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other words to get work performed on a plantation for at least three months. In this respect the contract is on a footing with the contract dealt with in the ruling of the 13th July 1867, which was distinctly decided on the ground that the contract was not merely to supply laborers but to get labor performed. The circumstance that, in the present case the nature and extent of the work to be performed are not clearly specified does not take the case out of the provisions of the Act. (*Vide* Section 4.)

For these reasons the High Court consider the order of the Joint Magistrate dismissing the complaint to be illegal.

Order set aside.

APPELLATE CIVIL.

Before Sir W. Morgan, C. J. and Mr. Justice Kindersley.

1877. August 10.

VENKATA RA'MA RAU, APPELLANT, *v.* VENKATA SURIYA RAU AND ANOTHER, RESPONDENTS (1).

Hindu lady—Stridhanam—Will.

Where a Hindu lady had received presents of moveable property from her husband, from time to time, during their married life and, after his death, partly out of such property and partly from funds raised by the mortgage of jewels admitted to be her stridhanam, purchased immoveable property—*Held* that that was her stridhanam and that she consequently could dispose of it by will.

THIS was an appeal from the decree of F. Brandt, Acting Judge of the Godávari District, in Original Suit No. 22 of 1877.

Mr. *Miller* for the Appellant, the plaintiff.

Mr. *Johnstone* for the Respondents, the defendants.

The facts sufficiently appear from the following judgments :—

MORGAN, C. J.—The appellant in this case, the Zamindár of Pattapore, in the District of Godávari, was the plaintiff in the suit below.

The suit was brought by him to recover a half share of the muttah of Víravaram, upon the ground that the muttah had been acquired by his grandmother, Bávayammá, the widow of Níladri, a former Zamindár, "*by her own exertions*;" that it was her self-acquisition and not her *stridhanam* property; and that, upon her death, the plaintiff, who is the son of her elder son, was

(1) Regular Appeal No. 19 of 1877, against the decree of F. Brandt, Acting Judge of the Godávari District, in Original Suit No. 22 of 1877.

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entitled by inheritance to one-half; the defendant, the son of her younger son, taking the other half. The defendants claimed to be entitled to the muttah under the will of Bávayammá who had purchased it with money borrowed by her on the pledge of her *stridhanam* jewels and on her own credit. They contended that the property could only be regarded as her *stridhanam* over which she had full powers of disposition.

Níladri, the husband of Bávayammá, died in 1828; his minor son, Suriya Rau (the plaintiff's father), then succeeding to the zamindárí. During the minority of Suriya Rau, which continued until 1841 (and at his desire for the years immediately following 1841), the estate was in the charge of the Court of Wards and its officers. Bávayammá, who, from the time of her husband's death, had received a maintenance allowance for herself and the younger children, in that year, and after her eldest son had attained his majority, bought the muttah, which had since Níladri's time been acquired by purchase and annexed to the zamindárí at a sale in execution of a decree. It is now the case of the appellant, although, as has been stated, he has not always relied on this ground, that the purchase of the muttah by Bávayammá was under circumstances which did not admit of the property being regarded as her *stridhanam* over which she had a disposing power, or otherwise than as property which, upon her death, descended to her husband's heirs.

On a former occasion we remanded the case to the District Court for trial, being of opinion that the Court had wrongly treated the adjudication in a former suit as a bar to the present litigation. In that suit the plaintiff charged the widow, Bávayammá, in effect with a misappropriation of a large sum of money belonging to her husband's estate, with which fund, it was then alleged, the purchase was made by her. The defence was then set up, which is now advanced, that is to say, that the purchase was made by means of the widow's *stridhanam* with funds borrowed on the security of her jewels and her own credit. But although the Courts, both Original and Appeal, which disposed of that case, expressed an opinion in favor of this plea, the final adjudication did not proceed on it. This is clearly shown from the following passage in the judgment of the

