

(1914) 03 MAD CK 0039
In the Madras High Court

Muthu Ramakrishna Naicken

APPELLANT

Vs

Marimuthu Goundan and Another

RESPONDENT

Date of Decision : 06-03-1914

Acts Referred:

Citation : AIR 1914 Mad 128 : (1915) ILR (Mad) 1036 : 24 Ind. Cas. 363 :
(1914) 26 MLJ 532

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

Bench : Full Bench

Judgement

Sankaran Nair, J.—The plaintiffs sue as the legal representatives of one Mottaya Goundan to recover possession of the plaint lands from the

1st Defendant, who held them as his lessee. The lease is admitted but the main contention is that the lands belonged to Mottaya Goundan's wife,

Ayyammal, from whose alleged heir, the 2nd defendant has purchased them and is now in possession. It is found by both the Courts that the

properties were acquired with the profits earned by Mottaya Goundan and his wife, Ayyammal, in a trade which was carried on by both of them.

Both the husband and wife were ""equally working together"". It is also stated that among the Padayachi community, to which Ayyammal and

Mottaya Goundan belonged, the wife worked along with the husband ""for the purpose of the maintenance of the family and development of the

family properties."" The District Munsif decided, however, that, according to the strict theory of the Hindu Smrithis even the separate property of a

woman earned by her by mechanical arts is subject to her husband's control, and that, therefore, the money with which the plaint lands were

acquired, was not Ayyammal's peculium. He held that, though the properties were acquired in the name of Ayyammal, that is due to the fact that

Mottaya Goundan wanted to shield his properties from the claims of his brothers and possibly also to the fact that Ayyammal was more intelligent

than her husband. He further held that, assuming that Ayyammal and Mottaya Goundan must be deemed to have jointly acquired the plaint lands,

on the death of Ayyammal, it became the sole property of Mottaya Goundan and as the plaintiffs are admittedly entitled to claim as the

representatives of Mottaya Goundan, he passed a decree directing the defendants to surrender them to the plaintiffs. In Appeal the Subordinate

Judge confirmed the District Munsif's decision. His decision was confirmed by Mr, Justice Miller. This is an appeal from his Judgment.

2. In the Lower Courts the main question that was argued appears to have been that the properties belonged solely to Ayyammal. In Second

Appeal before us the main contention was that, on the facts proved, it cannot be held that the property belongs only to the husband.

3. If properties are acquired jointly by two persons, both of them males, the two would be joint owners. The question then is whether the fact that

the properties in suit were acquired jointly by husband and wife makes any difference. If it was open to the wife to acquire property for herself by

her own exertions during coverture, it would seem to follow that, if she acquired the property along with her husband, then they must be deemed to

be joint owners. According to the Mitakshara, which is the leading authority in this Presidency, property however acquired by a woman is her

Stridhanam and on her death her heirs take it. This view is no doubt, directly opposed to the view maintained by the Daya Bhaga and certain other

authorities, according to which that alone is Stridhanam which the wife has power "" to give, sell or use independently of her husband's control.

See Mayne's Hindu Law (7th Edition), paragraph 610. Gifts to a woman in her capacity of bride or wife or given by her husband or by her

relations or by her husband's relations are admittedly her exclusive property with the doubtful exception of gifts of Immovable property by the

husband in certain circumstances. It is now also settled law in Bengal and Madras that the property inherited by a woman is not her exclusive

property. Her right with reference to the property otherwise acquired, according to the Mitakshara, "" by inheritance, purchase, partition seizure, or

finding"" has been the subject of much discussion. It has now been settled that she may acquire property by gift from strangers during coverture and

that it would devolve on her heirs. See *Ramasami Padayachi v. Virasanti Padayachi* (1867) 3 M.H.C.R. 272. It has also been held that property

may be given to a husband and wife jointly and that property may also be purchased by them jointly. Her husband's interest in such property

would devolve on his heirs and her interest in the property would devolve on her heirs. See *Madavaraya v. Tirtha Sami* ILR (1877) M.307.

Property may also be devised to them jointly. See *Muthumeenakshi Ammal v. Chandrasekhara Aiyar* ILR (1902) M. 498. This is also the

conclusion arrived at in *Salemma v. Latchmana Reddy* ILR (1897) M. 100. There an inam land was enfranchised in favour of a woman, and the

question was whether it was her stridhanam property descendible to her heirs or not. The texts were reviewed and it was held that the Mitakshara

should be followed, unless there is such a consensus of opinion among the commentators prevalent in Southern India as to suggest that the

Mitakshara has been departed from, or in other words, that it is open to a female to acquire ownership in any of the modes in which it is open to

males, and all such property, with the exception of that acquired by inheritance, is her stridhanam, devolving on her own heirs. The learned judges

accordingly held that a wife's earnings and gifts to her by strangers are her stridhanam property descendible to her heirs. This is a direct decision

on the point and is in favour of the appellant. But as our learned colleague has apparently taken a different view, we propose to review the Hindu

Law texts on this point, though neither the texts nor the cases above referred to, we are informed, were cited before the learned Judge.

