

(1951) 01 MAD CK 0027

In the Madras High Court

Case No : Second Appeal No. 1937 of 1946

Ramaiya Konar alias Ramaswami Konar, by father and
guardian Natesa Konar and Another

APPELLANT

Vs

Mottayya Mudaliar alias Manicka Mudaliar

RESPONDENT

Date of Decision : 19-01-1951

Acts Referred:

Hindu Womens Right to Property Act, 1937 — Section 1, 2, 3

Citation : AIR 1951 Mad 954 : (1952) ILR (Mad) 187 : (1951) 64 LW 776 :
(1951) 2 MLJ 314

Hon'ble Judges : Rajamannar, C.J.;Viswanatha Sastri, J;Panchapakesa Ayyar, J

Bench : Full Bench

Advocate : K.S. Desikan, for the Appellant; T.L. Venkatarama Iyer and C.P.
Rajagopala Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—I have had the advantage of perusing the judgment prepared by my learned brother Viswanatha Sastri J. and I am in

entire agreement with his reasoning and conclusion. If I add a few words it is because the question raised in the case is not covered by decided

authority.

2. Sabapathy Padayachi and Muthuvelu were undivided brothers. Muthuvelu died on 17-8-1943 leaving behind him his widow Alamelu. She sold

a house which was a part of the joint family property to the first appellant in this second appeal. In the ordinary course Sabapathi would have

become entitled to the entire joint family property on the death of his brother Muthuvelu. But the appellant relied on the right conferred on a widow

by Section 3(2) of the Hindu Women's Rights to Property Act, 1937 (hereinafter referred to as the Act). To meet this claim based on that Act, the

plea was raised on behalf of the contesting respondent that at the time of the death of her husband Alamelu was leading an unchaste life and lived in

adultery with a person at Kumbakonam. This fact has been found by both the Courts below and the claim of the appellant based on the Act

negatived on the ground that by reason of her un-chastity the widow was disqualified from acquiring any interest under the Act. The contention on

behalf of the appellant before us was that Section 3 (2) of the Act conferred upon the widow an unrestricted and unqualified right to take the

property of the husband in the same interest as the husband himself had and her unchastity would not disqualify her from acquiring that interest,

"The material provisions of the Act run as follows :

2. Notwithstanding any rule of Hindu law or custom to the contrary, the provisions to Section 3 shall apply where a Hindu dies intestate.

Section 3. (1) When a Hindu governed by the Dayabhag School of Hindu law dies intestate leaving any property, and when a Hindu governed by

any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his

widows together, shall, subject to the provisions of Sub-section (3), be entitled in respect of property in respect of which he dies intestate to the

same share as a son;

(2) Where a Hindu governed by any school of Hindu law other than the Dayabhag school or by customary law dies having at the time of his death

an interest in a Hindu joint family property, his widow shall, subject to the provisions of Sub-section (3) have in the property the same interest as

he himself had.

3. The appellant's contention is based upon the language of Section 2 which declares that the provisions of Section 3 shall apply notwithstanding

any rule of Hindu law to the contrary and on the fact that no disqualification is expressly mentioned in Section 3. The learned Editor of the 10th

Edition of Mayne on Hindu Law and Usage expressed the following opinion at page 722 :

As the Act confers upon the widow a right of succession notwithstanding any rule of Hindu law, in unchaste widow will not be disqualified from

inheritance. Similarly the rights of succession of the widowed daughter-in-law will not be subject to the condition of chastity even in the Dayabhaga

school. For the same reason the widow will be entitled to succeed, notwithstanding any ground of disqualification under Hindu law in either

School." The learned editor of the subsequent edition has added the remark :
"It may be stated that this is perhaps an unintended result".

The question is whether we are compelled to form the same opinion having regard to well established principles of construction of statutes.

