support of this contention. I feel no doubt that the conditional gift therein referred to is one where a right of reversion is reserved to the donor. It may also include cases of nominal transfers made on the understanding that it should go back to the donor after the contemplated fraud had been accomplished. Nor is there any force in the contention that a gift exceeding 2,000 fanams in value is not to be regarded as stridhanam. As pointed out by Mr. Ranga Achariyar, this may relate to property yielding an annual income of 2,000 fanams. It was moreover only intended as a direction to the donor. It may have

been due to the belief that women may not be able to manage extensive properties. These considerations can have no weight in these days. The text itself must in my opinion be regarded as obsolete.

8. The appeal, therefore, fails, and must be dismissed with costs.

John Wallis, Officiating C.J.

9. I agree that the appeal must be dismissed with costs and will only observe that considerable gifts by a father to his daughter prior to betrothal would seem not to have been of frequent occurrence in early times, as we do not find them separately dealt with in any of the texts or commentaries that have been cited before us. In this state of things I do not think that the statement in the Smrithi Chandrika is of the same authority as an express statement that gifts made by a father to his daughter before betrothal are not Saudayika. The author may not have had such gifts in mind when he wrote this passage, and even if he had, his opinion is expressed only tentatively, and cannot in my opinion outweigh the authority of the other texts which have been cited. Lastly if we may look to the reason of the thing, there is no reason why such gifts should be less at the disposal of the wife than gifts made at the time of marriage.