

(1943) 02 MAD CK 0006
In the Madras High Court

Kovuri Lakshmamma

APPELLANT

Vs

Nagineni Venkatayya and Others

RESPONDENT

Date of Decision : 17-02-1943

Acts Referred:

Citation : AIR 1943 Mad 731 : (1943) 56 LW 428 : (1943) 2 MLJ 173

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—Both these second appeals arise out of a suit filed by the plaintiff-appellant for recovery of the suit properties on the footing

that they originally belonged to her father one Dasari Naidu. According to the plaintiff, Dasari Naidu left a widow Mangamma and four daughters,

The plaintiff and. the first defendant are two of these daughters. It appears that Dasari Naidu; was living with his sister's sons and one of the

sisters. He had also a brother Rama Naidu who had predeceased him leaving a widow Parvathamma. Dasari Naidu had another sister whose sons

were Poliah and Venkatayya. Yet another sister of Dasari Naidu was one Chenchamma. She was also living with Dasari Naidu. After Dasari

Naidu's death disputes seem to have arisen between the following four sets of persons: (1) Dasari Naidu's widow Mangamma, (2) Rama Naidu's

widow Parvathamma, (3) Poliah and his younger brother Venkatayya, (4) Chenchamma and (5) Perumaliah, the son of another sister of Dasari

Naidu. It appears that Poliah and Venkatayya, Perumaliah and Chenchamma the surviving sister had all brought their respective properties to the

family of Dasari Naidu and his brother Rama Naidu when they came to live with them and that these properties were mingled with those of Dasari

Naidu and his brother Rama Naidu. Some mediators were called to settle the disputes between these various parties and ultimately the mediators

had very little to do by way of coming to any decision of their own, because all the parties agreed that Dasari Naidu's widow Mangamma and her

two unmarried daughters, the present plaintiff and another by name Naramma should take two-fifths of the property; one-fifth was agreed to be

taken by Poliah and Venkatayya; yet another one-fifth was agreed to be given to Chenchamma and lastly one-fifth was allotted to Perumaliah and

then comes the following provision;--

and that each should enjoy his or her respective share of property with powers of disposition by way of gift, sale and the like and whereas those

five persons have filed a statement before us, we have accordingly decided in the view that it is fair to act upon it.

2. So, two-fifths of the property was given to Mangamma. and her two unmarried daughters Lakshmamma and Naramma. After Mangamma's

death which took place in 1900, her daughters who had already been married before 11th November, 1882, the date of Ex. V, raised some

quarrels and there was a division of the properties given under Ex. V into four shares, each of the daughters taking a fourth share. Naramma

acquired further properties of her own, alienated the properties which were her acquisitions and also some of those which had been allotted to her

at the partition between herself and her three sisters. Naramma died in the year 1938. Thereupon, the plaintiff filed the suit out of which these two

second appeals arise for recovery of the suit properties which include those that were alienated by her or by her stridhanam heir who is the seventh

defendant in the action. The plaintiff's case is that the properties which were allotted to Mangamma, herself and Naramma under Ex. V were taken

by the widow and the daughters as representing the share of Dasari Naidu and that therefore the clause in Ex. V conferring absolute rights upon

Mangamma, plaintiff and Naramma does not bind the rever-sioners of Dasari Naidu and that the three persons to whom such absolute rights were

given under Ex. V all got them as the representatives of Dasari Naidu. The main question is whether Mangamma, plaintiff and Naramma were

rightly given absolute rights under Ex. V which would prevail against the heir-at-law of Dasari Naidu. If really the properties were given as

pertaining to the share of Dasari Naidu which had devolved upon the widow, then it is clear that the mere statement that the property should be

enjoyed with full and absolute rights may not legally confer absolute rights on the persons to whom these properties were given. But if, on the other

hand, on the death of Dasari Naidu, whatever properties were left by him legally devolved upon one or other of the other parties to the instrument-

-and in this case it is said that they all devolved upon his illatom son-in-law Poliah,--then an arrangement to which Poliah was a party under which

absolute rights were given to Mangamma and her two daughters would legally confer absolute rights on them and that cannot be challenged by any

one--whether plaintiff or the other daughters who but for the illatom son-in-law, would have been the reversioners to the estate of Dasari Naidu, as

pointed out in (1935) L.R. 63 I.A. 155 (Privy Council) . Really, the question in such a case is whether prior to the transaction in question, namely,

