

himself in his chief examination. He there states that the sales were to the first plaintiff and to the second plaintiff or to a Chetty and that the sales were for the discharge of her husband's debts. Nothing was put to him in cross-examination to suggest that the sales were not for the discharge of the husband's debts. The plaintiffs recalled and examined the second plaintiff and some other witnesses after the defence evidence had been closed. Even then no attempt was made to suggest that the statement as to the sales having been made for the discharge of the husband's debts was not true. In these circumstances, the learned District Judge was justified in holding that the surrender was not invalid by reason either of the non-inclusion of the alienated property or by reason of any incapacity of the widow to make a surrender after making alienations for such binding purposes.

This second appeal therefore fails and it is dismissed with costs.

ORIGINAL CIVIL.

Before Mr. Justice Wadsworth.

BALASUNDARAM, PLAINTIFF,

v.

KAMAKSHI AMMAL AND OTHERS, DEFENDANTS.*

1936,
August 7.

Hindu Law—Dancing girl—Devolution of property of—Dancing girl renouncing her caste and becoming a respectable married woman—Acquisition of property by—Character and incidents of such property—Subsequent reverter to her caste and its calling—Status of such a dancing girl and devolution of such property.

When a dancing girl, practising the calling of her caste, acquires property thereby, it devolves more or less after the fashion of stridhanam, females taking in preference to males. But if a dancing girl eschews the calling of her community

* Civil Suit No. 301 of 1932.

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and adopts the ordinary life of a respectable married woman and acquires property, that property would devolve in accordance with the ordinary rules of Hindu law, in spite of the fact that she belongs to the dancing girl caste, and such property is impressed with a character which it cannot lose by passing on her death into the hands of a dancing girl practising the calling of her caste; and the devolution of property, acquired during her widowhood by such a dancing girl after she reverts to what may be described as an immoral life, would not be different, since any subsequent lapse from conjugal virtue would not give her any character other than that of an unchaste married woman.

Subbaratna Mudali v. Balakrishnaswami Naidu, (1917)
6 L.W. 184, considered.

C. R. Rajagopalachariar for plaintiff.

C. Veeraraghava Ayyar and *A. P. Sundarachiari* for defendants.

JUDGMENT.

The plaintiff prays for a declaration that the mortgage, dated 6th July 1925, executed by one Rajammal in favour of the deceased husband of the first defendant is of no effect as against the plaintiff as reversioner to the estate of the deceased Papathi Ammal, mother of Rajammal, and cannot convey rights beyond the lifetime of Rajammal. There is also a prayer for an injunction which is not now pressed.

The second defendant supports the plaintiff.

The first defendant contends that Rajammal was the absolute owner of the suit house and that the plaintiff is not entitled to claim the suit property as a reversioner in the event of her death.

The evidence in the case is somewhat scanty, but it raises certain interesting questions with reference to the devolution of property in the

dancing girl caste. On the materials before me the following facts seem to be established. One Papathi Ammal who died many years ago had two daughters, Rajammal and the second defendant. It must, I think, be taken as proved that they belonged to the dancing girl caste. Papathi Ammal appears to have married and been widowed. She then came to Madras, became the concubine of a goldsmith, and while living as his concubine she somehow or other acquired the suit property. There is no sale deed in the evidence ; but the recitals in the mortgage deed in favour of the first defendant's husband, taken along with those of the release deed executed by the second defendant in favour of Rajammal, leave no doubt in my mind that this property did come down by inheritance from Papathi Ammal to her two daughters. Papathi Ammal died about the year 1900. Rajammal and the second defendant seem to have lived as dancing girls and to have been dedicated to a temple in Saidapet near Madras. Rajammal had no children, but following the custom of the dancing girl community she adopted a daughter, Navaneethammal, who is not a party in this suit. The second defendant had two children, a daughter who is the third defendant and a son who is the plaintiff. The suit property was registered in 1902 by the Collector in the joint names of Rajammal and the second defendant. In 1909 the second defendant released her interest in the properties so far as she was competent to do so in favour of Rajammal, and in the face of the terms of the release deed it cannot be contended that it would have the effect of shutting out any reversionary right

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which her children might claim on the death of Rajammal. In 1925 there was a mortgage by Rajammal and the third defendant in favour of the first defendant's husband. Now, if Rajammal and the second defendant had an absolute title to this property, there would be no question of a reversionary right in favour of the plaintiff in view of the release deed. If, however, Rajammal and the second defendant had no more than the ordinary limited estate of a Hindu female, then the plaintiff would be a reversioner.

There is remarkably little authority in the reported cases regarding the devolution of property through females of the dancing girl caste. It is of course quite settled that when a dancing girl, practising the calling of her caste, acquires property thereby, it devolves more or less after the fashion of stridhanam, females taking in preference to males. It seems also to be settled that when a dancing girl, eschewing the calling of her community, adopts the ordinary life of a respectable married woman and acquires property, that property would devolve in accordance with the ordinary rules of Hindu law, in spite of the fact that she belongs to the dancing girl caste. There is an observation in the case of *Subbaratna Mudali v. Balakrishnaswami Naidu*(1) that when the property of a dancing girl passes to her female heir the latter takes an absolute estate. This seems to be a reasonable view, though I have not been able to find any positive decision in support of it. But obviously, if the disability of a Hindu female in the matter of owning property is the

(1) (1917) 6 L.W. 184.

logical consequence of her disability as a member of the family and her dependence on the males of that family, no such disability should attach to the women of an emancipated community such as the *Devadasis* who live and acquire property quite independently of their male relatives. But what is the position when a woman like Papathi Ammal, belonging to the dancing girl community, elects not to follow the traditional calling, but to become an ordinary married woman and then, after her widowhood, reverts to what may be described as an immoral life and brings up her daughters so that they follow the caste calling? It seems to me reasonable that, if the mother acquires property while she is an ordinary married woman subject to the ordinary Hindu law, it should devolve upon her heirs in accordance with the ordinary rules of Hindu law, since the property is impressed with a character which it cannot lose by passing into the hands of a woman practising the calling of a dancing girl. But I doubt very much whether, when a woman of the dancing girl community has once elected not to take up the caste calling but to live the life of an ordinary Hindu married woman, any subsequent lapse from conjugal virtue would give her any other character than that of an unchaste married woman. Having definitely left the calling of the caste and adopted the constraints of ordinary married life, I do not see how she can at the same time enjoy the position of a respectable Hindu female and retain a sort of *animus revertendi* towards the traditional calling; and I see no logical reason why if she subsequently relapsed into unchastity she should get the benefit

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of the pseudo-respectability which surrounds the calling of a dancing girl.

If that reasoning is correct, it follows that in the present case the property acquired by Papathi Ammal, a married woman who has lapsed into unchastity, has devolved upon her daughters clothed with the character of property acquired by an ordinary Hindu female, that is to say, subject to the disability of the ordinary Hindu female to take an absolute estate ; and when it passes to the daughters, they would hold it subject to the same disabilities as attended the ownership of that property by a female when it was in the hands of their mother. It follows that Rajammal and the second defendant would have only a limited estate in the property and, on the release of her rights by the second defendant, Rajammal, in spite of the fact that she was a member of the dancing girl community living a life of unchastity, would hold that property as a limited owner with limited powers of alienation. The third defendant having joined with Rajammal in the mortgage in favour of the first defendant's husband obviously cannot attack that mortgage. The plaintiff must in my opinion be declared to be a reversioner to Rajammal and he must be given a declaration that the mortgage of the property to the first defendant is not binding as against the reversioner. The suit is therefore decreed with costs.

G.R.
