

suit, then by consent of all they divide into separate houses, and separate property is allotted to each house called (amongst Bráhmán members) *illam*.

In Suit 2 of 1875 the first defendant was sued as Karnavan, and defended on the ground that the land was the jenm of his *illam* or *tarwad*. He was not sued in his individual capacity, and the *kánom*, under which it was decided he held the lands, was granted to a former Karnavan and came by descent to be managed by him. It appears to us that appellant claims within the meaning of Section 13 under the first respondent, and that the matter directly and substantially in issue in this suit was directly in issue in Suit No. 2 of 1875 between the second respondent and the first respondent, and that plaintiff's claim in this suit is barred by Section 13.

Independent of the above views, we may point out that the appellant was well aware of the Suit No. 2 of 1875, and assisted the first respondent therein, as found by the Lower Appellate Court, to defend the suit. It was open to him to apply in that suit to be made a defendant as being interested in the matter, but he did not do so. The fourth, fifth and seventh to twelfth respondents, who are members of the appellant's *illam*, do not support him; they assist the second respondent. The third and sixth respondents took no part in the suit and were *ex parte*.

We dismiss the appeal with costs.

VARANAKOT
NARÁYANAN
NAMBÚRI

v.
VARANAKOT
NARÁYANAN
NAMBÚRI.

PRIVY COUNCIL.

VENKATA RÁMA RAO (PLAINTIFF), *v.* VENKATA SURIYA
RÁO AND ANOTHER (DEFENDANTS).

P.C. *
1880.
November 16.

[On appeal from the High Court of Judicature at Madras.]

Strídhánam—Testamentary power of widow.

The testamentary power of a Hindú female over her *strídhánam* being commensurate with her power of disposition over it in her lifetime, and both being absolute, no distinction can be taken as regards a widow's power of disposition by will

* Present:—Sir J. W. COLVILLE, Sir B. PEACOCK, Sir M. E. SMITH, and Sir R. P. COLLIER.

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over immovables in the purchase of which she has invested money given to her by her husband. Such estate is subject to the disposition which the general law gives her the power to make of her stridhanam.

A widow who received presents of movable property from her husband from time to time during their married life, after his death purchased immovable estate, partly out of such property and partly with money the proceeds of jewellery forming part of her stridhanam.

Held that she could dispose of such immovable estate as her stridhanam.

APPEAL from a decree of the High Court of Madras (10th August 1877), affirming a decree of the Judge of the Godávári District (19th September 1876).

The suit out of which this appeal arose was brought by the Zamindár of Pithapúr, the appellant, to recover a one-half share of the mutta of Viráveram from his cousins, the respondents, on the ground that at the death of his grandmother Bhávayammál he became joint heir with them of the property in dispute. The defendants claimed to be exclusively entitled to the mutta under the will of Bhávayammál.

The Court of First Instance, finding that the will had been made as alleged, and that the estate had been purchased out of what formed, in the Court's opinion, the stridhanam of Bhávayammál, decreed in favor of the defendants. This decree was maintained by the High Court on appeal.

The facts of the case are fully stated in the Judgments of the Judges of the High Court upon that appeal, which is reported in I.L.R., 1 Mad., 281. The question whether the mutta was such property as Bhávayammál might dispose of by will, so as to exclude the claim of the plaintiff, having been decided in the affirmative by the High Court, was again raised on this appeal.

Mr. J. D. Mayne appeared for the Appellant.

Mr. J. F. Leith, Q.C., and Mr. R. V. Doyne, for the Respondents.

Reference was made to *Luchmunchunder Geer Gossian v. Kalichurn Singh*. (1)

Their Lordships, without calling upon the Counsel for the respondents, delivered the following Judgment:—

Sir JAMES W. COLVILLE.—Their Lordships are of opinion that no ground has been made for reversing the Judgments of the Indian Courts in this case. The point, as ultimately stated,

is of the narrowest description. It is admitted that upon the facts, as found by the Court, it can no longer be disputed that this mutta, Viráveram, was purchased by Bhávayammál, the grandmother of the appellant and the respondents, out of her strídhnam. Again, the testamentary power of a Hindú female over such strídhnam is admitted by Mr. *Mayne* to be commensurate with her power of disposition in her lifetime, both being absolute. So far the case would have been governed by the decision of this Board, which is reported in the 19th volume of the "Weekly Reporter," page 295, but for the subtle distinction which has been raised. It is suggested that where the funds are shown to have come wholly or in part from the husband, and to have been afterwards invested in land by his widow, the same law which governs in the devolution of immovable estate derived from the husband is to govern that acquisition; but their Lordships cannot find any trace of authority to support such a distinction. It is clearly the law that from the time the funds were given to the widow by the husband they became her strídhnam, and that she had full power of disposition over them. Years after the death of the husband she chooses to invest them in land. Can it be contended with any plausibility that that was land which was derived from the husband? Their Lordships can see no ground for establishing this subtle distinction, or for thus arbitrarily interfering with the power of investment and application and disposition which the general law gives to a Hindú female over her strídhnam.

They must, therefore, humbly advise Her Majesty to affirm the Judgments of the Courts below, and to dismiss this appeal with costs.

Solicitors for the Appellant, Messrs. *Cobbold and Woolley*.

Solicitors for the Respondents, Messrs. *Burton, Yeates and Hart*.

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