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APPELLATE CIVIL.

Before Mr. Justice Mookerjee and Mr. Justice Carnduff.

1909
April 14

CHURAMAN SAHU
v.
GOPI SAHU.*

Hindu law—Mitakshara—Gift by Hindu widow to daughter—Gift of immoveable property to daughter at "gowna" or "dwiragaman" ceremony—Post-nuptial gifts—Reversionary heirs.

It is competent to a Hindu widow governed by the Mitakshara law to make a valid gift of a reasonable portion of the immoveable property of her husband to her daughter on the occasion of the daughter's *gowna* ceremony; and such a gift is binding upon the reversionary heirs of her husband.

SECOND APPEAL by the defendants, Churaman Sahu and others.

Musammat Janki Koer, the widow of Amrita Lal, a Hindu governed by Mitakshara law, made a gift of a house to her daughter Musammat Gango Koer, by a deed of gift dated the 28th December, 1891, on the occasion of the daughter's "*gowna*" ceremony. Musammat Gango Koer died childless in October, 1894, and Ajodhya Pershad, the *pro formâ* defendant, as her heir, sold the house to one Muni Lal, the defendant No. 2, and his son Churaman Sahu, the defendant No. 1.

The plaintiff on the death of Musammat Janki Koer as reversionary heir, commenced this action for a declaration of

* Appeal from Appellate Decree, No. 1063 of 1907, against the decree of L. Palit, District Judge of Gaya, dated May 20, 1907, reversing the decree of Nistaran Banerjee, Subordinate Judge of Gaya, dated Sept. 3, 1906.

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title and recovery of possession with mesne profits. The defendants Nos. 1 and 2 contested the suit on the ground that the gift to Musammat Gango Koer having been made for a lawful purpose the sale to them by her conferred on them an indefeasible title.

The Subordinate Judge held that the "*gowna*" ceremony was practically the completion and consummation of the marriage ceremony and that a gift of the immoveable property to the daughter by the mother on such an occasion must be treated as made for a valid and religious purpose, and that the gift was reasonable in extent, and he accordingly dismissed the plaintiff's suit. The lower Appellate Court, however, reversed the judgment of the Subordinate Judge and decreed the suit with costs. The defendants appealed to the High Court.

Dr. Rashbehary Ghose (*Babu Golap Chandra Sircar*, *Babu Jogendra Chandra Guha* and *Babu Lakshmi Narain Singh* with him), for the appellants.

Babu Umakali Mookerjee (*Babu Kulwant Sahay* with him), for the respondents.

Cur. adv. vult.

MOOKERJEE AND CARNDUFF JJ. The subject-matter of the litigation, which has resulted in this appeal, is a house which admittedly belonged to one Amrita Lal, a Hindu governed by the Mitakshara law. He died on the 1st October, 1886, and left a widow, Musammat Janki Koer, and an unmarried daughter, Musammat Gango. The daughter was given in marriage to the third defendant, Ajodhya Pershad, in May, 1889. Her *gowna* ceremony took place more than two years after her marriage, and on the 28th December, 1891, within a few days of the performance of that ceremony, her mother executed in her favour an absolute deed of gift in respect of the disputed house. Musammat Gango continued to be in possession of the house, as her *stridhan* porperty, and died in October, 1894. On the 5th January, 1899, her husband, as her legal heir, transferred the house to the first two defendants. Musammat