4. The dominant purpose in construing a statute is to ascertain the intention of the Legislature. No doubt, the meaning of a statute is primarily to be

sought in the terms as enacted, but the terms must be construed with due regard to the subject matter and object of the statute. The intention of the

Legislature must be first sought in the statute itself, then in other legislation and contemporaneous circumstances and finally by ascertaining what

was the law before the Act, what was the mischief or defect for which the common law did not provide, what remedy the Legislature have

provided to cure the defect and the true reason of the remedy. When the enactment is in the nature of an amending provision, that is to say, a

provision which amends the general law on the subject in any particular it should not be interpreted so as to alter completely the character of the

principal law, unless clear language is found indicating such intention. Statutes which introduce new principles into any branch of the law should be

expressed in clear unambiguous terms (Halsbury, vol. 81, pp. 477, 491, 493 and 504). There is always a presumption that the "Legislature does

not intend to make any substantial alteration in the law beyond what it expressly declares, either in express terms or by clear implication, or in other

words, beyond the immediate scope and object of the statute." (Maxwell on Interpretation of Statutes, Edn. 9, p. 85).

Statutes regulating heirship or descent, or giving force to wills and to the devises contained in wills should be read as not intended to affect

paramount questions of public policy or depart from well settled principles of jurisprudence.

Kenchava v. Girimallappa, 48 Bom. 569 .

The words of the statute are to be construed so as to ascertain the mind of the Legislature from the natural and grammatical meaning of the words

which it has used, and in so construing them the existing state of the law, the mischiefs to be remedied, and the defects to be amended, may

legitimately be looked at together with the general scheme of the Act.

(In re,Viscountess Rhondda's claim, 1922-2 A. O. 839 at p. 365).

. . . . general words are to be construed so as to pursue the intent of the makers of statutes and so as to import all these implied exceptions which

arise from a close consideration of the mischiefs sought to be remedied and of the state of the law at the moment when the statute was passed

(1922) 2 A. C. 339 .

5. The Act with which we are concerned is described as ""an Act to amend the Hindu law governing Hindu women's rights to property."" The

object is stated in the preamble thus:

Whereas it is expedient to amend the Hindu law to give better rights to women in respect of property.

The Hindu law as it stood before the passing of the Act gave certain rights to women in respect of property. The object of the Act was to give

better rights"" to them. Inter alia under the law as it stood before the Act, a Hindu widow who was not unchaste was entitled to inherit to the

separate property of her husband when he died intestate and leaving no son (or son's son or son's son's son), if there was a son she was entitled

to claim maintenance against the son and if the property was joint family property against the coparceners of her husband, provided she was not

unchaste. Unchastity was a disqualification which prevented her from claiming rights to which she was otherwise entitled under the law. If the

object of the Act was to remove the disqualification on the ground of unchastity, then, in my opinion the appropriate language would have been

different, vide, for instance, the Hindu Inheritance (Removal of Disabilities) Act XII [12] of 1928, which is described as an Act to amend the Hindu

law relating to exclusion from inheritance of certain classes of heirs and to remove certain doubts. An Act designed to remove the bar of unchastity

cannot be properly called an Act to confer a right. If the contention of the appellant is to be accepted the object of the Act would be among other

things, to confer rights on unchaste women.

6. There is another aspect of the matter which, in my opinion, throws considerable light on the scope of the Act. If the object of this enactment was

inter alia to abrogate the rule of Hindu law as regards unchastity and to remove the disability from inheritance on that ground, then, it is impossible

to comprehend why the Legislature should have removed that bar only in the cases provided for by the Act and not in cases where a Hindu dies

intestate and sonless. There can be no imaginable reason why an unchaste widow shall be disqualified from inheriting to her husband's property

when he did not leave a son behind but should be permitted to take an interest in her husband's property along with a son. It appears to me to be

clear that this Act has not expressly or by implication removed the disqualification on the ground of unchastity which is based on ethical foundations

and the sentiment of the people. It was argued for the appellant that Section 3 did not make any exception or impose any restriction on the right

conferred on the widow. The answer to this contention is that if by any rule of law in force at the time of the enactment, there is a disqualification or

disability from acquiring any right, unless such disqualification or disability is expressly or by necessary intendment removed by the Act, the

provisions of the Act must be read subject to such general rules of law. To give an instance, there is a rule of Hindu law which is also a rule of

general public policy that a murderer is disqualified from inheriting to the estate of the murdered man. Can it be successfully contended that a wife

who has murdered her husband would be entitled to the rights conferred on her by S 3 of the Act ? The learned advocate for the appellant was not

prepared to go this length and I believe, rightly. An interesting case which illustrates this principle is *Queen v. Harrauld*, (1872) 7 Q B. 361. 32 and

