

(1949) 10 MAD CK 0031
In the Madras High Court

Palla Sanyasi

APPELLANT

Vs

Kayitha Guruvulu

RESPONDENT

Date of Decision : 12-10-1949

Acts Referred:

Hindu Widows Remarriage Act, 1856 — Section 5

Citation : (1949) 2 MLJ 738

Hon'ble Judges : Viswanatha Sastri, J

Bench : Division Bench

Judgement

Viswanatha Sastri, J.—The first defendant is the appellant in this second appeal. The plaintiff filed the suit out of which this second appeal

has arisen for the recovery of certain jewels or their value from the first defendant. His case was that his younger brother Pentayya married a lady

by name Ramanna and that at the time of the marriage, the jewels now claimed were presented to Ramanna by the plaintiff out of his family funds.

Pentayya, the younger brother of the plaintiff, died in October, 1943, and his widow Ramanna married the first defendant in or about May, 1944.

Ramanna died on 17th December, 1944, having committed suicide. The present suit for recovery of the jewels presented by the plaintiff to

Ramanna at the time of her marriage with Pentayya, the plaintiff's younger brother, has been filed on the ground that according to the custom in the

Golla community to which the parties belong, Ramanna was bound to have returned the jewels to the plaintiff on her re-marriage with the first

defendant. In other words, the plaintiff pleaded a custom in the community that a woman who is presented with jewels by her husband's family is

bound to return them to the family of her husband, if, on her husband's death, she re-marries. There is an allegation to that effect in paragraph 5 of

the plaint and an issue on this point has also been framed by the trial Court.

2. Evidence has been adduced as regards the custom in the community to which the parties belong. P.Ws. 1 and 2 who are caste elders of the

community and P.W. 4 as well as D.Ws. 2 and 4 all speak to the fact that on the re-marriage of a woman, the jewels presented to her by her first

husband's family, revert to that family. This evidence has been accepted by both the lower Courts and I see no-reason for holding that the custom

pleaded has not been proved in the present case. Mr. Subramaniam, learned Advocate for the appellant, argues that by virtue of Section 5 of the

Hindu Widows' Re-marriage Act (Act XV of 1856) the custom pleaded cannot prevail against the provisions of that section. He contends that by

reason of Section 123 of the Transfer of Property Act, there was an absolute gift of the jewels to Ramanna when they were delivered to her at the

time of the marriage and therefore they were her absolute property at the time of her remarriage. On this hypothesis, he argues that her re-marriage

would not affect her absolute title to the jewels by reason of Section 5 of the Hindu Widows' Remarriage Act. The fallacy of the argument is that

the original gift of the jewels; to Ramanna at the time of her first marriage was itself subject to the customary incidents attaching to such gifts, viz.,

that there should be a reverter of the property gifted to the husband's family on the re-marriage of the lady. Therefore it could not be said that the

widow had an absolute interest in the jewels presented to her and that she was free to do what she liked with them even after her re-marriage. The

gift was subject to the customary incidents of the community and therefore Section 5 would not affect the operation of the customary rule with

reference to the gift in question. For these reasons I hold that the conclusion of the Courts below is correct and that this second appeal should be

dismissed with costs. (Leave to appeal is refused).