

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Ayling.

MUTHU RAMAKRISHNA NAICKEN (SECOND
DEFENDANT), APPELLANT,

v.

MARIMUTHU GOUNDAN AND ANOTHER BY THEIR GUARDIANS
ad litem ARJUNA GOUNDAN (PLAINTIFFS), RESPONDENTS.*

Hindu law—Acquisition of property by husband and wife—Joint-trade—Property, joint—Wife's interest—Stridhanam—Power of disposition—Death of wife—No survivorship to husband—Devolution on her heirs—Suit in ejectment—Decree for joint possession, if, can be given.

Where certain properties were acquired with the profits earned by a husband and his wife (who were Hindus) in a trade which was carried on by both of them :

Held, that the properties were under the Hindu law the joint properties of the husband and the wife, and her interest therein was her stridhanam which on her death did not survive to her husband but devolved on the heirs to her stridhanam property.

Property acquired by a woman by her own exertions during coverture is her own property which she is entitled to hold independently of her husband and it devolves on her heirs on her death.

Though a suit be one in ejectment, a decree for joint possession may be passed in favour of the plaintiff.

APPEAL under article 15 of the Letters Patent against the judgment and order of MILLER, J., in Second Appeal No. 1619 of 1912, preferred against the decree of K. SRINIVASA RAO, the acting District Judge of Coimbatore, Appeal No. 37 of 1912, preferred against the decree of R. V. KRISHNAN, the District Munsif of Erode, in Original Suit No. 937 of 1910.

The Second Appeal herein came on for hearing under Order XLI, rule 11 of the Civil Procedure Code (Act V of 1908) before MILLER, J., who delivered the following judgment :—

SECOND APPEAL No. 1619 OF 1912.

MILLER, J.

JUDGMENT.—There seems to me to be no reason to refuse acceptance to the view that, if the wife and husband earn together, the presumption is that the resulting property is that of

* Letters Patent Appeal No. 98 of 1913 with Second Appeal No. 1619 of 1912.

the husband and that no part of it is the wife's stridhanam. On this ground I dismiss the Second Appeal.

The second defendant preferred an appeal under the Letters Patent against the above judgment of MILLER, J.

The other facts of the case appear from the judgment of SANKARAN NAIR, J.

S. Srinivasa Ayyangar and *S. Duraiswami Ayyar* for the appellant.

The respondents did not appear.

SANKARAN NAIR, J.—The plaintiffs sue as the legal representatives of one Mottaya Goundan to recover possession of the plaint lands from the first defendant, who held them as his lessee. The lease is admitted but the main contention is that the lands belonged to Mottaya Goundan's wife, Ayyammal, from whose alleged heir, the second defendant has purchased them and is now in possession. It is found by both the Courts that the properties were acquired with the profits earned by Mottaya Goundan and his wife, Ayyammal, in a trade which was carried on by both of them. Both the husband and wife were "equally working together." It is also stated that among the Padayachi community, to which Ayyammal and Mottaya Goundan belonged, the wife worked along with the husband "for the purpose of the maintenance of the family and for the preservation and development of the family properties." The District Munsif decided, however, that, according to the strict theory of the Hindu smritis, even the separate property of a woman earned by her by mechanical arts is subject to her husband's control, and that, therefore, the money with which the plaint lands were acquired was not Ayyammal's peculium. He held that, though the properties were acquired in the name of Ayyammal, that is due to the fact that Mottaya Goundan wanted to shield his properties from the claims of his brothers and possibly also to the fact that Ayyammal was more intelligent than her husband. He further held that, assuming that Ayyammal and Mottaya Goundan must be deemed to have jointly acquired the plaint lands, on the death of Ayyammal, it became the sole property of Mottaya Goundan and, as the plaintiffs are admittedly entitled to claim as the representatives of Mottaya Goundan, he passed a decree directing the defendants to surrender them to the plaintiffs. In appeal the Subordinate Judge confirmed the District Munsif's decision.

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His decision was confirmed by Mr. Justice MILLER. This is an appeal from his judgment.

In the lower Courts the main question that was argued appears to have been that the properties belonged solely to Ayyammal. In Second Appeal before us the main contention was that, on the facts proved, it cannot be held that the property belonged only to the husband.

