

(1890) 05 MAD CK 0001
In the Madras High Court

Nunnu Meah

APPELLANT

Vs

Krishnasawmi

RESPONDENT

Date of Decision : 09-05-1890

Acts Referred:

Citation : (1891) ILR (Mad) 274

Hon'ble Judges : Handley, J; Arthur J.H. Collins, J

Bench : Division Bench

Judgement

1. The only two questions argued before us on the hearing of this appeal were (1) whether defendant's vendor, Thayammal, took under the will of

her husband, G. Veerasawmi Chetti, an absolute estate in the house in question in this suit or only a widow's estate; and (2) whether plaintiff is

bound to make good to defendant any and what sum for repairs and improvements alleged to have been made to the house by defendant.

2. As to (1) it is argued by the learned Counsel for appellant that the restriction upon the power of alienation by a Hindu wife of Immovable

property given to her by her husband as stridhanam has no application to gifts to a widow by will, that in the case of a gift by will, therefore, unless

there are express words of limitation, the widow takes an absolute estate, and that in this case there were no words limiting the gift, and, therefore,

Thayammal took an absolute estate. In support of the distinction contended for between a gift by a husband to his wife inter vivos and a gift to his

widow by will, we are not referred to any express authority, and we observe that it is opposed to the decision in Koonjebhari Dhur v. Premchand

Dutt ILR 5 Cal. 684, but we think that we are not called upon to determine the question in this case. It was assumed by the learned Judge in the

Court below that the testator could have given his widow an absolute estate with full power of alienation, but it was held that on the proper

construction of the will he had not done so, and upon a careful consideration of the words of the will, read by the light of the surrounding

circumstances, we are of opinion that the learned Judge was right in the construction he put upon it as to the house in question.

3. We are not concerned now with the moveable property bequeathed to the widow by the will. All we have to decide is what was the intention of

the testator in giving her this house "on account of her maintenance," and we entertain no doubt that in so doing he did not contemplate her selling

or otherwise alienating the house, but intended that she should either live in it, or take the rents and profits for her maintenance, and that after her

death it should still form part of his estate. It was competent to him, no doubt, to use the words of the judgment in *Bhujanqa v. Ramayamma* I.L.R

Mad., 387 "by apt language to clothe her with a power of alienation," and words conferring such power frequently find a place in Hindu wills and

deeds of gift. In the absence of any such words, and taking into consideration the ideas which a Hindu would have as to the nature of the interest to

which a woman is ordinarily entitled in Immovable property, it seems to us a fair presumption that the testator in this case did not intend his widow

to have any power of alienation over the house except of course such as she would have had if the property had come to her as his widow. And

we agree with the learned Judge in the Court below that the endorsement by the testator on the Collector's certificate of the house does not show

any other intention.

4. The words of the endorsement are merely "according to the will, etc., my wife after my death should enjoy".

5. As to the second question, we also agree with the decision of the Court below. This is not a case of a man standing by and allowing another in

ignorance of his rights to add to the value of his property. The plaintiff, as the reversioner, could not, as long as the widow was alive, do anything to

interfere with what she, or the defendant by her permission, chose to do with the property, and the defendant seems to have known perfectly well

the nature of the widow's title and the provisions of the will. If he took a mistaken view of the extent of her interest under that will, it was his own

fault, and the plaintiff is not to blame for it. He did warn defendant as soon as he knew of the sale to him, but apparently without any effect. Even if

the money in question was bond fide advanced by the defendant for the repairs and improvement of the house, as to which there seems to be

reason for considerable doubt we agree with the Court below that the defendant has no legal claim for its repayment.

6. The appeal fails and is dismissed with costs. Branson and Branson Attorneys for Plaintiff. Champion and Short: Attorneys for Defendant.