As to the defendants' counter-claim, they are not entitled to recover as the heirs of their daughter as the marriage was in the Brahma form, and as to their allegation that they only gave some of the properties for the marriage ceremony and the others were intended to be taken back, it is not explained why they were not taken back before. Any property therefore allowed to remain with the plaintiff must be presumed to have been given to him. We accordingly disallow the counter-claim.

We set aside the decree of the learned Judge and give the plaintiff a decree for the recovery from the defendants of the jewels in schedule V of the first defendant's written statement or their value Rs. 5,428-9-0, with costs in both Courts on the above value of the jewels decreed.

The counter-claim is dismissed with costs in both Courts.

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Sankaran-Nair.

JANAKISETTY SOORYUDU *alias* SOORAYYA (PLAINTIFF), APPELLANT,

v.

MIRIYALA HANUMAYYA (DEFENDANT), RESPONDENT.*

1908. November 20. December 3. 1909. July 20.

Hindu Law—Stridhanam—Property inherited by maiden daughter, nature of interest taken in—Daughter takes only limited estate.

Inherited property is not *stridhanam*, and the case of a maiden daughter succeeding to the *stridhanam* property of her mother is no exception to this general rule. The maiden daughter so succeeding takes only a limited estate.

The inclusion by Vignaneswara of inherited property in the definition of stridhanam is not in accordance with other authorities and ought not to be accepted as law.

Virasangappa Shetti v. *Rudrappa Shetti*, [(1896) I.L.R., 19 Mad., 110], followed.

Venkatarama Krishna Rau v. *Bhujanga Rau*, [(1896) I.L.R., 19 Mad., 107], not followed.

Narasayya v. *Venkayya*, [(1893) 2 M.L.J., 149], not followed.

SECOND APPEAL against the decree of S. P. Rice, District Judge of Guntur, in Appeal Suit No. 56 of 1905, presented against the

* Second Appeal No. 369 of 1906.

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decree of C. Ranganayakulu Naidu, District Munsif of Narasaraopet, in Original Suit No. 657 of 1904.

[This was a suit for the recovery of possession of land, house, etc.]

The plaintiff and one Chendrudu were undivided brothers. The latter died and his widow, Kotamma, claimed a provision for maintenance from the plaintiff. He accordingly executed a maintenance deed conveying thereby the suit property as well as some moveables. Kotamma died and her maiden daughter Lingamma inherited the suit property. Lingamma died after her marriage. The defendant, her husband, was at the time of suit in possession of the land and the plaintiff claimed it from him on the ground that after the death of Kotamma the property reverted to him as he was the donor and as it was intended for her maintenance.

The defendant denied the plaintiff's right to the suit land and contended that the deed executed by the plaintiff in favour of Kotamma vested an absolute estate in her with powers of alienation, and the land was not meant to revert to the donor as it was given away in full satisfaction of Kotamma's claim for maintenance under a special arrangement and not merely for the purpose of Kotamma's maintenance for life. The defendant also set up an oral will by the deceased Kotamma in favour of her daughter Lingamma and claimed the suit property as her husband and heir.

The material issues were —

Whether the suit land, which had been given to the defendant's mother-in-law with powers of disposition, can now be claimed by the plaintiff as the reversioner?

Whether the defendant's mother-in-law left the suit property to the defendant's wife by an oral will?

The District Munsif found the former issue against the plaintiff and dismissed the suit.

On appeal the decree was confirmed.

Plaintiff appealed to the High Court.

The main grounds of appeal were as follow—

1. The lower Appellate Court erred in holding that the property inherited by Lingamma became her absolute property.

2. The lower Appellate Court ought to have held that under the Hindu Law property inherited by a maiden stands on the same footing as property inherited by a married woman.

B. Sitarama Rau for appellant.

V. Ramesam for respondent.

JUDGMENT.—It was decided in the Court of First Instance that Kotamma took a heritable estate and not one limited for her life under the grant from her brother-in-law: this question though raised in the memorandum of Appeal was not argued before the District Judge. Argument was addressed to us on the question but we think the District Munsif's decision is right.

The remaining questions are (1) whether Lingamma inherited the property as her stridhanam, so that it passes on her death to her heirs? and (2) if she did not, whether the property became her stridhanam under the will of her mother Kotamma? The second of these questions has not yet been decided by either of the Courts below; the District Judge having held that Lingamma inherited the property as stridhanam if it came to her by inheritance did not find it necessary to consider the alleged will, and the District Munsif seems to have decided the suit solely on his finding as to the nature of Kotamma's estate.

On the first question the District Judge holds that the property was stridhanam in Lingamma's hands by reason of an exception to the general rule that property received by a woman by inheritance from a woman is not stridhanam in the former's hands.

This exception is in the case of a maiden daughter inheriting from her mother property which was her mother's stridhanam; and this is the present case. The District Judge supports his conclusion by the authority of *Narasayya* v. *Venkayya*(1) and *Venkatarama Krishna Rau* v. *Bhujanga Rau*(2), in which the former case is declared to form an exception to the general rule. But neither of these cases required for the decision of the questions in dispute, the decisions of this question.

In *Virasangappa Shetti* v. *Rudrappa Shetti*(3), however, this question did actually arise and was decided by Best and Subramania Aiyar, JJ., in accordance with the general rule and not as an exception. The case of *Narasayya* v. *Venkayya*(1) was brought to the notice of the learned Judges but they do not

(1) (1892) 2 M.L.J., 149. (2) (1896) I.L.R., 19 Mad., 107.
(3) (1896) I.L.R., 19 Mad., 110.