If properties are acquired jointly by two persons, both of them males, the two would be joint owners. The question then is whether the fact that the properties in suit were acquired jointly by husband and wife makes any difference. If it was open to the wife to acquire property for herself by her own exertions during coverture, it would seem to follow that, if she acquired the property along with her husband, then they must be deemed to be joint owners. According to the Mitakshara, which is the leading authority in this Presidency, property however acquired by a woman is her stridhanam and on her death her heirs take it. This view is no doubt, directly opposed to the view maintained by the Dayabhaga and certain other authorities according to which, that alone is stridhanam which the wife has power "to give, sell or use independently of her husband's control." See Mayne's Hindu Law (7th edition), paragraph 610. Gifts to a woman in her capacity of bride or wife or given by her husband or by her relations or by the husband's relations are admittedly her exclusive property with the doubtful exception of gifts of immoveable property by the husband in certain circumstances. It is now also settled law in Bengal and Madras that the property inherited by a woman is not her exclusive property. Her right with reference to the property otherwise acquired, according to the Mitakshara, "by inheritance, purchase, partition, seizure or finding" has been the subject of much discussion. It has now been settled that she may acquire property by gift from strangers during coverture and that it would devolve on her heirs. See *Ramasami Padeiyatchi v. Virasami Padeiyatchi* (1). It has also been held that property may be given to a husband and wife jointly and that property may also be purchased by them jointly. Her husband's interest in such property would devolve on his heirs and her interest in the property

would devolve on her heirs. See *Madavarayya v. Tirtha Sami*(1). Property may also be devised to them jointly. See *Muthumeenakshi Ammal v. Chandrasekhara Ayyar*(2). This is also the conclusion arrived at in *Salemma v. Lutchmana Reddy*(3). There an inam land was enfranchised in favour of a woman, and the question was whether it was her exclusive stridhanam property descendible to her heirs or not. The texts were reviewed and it was held that the Mitakshara should be followed, unless there is such a consensus of opinion among the commentators prevalent in Southern India as to suggest that the Mitakshara has been departed from, or in other words, that it is open to a female to acquire ownership in any of the modes in which it is open to males, and all such property, with the exception of that acquired by inheritance, is her stridhanam, devolving on her own heirs. The learned Judges accordingly held that a wife's earnings and gifts to her by strangers are her stridhanam property descendible to her heirs. This is a direct decision on the point and is in favour of the appellant. But as our learned colleague has apparently taken a different view, we propose to review the Hindu Law texts on this point, though neither the texts nor the cases above referred to, we are informed, were cited before the learned Judge.

The question, as we have already stated, is whether a married woman's earnings are her exclusive property. Dr. Mayr adduces passages from the Vedas to show that in early times married women pursued independent occupations and acquired gains by them. See Mayne's Hindu Law, VII edition, paragraph 656. According to Manu (Chapter VIII, sloka 416), however, a wife is declared to have no property. The wealth which she acquires is said to be acquired for him to whom she belongs. Four of the commentators of Manu, and among them Medhatithi, take this to mean only that she is unable to dispose of her property independently of her husband. Another commentator, according to Mr. Butler, the editor, "seems to indicate that he took it to refer to her incapacity to earn money by working for others." See Sacred Books of the East, volume XXV, page 326.

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(1) (1877) I.L.R., 1 Mad., 307.

(2) (1904) I.L.R., 27 Mad., 498.

(3) (1898) I.L.R., 21 Mad., 100.

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The text that is generally referred to with reference to a woman's earnings is that of Katyayana which is thus translated by Colebrooke in his Digests, Volume II, page 589, sloka 470:—

“But whatever wealth she may gain by arts, as *by painting or spinning*, or may receive on account of friendship from any but the kindred of her husband or parents, her lord alone has dominion over it: of her other property she may dispose without first obtaining his assent. The commentator Jagannatha states that ‘Arts’ in this text is expressed in the plural number with the sense of ‘and the rest.’” We have already pointed out that this text has not been followed in this Presidency as regards gifts from others than her husband's or her own kindred. In the Dayabhaga this text is understood to imply that “though the wealth be hers, it does not constitute woman's property, because she has not independent power over it.” The Dayakrama Sangraha (Stokes' Hindu Law Books, page 490) is to the same effect. Chapter II, section II, sloka 29, states:—“Notwithstanding the woman has ownership in both descriptions of property she has not independent power in regard to it” as the husband's permission for its disposal is necessary. In the Viramitrodaya we find the same proposition laid down in Chapter V, part I, slokas 2 and 7. The ownership of the woman in the properties is acknowledged; it is only her power of alienation that is declared subject to the husband's control. It is said “the denial is not of their being woman's property, but of its consequences, such as distribution, etc.” Devala also mentions a woman's gains as part of her separate property over which she has exclusive control and which her husband cannot use except in times of distress. Mr. Mayne thinks that the word is apparently used by Devala in the sense of gifts—Mayne's Hindu Law, VII edition, paragraph 663. All the texts, therefore, recognize the wife's ownership in the property acquired by her own labour. They only restrict her right of alienation and make it subject to the wishes of her husband. Mr. Mayne considers the question in paragraph 663 and his conclusion is that these texts with reference to the husband's control do not seem to convey anything more than a moral precept, while the texts asserting her absolute power are “express and unqualified.” It is unnecessary to express any opinion as to the husband's right to control any alienation by his wife, as that question does not arise in this

