

(1942) 01 MAD CK 0021
In the Madras High Court

Nataraja Dikshithar by next friend and mother Pattammal	APPELLANT
Vs	
Mahaganapathi Dikshithar and Another	RESPONDENT

Date of Decision : 08-01-1942

Acts Referred:

Citation : AIR 1942 Mad 517 : (1942) 55 LW 313 : (1942) 1 MLJ 522

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This second appeal arises out of a suit for possession of a house. The basis of the plaintiff's claim is that on the 6th

December, 1928, the mother of the defendants during their minority executed a usufructuary mortgage deed for a sum of Rs. 1,500 in favour of the

plaintiff's father and uncle and on the same day executed a registered deed of lease agreeing to occupy the house for a period of three years on a

certain rent and that as the defendants committed default in the payment of rent, the plaintiff filed the present suit for recovery of possession. So far

as the plaintiff's title is concerned, his case is that at a partition between him and his uncle after the death of his father the suit mortgage was

assigned to his share. The main defence of both the defendants is that the mortgage is not binding on them. On behalf of the second defendant a

special plea is raised that even though the mortgage is binding on the first defendant it is not for a necessary purpose because the main portion of

the consideration which formed the subject of the mortgage in favour of the plaintiff's father was to discharge prior mortgages which were alleged

to have been executed for debts incurred in respect of the second marriage of the first defendant. The learned District Munsif gave a decree in

favour of the plaintiff but the learned Subordinate Judge reversed this decision. When the matter was taken up by me on the last occasion I called

for a finding on the question whether the usufructuary mortgage was binding on the defendants. The learned Subordinate Judge has now submitted

a finding in the negative, that is, that it is not binding on the defendants.

2. The question is whether this finding is correct. So far as the first defendant is concerned, it seems to me that the finding of the learned

Subordinate Judge cannot be sustained. The mortgage Ex. C was executed in discharge of two prior mortgages and also for a sum of Rs. 331 paid

in cash for sundry debts. The two prior mortgages are Exs. A and B, dated 16th June, 1927 and 31st July, 1927 for Rs. 500 each executed by the

defendants' mother in favour of one Kalyani Ammal. The concurrent finding of both the lower Courts is that so far as the consideration for these

documents is concerned, it has been proved that the moneys were, paid. The only question therefore is as to their binding nature. The learned

District Munsif was of the view that the moneys borrowed under Exs. A and B were required for purposes of the marriage of the first defendant

which admittedly took place in July, 1927. No doubt in the evidence the plaintiff sought to prove that the sum of Rs. 1,000 borrowed under both

these mortgages was for the purposes of paying the bride's price but both the lower Courts on the evidence came to the conclusion that it was not

for that purpose. The learned District Munsif in coming to this conclusion relied upon an acknowledgment made in the mortgage (Ex. E) executed

by the first defendant and his mother on 17th September, 1932. In regard to the said mortgage the first defendant sought to prove that he simply

signed it at the instance of his mother but the learned District Munsif disbelieved him. On appeal the learned Subordinate Judge when he heard the

appeal on the first occasion took the view that by means of Ex. E, the first defendant must be deemed to have ratified the transaction so far as his

share is concerned. But in submitting the present finding he observes that at the date of Ex. E, the first defendant had attained majority and it was

obviously at a time when he was still under the influence of his mother and the learned Subordinate Judge left the matter there without discussing

the evidence in regard thereto. Instead of remanding the case again, I decided to deal with the points. I have been taken through the evidence of

the first defendant and on a perusal thereof I am clearly of the opinion that his version that he executed the mortgage under the influence of his mother could not be believed. He * says that he learnt that he was deceived into signing Ex. E, a year before he was giving evidence, but he had not taken steps to have the transaction set aside. He was an adult and was capable of managing his affairs and beyond his interested testimony there is absolutely nothing to show that he was made to; execute the document as he suggests. It is clear therefore that the learned District Munsif was right in the view he took that the first defendant did ratify the transaction. So far as the validity of the transaction is concerned, it must therefore be held to be binding on him he having obtained the benefit by reason of his second marriage. The question as to what extent the consideration could be said to be binding on him is another matter and as that will be the subject of investigation in any suit that may be filed upon the mortgage by the plaintiff, I do not propose to express any opinion thereon.