Ex. V, the properties were the properties of the first defendant's husband Poliah by reason of the fact that Poliah was the illatom son-in-law and

under the law got all the properties left by Dasari Naidu. In such a case whether he conferred absolute rights with respect to the two-fifths on

Mangamma and her two daughters with the full consciousness that he was the full owner of the property or whether he was really ignorant of his

rights it does not in the least matter. In either case, the donees would take absolutely and, at any rate, Dasari Naidu's reversioners as his heirs at

law would have no right to question the allotment of the two-fifth share with absolute rights under Ex. V. Therefore, the question is whether the first

defendant's husband was the illatom son-in-law of Dasari Naidu and what his rights are under the law.

3. That Poliah was the illatom son-in-law of Dasari Naidu is spoken to by the first defendant herself who is his widow. No cross-examination was

directed to that part of her evidence. The illatom affiliation of Poliah was admittedly more than sixty years before the date of suit and in the very

nature of things, it is impossible to get more evidence than what has been adduced in the case. Luckily his widow (the first defendant) is alive and

she is a person who can be expected to know of the illatom affiliation. She has spoken to it and there is no cross-examination on that point. Ex. V

supports it. The District Munsiff accepted the defence that Poliah was taken as the illatom son-in-law of the deceased Dasari Naidu. I see no

reason to differ from the conclusion arrived at by the District Munsiff and which has been assumed to be correct by the lower appellate Court.

4. The next question is what the rights of an illatom son-in-law are under the Hindu law. All the decisions beginning with (1935) L.R. 63 I.A. 155

(Privy Council) assume that he is in the position of a son in competition with an after-born son and would get an equal share. He has, no doubt, no

power of interdict over the father-in-law and the father-in-law may alienate the property either by a deed inter vivos or by a will and he has no

power to demand a partition during the father-in-law's lifetime. Subject to these and other possible restrictions, it has been always assumed that

he has got all the rights, of a son. This is made further clear by the observations in *Narasimha Razu v. Veeabadra Razu* I.L.R.(1893) Mad. 287 .

No authority has been brought to my notice by the appellant's learned advocate to doubt the proposition that the illatom son-in-law would get all

the properties of the father-in-law excluding the widow. So, on the death of Dasari Naidu all the properties vested in his illatom son-in-law Poliah.

And hence the properties were rightly given with absolute rights to the widow and the daughters of Dasari Naidu. In any event, the present suit

filed on the footing that the plaintiff and her deceased sister Naramma along with two others inherited his estate and made a division of the

properties of Dasari Naidu into four shares which division would confer only limited rights on the four daughters cannot stand.

5. An alternative argument has been raised before me that even on the footing that Ex. V validly conferred an absolute right on Mangamma and her

two daughters, Mangamma would have one-third of the properties given under this arrangement, that the one-third devolved upon the daughters

and that on Mangamma's death, the daughters would take only a limited estate in her mother's stridhanam. This is not the basis upon which the suit

was brought. There is another answer to such a claim. Let us take it that 75 acres had been allotted to Mangamma and her two daughters.

Deceased Mangamma was entitled to 25 acres and the plaintiff and the deceased Naramma each was entitled to 25 acres. In this case all the 75

acres were divided by the four daughters including plaintiff and Mangamma and Naramma got only a fourth of 75 acres, that is, 18 ³/₄ acres.

Therefore it cannot be postulated that what was attributable to Mangamma's share was given to Naramma. Even otherwise, accepting the

argument that one-fourth of one-third should have really belonged to Mangamma's share, even then it would be open to the alienees of Naramma

to say that if the suit had been properly brought on the footing that it was limited to Mangamma's share and that the plaintiff was suing as the

heiress of Mangamma's stridhanam property, various defences would have been open to the defendants and it might have been urged that all the

alienated properties should be allotted to the share of Naramma and that the unalienated portion must be taken by the plaintiff. The suit not having

been filed on that basis, that question cannot be allowed to be raised in second appeal.

6. These second appeals are accordingly dismissed with costs of the first respondent in S.A. No. 1263 of 1941 and of respondents 1 and 3 in the other second appeal.