
(1915) 10 MAD CK 0036
In the Madras High Court

T.B.K. Viswanathaswami Naiker

APPELLANT

Vs

Kamulu Ammal and Others

RESPONDENT

Date of Decision : 26-10-1915

Acts Referred:

Citation : 31 Ind. Cas. 833 : (1915) 2 LW 1214

Hon'ble Judges : John Wallis, C.J.;Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

1. The first question to be decided is whether the plaintiff, as the illegitimate son of his deceased father, is entitled to share equally with his widow, the 1st defendant, or whether he is only entitled to half of her share, i.e., to 1/3rd of the properties. In a series of cases in Madras beginning with Ranoji v. Kandoji 8 M.P 557, it has been held that an illegitimate son succeeding to his deceased father along with a widow, daughter or daughter's son is entitled to half of the properties and not merely to one-third Parvathi v. Thirumalai 10 M.P 334, Chinnammal v. Varadarajulu 15 M.P 37, Meenakshi Anni v. Appakutti 4 Ind. Cas. 299 ; 33 M.L.T. 26 : 20 M.L.J. 359. In Rahi v. Govinda 1 B.K 97, Chief Justice Westropp elaborately reviewed all the texts of Hindu Law dealing with the rights of an illegitimate son and came to the conclusion (as we understand the judgment) that the illegitimate son was entitled to a half share of the properties; and in Shesgiri v. Girewa 14 B.K 282 Sargent, C.J., who delivered the judgment of the Court, took the same view and understood the decision in Rahi v. Govinda 1 B. 97 as laying down the same rule. The learned Vakil for the respondent invited us to construe for ourselves the original text of the Mitakshara, which he says is clearly in his favour. He also cited the commentary of Apararka on the text of Yajnavalkya and the commentary of Medhathithi, the well-known commentator of Manu, on the same text. He further contended that all the text-book writers on Hindu Law who knew Sanskrit have construed the passage of the Mitakshara in the way he construes it. Much may no doubt be said in favour of this construction. But the decisions of this Court are not based merely on the interpretation of the text of the Mitakshara. In Ranoji v. Kandoji 8 M.P 557, in

which the position of an illegitimate son was fully considered, reliance was placed on a passage from the Dattaka Chandrika which states in clear terms that the illegitimate son shares equally with the widow, daughter and daughter's son. It was this very passage of the Dattaka Chandrika which was relied on as authority for not excluding the widow from the succession when there is an illegitimate son, whereas the Mitakshara omits the widow from the category of persons who are not excluded by the illegitimate son. The Dayabhaga, which gives the illegitimate son an equal share with the daughter and daughter's son, was also referred to. In this state of things, we are not prepared to depart from the course of decisions in this Court which hold that the plaintiff is entitled to share equally with the widow.

2. The next question is whether the last zemindar's step-brother, Vadamalai, was disqualified by reason of insanity from sharing with his brother their father's separate property. Vadamalai, it should be mentioned, who was older than the zemindar but was the son of a junior wife, did not press his claim to succeed to the zemindari in preference to his brother, nor did he, after the brother's death, claim the zemindari against the widow. As regards the first point the respondents explain that according to the custom of Kambala zemindars the son by the senior wife succeeds to the zemindari. As regards the separate property left by their father it is urged that there was no need for a partition as Vadamalai lived with his brother, the late zemindar, in the palace, and after his death, went on living with his widow, the 1st defendant, whose sister's daughter he had married. These facts, it is suggested, explain his conduct in not having put forward a claim to the zemindari after his brother's death, and at the time of the compromise between the widow and the more distant co-parceners. The mere fact that Vadamalai did not press his claim to the zemindari is not, in our opinion, sufficient proof of insanity. On the other hand, we have the fact that he gave evidence in Court in Original Suit No. 15 of 1891 and though subjected to a lengthy examination gave rational answers, and that he married and had issue. On the whole we think the evidence does not establish that Vadamalai was disqualified from inheriting. It follows, therefore, that the late zemindar's share in his father's separate properties on his death passed by survivorship to Vadamalai and that the plaintiff has no claim to them. On this ground his claim to the properties mentioned in Exhibit ZZZZZ also fails.

