

the adoption, including that of inheritance to him, would devolve separately in each family—as in fact they must according to the course of events in each family, and consequently that on the facts here the adopting mother would be the preferential heir; but this purely logical conclusion would not, I think, be in accordance with the doctrines of Hindu law in connection with adoption. The fundamental doctrine is that an adoption creates a son, who, though he may be a stranger in blood, acquires by the ceremony not only the rights of an heir in the adopting family, but a religious or sacramental character, which endows him also with the spiritual qualities of a real son, so that he can perform and as efficaciously, all the religious duties of a born son after his father's death. This being so, I think that in the special case we have to do with, the adopted son must be taken to have had, on his death, two mothers, for it is impossible in this view to differentiate between the real and the adopting one, and in that case I think both surviving mothers are equally the heirs.

I agree with the conclusion come to on somewhat different grounds by my learned brother, and think the decree challenged should be confirmed and the appeals against it dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Patkar and Mr. Justice Murphy.

VENKARADDI MARDEPPA LINGDAL, APPELLANT *v.* HANMANTGOUDA
RAMANGOUDA KULKARNI, RESPONDENT.*

1932
February 10

Hindu law—Saudayika stridhan—Property bequeathed from maternal grandfather—Disposition of property without husband's consent.

Property bequeathed to a woman by her maternal grandfather is her Saudayika stridhan, which she is competent to alienate without the consent of her husband.

*First Appeal No. 503 of 1928, against the decision of K. G. Kulkarni, Joint First Class Subordinate Judge at Dharwar, in Special L. C. Civil Suit No. 117 of 1926.

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The texts on the subject discussed.

Bhuu v. Rajhunnath⁽¹⁾ and *Muthukaruppa Pillai v. Selluthammal*,⁽²⁾ referred to.

SUIT for declaration.

Venkaraddi (plaintiff) was married to Tulsava in about the year 1900. They never lived together as man and wife. On January 16, 1907, Lakshmappa, the maternal grandfather of Tulsava, bequeathed by will all his property to Tulsava. On June 24, 1926, Tulsava gifted away the whole of the property to her brother Hanmantgouda (defendant) without the consent of her husband (plaintiff).

On October 19, 1926, plaintiff filed a suit in the Court of the Joint First Class Subordinate Judge at Dharwar for a declaration that the gift was illegal and void. The suit was dismissed for the following reasons :—

“When in this case the husband had abandoned Tulsava since the date of her marriage there could be no coverture as understood by Hindu law. When thus Tulsava was not a woman under coverture, she was competent to dispose of any kind of her Stridhan without plaintiff's consent (27 Bom. L. R. 633). The plaintiff's property came to Tulsava under the will of her maternal grandfather Lakshmappa. When a bequest is from an affectionate kindred like the maternal grandfather it is *saudayak* (7 Bom. L. R. 936, 39 Mad. 298). *Saudayak* can be alienated by a woman at any time without the consent of her husband even assuming Tulsava was under coverture. Even if the property is non-*saudayak* Tulsava was competent to alienate it as she had been abandoned by her husband and was not under his coverture.”

The plaintiff appealed to the High Court.

G. N. Thakor, with *G. P. Murdeshwar*, for the appellant.

S. B. Jathar, for the respondent.

PATKAR J. This was a suit brought by the plaintiff for a declaration that the deed of gift passed by his wife Tulsava in favour of the defendant, her brother, was invalid as it was passed by her without the consent of the plaintiff, her husband.

The property in suit was bequeathed in 1907 by the maternal grandfather to the plaintiff's wife Tulsava, who passed a deed of gift in 1926 in respect thereof in favour of her brother, the defendant. According to the finding of the lower Court, which we think is correct, the plaintiff and his wife did not live together ever since they were married. The

⁽¹⁾ (1905) 30 Bom. 229.

⁽²⁾ (1914) 39 Mad. 298.

learned Subordinate Judge held that the property which came to the plaintiff's wife was *saudayika stridhan*, and therefore, she was competent to make a gift in favour of her brother without the consent of her husband. In the alternative he held that even if it were not *saudayika stridhan*, she was competent to alienate it as she had been abandoned by her husband and was not under coverture, and relied on the decision in the case of *Bhagvanlal v. Bai Divali*.⁽¹⁾

The question, therefore, in this appeal is whether the property which the plaintiff's wife obtained by bequest from her maternal grandfather is *saudayika stridhan* according to Hindu law. According to the decision in *Bhav v. Rayhunath*,⁽²⁾ *saudayika stridhan* is that which is obtained by a married woman or by a virgin in the house of her husband or of her father, from her brother or parents. It is contended on behalf of the appellant that this being a bequest from the maternal grandfather, it is not obtained from her brother or her parents and therefore it is not *saudayika stridhan*. The dictionary meaning of *saudayika* is "whatever is given to a woman at her marriage by her parents, or a relative in general, which becomes her own property."