case. But we think that Mr. Mayne is right in his view that the property acquired by a woman by her own exertions during coverture is her own property which she is entitled to hold independently of her husband and that it devolves on her heirs. The Mitakshara is clear in favour of this conclusion and the other texts also recognise her ownership, though they convey an injunction that she is not to alienate the property without her husband's consent. This is due to the general incapacity of women to deal with property. These texts do not over-ride the express provision of the Mitakshara which declares her self-acquisition to be her own stridhanam; and we are confirmed in this view by the decisions cited.

We think, therefore, that the property in suit was the joint property of Ayyammal and her husband. If it formed joint property, there is no reason for holding that, on the death of Ayyammal, her interest survived to her husband. In *Madavaraya v. Tirtha Sami*(1) which we have already cited, the theory of survivorship was not recognised and it was held that the woman's own heirs were entitled to her undivided interest. Ayyammal's daughters, therefore, are the persons entitled to her property. They became co-owners with their father Mottaya Goundan on Ayyammal's death. There is no finding that their right has been lost by adverse possession. Mottaya's possession cannot be deemed adverse to his daughters who were co-owners with him.

On this finding the plaintiffs, who claim under Mottayya, are only co-owners, with his (Mottayya's) daughters. The first defendant admittedly got into possession as lessee under Mottayya; the plaintiffs are co-owners, and no objection was taken in the lower Courts that they alone cannot maintain the suit; but the first defendant set up the title of the second defendant who is found by the District Munsif to have no title, as he purchased the property from Velayuda Goundan, who is not the heir of Ayyammal. Though the suit is one in ejectment, a decree for joint possession may be passed. In the circumstances we set aside the decrees of the lower Courts, direct the District Munsif to restore the suit to his file, make the daughters or other representatives of Ayyammal parties to the

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suit, and pass a decree in accordance with law. The costs hitherto incurred will abide the result.

AYLING, J.—I agree.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ayling.

S. CHIDAMBARAM PILLAI (PLAINTIFF), PETITIONER,

v.

MUTHAMMAL AND ANOTHER (DEFENDANTS NOS. 1 AND 3),
RESPONDENTS.*

1914.
March 17.

*Estates Land Act (Madras Act I of 1908), sec. 111, et seq.—Sale of holding under—
Suit for declaration of its invalidity—Cognisable in a Civil Court.*

A suit for a declaration that the sale of a holding under section 111, *et seq.*, of the Madras Estates Land Act was void in consequence of the landholder's failure to apply for sale within forty-five days as prescribed by section 115 of the Act, is maintainable in a Civil Court.

Gouse Mohideen Sahib v. Muthialu Chettiar (1914) M.W.N., 55, followed.

Dorasamy Pillai v. Muthusamy Maccpan (1904) I.L.R., 27 Mad., 94 and
Zemindar of Ettayapuram v. Sankarappa Reddiar (1904) I.L.R., 27 Mad., 488,
referred to.

Section 189 of the Act commented on.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of D. G. WALLER, the Acting District Judge of Tinnevely, in Civil Miscellaneous Appeal No. 2 of 1913, preferred against the order of N. SUNDARAM AYYAR, the District Munsif of Ambasamudram, in Original Suit No. 5 of 1911.

The plaintiff sued in the Court of the District Munsif of Ambasamudram for a declaration that the sale of his holding was invalid and liable to be set aside on the ground that the application for sale was made more than 45 days after the posting of intimation of service as required by section 113 of the Estates Land Act. The District Munsif held that even if such a suit lay under the Act, it was exclusively triable by the Revenue Court and that he had no jurisdiction to try the same and returned

* Civil Revision Petition No. 454 of 1913.