33 Vict. ch. 55 enacted (s. 9) that in the Municipal Corporation Acts, words importing the masculine gender shall include females for all purposes

connected with the right to vote at the election of Councillors, auditors and assessors. Nevertheless, it was held that a married woman was not

entitled to vote because of the disability by reason of the status of coverture. It was contended that the statute did not contain any exception in

regard to married women and, therefore, even married women were entitled to vote. The provisions of the Married Women's Property Act were

also relied upon, but the contention was overruled. Cockburn C. J. observed :

The 32 and 33 Vict. Ch. 55 enacted that where-ever men were entitled to vote, women, being in the same situation, should thereafter be

entitled; but this only referred to women possessed of the necessary qualification in respect of property and the payment of rates, and I cannot

believe that it was intended to alter the status of married women. It seems quite clear that this statute had not married women in its contemplation.

Mellor J. said that the Act only removed the disqualification by reason of sex and left untouched the disqualification by reason of status. The other

learned Judge Hannon J., disposed of the contention based on the Married Women's Property Act thus:

The Married Women's Property Act was intended to protect married women in the enjoyment of the rights of property and was not intended to

extend in any way to the political rights of the women, and we must not by a side mind give an extension to its effect which we can clearly see was

not intended.

This is what we would be doing if we imported into the Hindu Women's Rights to Property Act a provision removing the disqualification on the

ground of unchastity. In my opinion, if the Legislature intended to confer rights on even widows who were otherwise disqualified under the general

rule of Hindu law, then it would have given expression to that intention. If I could borrow the language of Birkenhead L. C. in the Viscountess

Rhondda's case, 1922 2 A. C. 839, I would say that it would require a convincing demonstration to satisfy me that the Legislature intended to

effect a change so momentous and far-reaching by so furtive a process.

7. Much reliance was placed on Section 2 which declares that the provisions of Section 3 shall apply notwithstanding any rule of Hindu law or

custom to the contrary. It is important to note that the language is not ""Notwithstanding any rule of Hindu law or custom"" but ""Notwithstanding any

rule of Hindu law or custom to the contrary."" If there is any rule of Hindu law or custom which is contrary to the provisions of Section 3, then it is

such a rule that is abrogated and not every rule of Hindu law which is not directly contradicted by the provisions of Section 8. As pointed out by

Viswanatha Sastri J., it is the general rule of Hindu law that a son excludes the widow in respect of separate property and the surviving

coparceners exclude the widow in respect of joint family property that are contrary to the provisions of Section 3; and Section 2 declares that

notwithstanding these rules of Hindu law, the provisions of Section 3 shall apply.

8. I have, therefore, come to the conclusion that we are not obliged to hold that the effect of the enactment is to bring about something not intended

by the Legislature, as the learned Editor of Edn. 11 of Mayne's Hindu Law opined. On the finding of fact that Alamelu was unchaste at the time of her husband's death, she was disqualified from acquiring any interest under the Hindu Women's Rights to Property Act. The second appeal fails and is dismissed with costs.

9. Viswanatha Sastri J. -- The point for determination is whether a Hindu married woman living in adultery at the time of her husband's death is

disqualified by reason of her unchastity from succeeding to his interest in joint family property u/s 8, Hindu Women's Rights to Property Act

(XVIII [18] of 1937) hereinafter referred to as "the Act." The problem presented by this case is one of a type which occasionally confronts Courts

of applying an enactment to circumstances not within the contemplation of the Legislature. The learned Editors of Edns. 10 and 11 of Mayne's

Hindu Law, have expressed the opinion based on the language of Section 2 of the Act, that a widow is not disqualified by reason of her unchastity

from succeeding to her husband's estate u/s 3 of the Act, and this opinion has been accepted as correct by a learned Judge of the Bombay High

Court in *Akoba Laxman v. Sai Genu Laxman* I. L. R. (1941) Bom. 438. I am unable to agree with this interpretation of the Act.

10. In construing the Act, it must be remembered that it is not an enactment codifying the Hindu Law of Inheritance or even the topic of Hindu

women's right to succession to property. The legislature is piecemeal and deals only with particular cases where, under the pre-existing law, a

Hindu widow was excluded from succession to her husband's self acquired or separate property or interest in joint family property. The draftsman

of the Act has assumed a knowledge of the existing state of Hindu law on the part of those who have to interpret it. The hardships which the Act

was intended to remedy and the extent of legislative interference considered to be necessary for that purpose must be borne in mind in construing

the enactment.