The text dealing with this question in *Mayukha*, Chapter IV, section X, pl. 5 and 8, (Mandlik's translation, p. 93) is as follows :—

"A wife, a son, and a slave are all incapable of property. Whatever they earn, belongs to him to whom they belong', that too has reference to wealth acquired by mechanical arts and the like. It is also proper [to interpret the text as showing] the absence of absolute dominion even in the *udhivedanika* or other [species of *stridhan*]. Hence, says Manu [Ch. IX, v. 199] :—'a woman should never make [any] expenditure out of the family [property] belonging to several or even [out of] her own wealth without the assent of her husband' . . . In a certain [kind of] property, Katyayana declares [their] absolute dominion. 'That which is obtained by a married woman, or by a virgin in the house of her husband, or of her father, from her brother, or her parents, is termed *Saudayika*. The independence of women who have received the *Saudayika* wealth, is desirable [in regard to it], for it was given [by their kindred] for their maintenance out of affection. The power of women over *Saudayika* at all times is celebrated both in respect of gift and sale, according to their pleasure, even in [the case of] immoveables."

⁽¹⁾ (1925) 27 Bom. L. R. 633.

⁽²⁾ (1905) 30 Bom. 229.

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In Colebrooke's Digest of Hindu Law, Volume II, pages 594 and 595, after reciting the texts of Katyayana, reference is made to several commentaries. Reference is made to Chandeswara, who says that the words "from her brother or her parents" are merely illustrative and a gift from affectionate kindred would include a gift from other persons. Misra, instead of saying from other persons, says "from her own kindred, or from the relations of her lord." Reference is made to Jimutavahana who says :— "That which is received from affectionate kindred (sudaya), is the gift of affectionate kindred (*saudayika*)." Then Raghunandana's commentary is :— "That which is received from an affectionate father, mother, or husband, or from the kindred of these, is a gift from affectionate kindred."

Apararka quotes also the text of Vriddha Vyasa as follows :—

यत्कन्यया विवाहे च विवाहात्परतश्च यत् ।

पितृभ्रातृगृहात्प्राप्तं तच्च सौदायिकं स्मृतम् ॥

"That which is received by a woman either at the time of or subsequent to the marriage or which is obtained from the house of the father or the brother is called *Saudayika*."

In Smriti Chandrika for the word भ्रातृ (brother), the word सत्ृ (husband) is used. In Smriti Chandrika, Ch. IX, s. II, pl. 5 and 6, the texts of Katyayana and Vyasa are cited. See Sethur's translation, page 260 :—

"5. The same author [Katyayana] also defines *Saudayika* : 'That which is received by a married woman or by a maiden in the house of her husband, or of her father, from her brother or from her parents, is termed the gift of affectionate kindred [*Saudayika*].'"

"6. Vyas accordingly :— 'Wealth which is received by a woman either at the time of, or subsequent to, marriage, from the house of the father or the husband, is denominated *Saudayika*.'"

The subject relating to the description of stridhan is dealt with in Mitakshara, Ch. II, s. XI, Gharpure's translation, pages 270 to 274, and Mayukha, Ch. IV, s. X, Gharpure's translation, pages 127 to 131.

In placitum (4) the Mitakshara dealing with the six kinds of stridhan mentioned by Manu says that the denomination

of sixfold property of a woman is intended not as a restriction of a greater number but as a denial of a less. It would, therefore, follow that the texts are not exhaustive but illustrative. In placitum (5) Saudayika is defined as follows :—
 “ That which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed ‘ a kind gift ’ (*saudayikam*).”
 A gift after marriage in the house of her father would include the gift from the father’s relations. Further Yajnyavalkya in verse 144 mentions a kind of stridhan वंशुदत्तं (*Bandhudattam*) that which has been given to a woman by her kindred and is explained by Mitakshara as follows :—“ By her kindred, i.e., by the matribandhus as well as pitribandhus of the damsel.” A maternal grandfather would be included in the matribandhus.

Mayukha in Ch. IV, section X, pl. 5 to 8, Gharpure’s translation pp. 128 and 129, deals with the text of Katyayana. In pl. (5) the Mayukha in dealing with the texts of Katyayana and Vyasa says that even immoveable property can be given in gift by father, mother, brother, husband and *kindred (Dnati)*. In pl. (7) and (8) distinction is made as regards wealth acquired from mechanical arts and received from a *stranger* and also presents at the time of supersession (*Adhivedanika*) which can be spent with the assent of her husband, and in pl. (8) reference is made to the power of disposal over *saudayika* as being *stridhan* over which the woman has independent power of disposal on the ground that it is given out of affection and for maintenance. Distinction is, therefore, made between a gift from kindred which term would include maternal grandfather and gift from a stranger as regards the power of disposal.

Mayne in his *Hindu Law*, 9th Edition, pp. 971 and 972, after referring to the text of Katyayana and Vyasa, states :—

“ Provided the gift is made by the husband, or by a relation either of the woman or of her husband, it seems to be immaterial whether it is made before marriage, at marriage, or after marriage ; it is equally her *saudayika*.”