3. The next question is whether the said mortgage can be said to be binding on the second defendant because if it is not binding on him the lease on the strength of which the suit was filed could not be said to be binding on him and no relief could be given to the plaintiff in this suit. The contention of Mr. Ramachandran is that moneys borrowed under Exs. A, B and C were for a legitimate family purpose and the fact that the; marriage was a second marriage was immaterial. He further contended that the marriage was an obligatory samskara and so long as the family was joint, debts incurred for the marriage of a coparcener, whether it was a first or a second marriage, must be held to be binding upon the other coparceners. He also contended that the second marriage in this case was very necessary because the family is a Dikshitar family whose members are entitled to perform puja and archana in the Chidambaram temple and derive emoluments therefrom and for that purpose only a married man can function in the temple, and therefore in the interests of the family the marriage of the first defendant was an absolute necessity. In support of the contention that the expenses incurred for a, second marriage must be held to be expenses incurred for a legitimate family purpose Mr. Ramachandran relied on Devulapalli Kameswara Sastry and Others Vs. Polavarapu Veeracharlu, by his Guardian, Kodamanchi Bhimanna, undra Bai v. Shivnarayana ILR

(1907) Bom. and Bhagirathi v. Jokhu Ram Upadhia ILR (1910) All. 575 . But Devulapalli Kameswara Sastry and Others Vs. Polavarapu

Veeracharlu, by his Guardian, Kodamanchi Bhimanna, and Sundra Bai v. Shivnarayana ILR (1907) Bom. 81 are cases of first marriage and they

therefore do not throw much light on the question as to how far a second marriage can be said to be an obligatory samskara in the sense that

expenses incurred therefor must be held to be an expenditure binding on the whole family. Krishnaswami Aiyar, J., who delivered the leading

judgment in Devulapalli Kameswara Sastry and Others Vs. Polavarapu Veeracharlu, by his Guardian, Kodamanchi Bhimanna, based his

conclusion on the fact that for a Brahmin marriage is a necessary samskara and the life of a house-holder is absolutely necessary after the period of

his studentship if he is not willing to remain celibate and is not prepared to become a sanyasi. This is what he observes at page 428:

Except for him who has thus qualified for entry direct into other asramas than that of house-holder the stage of house holder is practically

compulsory. The twice-born Hindu is not to be a student as long as he chooses. He may remain a Naishtika Brahmachari devoted to lifelong

studentship under strict conditions.

In the later portion of his judgment he also observes:

Except to the man who pursues the path of non-attachment to all others the order: of a house-holder is a necessary stage in the journey of life.

This case was followed by Chandavarkar, J., in Sundra Bai v. Shivnarayana ILR (1907) Bom. 81 who also gives the same reason in arriving at his

conclusion. At page 92, he observes as follows:

It follows from this exposition in the Mitakshara that, if an unmarried coparcener in a joint Hindu family thinks that he is not qualified either to

continue a celibate to the end of his life or to become an ascetic, the rite of marriage in his case becomes a necessity; it is forced on him by the

Shastras, inasmuch as he cannot remain without belonging to one of the four orders of life, and all orders are proscribed to him except the order of

the house-1 holder. Marriage, therefore, in his case becomes an unavoidable purpose.

Both the learned Judges have examined the texts bearing on the question in considerable detail and I think it is unnecessary to refer to them. A

study of those texts and reference to the various books referred to by them clearly indicate that according to the correct principles enunciated by

these ancient texts a person cannot think of a marriage till he finishes the Brahmacharya course and that according to the Shastras is when the man

reaches 25 or 30. It is only after a man finishes his period of studentship, takes leave of his Guru and elects to be a house-holder without being a

celibate or ascetic that marriage becomes an unavoidable purpose because he must enter one of four orders of life and having decided to become

a house-holder he must get married. In fact Krishnaswami Aiyar, J., at page 425, observes thus:

I put it to the respondent's vakil whether he contended that having regard to the age of the second defendant at the time of the marriage it was not

a purpose for which the father could legitimately incur expenditure or contract a loan. He disclaimed any intention of resting his case on that

ground. Dismissing therefore from consideration any question of propriety based on the ground of age, we are confronted with the broad question

whether the father was justified in borrowing money for the marriage of his son while the income of his property was insufficient to meet the

expenditure.

Therefore even with reference to a case of first marriage the learned Judge thought that the question of minority would be a material consideration

in coming to the conclusion whether in the particular circumstances the marriage could be said to be an obligatory samskara the expenses for which

could be held to be binding on the other members of the family. Sundra Bai v. Shivnarayana ILR (1907) Bom. 81, dealt with the case of a

marriage of a minor and the learned Judge upheld an alienation for debts incurred for the marriage of such a minor, and gave reasons for doing so..

