

(1910) 04 MAD CK 0030
In the Madras High Court

Vuppuluri Tatayya alias Veeranna

APPELLANT

Vs

Garimalla Ramakrishmamma and Others

RESPONDENT

Date of Decision : 12-04-1910

Acts Referred:

Citation : (1910) 20 MLJ 798

Judgement

1. The second appeal is argued as regards the validity of the gift of Item No. II. Lakshmamma who succeeded to estate of her father on his death

in the sixties made a gift of 49 cents of her father's property to the 3rd defendant. The extent of land which came to her from her father was about

19 acres, apart from houses and house sites and moveable property. The gift was made on the occasion of the Pushkaram at Rajahmundry, a

peculiarly holy event amongst Hindus which happens once in twelve years. She was the person to perform her father's shraddh on his death, there

being no brothers and her mother having died before him. She performed the shraddh on the occasion of the Pushkaram and made the gift of the

land as part of the shraddh ceremony. The plaintiff, a reversioner, impeaches the gift.

2. Under the Hindu Law in force in this Presidency the daughter is limited owner like the widow, and her powers of alienation as regards property

which she has inherited from her father are no greater than those of the widow, and we are inclined to hold that they are not less. The test however

is, apart from cases of temporal necessity, whether the alienations are for the spiritual purposes of the deceased father or husband. The daughter

inheriting property from her father is not entitled to expend it for the spiritual needs of her husband, though it cannot be said that under no

circumstances can the father's property be so used. However this may be, if the expenditure by the daughter is for the spiritual needs of the

father's soul, it stands on the same footing as the expenditure by the widow for the spiritual needs of her husband. There may be a question as to

whether the daughter is competent to minister to the spiritual needs of a father in all those ways in which the widow is competent to serve the

spiritual needs of her husband. But if, according to the ceremonial law, it is incumbent on the daughter to serve the spiritual necessities of her

deceased father whose property she inherits, we are not justified in dealing with her alienation of her father's properties for such necessities in a

manner different from a widow's alienations under like circumstances.

3. In this case the daughter succeeded to her father's property. She was also the person bound to perform his shraddh at his death. The duty in

respect of funeral and annual ceremonies is laid down by writers on the ceremonial law. Rajkumar Sarvadhikari in his Tagore Law Lectures names

her at p.110 as "the person entitled to perform shraddha rites on failure of the widow." Mr. Ghose in his Hindu Law names her among the persons

competent to perform the shraddh, at p. 63. Sarvadhikari relies on the authority of the Dharma Sindhu from which he quotes largely. In the Bombay

Sanskrit edition of the Nirnaya Sindhu, at p. 287, the author says : " The daughter performs the shraddh to the deceased father as she takes the

property." In the Shraddha Kanda of Vaidianatha Dikshita, published by Narayana Sastri in Grantha characters, the daughter's duty to perform her

father's shraddh is laid down in pages 23 and 26. He says the daughter performs the shraddh in the absence of the son, etc., and gives the order at

the bottom of p. 26 thus: " The son born, the grandson, his male descendants, the putrika putra, his descendants, the adopted son, his issue, the

daughter's son who inherits, the daughter's son, the widow, the husband, the son of a co-wife, the daughter, the brother, the brother's son, etc.

The performance of the shraddh being enjoined, the Nibandhana writers are agreed that a visit to a Theertha or holy place is a proper occasion for

the performance of a shraddh. Reference is made by Sarvadhikari in the foot-note at page 101 to the Theertha shraddha on the authority of Dharma