4. The question, as we have already stated, is whether a married woman's earnings are her exclusive property. Mr. Mayne adduces passages from

the Vedas to show that in early times married women pursued independent, occupations and acquired gains by them. See Mayne's Hindu Law

VII Edition paragraph 656. According to Manu (Ch. VII, Sloka 416), however, a wife is declared to have no property. The wealth which she

acquires is said to be acquired for him to whom she belongs. Four of the commentators of Manu, and among them Medhatithi, take this to mean

only that she is unable to dispose of her property independently of her husband. Another commentantor, according to Mr. Buhler, the editor,

seems to indicate that he took it to refer to her incapacity to earn money by working for others." See Sacred Books of the East Vol XXV, page

326.

5. The text that is generally referred to with reference to a woman's earnings is that of Katyayana which is thus translated by Colebrooke in his

Digest Vol. II, page 589, Sloka 470: ""But whatever wealth she may gain by arts, as by painting or spinning, or may receive on account of

friendship from any but the kindred of her husband or parents her lord alone has dominion over it Of her other property she may dispose without

first obtaining his assent. The commentator Jagannatha states that "" "arts" in this text is expressed in the plural number with the sense of "and the

rest"." We have already, pointed out that this text has not been followed in this Presidency as regards gifts from others than her husband's or her

own kindred. In the Dayabhaga this text is understood to imply that ""though the wealth be hers, it does not constitute woman's property, because

she has not independent power over it." The Dayakrama Sangraha (Stoke's Hindu Law Books, page 490) is to the same effect. Chapter II,

Section ii, Sloka 29, states ""notwithstanding the woman has ownership in both descriptions of property, she has not independent power in regard

to it"" as the husband's permission for its disposal is necessary. In the Viramitrodaya we find the same proposition laid down in Chapter V, Part I,

Slokas 2 and 7. The ownership of the woman in the properties is acknowledged ; it is only her power of alienation that is declared subject to the

husband's control. It is said ""the denial is not of their being woman's property, but of its consequences, such as distribution etc,"" Devala also

mentions a woman's gains as part of her separate property over, which she has exclusive control and which her husband cannot use except in

times of distress. Mr. Mayne thinks that the word is apparently used by Devala in the sense of gifts. Mayne's Hindu Law, VII Edition, paragraph

663. All the texts, therefore, recognise, the wife's ownership in the property acquired by her own labour. They only restrict her right of alienation

and make it subject to the wishes of her husband. Mr. Mayne considers the question in paragraph 663 and his conclusion is that these texts with

reference to the husband's control do not seem to convey anything more than a moral precept, while the texts asserting her absolute power are

express and unqualified "". It is unnecessary to express any opinion as to the husband's right to control any alienation by his wife, as that question

does not arise in this case. But we think that Mr. Mayne is right in his view that the property acquired by a woman by her own exertions during coverture is her own property which she is entitled to hold independently of her husband and that it devolves on her heirs. The Mitakshara is clear in favour of this conclusion and the other texts also recognise her ownership, though they convey an injunction that she is not to alienate the property without her husband's consent. This is due to general incapacity of woman to deal with property. These texts do not over-ride the express provision of the Mitakshara which declares her self-acquisition to be her own Stridhanam ; and we are confirmed in this view by the decisions cited.

6. We think, therefore, that the property in suit was the joint property of Ayyammal and her husband. If it formed joint property, there is no reason, for holding that, on the death of Ayyammal, her interest survived to her husband. In *Madavaraya v. Tirthasami* ILR (1877) M. 307 which we have already cited, the theory of survivorship was not recognised and it was held that the woman's own heirs were entitled to her undivided interest. Ayyamal's daughters, therefore, are the persons entitled to her property. They became co-owners with their father Mottaya Goundan on Ayyammal's death. There is no finding that their right has been lost by adverse possession. Mottaya's possession cannot be deemed adverse to his daughters who were co-owners with him.

7. On this finding the plaintiffs, who claim under Mottaya, are only co-owners with his (Mottayan's) daughters. The first defendant admittedly got into possession as lessee under Mottaya the plaintiffs are co-owners, and no objection was taken in the lower Courts that they alone cannot maintain the suit; but the first defendant set up the title of the second defendant, who is found by the District Munsif to have no title, as he purchased the property from Velayuda Goundan, who is not the heir of Ayyammal. Though the suit is one in ejectment, a decree for joint possession may be passed. In the circumstances, we set aside the decrees of the Lower Courts, direct the District Munsif to restore the suit to his file, make the daughters or other representatives of Ayyammal parties to the suit, and pass a decree in accordance with law. The costs hitherto incurred will abide the result.

Ayling, J.

8. I agree.