11. I might indicate at the outset what I consider to be the proper mode of approach to the construction of the Act. The Legislature might well be

presumed to have left the previous law unaltered except to the extent to which a departure therefrom has been specifically enacted. In *Secretary of*

State v. Bank of India Ltd., I. L. R. (1938) Bom. 502, the Judicial Committee

observed, "A statute is prima facie to be considered as changing the law to no greater extent than its words or necessary intendment require." In Maxwell on Interpretation of Statutes, 9th Edn. at pages 85 and 86 the rule of construction applicable to cases like the present is thus stated:

It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights or depart from the general system of law, without expressing its intention with irresistible clearness and to give any such effect to general words, simply because they have a meaning that would lead thereto when used in either their widest, their usual, or their natural sense, would be to give them a meaning other than that which was really intended In construing the words of the Act of Parliament we are justified in assuming that the Legislature did not intend to go against the ordinary rules of law unless the language they have used obliges the Court to come to the conclusion they did so intend.

It has been observed by the Federal Court and this Court that though the Act conferred new rights of succession upon widows yet, in view of its far-reaching consequences on other branches of the Hindu law, the Act should be so construed, as to make no further inroad into the Hindu law than is warranted by its plain terms. In all other respects the Legislature might be presumed to have left the Hindu law unaffected. *Umayal Achi v. Lakshmi Achi* 1945 1 M. L. J. 108 at p. 116, *Radha Ammal v. Commr. of Income Tax*, 1950 1 M. L. J. 399, *Subba Naicker Vs. Nallammal and Others*, and *Seethamma v. Veeranna Chetti* 1950 2 M. L. J. 21. This is also the view of the learned Editors of *Maya's Hindu Law*, 10th and 11th Edns. as regards the scope and effect of the Act.

12. It is a well settled rule of Hindu law--a rule that is in conformity with popular sentiment--that unchastity disqualifies a widow from succession to her husband's estate. The textual authorities on this point will be found assembled in the judgment in *Kery Kolutany v. Moneeram Koluta*, 13 Beng. L. B. R. The text requires that the widow must be chaste not only when the inheritance of her deceased husband opens but also thereafter. A text attributed to *Vridha Manu* says:

The wife alone, being sonless and keeping the bed of her lord unsullied and leading a life of religious observance, may take his entire estate.

Katyayana also declares:

Let the sonless widow, preserving unsullied the bed of her lord and bidding with her venerable protector, enjoy with moderation the (husband's)

property until her death.

Other texts state that as ""half the body"" of her deceased husband the widow takes his property in default of male issue. The above texts show that

not only that the sonless widow's right in her husband's property is a mere right of enjoyment but that the exercise of that right is dependent on her

chastity. The use of the present participle form implies that chastity is imposed as a permanent condition of the widow's enjoyment of her

husband's estate and that a violation of that condition would involve a forfeiture of the right. But European writers like Colebrooke and English

Judges who had to administer the Hindu law, in their concern for ensuring certainty of titles to property and their leanings against a divestiture of

estates once vested, declared the law to be that a sonless widow who was chaste at the time of her husband's death inherited his estate and that a

widow who had once inherited the estate of her husband was not liable to forfeit it by reason of her subsequent unchastity. The law was thus

settled by the Judicial Committee in *Moniram Kolita v. Keri Kolutany*, 5 Cal. 776 and this has been the accepted rule of Hindu law ever since.

Unchastity disentitles a Hindu widow to maintenance. Maintenance being a recurring right her continued chastity is a condition of her right to

receive maintenance and she would forfeit her right by reason of her unchastity even though maintenance has been decreed to her by a Court.

Lakshmichand v. Mt. Anandi, 57 ALL. 672 P. c., *Kandasami v. Murugammal*, 19 Mad. 6 and *Nagamma v. Virabhadra*, 17 Mad. 392. If there

has been a lapse from chastity the widow would be entitled only if she reforms her ways, and even then only to a starving maintenance,

Satyabhama v. Kesavacharya, 39 Mad. 658. The widows of coparceners in a joint Hindu family are in fact and in law members of the family with

rights in or over the family property by way of maintenance. *Raghunanda Deo v. Brozokishore Patta Deo*, 1 Mad. 69 ; *Kalyanji Vittaldas v.*

Commissioner of Income Tax, I. L. R. (1937) Cal. 653 and *Vedathunni v. Commissioner of Income Tax*, 66 Mad. 1 at pp. 4, 5. The requirement

of chastity as a condition of their maintenance from the family property is therefore intelligible.