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Appellate Court, affirming the District Judge's order dismissing the suit: "This being our opinion, it becomes unnecessary to "consider the evidence adduced by the 1st defendant (the widow "Bávayammá) to prove that the muttah was purchased from her "own private funds." In the judgment now before us the District Court holds that the defendants have established their case, and that the muttah must be regarded as property purchased by her with or by means of her own *stridhanam*; that she had a right to dispose of it to the defendants, and that she had actually so disposed of it. Upon the arguments of this appeal nothing was urged against the Court's finding to the effect that a testamentary disposition in favor of the defendants had been made by Bávayammá, although this forms one of the grounds of appeal. It was indeed faintly argued that the testamentary power of Hindus did not extend to entitle a Hindu widow to dispose by will of her *stridhanam* property, but no authority was cited for this limitation of the power of testamentary disposition, and cases were cited in which the power was exercised without question. Upon the first and principal ground of appeal in which it is alleged that the decree is erroneous in having found that the estate sued for was the *stridhanam* property of the testatrix, the same being her property other than *stridhanam*, the learned Counsel for the appellant admitted that the appellant was not in a position to adduce proof in explanation of the purchase by Bávayammá, or of the sources from which the funds were derived with which that purchase was made. No evidence in explanation of this acquisition and in support of his own case was available, and the case it was conceded must rest on the proof adduced at the trial and on previous occasions in support of the plea of Bávayammá and the defendants. This evidence has, as we have noticed, been on more than one occasion under the consideration of the tribunals, and although no formal adjudication has been made, the opinion of the Courts has been expressed to the effect that the plea had been established. It is shown that the widow Bávayammá being in 1841 possessed of *stridhanam* jewels of considerable value, pledged them for the sum of Rupees 46,002, and thereby and by means of funds borrowed on her own credit and on the security of the muttah itself

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(which were afterwards repaid from the profits of the muttah), was enabled to purchase this estate. A portion of the purchase-money, *viz.*, the deposit of 15 per cent., is stated to have been money received by her from her husband from time to time by way of gift. It cannot, perhaps, be said that (if the enquiry, since made, had been made at a time nearer to the date of this purchase) the evidence adduced in support of the widow's means of acquisition, having regard to Bávayammá's position and the surrounding circumstances, constituted a strong case. But the purchase was openly made with the Zamindár's knowledge; the estate was registered in the name of Bávayammá: at no time during the life of the Zamindár was any question raised as to the separate acquisition of the estate by the widow. On his death, his son, the appellant, succeeded to the estate, which was again for some years under the Court of Wards. It was not until the year 1862 that the widow's title to hold the estate as her own was challenged. We think that the finding of the Court in favor of the defendants should not in this state of the evidence be disturbed.

It is not in my view of the case necessary to review the decisions of this Court which were cited for the appellant on the subject of women's property and the powers of disposition possessed by married women without the consent of their husbands. If the conclusion of fact at which we have, agreeing with the Lower Court, arrived, is well founded, it follows that the estate, purchased by the widow without the aid of her husband's estate and in great part with that which is the peculiar property of the woman, is at her disposal as fully as that which enabled her to make the purchase. The texts cited which refer to the husband's dominion over that which is earned by wives by mechanical arts, or which is received through affection from others, have no application to the facts of the present case. The dependent position ordinarily assigned to Hindu women, cannot, we think, be regarded as affecting an acquisition made, as this was, openly by the widow by her own means and through her own credit, not questioned by her husband's relations and in effect assented to by them. We shall affirm the judgment of the Court below and dismiss this appeal with costs.

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KINDERSLEY, J.—I concur generally in the judgment of the Chief Justice in this case. However improbable it may appear that a widow lady in the position of Bávayammá would have been able to purchase the muttah of Víravaram for the large sum of 54,000 Rupees out of her own resources and by her own credit and ability, it was not disputed at the hearing that we must take the facts as they were found in Suit No. 4 of 1862. It appears that Bávayammá had received from time to time presents from her husband during their married life, and that, after his death, with the amount of those presents she was able to pay the deposit of Rupees 8,118, or 15 per cent. of the purchase-money, at the time of the auction-sale. Then by mortgaging her own jewels, and by creating a charge on the muttah itself, and by using her own credit and ability, she was able to borrow the balance due, *viz.*, Rupees 46,400. Her *stridhanam* jewels, which were pledged, appear to have been worth more than 20,000 Rupees, and the revenues of the muttah appear to have been sufficient to pay off the debt in a few years. There is no doubt that the jewels thus pledged were a part of Bávayammá's *stridhanam*, and it seems equally clear that presents made to a wife by her husband during the marriage are her *stridhanam*.—(*Mitákshará*, Chapter II, Section xi, page 6; *Smriti Chandriká*, Chapter IX, Section ii, page 6; and *Dáyakrama Sangrahá*, Chapter II, Section ii, pages 19, 20.) It may therefore be taken that the muttah was purchased by Bávayammá with her own *stridhanam*, and her own credit, and by her personal exertions.