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The same view is accepted by Golapchandra Sarkar Shastri in his Hindu Law, 6th Edition, p. 638, and by Sir Dinshah Mulla in his Hindu Law, 7th Edition, p. 142, followed in *Emperor v. Sat Narain*.⁽¹⁾

Sir Gurudas Banerjee in his Hindu Law of Marriage and Stridhan, 5th Edition, p. 337, observes that "*Saudayika*, or gift of affectionate kinsmen, is explained as being a general name for several sorts of *stridhan*."

In *Bhāu v. Raghunath*,⁽²⁾ the *writi* was inherited by the woman as the bequest to her by the grandmother was invalid, and the precise point under consideration did not arise for decision.

In *Muthukaruppa Pillai v. Sellathammal*,⁽³⁾ Seshagiri Ayyar J. observes as follows (p. 300):—

"An examination of the various commentaries shows that *stridhanam* property is divisible into *Yautaka* and *Ayautaka*. *Yautaka* is that which is given at the nuptial fire. That interpretation is in accordance with the etymological significance of the term. In that term, moreover, are included all gifts made during the marriage ceremonies. *Ayautaka* is gift made before or after marriage. *Saudayika* includes both *Yautaka* and *Ayautaka* not received from strangers. It is defined to be gifts from affectionate kindred. This property can be dealt with by a married woman in any way she likes."

The gift or bequest from a maternal grandfather, having the essential attribute of a gift from relations or affectionate kindred falls within the class of *stridhan* called *saudayika*.

I think, therefore, that the lower Court is right in holding that the property obtained by the plaintiff's wife by bequest from her maternal grandfather is *saudayika stridhan*, and she can alienate it without the consent of her husband.

It is, therefore, unnecessary to go into the alternative ground on which the decision of the lower Court is based, and consider the decision in the case of *Bhagwanlal v. Bai Divali*.⁽⁴⁾

We, must, therefore, dismiss this appeal with costs.

MURPHY J. This is a plaintiff's appeal and the grievance is that the Court below has refused him a declaration that

⁽¹⁾ (1930) 53 All. 437.⁽²⁾ (1905) 30 Bom. 220.⁽³⁾ (1914) 39 Mad. 298.⁽⁴⁾ (1925) 27 Bom. L. R. 633.

his wife had no power to give her stridhan estate to her brother, during the continuance of their marriage and without his assent. What he set out to prove was that the property gifted was ordinary stridhan and not the kind which is excepted from the need of the husband's sanction before alienation, and that he has been living with his wife, in order to counter the finding of abandonment of the Court below.....

As to the first point, the decision turns upon whether the property in question is of the class of stridhan known as *saudayika*, or not. If it is, then the husband's sanction was not necessary to the wife's gift. This property which consists of a house and some land, was willed to the defendant by her grandfather. To discover the answer we must refer to one of the governing texts of the Hindu law. According to Mr. Ghose's translation of this text, quoted in the judgment in *Muthukaruppa Pillai v. Sellathammal*,⁽¹⁾ *saudayika* is, "whatever is received from the husband's father's family, from the brothers, or from the parents." According to the translation in Sir Dinshah Mulla's work on Hindu Law, the meaning of the text is "what a woman, either after marriage or before it, either in the mansion of her husband or of her father, receives from her lord or her parents is called *Saudayika*, that is, a gift from affectionate kindred." Our attention has been drawn to another version to be found in Golapchandra Sarkar Sastri's book on Hindu Law, which is to the following effect: "That which is received by a married woman or maiden in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred." The word itself means good kindred and this finds expression in the term of "affectionate kindred."

Mr. Thakor's main contention has been that there is no text which includes as *saudayika* a gift from a maternal grandfather as in this case. On the other hand, gifts from

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strangers come within another category, and unless we consider the grandfather as included in the group of parents, there is no place for him in this connection, for clearly he is not a stranger. The case law does not solve the exact question before us. The leading cases are *Bharu v. Raghunath*⁽¹⁾ and *Muthukaruppa Pillai v. Sellathammal*.⁽²⁾ The Bombay case was a decision that property got by inheritance was not *saudayika*, though it had originally been got as a gift, and it was held that the gift was exhausted on the donor's—a Hindu widow's—death owing to her limited estate. In the Madras case, the property had been gifted by the father to the daughter, and it was held to be *saudayika* as being included in the gifts from affectionate kindred. Neither of these cases really cover the point we have to decide.

It is clear that the plaintiff can only succeed if we hold that the terms used in the text are meant to exclude all donors except the husband, or the father, or the brother or the mother, that is, who are not mentioned. Personally I think "parents" would include a maternal grandfather, as this view seems to be more in harmony with the general ideas of the Hindu law on the subject, as in the case of *bandhus* where the mother's father is not mentioned in the list of the *matribandhus* but has been held to be included logically, the reason given being that the text is illustrative and not exhaustive. Similarly, the word *son* has been used in the text, and has been held by the Court to be used in a generic sense and not literally. So here it seems to me that the real meaning must have been to include both the ancestral lines, and not to limit it to the immediate parents of the person mentioned.

I agree, therefore, that the case has been rightly decided, and the appeal must be dismissed.

Appeal dismissed.

B. G. R.

⁽¹⁾ (1905) 30 Bom. 229.

⁽²⁾ (1914) 39 Mad. 298.