13. The Act was doubtless intended to "give better rights to women in respect of property" as stated in the preamble. But in what cases and to what extent ? The rights of a Hindu widow in relation to the property or interest of her husband, as they stood before the Act, and as they now stand, have to be considered. A Hindu widow succeeded to the self-acquired property of her husband or the property held by him as the last surviving coparcener or as the holder of a share on partition if he happened to die without leaving sons (including in that term grandsons and great grandsons) The sonless widow was disqualified from inheriting her husband's separate or self acquired property if she was unchaste or living in adultery at the time the inheritance opened. The Act did not touch this class of cases and did not abrogate the rule of Hindu law as to disqualification of a widow arising out of her unchastity in such cases. If in the cases abovementioned the husband had left sons (in the comprehensive sense) the widow would before the Act have been excluded by the sons from inheriting her husband's estate and would only be entitled to maintenance for her life out of that estate. If her husband had died as a member of a joint Hindu family owning property, his interest in the family property ceased on his death. The widow would but for the Act, be excluded from succession to the undivided interest of her husband which passed by survivorship to the remaining coparceners. She would have had a right, however, to be maintained from the joint family property in the hands of the surviving coparceners, who might be her son or her husband's uncles, brothers, nephews or other agnate relations. With reference to these two classes of cases above specified, Section 3 of the Act conferred new rights of succession on widows in supersession of the above mentioned rules of Hindu law. The rule that a widow succeeded only on failure of male issue was abrogated and she was given the same share as a son in her husband's separate or self acquired property. Where the husband died a member of an undivided Hindu family, his undivided interest in the family property passed to his widow even if he left male issues. The rule of survivorship was to this extent abrogated. The interest taken by a widow in her husband's estate by virtue of Section 3 of the Act was the same as the interest which she took in her husband's separate or self-acquired property in the absence of male issue, that is to say a Hindu widow's estate with all the incidents attached by law to that estate.

The liability to forfeiture on remarriage would attach to that estate from its commencement and continue throughout the Widow's life. The condition of chastity however attaches to the estate only at its commencement. Though the Act conferred new rights of succession on Hindu widows in the two classes of cases referred to above, it did not purport to abrogate the pre-existing rule of Hindu law excluding an unchaste widow from succession to the property of her husband. It would be a queer state of law that a sonless widow has to be chaste in order to inherit her husband's separate or self acquired property but a widow need not be chaste if she happens to have sons or other coparceners of her husband in competition with whom she claims to take her husband's estate. This, however, would be the result of the argument of the appellant as regards the construction of Sections 2 and 3 of the Act.

14. The Act does not provide for the devolution of her interest after the widow's death in cases where she is given a right of inheritance by the Act. This is left to be determined by the general law. The right of maintenance possessed by a widow now enlarged by the Act into a right of succession, is not abrogated by the Act, but having regard to the principle of Hindu law that maintenance is awarded to a widow because of her exclusion from inheritance and a share on partition, it is to be inferred that the right of maintenance would not be available to the widow in such cases. I refer to these matters to show that the Act is not exhaustive or self-contained, and must be fitted into the context of the existing Hindu law except to the extent forbidden by its plain terms. The Hindu law as to the grounds of exclusion from inheritance has been considerably modified by Hindu Inheritance (Removal of Disabilities) Act, 1928. But even after this Act congenital idiocy or lunacy is a ground of exclusion from inheritance. Unchastity is a ground of exclusion of Hindu widows from inheritance to their husband's estate has not been removed by that Act which removed many other grounds of disqualification imposed by Hindu law. Is it to be said that the disqualification from inheritance based on congenital idiocy or lunacy, which has not been removed by the Act of 1928, has now been removed by the Act not under consideration, not directly but inferentially? This is, however, what the appellant's argument amounts to. A murderer is disqualified from succeeding to the estate of the person murdered on

grounds of public policy. *Kenchayya v. Girimallappa*, 48 Bom. 569 . Is it to be said that this disqualification attaches only to a sonless widow who

murders her husband and claims to succeed to his separate or self-acquired property, and not to a widow who claims her husband's estate in

competition with her sons or other coparceners of her husband? The Caste Disabilities Removal Act (XXI [21] of 1850) set aside the provisions

of Hindu law which penalised renunciation of religion or exclusion from caste. But it was held that the Act did not get rid of any conditions or

restrictions to which the converts were originally subject under the Hindu law *Matungiri Gupta v. Ram Rutton Roy*, 19 Cal. 289 and *Pathumma v.*

