

Appellate Jurisdiction. (a)*Special Appeal No. 212 of 1869.*GANGADARAIYA..... { *Special Appellant*
(*2nd Defendant.*)PARAMESWARAMMA..... { *Special Respondent*
(*Plaintiff.*)

Land received by a woman from her husband as stridanum cannot be alienated even after the husband's death to the prejudice of the daughters as next heirs without their consent.

THIS was a Special Appeal against the decision of Srinivasa Rao, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 426 of 1867, confirming the decree of the Court of the District Munsif of Udipi in Original Suit No. 110 of 1866.

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The plaintiff brought this suit to recover certain land given by Naranappa, father of herself and of the 1st defendant, to their mother Sitamma on account of her female children, which was in the possession of the defendants. The plaintiff stated that Sitamma died in June 1854, that the plaintiff is entitled to half of her estate; and that, therefore her half share of land assessed at Rupees 7-9-8, producing Rupees 11-15-5, should be recovered to her together with net produce.

The 1st defendant allowed the suit to go by default. The 2nd defendant stated that Naranappa gave the estate only to Sitamma, but not on account of her children; that Sitamma sold her estate to the 2nd defendant on the 6th May 1854 for rupees 250.

The plaintiff denied the sale, and asserted that Sitamma had no power to make it.

The issues settled were :—

1st.—Whether Naranappa made the gift to Sitamma on account of her children.

2nd.—Whether Sitamma had *bona fide* effected the sale, and

3rd.—Whether such sale can be upheld.

The Munsif found the third issue in favour of the plaintiff. He added, "It is just that the plaintiff should, while

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obtaining her share in the estate, pay Sitamma's real debts. The plaintiff admits that a debt of 120 Rupees was allotted to Sitamma's share along with property; that the disputed estate was mortgaged for Rupees 100 with reference to the said debt, and that that mortgage was discharged by the 2nd defendant. Though the plaintiff asserted that the remaining sum of Rupees 20 was paid by Sitamma, yet, as it has been admitted that a debt of Rupees 120 was allotted to her (Sitamma's) share, and as it appears from the deed of sale that Sitamma received the said sum of Rupees 20 from the 2nd defendant in order to pay the same, it is just that the plaintiff should pay a moiety of that debt."

The decree was that plaintiff was entitled to a moiety of the estate on paying off to the 2nd defendant the debt of Rupees 60; that as the 2nd defendant has been enjoying the land as regards the money paid by him, the plaintiff cannot get the net produce, and that the 2nd defendant should pay to the plaintiff her costs with interest at 12 per cent.

Upon appeal the Principal Sadr Amin gave the following judgment:—

The principal Sadr Amin perused the records of this suit and listened to the arguments set forth by the vakils for both parties.

That the disputed land was given to the plaintiff's mother Sitamma by her husband is undisputed in this suit; but as Sitamma had no power under Sastras to sell such an estate the deed of sale obtained by the 2nd defendant cannot be held valid.

The plaintiff had no right during the life-time of Sitamma to bring an action regarding her stridandum property; but as this suit has been brought within 12 years after her demise, the same is not barred by Limitation Rules.

Though the plaintiff stated in the plaint that the estate was given by their father to Sitamma also on account of her (plaintiff,) yet, as Sitamma's estate is a stridandum property, and as the plaintiff is actually entitled thereto, her claim is in no way defective.

Under the foregoing reasons, the Principal Sadr Amin, holding that the decree appealed against is just, upholds the same, and dismisses the appeal with costs.

A special appeal was presented to the High Court on the part of the 2nd defendant.

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Sanjiva Row, for the special appellant (2nd defendant.)

The Court delivered the following

JUDGMENT :—The Principal Sadr Amin seems justified by the authorities in saying that land received from the husband as stridanum cannot be alienated even after his death without the assent of the daughters and to their prejudice as next heirs. There is a “consensus” of the highest authorities, Native and European, for a restriction to this extent.

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Civil Miscellaneous Regular Appeal No. 242 of 1869.

KAILASANADA MUDELY.....*Petitioner.*

NARAYANA MUDELY.....*Counter-Petitioner.*

Section 270 of the Civil Procedure Code gives priority to the decree-holder who first causes the property of the judgment debtor to be attached, and not to the decree-holder who first applies for attachment.

THIS was an appeal against the order of E. B. Foord, the Civil Judge of Chingleput, dated the 5th May 1869, passed on Miscellaneous Petition No. 231 of 1869.

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The facts sufficiently appear from the following

JUDGMENT :—From the Return made by the Lower Court we find that plaintiff in Original Suit No. 96 of 1865 on the file of the District Munsif of Poonamallee applied for attachment of the defendant's property, and that the Indigo vat and some moveable property were attached on the 1st December 1868 and other moveable property on 2nd December 1868. We also find that the plaintiff in Original Suit No. 3 of 1864 on the file of the Civil Court applied for attachment of the same defendant's property, and that a house was attached on 1st December 1868 and the Indigo vat on 2nd December. On the 26th April 1869 the Indigo vat was sold for 300 Rupees by order of the Civil Court in execution of the decree in Original Suit No. 3 of 1864; and when the

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