Next, as to her power of disposal by will. Our attention was directed to those texts which require that a Hindu woman should remain in a dependent position. According to the principles of Hindu law, the proper state of every woman is one of tutelage; they always require protection, and are never fit for independence: and a widow should practice self-denial, living under the protection of her husband's relations in the practice of austerity, with suppressed passions, foregoing all show and luxury of living, using such property as she has for necessary and religious purposes, but not lavish in expenditure: and it has been argued that it would be repugnant to Hindu law to allow a widow to acquire a large property and dispose of it by

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will. It may be doubted whether the austerities which the Hindu law imposed on a Hindu widow would be enforced at the present day; and the acquisition and disposal of a large estate imply no personal self-indulgence or luxury in the acquirer of the estate, but rather self-denial. It has been pointed out to us that whatever a married woman may earn by the exercise of mechanical arts is not her own, but her husband's property. But that text applies to a woman living with her husband, and there is no obvious analogy between the mechanical arts in question and the financial skill with which Bávayammá acquired the muttah of Víravaram. If this were immovable property given to her in that form by her husband, then probably she would have no power to alienate it at her pleasure. It would according to the policy of Hindu law revert to her husband's heirs; but this does not necessarily apply to wealth given in the shape of movable property, and it is not shown that, if with such movable property over which she had a power of disposal at her pleasure, the widow purchased immovable property, such property should revert to her husband's heirs, as if it were a part of her husband's immovable estate. There is indeed a suggestion in the judgment of WEST, J., in the case of *Vizia-rungum* v. *Lakshuman* (1) that the author of the *Mitákshará*, who has not dealt with the woman's power of alienating her *stridhanam*, may have considered that as to immovable property she was subject to restrictions analogous to those imposed upon a Hindu father having sons. She would doubtless be incompetent to alienate any immovable property received from her husband, because it would remain a part of the family estate in which she would have only a life interest; but the same reasons do not seem to me to apply to an estate acquired by a widow by purchase. It may be that if she had acquired this property before her husband's death, she would not have had an uncontrolled power of alienation as long as he lived.—*Dántuluri Ráyapparáz* v. *Mallapudi Ráyudu* (2). But the question is what power of disposition Bávayammá had *as a widow*. In the *Dayakráma Sangraha* Chapter II, Section ii, page 10, there is a text of Kalayána: "Let the woman place her husband's donation "as she pleases when he is deceased, but while he lives she should

(1) 2 Bom. H. C. R., 364. (2) 2 Mad. H. C. R., 360.

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"carefully preserve it, or else commit it to the family;" and in the *Smriti Chandriká*, Chapter IX, Section ii, page 10, we find a text of Nárada: "What has been given by an affectionate "husband to his wife, she may consume as she pleases when he is "dead, or may give it away excepting immovable property." The text of Vyása at the outset of the same chapter gives the general "rule: What has been given to a woman by her husband she may "consume as she pleases." In this Presidency a woman's power to alienate her *stridhanam* has been held to be subject to the limitation already noticed in respect of immovable property given to her by her husband; but I am not aware of any authority for saying that as a widow she may not purchase immovable property with her own *stridhanam*, and dispose of it by will.

I therefore agree that the suit ought to be dismissed with costs.

Suit dismissed.

APPELLATE CIVIL.

Before Sir W. Morgan, C.J. and Mr. Justice Innes.

1877. March 16.

RYALL, APPELLANT, *v.* SHERMAN, RESPONDENT (1).

Adjournment—Dismissal of Suit—Act VIII of 1859, *sec.* 148.

In a suit issues having been settled, the final hearing of the suit was adjourned to a fixed date for final disposal. On that date plaintiff did not appear and the suit was dismissed under section 148 of Act VIII of 1859. *Held*, that as this was not a case which had been adjourned in favor of either party to enable him to "produce his proofs or cause the attendance of his witnesses" the order was not one which could properly be made.

THIS appeal arose out of a suit, No. 10 of 1875, brought by Albert Ryall against F. Sherman.

T. Rama Rau and *R. Báláji Rau* for the Appellant.

There was no appearance for the Respondent.

The facts are sufficiently stated in the following

JUDGMENT:—Issues had been settled and the hearing of the

(1) Civil Miscellaneous Regular Appeal No. 28 of 1877, against the order of F. M. Kindersley, Acting District Judge of Coimbatore, dated 21st July 1876.