Sindhu. The Nirnaya Sindhu (Bombay Sanskrit edition) speaks of it at p. 379. The Madhaviyai½published as Volume 48 of the Bombay Sanskrit

series½lays down the duty of performing the shradh on occasions of visits to holy places and on the occurrence of sacred conjunctions½see

pages 301 to 307. So does the Vaidhyanatha Dikshitya dwell in great elaboration on the peculiarly sacred occasions when the performance of

shradh is enjoined. That the banks of the Godavari--which is a sacred river½would, according to Hindu ideas, be a fitting place for the

performance of the shradh cannot be questioned. That the occurrence of the Godavari Pushkara would largely enhance the sacredness of the place

is also an accepted item of orthodox belief. The gift of land is a suitable appendage to the shradh ceremonial, and is laid down in ceremonial

treatises as highly meritorious. The Madhaviya at p. 436 and the Vaidhyanatha Dikshitya at p. 359 (the editions are those already referred to) refer

to the gift of land as part of the shradh ceremonies. It is therefore clear that the gift in the present case of a very small extent of the father's

property was in accordance with Hindu ideas as regards the daughter's duty in connection with the performance of a father's shradh on the

occasion of the Godavari Pushkara. It has sometimes been said that the gift of property is justifiable if it is in performance of indispensable acts of

duty or religious necessity--see Rama v. Runga ILR (1885) M. 552 and Lakshmi Narayan v. Dasse ILR (1887) M. 288. In the first of these cases

the sale by the widow of nearly all the property she inherited from her husband for the expenses of pilgrimage was held unjustifiable. In the second

case of a gift to a pro-Brahmin introduced into a family by widows for the performance of their husbands' shradhs, it was held that the gift was for

indispensable necessity and of a small portion of the husband's property, and therefore valid. But we do not think we can lay down the rule that to

justify the alienation the expenditure should be for a spiritual necessity. We have already said that the gift or expenditure should have reference to

the spiritual needs of the father or husband whose property is taken. Where it was only for the widow's spiritual benefit as in Puran Dai v. Jai

Narain ILR (1882) A. 482 or for the endowment of a temple built by the mother-in-law as in Ram Kawal Singh v. Ram Kishore Das ILR (1895)

C. 506 the gift was, undoubtedly, without justification. The case of Raichunder Deb Biswas v. Sheshoo Ram Deb (1867) 7. W.R. 146 is not quite

intelligible, and we are not clear that the head note is supported by the somewhat laconic judgment. It is said that the sale of the property by the

daughter for the mother's shradh was invalid. The appeal itself appears to have been dismissed, which would rather support the view that the

alienation was held good. But none of these cases which were relied on by Mr. Naghabhushanam is authority for the position that the alienation

must be for an indispensable spiritual duty to support the alienation. It can hardly be supposed that a Hindu widow paying a visit to Gaya or Sethu

is not justified in incurring reasonable expenditure for the purpose or in making a gift of land on the occasion of the shradh there performed for the

spiritual benefit of her husband's soul. Mr. Justice Dwarka Nath Mitter¹ a high authority on such a question² held in Chowdry Jummenjoy

Mullick v. Rasmoyee Dossee (1868) 10 W.R. 309 that a sale for the expenses of her husband's mother's shradh by a Hindu widow was

justifiable even though the actual performer of the ceremonies was the husband's brother. We think we are warranted in holding that if the property

sold or gifted bears a small proportion (which it is impossible to define more exactly) to the estate inherited, and the occasion of the disposition or

expenditure is reasonable and proper according to the common notions of the Hindus, it is justifiable and cannot be impeached by the reversioner.

We are obliged to express ourselves somewhat guardedly because almost every gift according to Hindu notions is as such calculated to promote

spiritual merit and the occasions for the performances of ceremonies calculated to bring spiritual reward are so innumerable that almost any

expenditure not for a sinful object and any alienation by way of gift may be attempted to be justified as ministering to spiritual benefit. We do not

think that Hindu lawyers contemplated such an exercise of the power of alienation by a limited owner. It is to be regretted that we have not found

ourselves in a position to lay down a more definite rule for practical application. In The Collector of Masulipatam v. Cavalry Venkata Narainappa

(1861) 8 M.I.A. 520 the Privy Council said : "" For religious or charitable purposes or those which are supposed to conduce to the spiritual welfare

of her husband, she (the widow) has a larger power of disposition than that which she possesses for purely worldly purposes."" Their Lordships did

not attempt to further define the spiritual purpose. We have endeavoured to suggest the further limitation that the spiritual purpose should be such

as is regarded by the Hindu community as reasonable and proper though not absolutely necessary. We think the alienation in the present case falls

within the rule.

4. We must dismiss the second appeal with costs.