Janki Koer, the widow of the original owner, died on the 24th March, 1905, and on the 23rd July, 1905, the first plaintiff, who is distantly related to the original owner and is his nearest reversionary heir, executed a conveyance in favour of the 2nd plaintiff, under which he purported to transfer a half share in the house upon the allegation that the deed of gift of the 28th December, 1891, was inoperative after the death of the executant. On the 19th August, 1905, the plaintiffs commenced this action for declaration of title and recovery of possession, as also for mesne profits. The first two defendants, who had purchased from the husband of the daughter of Amrita Lal, resisted the claim substantially on the ground that the gift had been made for a lawful purpose, and had consequently created an indefeasible title in the donee. In the Court of first instance, the Subordinate Judge held that the *gowna* ceremony was practically the completion and consummation of the marriage, and that a gift of immoveable property to the daughter by her mother on that occasion must be treated as made for a valid religious purpose. He further found that the gift was reasonable in extent, and in this view he concluded that a distant reversionary heir like the plaintiff had no good ground for complaint. Upon appeal, the learned District Judge held that the *gowna* ceremony could not, except on philosophical and sentimental grounds, be regarded as part of the marriage ceremony, that there was no authority which entitled a Hindu widow to make a gift out of the estate of her husband to a daughter on the occasion of her marriage, and that much less could she do so on the occasion of the *gowna* ceremony. In this view, the District Judge reversed the decision of the Court of first instance and decreed the suit with costs. The defendants have now appealed to this Court and the substantial question of law, which has been argued on their behalf, is, whether a Hindu widow, governed by the Mitakshara law, is competent to make an absolute gift in favour of her daughter, on the occasion of the latter's *gowna* ceremony, of a reasonable portion of the immoveable property left by her husband. We have been invited on behalf of the appellants to answer this question in the

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affirmative, while it has been strenuously contended on behalf of the respondents that, although, under the Hindu law, it may be open to a widow to make a suitable gift to her daughter on the occasion of her marriage, neither principle nor authority can be invoked in support of the validity of a post-nuptial gift to a daughter. The question raised is one of great importance and of some nicety; but upon a careful examination of the principles and authorities, which we shall presently explain, we feel no doubt that the question ought to be answered in support of the validity of such a gift.

That gifts to a bride on the occasion of her marriage, as also at the time of the bridal procession, are of considerable antiquity cannot be denied. There are passages in the Rig Veda, which describe such gifts: for instance, in Mandal 10, Sukta 85, verses 9 and 11, it is mentioned that Surjya gave his sister in marriage, who was asking in her mind for a husband, and that, when she was carried to her husband's home, the presents which had been given to her were carried before the cart. And to come down to considerably more modern times, we find gifts to brides on the occasion of marriage recognised as one of the commonest forms of *stridhan* or woman's peculiar property. Thus in a passage from Manu (IX, 194) and Katyayana quoted by Jimutavahana in the Dayabhaga, Chapter IV, section 1, para. 4, what is given before the nuptial fire and what is presented in the bridal procession, are described as two out of the six-fold forms of *stridhan*. To the same effect is a passage from Narada (XIII, 8) where mention is expressly made of gifts before the nuptial fire or presented in the bridal procession. Vishnu and Yajnavalkya apparently do not expressly mention gifts at the time of the bridal procession, but they refer to what is received and what is given before the nuptial fire. Again, whatever a woman receives at the time she is taken from her father's house to her father-in-law's house, is denominated as her *stridhan* under the terms *Adhya Vahanika*, which means presented in the bridal procession. When we turn to the Mitakshara, Chapter II, section XI, paras. 4 and 5, we find the commentator adopting the definitions given by Manu and Katyayana

