

APPELLATE CIVIL.

*Before Sir William Phillips, Kt., Officiating Chief Justice,
and Mr. Justice Reilly.*

NAMMALWAR CHETTY AND ANOTHER (DEPENDANTS
1 AND 2), APPELLANTS,

1927,
September 1.

v.

PERUNDEVI THAYARAMMAL (PLAINTIFF), RESPONDENT.*

*Hindu Law—Right of husband in distress to take his wife's
stridhanam—Text, meaning of.*

The word "take" in the text of Yagnavalkya, that "a husband is not liable to make good the property of his wife taken by him in a famine or for the performance of a duty or during illness or while under restraint" does not mean "physical taking" but means "taking and using." Hence if the husband taking his wife's property in such circumstances does not actually use it, the wife still remains its owner.

APPEAL from the judgment of Mr. Justice V. V. SRINIVASA AYYANGAR in C.S. No. 329 of 1924 in the exercise of the Ordinary Original Civil Jurisdiction of the High Court.

The facts are given in the judgment of the Officiating Chief Justice.

K. Krishnaswami Ayyangar (with *T. S. Narasinga Rao* for *K. G. Ramaswami Ayyar*) for appellants.—The husband can according to the text in Yagnavalkya in Chapter II, placitum 148, take his wife's property in case of distress. This means physical taking. If he chooses to take it, it becomes his own; see also *Mitakshara ii*, Chapter 11, placita 31 and 32.

C. S. Venkatachari for the respondent.—The text does not mean that physical taking alone constitutes the husband the owner. Unless he *uses* them for any of the purposes mentioned, the wife's ownership does not cease. Using is necessary; see *Smriti Chandrika IX*, section 21, placita 19 and 20. Other commentaries such as *Dayabhaga*,

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Dayakrama Sangraha, Vyavahara Mayukha understand the word "take" only as "use."

T. S. Narasinga Rao in reply.—Mere physical taking is sufficient. Even if using were necessary, there has been a user of the wife's jewels in this case by the husband, in that he placed them in the hands of a mediator and that was the means of his obtaining relief from arrest.

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PHILLIPS, OFFG. C.J.—In this case the plaintiff respondent sues to recover certain jewels which, she alleges, are her stridhanam. Her husband was ordered to pay a sum of Rs. 12,000 into Court by the 7th April 1924. The order was passed on the 24th March. The payment was to be made in a suit in which the present appellants were the plaintiffs. After the date fixed for payment it appears that the plaintiff's husband arranged to sell the jewels now claimed by the plaintiff to the respondents in part-satisfaction of the claim of Rs. 12,300 under the Order. In accordance with this arrangement the plaintiff's husband put in an application to the Court to sanction this arrangement as there was a minor concerned and the arrangement amounted to a compromise between the parties in respect of this claim of Rs. 12,300. The appellants signified their agreement to this application when it was put into Court. The application was for leave to be granted to the first plaintiff to receive these jewels on behalf of her minor son in respect of this order of Rs. 12,300. An affidavit was filed at the same time which said that

"it had been agreed that in lieu of the said sum of Rs. 12,300 the undermentioned jewels should be handed over by the first defendant to the first plaintiff. All the eight items have now been deposited with the mediator pending the order of this Honourable Court granting leave to the first plaintiff to receive them."

Before the leave of the Court was obtained the present plaintiff claimed these jewels as hers and they

were also attached by a creditor. Accordingly orders were postponed and finally the application was withdrawn and dismissed on 24th July 1924, with the plaintiffs', the present appellants', costs, by which date, the second appellant had attained majority. The appellants have relied at the trial on a provision of Hindu Law, that in times of necessity a husband is entitled to take his wife's property to relieve that necessity. It has been found by the learned Judge that that necessity did not exist but he has also found in his judgment—he does not base his decision on it—that the husband had not disposed of these jewels and, as he died before the disposal, the creditors cannot seize the jewels which belonged to the plaintiff to pay his debts. This finding was not in accordance with the pleadings and apparently the attention of the parties had not been directed to it, but it having found a place in the judgment, it was undoubtedly the duty of the appellants to meet this aspect of the case. They were not prepared to do so at the first hearing but were granted time and have now argued the case. In the first place they contend that the finding that the jewels were the stridhana of plaintiff is wrong. There is the evidence of the plaintiff and her relations coupled with entries in her husband's account book which go strongly to support the plaintiff's case. There is no evidence contra and I must therefore accept the learned Judge's finding that the jewels were plaintiff's.

The next question is whether the husband had disposed of these jewels before he died. He had deposited them with a mediator who was to hold them pending sanction of the Court being obtained. His possession therefore was clearly the possession of the person who would be entitled to these jewels subject to the Court's order. If sanction had been given, his possession would

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have been that of the appellants. But in this case no sanction was given and therefore the property in the jewels did not pass to the appellants. There was an agreement by the deceased to sell the jewels but payment had not been made and the goods had not been delivered and the property in them had not passed. It was then contended for appellants that this is not necessary but that according to the text the husband has a right to take his wife's Stridhana, and need not dispose of them. The text runs as follows:—

“A husband is not liable to make good the property of his wife taken by him in a famine or for the performance of a duty or during illness or while under restraint.”

