
(1927) 08 MAD CK 0034
In the Madras High Court

Nagarathnammal and Others

APPELLANT

Vs

Chinnu Sah and Others

RESPONDENT

Date of Decision : 02-08-1927

Acts Referred:

Citation : (1927) 53 MLJ 861

Hon'ble Judges : William Phillips, J

Bench : Division Bench

Judgement

William Phillips, Kt., Officiating C.J.

1. The plaintiffs have brought this suit to recover a share in the family property of themselves and the defendants. Plaintiffs 2 and 3 are the

illegitimate sons of the deceased brother of the 3rd defendant; defendants 1 and 2 are sons of the deceased and the 4th defendant is the son of the

3rd defendant. The learned trial Judge has held that, sitting as a single Judge, he is bound by the decision in Gopalasami Chetti v. Arunachellam

Chetty ILR (1903) M 32 and has held that the illegitimate sons, plaintiffs 2 and 3, are not entitled to any share in the family property of their

deceased father as there are collaterals in existence. This point was expressly determined in Gopalasami Chetti v. Arunachellam. Chetty (1890) LR

17 IA 128 : ILR 18 C 151, but it is now sought to be argued that that decision is wrong. Reliance is placed chiefly on a decision of the Privy

Council reported in Jogendro Bhupati Hurrochundra Mahapatra v. Nityanand Man Sing (1890) LR 17 IA 128 : ILR 18 C 151 (PC). This case in

Jogendro Bhupati Hurrochundra Mahapatra v. Nityanand Man Sing (1890) LR 17 IA 128 : ILR 1890 C 151 was considered in Ramalinga

Muppan and Others Vs. Payadai Gounden, , and it was there held that it did not

affect the law as laid down in this presidency. Similarly in

Gopalaswami Chetti v. Arunachellam Chetty ILR (1903) M 32, the case in Ramalinga Muppan and Others Vs. Payadai Gounden, , more

particularly that portion of it referring to the Privy Council decision, was considered, and it was held that an illegitimate son was not entitled to a

share in the family property when there were collaterals in the family. The learned vakil for the appellants has been unable to refer us to any case in

which the correctness of Gopalasami Chetti v. Arunachellam Chetty ILR (1903) M 32 has been impeached, and that case only carries a little

further the decisions of this Court beginning with Krishnaaayyan v. Muttusami ILR (1883) m 407. That current of decisions has continued for the

last 40 years and there appears to be no case in which the principle has been questioned. With all respects, we entirely agree with the decision in

Gopalasami Chetti v. Arunachellam Chetti ILR (1903) M 32 and, as nothing has been urged before us to show that it is in any way wrong, we are

prepared to follow it. The appeal accordingly fails.

2. A Memorandum of objections has been filed by the respondents objecting to the grant of maintenance to plaintiffs 4 and 5, the illegitimate

daughters of Chinnasami Sah. The question of whether they are entitled to any maintenance has not been discussed in the trial Court, but the

learned judge has remarked:

As regards them (namely plaintiffs 4 and 5), it is not admitted by [he defendants that they would be entitled to maintenance, but still, in order to

avoid any further litigation or question, the defendants' counsel is willing that I should fix a reasonable rate of maintenance for them also.

It is, therefore, contended for the appellants that the decree for maintenance in their favour is a consent decree and cannot be altered, but we are

assured by the respondents' counsel that this agreement was, as stated in the judgment, ""in order to avoid any further litigation"" and that it was

understood that the agreement was subject to the plaintiffs not appealing against the decree for maintenance. This is consistent with the language of

the judgment and we must accept counsel's submission that this is the correct interpretation of the learned Judge's order. It has been held very

recently in this Court in Vellaiyappa Chetty v. Natarajun ILR (1926) M 340 : 1926 52 MLJ 229 that illegitimate daughters are not entitled to

maintenance from their father's family. The provision therefore for their maintenance and for their marriage expenses must be omitted. In this respect the decree must be modified.

3. The appeal is dismissed with costs. No order as to costs in the Memorandum of Objections.