Raman Nambiar, 44 Mad. 891. For instance, this enactment would not remove the disqualification based on the widow's unchastity imposed by

the Hindu law though it removed the disqualification arising from apostasy. *Moniram Kolita v. Keri Kolutany*, 5 Cal. 776 and *Sundari v. Pitambari*,

Letani, 32 Cal. 871 . That the Legislature did not take the view that adulterous conduct or unchastity in a married woman was a minor or negligible

misdeemeanour not affecting her rights to property is clear from Section 2, Hindu Married Women's Rights to Separate Residence and

Maintenance Act 1946 which disentitles an unchaste wife to maintenance. I find it difficult to hold that the Act now in question has expressly or by

necessary intendment done away with the personal disqualification like unchastity imposed by Hindu law on widows claiming to succeed to the

estate of their deceased husband.

15. Reliance has been placed by the learned counsel on the language of Section 2 of the Act which runs thus:

Notwithstanding any rule of Hindu law or custom to the contrary, the provisions of Section 3 shall apply when a Hindu dies intestate.

It is said that the disqualification of a Hindu widow to inherit her husband's estate arising from her unchastity is a rule of Hindu law which stands

abrogated as a result of Section 2. I cannot agree. The "rule of Hindu law to the contrary," referred to in Section 2 is the rule of Hindu law

excluding a widow from succession to her husband's estate if he had left a son, grandson or great grandson, or if he had died as a member of a

joint Hindu family leaving his coparceners. It is this rule of Hindu law that was superseded by Section 3 of the Act. To this extent, but no further,

Section 3 is contrary to and therefore, supersedes the rule of Hindu law. The significance of the words ""to the contrary"" following the words

Notwithstanding any rule of Hindu law"" in Section 2 is that it is only such rules of Hindu law as are contrary to the provisions of Section 3 of the

Act that stand abrogated. The disqualification of a Hindu widow from succession to her husband's estate based on her unchastity was not even

touched upon by the Act, and there is nothing in 8. 3 prescribing a rule contrary to the well established rule of Hindu Law that the chastity of a

widow is a condition precedent to her inheriting her husband's estate.

16. The object of the Act according to the preamble, was to give " better rights to women"" and not to confer rights on unchaste women. The

object has been amply achieved by Section 3 which gives Hindu widows rights of succession to their husband's estate in supersession of the rules

of Hindu law which in the circumstances specified in the section gave them a mere maintenance out of that estate. The family a pivotal institution

extolled by Dharma Sastras depended for its unsullied cohesiveness and continuity, upon the sanctity of marital relationship with its attendant

obligation of chastity I consider it improbable that the Legislature would have overthrown the well-established and fundamental principle of Hindu

law founded in the deep rooted sentiments of the people that chastity is a condition precedent to a widow's right to inherit her husband's estate,

without expressing its intention with irresistible clearness I also venture to think that it could not have been the intention of the Act to give a charter

of unchastity to married women or to abrogate the inhibitions of a law designed to preserve the purity and sanctity of family life. Unless there is no

reasonable way of escape I must decline to attribute to the legislature so wayward an intention.

17. For these reasons the second appeal fails and is dismissed with costs.

18. Panchapakesa Aiyar J.--I have had the advantage of going through the judgments of my brother Viswanatha Sastri J. and my Lord the Chief

Justice. I unhesitatingly agree with their conclusions that the Hindu Women's Rights to Property Act (Act XVIII [18] of 1937) has not abrogated

either expressly or impliedly the Hindu law rule that a wife who is unchaste cannot succeed to her husband's property, whether joint family

property or self-acquired property and that the opinion to the contrary expressed

by the learned authors of Mayne's Hindu Law (Edns. 10 and 11) and by a single Judge of the Bombay High Court in Akoba Laxman v. Sai Genu Laxman, I. L. R. (1941) Bom. 488 is wrong and unwarranted.

