
(1898) 03 MAD CK 0005
In the Madras High Court

Siva Rau and Others

APPELLANT

Vs

Vitla Bhatta

RESPONDENT

Date of Decision : 31-03-1898

Acts Referred:

Citation : (1898) ILR (Mad) 425

Hon'ble Judges : Subramania Ayyar, J; Davies, J

Bench : Division Bench

Judgement

1. One thing appears to be clear as to the intention of the testator and that is that the property should be divided and enjoyed in three shares by his three daughters and their respective descendants. It would be inconsistent with this intention to hold that each daughter was to take an ordinary daughter's estate, for in the event of any daughter dying leaving other daughters, the property would go to those other daughters instead of to the deceased daughter's descendants. Nor is the contention that each daughter was to take an absolute estate in accordance with the above intention or with certain express provisions in the will. In the first place in the case of the daughter and son before us the two are coupled together as both taking under the will, and no power of alienation is given to the daughter, while it is expressly prohibited to the son. Though this prohibition may not be valid as against the son, it is a clear indication that no absolute estate was intended to be given to the daughter. It being clear, however, that both the daughter and the son had an interest, it is necessary to determine what was the nature of the interest of each. We have already shown that the mother's estate could not have been absolute. It seems to us that it was a life estate that was granted to her with remainder to her son. The

provision that the son was to act under her orders with reference to the management of the property shows that his interest was subordinate to hers

and was therefore not a joint interest. The view taken by Parker, J., in *Shanteramma v. Sadasiva Rau* [Appeal against. Appellate Order No. 16 of

1889 (unreported) that the two took as joint tenants cannot be maintained, for it was based on the decision in *Vyadinada v. Nagammal* ILR 11

Mad. 258 which has since been overruled by the Privy Council (*Jogeswar Narain Deo v. Ram Chandra Dutt* ILR 23 Cal. 670 and they were

clearly not tenants in common as already pointed out. The fact being as we find that the daughter Saraswati took only a life estate and not an

absolute one, it follows that the plaintiffs, who claim as the heirs of Saraswati, must fail. In our view the persons entitled to the property are the

heirs of Rama Bhatta her son, who has left a widow surviving. We must therefore allow the appeal, and as against the appellants who are the

defendants Nos.2,4 and 6, we reverse the decrees of the lower Courts and direct that the suit be dismissed. In the circumstances we make no

order as to costs.