3. Item 55 of Schedule A, the next item claimed by the plaintiff, is a bungalow in Madura built by the Court of Wards during the minority of the late zemindar at a cost of Rs. 60,000 on a site inherited by the zemindar and his brother from their father. The 1st respondent contends that either the bungalow became the joint property of the two brothers as the site was joint property, or that it was built as a town residence for the zemindar and was intended to pass with the zemindari, and that in either view the plaintiff's claim must fail. We agree with this contention.

4. The 1st respondent objects to items 61, 65 to 69, 73 to 76, 79 to 113, 116 to

118, 120 to 127, 129 to 138, 149, 151 to 177, 185, 221, 248, 249, 254, 285, 308 to 318, 322, 324, 330 to 345, 348, 350, 352, 354 to 357, 359 to 366, 375 to 379, 63, 64, 371 to 374, 380 to 410, 62, 70 to 72, 77, 78, 139, 140, 146, 323, 326, 328, 358, 367, 217, 218, 228 to 231, 247, 252, 259 to 264, in this Schedule A, which have been allowed to the plaintiff. They are lands within the ambit of the zemindari and the zemindar was entitled to the melvaram therein. He purchased the kudivaram right in items 61 to 410 and succeeded to the kudivaram right in the remaining items on the death of his mother. All these lands were cultivated as pannai along with the other pannai lands of the estate. They are clearly property intended to be held with the zemindari; in fact they are accretions to the zemindar's interest in the zemindari. Following the decisions of this Court in *Lakshmipathi v. Kandasami* 16 M.P 54 *Ramasami Kamaya Naik v. Sundaralingasami Kamaya Naik* 17 M.P 422 *The Ramnad case* 24 M.P 613 we disallow the plaintiff's claim to these items.

5. The plaintiff also claims items 57, 69, 135 and 136 of Schedule C. Item 57 is a jewel usually worn by women. The 1st defendant swears that the jewel was purchased for her. Considering that at that time the 1st defendant was the only lady in the zemindar's family who could have worn such a jewel we are inclined to believe her evidence and disallow the plaintiff's claim to this item. The respondent admits that the plaintiff is entitled to item 69. Items 135 and 136 are loose pearls and rubies and the 1st defendant claims them as her stridhanam. She did not set up this claim in Exhibit K and there, is only her evidence in support of her claim. We are not prepared to act on it. We, therefore, allow the plaintiff's claim to these two items.

6. The 1st respondent claims the cattle used for cultivating the pannai lands, i.e., items 173 to 203 of Schedule C. The appellant admits that if the pannai lands are held to be part of the zemindari he would not be entitled to a share in them. As we hold that the pannai lands are appurtenant to the zemindari we disallow the plaintiff's claim to these items. The plaintiff admits that the 1st defendant is solely entitled to item 231 of this Schedule. The plaintiff accepts the valuation given by the 1st respondent for item 229, viz., Rs. 1,300, and will be entitled to his share of this sum and: not to Rs. 2,607 as claimed by him. The 1st defendant argues that she ought not to have been made accountable for certain jewels said to have been given by her to her daughter and claims contribution from the partible properties for the expenses connected with her daughter's marriage. This claim was not made in the lower Court and we, therefore, disallow it.

7. The 1st defendant also contends that the lower Court was wrong in making her liable for items 9, 11, 15 and 17 of Schedule D. Plaintiff's witness No. 48, who was the 1st defendant's manager for a considerable time, says that these items were collected by the 1st defendant. She denies this, but does not produce the bonds which should be in her possession. In these circumstances we agree with the lower Court that she is liable to the plaintiff for his share of these items.

8. The finding of the lower Court will be modified accordingly.

9. As the release Exhibit II has been set aside, the plaintiff must deliver to the 1st defendant items Nos. 1 to 3 in Schedule I to that deed as they are pannai lands and are, therefore, impartible. In the fourth item and the moveables in the same Schedule he is entitled to a half share and he must account to the 1st defendant for the other half.

10. The plaintiff and the 1st defendant will pay and receive proportionate costs in the appeal.

11. The memorandum of objections is dismissed with costs; and the Pleader's fee payable will be on Rs. 1,588-15-0 plus Rs. 541-1-0.