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follow it: they accept the view which rejects "Vignanesvara's doctrine that the word '&c.' in the text of Yajnavalkya relating to what constitutes stridhanam includes property inherited"; they note that *Narasayya* v. *Venkayya*(1) was not followed in *Mullangi Ammanna* v. *China Kamiah*(2) in this Court; and in answer to the contention that that case is in accordance with the Mitakshara, they discuss the question and decide that the Mitakshara is not upon this point to be followed. According to this decision inherited property is not stridhanam. It was urged before us that the learned Judges must have overlooked Mitakshara, Chapter II, Section XI, 30 on which reliance is placed in *Narasayya* v. *Venkayya*(1) but we cannot think that that is so. The learned Judges proceed on the broad grounds that the inclusion by Vignanesvara of inherited property in the definition of stridhanam is not in accordance with other authorities, and cannot be accepted as the law now that the Courts, including the Privy Council have, except in Bombay, unanimously declined to follow him as to property inherited from a male.

Inherited property then is not stridhanam, and, if Vignanesvara is not to be followed when he defines stridhanam as including inherited property, what reason is there for holding that he should be followed when, in a passage a little later on in his commentary, he follows his own definition in considering the disposal of such property? There is no solid basis for the exception suggested; and the learned Judges in *Virasangappa Shetti* v. *Rudrappa Shetti*(3) the only case in this Court in which the question has actually required decision, refused to make any exception.

On the other hand, the learned Judges in *Venkataramakrishna Rau* v. *Bhujanga Rau*(4) which was decided after *Virasangappa Shetti* v. *Rudrappa Shetti*(3) and which refers to it clearly overlooked the fact that the latter case related to an unmarried daughter, when they say "the succession to a maiden daughter is the sole exception to the rule, and in all the other cases quoted, the question has been as to the succession to a married daughter" (page 110).

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(1) (1892) 2 M.L.J., 149.

(2) Second Appeal No. 169 of 1893 (unreported).

(3) (1896) I.L.R., 19 Mad., 110. (4) (1896) I.L.R., 19 Mad., 107.

Following *Virasangappa Shetti* v. *Rudrappa Shetti*(1), we hold that Lingamma had only a limited estate in the property which came to her from Kotamma if she took it by inheritance, and must ask the District Judge for a finding on the third issue before we can dispose of the appeal. No oral evidence has been recorded in the Court of First Instance on any point, so we must allow evidence to be taken.

The finding should be submitted within six weeks, and seven days will be allowed for filing objections.

In accordance with the above order the District Judge submitted the following.

FINDING.—I am directed by the High Court to try the following issue; "Whether the defendant's mother-in-law left the suit property to the defendant's wife by an oral will?"

2. The parties were permitted to adduce evidence on the issue. Defendant examined six witnesses. Plaintiff examined himself and two other witnesses. The evidence of plaintiff and his witnesses is untrustworthy. He asserts he executed Exhibit I in favour of Kotamma under coercion. I do not believe he ever cared much for her. His assertion that he was present at Kotamma's house throughout the day when the oral direction relied on by the defendant is alleged to have been made is incredible. He goes so far as to say that his wife had nursed Kotamma and that the latter's parents were practically indifferent in the matter. He and his witnesses state that Kotamma's male neighbours never called at her house when she was seriously ill on the day preceding her death and that the only males then present were themselves, who had admittedly lived far away from her house and were not really interested in her welfare. Plaintiff's witnesses Nos. 2 and 3 are closely related to him. I disbelieve the evidence adduced on plaintiff's side.

3. The next question is whether the evidence of defendant's witnesses establishes the truth of the oral will relied on by the defendant. All the defendant's witnesses were Kotamma's neighbours and they are also disinterested witnesses owning lands in the village. Defendant's first five witnesses state that Kotamma became very ill on the day previous to her death and told her father in their presence that all her property should go after her

(1) (1896) I.L.R., 19 Mad., 110.

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death to her only daughter and that the latter should be given in marriage to her younger brother, the defendant herein. Defendant's sixth witness states that Kotamma said that her estate should go to her younger brother and daughter and that her daughter should be married to that brother. The witness states that Kotamma died about ten days after making that declaration. But the evidence on both sides shows that she died after a short illness and the defendant's sixth witness himself states that he went into the house of Kotamma on that occasion hearing people crying inside that house. It is admitted on both sides that Kotamma died nine years ago and therefore defendant's sixth witness might have stated through weak memory that Kotamma died ten days after the incident he described.

4. Defendant's witnesses Nos. 1, 3 and 4 state that Kotamma made the declaration abovementioned at about 2 or 3 P.M. of the day. Defendant's witnesses Nos. 2 and 5 depose that she made that declaration in the morning hours of the same day. From the evidence of those witnesses who were all neighbours of Kotamma, it appears that they were frequenting her house many times on each day of her last illness and the incidents they speak to occurred about nine years ago. Therefore some confusion is probable in their recollection as regards the exact hour when Kotamma told her father that her daughter should take her estate after her death and that she should be married to the defendant. The incident they describe appears to be extremely probable. Kotamma left an only daughter who was also unmarried. She expected her death one day before she actually expired, according to the evidence on both sides. She must have then thought about the girl whom she was leaving an orphan, about the girl's marriage and her future protection. It is likely that she would have considered that her brother who was requested to marry the girl, would better care for the girl on account of the property she would get and also as he himself was her maternal uncle.

I therefore find the issue in the affirmative.

This appeal coming on for final hearing after the return of the finding of the District Judge the Court delivered the following.

JUDGMENT.—Taking into consideration the circumstances under which the will was made, we think it ought to be construed as containing a gift of an absolute estate.

We dismiss the second appeal with costs.