At page 96, the learned Judge observes thus:

The rules of the Shastras seem indeed to have been framed by the Rishis with the object of discouraging, if not prohibiting the marriage of a male

before he is at least 25 years of age. Niiakantha in his Samskara Mayukha states that 25 years should be allotted to each of the four orders of life.

But usage has broken in upon the rule. Though the marriage of a minor boy may appear opposed (to the intention, if not injunctions, of the Shastras

and of the Commentators, and however objectionable it may seem to our

modern ideas, usage having sanctioned such marriages, we must give effect to them and administer the law as it is, not as it should be.

Thus the learned Judge relies on usage and not on Shastras for his conclusion. In this case the first defendant was married at the age of 7 and he

lost his wife. The second marriage was performed when he was 13 or 14. Strictly speaking neither of the marriages could be in accordance with

the Shastras because the first defendant was admittedly not of an age prescribed by the Shastras. Even for an adult, it has been pointed out by

Niyogi, J., in AIR 1930 282 (Nagpur) after discussing the relevant texts bearing on the point that there is no obligation on a widower to marry. At

page 284, the learned Judge observes thus:

Marriage is recommended to a widower; there is no obligation laid on him to marry. In this case the widower has a son and consequently the!

necessity of begetting a son could not be assigned as a reason. As to the necessity of maintaining sacrificial fire, the necessity is illusory and

theoretical as no fire is now maintained. That this peculiar feature of the Vedic religion has been wiped off long ago is well known. Vedic mode of

religious observances was overgrown and superseded by the Smartha and still later by the Puranic forms. Today an agnihotri is rare even in places

like Benares...The first marriage is ordained (Vyavasthita) and any subsequent marriage is left to the choice (Aichhik) of the agent. The former

springs from Shabdi Bhavana (prompting of the Vedic words); the latter from Arthi Bhavana (prompting of desire).

In that case the learned Judge refused to uphold an alienation made in connection with the fourth marriage of a father with a son 9 years old living.

No doubt, the facts of the case may be distinguishable but the observations are pertinent to this case in so far as they point out that the first

marriage is ordained and that any subsequent marriage must be left to the choice of the agent, i.e., the person who marries. In this case the first

defendant was 13 years old when the second marriage took place and it could not be said that he felt the necessity of a marriage nor could it be

said that he was of an age when he was obliged to beget an offspring in order to discharge his debt to his pithris. If even in the case of an adult, a

second marriage can be construed not to be an obligation, there can be no justification therefore for the second marriage of a minor. Thus, if the

authority of the Shastras is invoked, the marriage of a minor boy is not sanctioned. That is why ChandaVarkar, J., had to rely on usage for the first marriage of a minor boy. But no such usage is relied on in this case for the performance of a second marriage of a minor boy. Thus it seems to me that the expenses incurred for the second marriage of the first defendant who was on the date of the marriage a minor of about 13 years cannot be held to have been incurred for a legitimate family purpose. Even assuming that the second marriage may be held to be necessary, the question is whether having regard to the age and the then circumstances of the family the first defendant's marriage could be held to be for a legitimate family purpose. One reason that was assigned was that unless the first defendant was married, he could not derive the emoluments from the Chidambaram temple. The learned Subordinate Judge in paragraph 15 of his judgment points out clearly that in order to derive emoluments from the temple it is not necessary that a person should again be married and that once a marriage has taken place, that would be enough. From the plaintiff's own evidence the learned Subordinate Judge has pointed out that a substantial income is derived by performing archana in the temple and the widowers have a right to perform archana and that therefore the family could not be held to have suffered if the first defendant was not married again. Having regard to the first defendant's age and "there being no compelling necessity to marry in the interests of the family, it could not be " said that the marriage was a prudent and a necessary act and the mother could have waited until the boy attained majority. The result of this marriage has been, as pointed out by the learned Subordinate Judge, that the family house had to be mortgaged and is in peril of being lost. Therefore so far as the second defendant is concerned, it cannot be said that the debt incurred for the marriage of the first defendant was for a family purpose. The finding of the learned Subordinate Judge that the mortgage is not binding on the second defendant must therefore be sustained. If the mortgage is not binding on the second defendant, the lease also is not binding on him and if the lease is not binding on him, the possession of the plaintiff could only be that of an alienee from one of the coparceners and the plaintiff will not be entitled to eject him nor could he claim joint possession along with the first defendant.

4. The result is that the second appeal fails and is dismissed. I direct each party to bear their own costs throughout. Leave to appeal refused.