It is contended that the word “taken” means only physical taking and not necessarily the use or disposal of the property. The same text is explained in several passages in the Smriti Chandrika which clearly show that the word “take” has the meaning of use or disposal and it is difficult to hold that it merely means physical taking. If that were the meaning, the husband in illness or in a famine could take his wife's Stridhana and not use it for his benefit but he might recover or obtain relief by other means and would apparently be entitled to retain possession of his wife's property which was still in his hands. This is a very strange interpretation to put upon the text which clearly refers to the husband being entitled in case of necessity to make use of his wife's property as well as his own in order to obtain relief. In that view the only way in which he could be said to take the property would be when he takes it and disposes of it for his own benefit. This contention therefore cannot be accepted.

The further contention that by placing the jewels in the hands of a mediator, the husband did obtain relief

and that the jewels themselves were the cause of his relief and that therefore he is not liable to make them good is clearly a fallacy. It is not the jewels themselves that gave the relief but the agreement by the deceased to sell them to the appellants. As a consequence of that agreement which was never completed we may assume that they did refrain from taking active steps against him, but the deceased unfortunately died before the jewels had passed to the appellants and it has been consistently held that his right to take his wife's jewels does not extend to a creditor or any other person whatever. As he had not exercised that right during his lifetime, the jewels remained the property of the plaintiff.

The appeal is accordingly dismissed with costs. As regards the costs which have been ordered to be paid to the third defendant's legal representative's guardian it can only be observed that the mediator was a necessary party to the suit and as he is not himself liable for costs he must be paid by the losing party.

REILLY, J.—I agree that we certainly cannot interfere in this case with the finding of the learned trial Judge that the jewels in question were the *Stridhana* property of the plaintiff, on which point the evidence at the trial was all one way.

In the argument in this appeal, so far as it has been necessary to go, it has been assumed that the exceptional circumstances, which will justify a husband in taking his wife's *Stridhanam* and dealing with it to relieve his own distress have been fulfilled. But it has been disputed whether his right is only to use that property for the relief of his distress or he is entitled to take it from his wife for the purpose of relieving his distress but, if he does not use it for that purpose, to keep it nevertheless for himself. The text upon which the

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special power of the husband to take his wife's *Stridhanam* is founded is that of Yagnavalkya :—

“ A husband is not liable to make good the property of his wife taken by him in a famine or for the performance of a duty or during illness or while under restraint.”

Speaking for myself I should have thought it obvious that “ taken ” in that verse means “ taken and used.” But no very great discussion on that point is really necessary because the Smriti Chandrika, undoubtedly an authority in this Presidency, explains the verse as meaning that the husband is entitled to use his wife's property in those circumstances; and the quotation which has been read to us from the Mitakshara, in which the verse is slightly enlarged, certainly is not against that interpretation of it.

Then the question in this case is, did the husband actually use these jewels to relieve his necessity? What it appears he did was to enter into a contract of sale in regard to them. The jewels were to be sold to defendants 1 and 2 for Rs. 9,500, part of a sum which the plaintiff's husband had been directed to pay into Court for the benefit of the second defendant. But the agreement of sale had a term in it that the plaintiff was to obtain the sanction of the Court for this adjustment. If the agreement between the parties had been that the plaintiff's husband was to have something done to the jewels, to have them cleaned or mended or reset or anything of that sort, it is perfectly clear and indeed unquestionable that the property in the jewels would not have passed from him to the second defendant until that work had been done. And I think the same principle applies where the seller undertakes to do something in respect of the goods. In this case the plaintiff's husband undertook to get the sanction of the Court and, so far as we can see, honestly undertook that. He applied for

the sanction of the Court ; but, before the sanction was obtained, he died. Then had the property passed at the date of his death? I think the answer to that clearly must be "no." If the property had not passed, then he had not made use of the jewels to relieve his necessity, and, as the right to use them was peculiar to himself, it ended with his death. If the jewels had been in his house or in his possession at the date of his death, I think there can be no doubt that the plaintiff could have recovered them. In this particular case it happens that the jewels, pending the sanction of the Court, were handed over to a third party, a "mediator." But that does not really affect the legal position at all, the mediator being like a stake-holder trustee for whichever party might eventually be entitled to the jewels.

What appeared to me to be the most effective argument for the second defendant was raised by Mr. Narasinga Rao in his reply, namely that the plaintiff's husband got a benefit out of his dealings with the jewels. He was by the order of the Court to pay the Rs. 12,300 by the 7th April; but by the arrangement which the second defendant entered into and the petition for sanction, the proceedings were prolonged until after the plaintiff's husband died on the 20th April. It is urged therefore that from the 7th April to the 20th April the plaintiff's husband obtained a benefit out of his dealings with the jewels. But, as my Lord has explained, that benefit was obtained, not by the use of the jewels or any transfer of property in them, but by the agreement to sell them in certain circumstances which were never fulfilled.

I agree that this appeal must be dismissed with costs.

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