

(1949) 10 MAD CK 0030

In the Madras High Court

Case No : Letters Patent Appeal No. 1 of 1948

Vadakumpprath Pillai's Son, Muthu

APPELLANT

Vs

Kulathinkol Kuppan's Son Narayanan and Others

RESPONDENT

Date of Decision : 13-10-1949

Acts Referred:

Citation : AIR 1950 Mad 351 : (1942) 55 LW 16

Hon'ble Judges : Horwill, J; Balakrishna Ayyar, J

Bench : Division Bench

Advocate : K. Kuttikrishna Menon and T.C. Raghavan, for the Appellant; C.S. Swaminathan and D.A. Krishna Variar, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Ayyar, J.—This appeal raises a question of Hindu law of particular interest to the Ezhava community in Malabar. This is how the question comes up. The properties which form the subject-matter of this litigation belonged to an Ezhava woman called Kalu. She died issueless in 1936. Chathu her husband then took possession of the properties and subsequently sold them to defendant 1, in the suit. The plaintiff is the brother of Kalu and he claimed that the marriage of Kalu to Chathu had been in the asura form, that he was therefore in law the real heir of Kalu and as such entitled to the properties. On this basis he sought to recover possession of the properties from defendant 1, the vendee from Chathu. The learned District Munsif who tried the suit and the learned Subordinate Judge on appeal took the view that the marriage of Kalu had been in the asura form and decreed the suit. In second appeal Patanjali Sastri J. held that the marriage was not an asura marriage and allowed the appeal and

set aside the decisions of the Courts below. This is a Letters Patent appeal from the decision of Patanjali Sastri J.

2. It is common ground that at the time Kalu was married, one sovereign was paid to her father as memmekanom. Both the District Munsif and the

Subordinate Judge took the view that this payment was in the nature of ""bride price"" and they therefore decided that the marriage fell into the

category of marriages described as ""asura"". But as indicated above Pataajali Sastri J. took a different view.

3. One essential feature of an asura marriage, the feature which makes the form objection-able, is that the father of the bride receives a gratuity or

fee for giving the girl in marriage. Ordinarily, it would be expected of every decent and respectable father when he selects a husband for his

daughter to make his selection uninfluenced by any considerations other than the welfare of of the girl. But when he receives a payment for the

personal benefit, a very objectionable factor would influence his selection, and it is clearly this which the ancient law-givers took objection to and

therefore relegated the form to the category we call ""disapproved"". When the father accepts money and allows his greed or avarice to sway his

judgment, he thereby converts what is intended to be a sacrament into a commercial transaction.

4. Can we say in the present case that the payment of this one sovereign or memmekanom transformed the marriage into the asura form? The

expression memmekanom is really a compound of three words, ""mel"" meaning body, ""mel"" meaning on or over and knom meaning that composite

tenure of mortgage and lease peculiar to Malabar. And the word memmekanom literally means a ""kanom over the body"" of the girl. At page 152

of Logan's Manual of the Malabar District (1906 reprint) reference is made to the practice of slavery and the prices that slaves used to fetch:

Women in some taluks (in 1841) fetched higher prices in order to breed slaves. The average cost of a young male under ten years was about Rs.

3-8-0, of a female somewhat less. An infant ten months old was sold in a Court auction on 10th August 1841 for Rs. 1-10-6 independent of the

price of its mother.

The amounts of memmekanom frequently varied, but 42 panams which is equivalent to Rs. 10-8-0 was a sort of standard figure. When we have

regard to the prices which slaves were fetching, this amount might in the old days have been regarded by the parties to the transaction as analogous to the kanartham.

5. But whatever the real nature of the custom in olden days, it is difficult to say that when today the father of a girl receives memmekanom, he is

really ""mortgaging"" her. In most, though not necessarily in all cases, the payment has lost all its original significance and survives only as a ritualistic

form, it has become a ceremonial symbol devoid of any content or meaning or purpose. In the present case, the evidence clearly shows that when

Kalu was given in marriage, she was given stridhanam of very considerable properties. It appears that the rent on the properties which it was

agreed should be regarded as her stridhanam was 400 paras of paddy, which in 1920, the year in which Kalu was married, must have been

equivalent to about Rs. 200 a year. Now when a father gives such a large ""amount as stridhanam and receives one sovereign in compliance with

traditional form, it would be very wrong to say that he had been selling or mortgaging the girl and that he received the sovereign from greed or love

of gain.

6. Every marriage in which memmekanom is received need not necessarily be a marriage in the asura form. When that payment is made merely in

order to conform to custom or out of respect for tradition, the marriage will not be one in the asura form. But when the payment is as a matter of

actual fact and not mere form, a bride price, the marriage will be an asura marriage. It goes without saying that when at the time of the marriage the

father gives the bride property the value of which exceeds the amount of memmekanom, there is no room whatever for the application of the notion

of ""bride price.

7. Mr. Kuttikrishna Menon for the appellant argued that the marriage in the present case was neither in the brahma nor in the asura form, but that it

was in a special or customary form and that the case should be remitted for ascertaining what the customary line of succession is in a case of this

kind. He referred to the decision in (Parambarathil) Pattukkayal Chakutti and Others Vs. Kothembra Chandukutti, where it was held:

We think the Makkatayain Thiyyas are governed by what is called the customary law and when a question arises as to what is the rule of law

governing them on any particular matter, what we have to see is what is the rule of customary law obtaining amongst them in that matter and in

cases which are not sufficiently covered by prior decisions the question will have to be determined with reference to the evidence in the case In

the absence of any satisfactory evidence to show what exactly is the rule of the customary law on any particular point, the rule of Hindu law on that

point must, we think, be presumed and adopted to be the rule of the customary law obtaining amongst the community on that point. The

presumption is not that the Hindu Law as such is the law governing them in all matters; if that be the presumption a person who alleges a rule of

customary law at variance with it will have to prove it as a custom in derogation of the law. The presumption is simply that the rule of Hindu Law is

also the rule of the customary law obtaining amongst them, so that if any person alleges that the rule of customary law on any particular point is

something different the evidence that he adduces in support of his allegation ought not to be subjected to those well-known tests which are applied

to the case of an alleged custom contrary to, or in derogation of, the law, but should be viewed, simply as evidence adduced to show what is the

rule of customary law itself. The presumption therefore will be useful and will hold good only if satisfactory evidence is not forthcoming as to what

is the rule of customary law.

With these observations we are in respectful agreement. But they do not take the appellant very far forward. Granting that in the present case, the

marriage was in the customary or in a special form, and that the rule of devolution is different from that applicable to other Hindus, it is for the

plaintiff to show what the order of devolution is according to the custom prevailing among Ezhavas in Malabar. But he adduced no acceptable

evidence in support of any special custom. On the other hand, he laid his case on the footing that the marriage of Kalu had been in the asura form:

that was his case and nothing else. Therefore, there can be no justification for remitting the matter for enquiry into something which does not arise

from the pleadings.

8. In the course of his arguments Mr. Kuttikrishna Menon referred to an unreported decision in S. A. No. 22 of 1922 on the file of this Court. A

reading of that decision shows that the plaintiff there admitted that the property

devolved in a particular form and that admission was treated as evidence to show that the marriage had been in the asura form. Besides, that judgment expressly stated that no question of law arose there. The decision turned on the admissions made by the parties and is of no assistance here.

9. We consider that the decision of Patanjali Sastri J. was right and dismiss this appeal with costs of respondent 1.