19. Chastity is considered by all schools of Hindu law, and by all Hindus as Truth in Action, and this is a land where it is proclaimed that God is

Truth and Truth is God. For the Hindus, chastity in a wife is the first thing required, all other qualities paling into insignificance beside it. The Vedas

say:

Ardha Va Esha Atmanee Yajyayeta"" (Shethe wife.....is born as half of the self.)

In the hoary past Sati Savitri leaped across death with chastity as her sole armour and shield, and got back the life of her husband, Satyawana, from

Yama who had to yield her husband's body, the submerged half of the wand of life of the couple, when it was pulled by her, his half standing out

of the waters of death. Only in the background of this thrilling tale can we understand the lawgiver Prajapati's words:

Amnaye Smriti tantre Cha Lekachare cha sooribhi Sareerardham Smrita Jaya Punyapunyaphala Sama Yasya noparate bharya dehardham tasya

jeevati Jeevatyardhasareerartham Kathamanyah Samapnuyat.

(In the Vedas and Smritis and popular usage, the wife is declared to be half the body of her husband and to be sharing equally the fruits of her

husband's good and bad acts. Of him whose wife is not dead, half the body survives. When half his body survives, how can any one else inherit his

property?)

20. Vriddha Manu expressly says that only the sonless widow who keeps the bed of her lord unsullied is entitled to her husband's property.

Katyayana also expressly says that she must be chaste (Yasyadavyab icharinee) if she is to succeed to her husband's properties. This idea of an

unchaste wife's being disqualified to inherit her husband's property was taken for granted so much so that several law-givers, like Yagnavalkya,

Vishnu and Brihaspati, often omit it as understood. Thus, Yagnavalkya says:"" Patneeduhitaraschaiva Pitaram Bhratarastatha"" (the wife, the

daughter, the parents and the brothers succeed to the property of a sonless man). Vishnu says: ""Anapatyasya Prameetasya Dhanam

Patnyabhogami"" (the wife takes the property of her sonless husband). And Brihaspati says: ""Bharya Sutaviheenasya Purushasya Mritasyatu"" (the

wife takes the property of her sonless husband.) By such omission they do not intend to say that the disqualification of unchastity is removed. For it

is the very same Brihaspati who says:

Vrateenavasadirata Brahmacharya Vyavasthita Dharmadanarata nityam aputrapai divam Vrajat.

(Performing religious ceremonies and observing fasts, chaste, virtuous, and always making gifts for the benefit of her husband's soul, even a

childless widow goes to heaven.)

21. That the Hindus of South India (the widow in this second appeal comes from Trichinopoly district) did not attach less importance to chastity in

a wife is clear from the following verses from the Kural of Sage Tiruvalluvar, the authoritative book of Dharma of the South:

Is there anything greater than a wife with the armour and shield of chastity? She worships no other God than her husband. Verily, at her bidding

the rain will fall. Her chastity is her armour and her shield. A home with a chaste wife lacks nothing. If a wife lacks chastity, the home is doomed.

So, the North and South, East and West in Hindu India, did not differ in the least on this vital point. And this was only natural, seeing that the

patriarchal Hindu law, of Sapindas and Samanodhakas, depended on the chastity of the cornerstone of its edifice.

22. With this background of a fanatical insistence on chastity in a wife and its being an essential pre-requisite for inheriting the husband's property,

it is obvious that its omission by Yajnavalkya, Vishnu and Brihaspati is only because of the disqualification being taken for granted. The omission is

therefore similar to the omission of the disqualification in the Hindu Women's Rights to Property Act, 1937 by the Indian Legislature which

expressly mentions the disqualification in the Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946, nine years later

showing that it never intended to abrogate it for the purposes of the 1937 Act which conferred far more valuable rights. India is one of the few

civilized countries where adultery is still a criminal offence, showing the great importance placed on the chastity of wives by the people and their