and recognizing what is presented to the bride before the nuptial fire or in the bridal procession as an ordinary form of *stridhan.* To the same effect is the discussion in the Viramitrodaya, Chapter V, part I, section III (Sastri Golap Chandra Sarkar's Translation, p. 222). There can be no question, therefore, that from the earliest times institutional writers and commentators on Hindu law have recognised gifts to a bride at the time of her marriage before the nuptial fire, as also what is received by her, when she is conducted from her father's house to her husband's, as among the most common forms of a woman's property. It would be a mistake to suppose, however, that the right of a Hindu daughter whose father is dead, to receive a dowry at the time of her marriage from the estate of her father is dependent merely upon ancient custom. There are express texts which show that, if a man leaves unmarried daughters, the persons, who take his property by inheritance or by survivorship, are bound to make adequate provision for their marriage. Thus in Manu, Book IX, verse 118, it is provided that, "to the unmarried daughters by the same mother, let their brothers give portions out of their own allotments respectively according to the class of their several mothers; let each give a one-fourth part of his own distinct share; and those who refuse to give it shall be degraded." To the same effect is the rule laid down in Yajnavalkya, Book II, verse 124, that "uninitiated sisters should have their ceremonies performed by those brothers, who have already been initiated, giving them a quarter of their own share." With reference to this last text, it appears that, although at one time *upanayana* as distinct from marriage was allowed to females, now, according to usage and a well-known text of Manu (Book II, verse 67), their initiation consists of their marriage. The two texts, to which we have just referred, have led to considerable difference of opinion amongst commentators; one school adopts a liberal construction, while another school maintains that all that is intended to be laid down is, as stated in the text of Vishnu, "that the marriage ceremony of the unmarried daughters should be performed according to the father's wealth," and that the word "quarter" is here used, not in its

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plain sense, but simply to enjoin the allowance of as much as will suffice for the marriage of the sisters. Visvanath Mandalik in his edition of the Institutes of Yajnavalkya, at page 217, points out that Vachaspati Misra follows this interpretation, and his view is adopted by Sulapani. The Smriti Chandrika, Bharuchi, a commentator of Manu, and Jimutavahana follow the same rule, whereas Vijnaneswara and the author of Viramitrodaya notice this interpretation and reject it; the authors of the Mayukha and the Kamalakara follow Vijnaneswara, while Aparарka and Medhatithi in their commentaries on the text of Manu, which we have just quoted, also make observations to the same effect. It may further be mentioned that Aparарka, in his commentary on the Institutes of Yajnavalkya (Poona edition, Vol. II, page 731) relies upon the text of Narada and Vyasa in support of the view that an unmarried daughter is entitled to a quarter of the share, which she would have received, if she had been a son. But whichever view be accepted, it is clear from the Mitakshara, Chapter I, section 7, paragraphs 5 to 14, and from Viramitrodaya, Chapter II, part I, section 21 (Sastri Golap Chandra Sarkar's Translation, pages 81 to 84), that the maiden daughter is entitled to a share, which represents her dowry and marriage expenses, and such share is one-fourth of what she would have been entitled to receive, if instead of being a daughter she had been a son. These texts are, in our opinion, sufficient to support the view that when upon the death of a Hindu governed by the Mitakshara law, his property is taken by his widow, a gift by the widow to her daughter on the occasion of her marriage out of the estate of her husband is within her powers, provided that the portion so given is reasonable in amount, and that the question whether it is reasonable or not has to be determined with regard to what would have been the share of the unmarried daughter under the rules laid down in the Mitakshara, Chapter I, section 7, paragraphs 5 to 14. That a Hindu widow is entitled to alienate a portion of her husband's estate for the marriage of her daughter is beyond controversy. As to this, it will suffice to refer to the Vyavastha Darpan of Shama