Legislature and the feeling against men who interfere with it. The Hindu

members of the Legislature, who formed the vast majority in both the Houses, which passed the 1937 Act could never have intended to interfere with this deep-rooted feeling of the race. Nowhere in the Act or Preamble or objects do we have any whisper about removing this cornerstone of Hindu law about a wife's capacity to inherit. It is unthinkable that such a revolutionary change was made without any demand from the public or mention in the objects or preamble or body of the Act, and still more unthinkable that if the Legislature deliberately did away with it in 1937 it would keep it in 1946 for a lesser right, for that would be swallowing a camel and straining at a gnat. The 1937 Act was intended only to amend the Hindu law to give better rights to women in respect of property, and not to take away any established disability, like congenital idiocy, congenital lunacy, living in adultery, murdering the husband, etc., and the phrase "notwithstanding any rule of Hindu law or custom to the contrary" in Section 2 must be read as meaning only notwithstanding any rule of Hindu law or custom to the contrary of what Section 8 says, and not as abrogating all disqualifications, especially when the Act never mentioned such an object or intention at all.

23. Nor can the argument that the 1937 Act is a self-contained Act and therefore effect must be given to Section 3 despite all pre existing disqualifications under Hindu law be accepted. It is only a piecemeal legislation regarding a small corner of Hindu law. It is not a codifying Act, like the Hindu Code now before Parliament, nor even a general amendment of the Hindu law of Inheritance. Varadaobariar J. has said in *Umayal Achi*

v. Lakshmi Achi, 1945 1 M. L. J. 108 :

But it must be remembered that the Act was not a codifying Act or even a general amendment of the Hindu Law of Inheritance. It will help us to ascertain the precise scope of the Act if we can ascertain the defects which it set out to remedy,

Even the learned authors of Mayne's Hindu Law, Edns. 10 and 11 are well aware of this. They say:

Where the provisions of the Act are clear, effect of course, must be given to them. But the Legislature may well be presumed to have left Hindu

law unaltered in other respects. The Act must therefore be so construed as not to create a greater departure from Hindu law than it necessarily

implies.

In holding that the disqualification of chastity was abrogated, they overlooked their own observations quoted above and construed the Act so as to

create a greater departure from Hindu law than it necessarily implies. The well known rules of construction given in *Secretary of State v. Bank of*

India Ltd., *I. L. R. (1938) Bom. 502* and *Kanchava v. Girimallappa*, *48 Bom. 569* and by acknowledged authorities like Maxwell on

Interpretation of Statutes, were ignored by them in arriving at their conclusion. They also observed, rather illogically, that a murderous wife could

not inherit as public policy retained that disqualification. There is nothing against public policy in retaining the disqualification of unchastity for a wife

seeking to inherit her husband's property. The various anomalies pointed out by Viswanatha Sastri J., if this disqualification is taken, as removed

by implication by the 1937 Act, also show the erroneous nature of such a conclusion.

24. It was urged that commonsense requires the removal of the disqualification as there is no divesting of the estate from a widow who was chaste

when she inherited it and began to live in adultery later on. I cannot agree. This rule of law is only the result of the application of English rules of

fixity of property rights and a desire not to divest what has vested. The rule need not be extended further in the name of commonsense. Often, an

unsuitable marriage which is only contemplated will be prevented by a Court by issuing an injunction, but, once it is celebrated a Court will be slow

to annul it. So, this will be a case falling within Jimutavabana's famous rule : ""A hundred texts cannot annul a settled fact"". In other words, it is only

a rule of prudence recognising a *fait accompli* and cannot be applied before the fact occurs.

25. Nor do justice, equity and good conscience require the abrogation of the disqualification.

There is nothing unjust in requiring chastity in a wife before she seeks to inherit her husband's property. It is only a *quid pro quo*. Nor is Equity

offended by the disqualification. ""He who seeks equity must do equity"" is the well known rule of equity. A wife who seeks to inherit her husband's

property should not be indulging in iniquitous conduct. Here, the widow Alamelu left her husband Muthuvelu and eloped with a paramour,

Thangavelu, and lived with him in adultery. Muthuvelu went and took her back, condoning her adultery. But, after a few days, she again left

Muthuvelu and went back to Thangavelu and lived with him in adultery in Kumbakonam till her husband Muthuvelu's death. Neither equity nor

good conscience can be invoked on behalf of such a wife for inheriting the property of her husband she had wronged so grievously.

26. For all these reasons I have no hesitation whatever in agreeing with the conclusions of Viswanatha Sastri J., and my Lord the Chief Justice.

This second appeal must be dismissed with costs.