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Charan Sircar (1st edition, page 59; 2nd edition, page 54), where it is stated that the widow is competent, even without the consent of reversioners, to make a sale or other disposition of her husband's property for the marriage of her daughter, and in support of the assertion, reliance is placed upon the text of Devala to the effect that "to maidens should be given a nuptial portion of the father's estate" (Jagannath's Digest translated by Colebrooke, Vol. I, page 185), and upon other texts of Vasistha and Paithinashi, which indicate plainly the religious benefit accruing to the father of a girl upon her marriage, and the sin committed, if the maiden is not given away in marriage before she attains puberty (Jagannath's Digest translated by Colebrooke, Vol. III, page 460). The same view has been adopted in judicial decisions of the highest authority. Thus in the case of *Cossi Nath Bysack* v. *Hurro Soondery* (1), which was heard by the Supreme Court at Calcutta in 1819 and by the Judicial Committee in 1826 [2 Morley's Digest, 198; Clarke's Rules and Orders 1834, page 91; Montriou's Cases on Hindu Law, 477 to 507; Vyavastha Darpan, 2nd edition, pages 89 to 107], it was stated by Lord Gifford, in delivering the opinion of their Lordships, that a Hindu widow had, "for certain purposes a clear authority to dispose of her husband's property, and might do it for religious purposes, including dowry to a daughter." The learned Judge further added that it was in his opinion absolutely impossible to define "the extent and limit of her power of disposing it, because it must depend upon the circumstances of the disposition whenever such disposition shall be made and must be consistent with the law regulating such disposition." The validity of gifts on the occasion of marriage of unmarried daughters has also been affirmed in more recent cases. Thus in the case of *Ramasami Ayyar* v. *Vengidusami Ayyar* (2), it was ruled that, when upon the death without issue of a Hindu, in whom the whole of the family property had vested, her mother took the estate and subsequently gave a portion of the property to her son-in-law on the occasion of his marriage with

(1) (1826) Clarke's Rules and Orders, 91.

(2) (1898) I. L. R. 22 Mad. 113.

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her daughter, the gift, which was found not to be otherwise than reasonable in extent, was upheld as binding on the reversioner. Mr. Justice Subramania Ayyar relied upon passages from the Mitakshara, Chapter I, section 7, paragraphs 6 to 14, and Smriti Chandrika, Chapter IV, section 20, which deal with the question of allotment to be made by brothers to their maiden sisters at the time of partition, and referred to the circumstance that the commentators were divided as to their precise import, some of them holding that all that the texts mean is that the funds required for the marriage of sisters should be provided out of their father's estate, and others maintaining that, inclusive of their marriage expenses, sisters are entitled to a provision not exceeding one-fourth of what they would have obtained had they been males. The learned Judge, without deciding the question which of the two views has to be taken as law, held that the texts justified something more than a disbursement out of the estate of only the price of things required in connection with the celebration of the marriage, and that the better and sounder view was that the authorities should be understood to empower a qualified owner, like a widow, to do all acts proper and incidental to the marriage of a female, according to the general practice of the community to which she belongs. In the particular case then before the Court, it was held that as at the time when a girl belonging to the community concerned was handed over in marriage, certain gifts had to be made to the bridegroom, one of which was *bhoodanam* or gift of land, a gift by the widow in conformity with immemorial custom must be upheld. The learned Judge also observed that the gift could be defended on the ground that, apart from the circumstance that it was a provision for the married couple, it was believed to enhance the merit of the primary act, namely, the giving of a virgin in marriage, which from a religious point of view is supposed to be productive of considerable benefits to the parents. We are entirely in agreement with this view of the law, which is, moreover, supported by still later decisions. Thus in *Kudutamma* v. *Narasimhacharyalu* (1), it has been

(1) (1907) 17 M. L. J. 528.

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ruled that a Hindu father governed by the Mitakshara law, who would not ordinarily be entitled to transfer any portion of the coparcenary property, is entitled to make a gift by way of marriage portion to his daughters out of the family property to a reasonable extent, and, further, that a Hindu brother, the managing member of a joint family, does not act in excess of his powers as such when he gives away a reasonable portion of the joint family property to his sisters who, though married in their father's lifetime, were left for some reason or other without marriage portions. The learned Judges held that they were not required to rule that the brother was bound to do so or that the father was bound in law to give his daughter anything at her marriage, but that all that was necessary to rule was that the gift was not in excess of the powers of the brother, and could not, therefore, be recalled by him or avoided by his son. The case of *Kamakshi Ammal* v. *Chakrapany Chettiar* (1) is not really opposed to this view, and is at best an authority for the proposition that an undivided member of a Hindu family governed by the Mitakshara law has no power to alienate a considerable portion of the joint family property by way of gifts to the female members of the family, specially when the gift is not shown to have been made in connection with the marriage of such female members. Substantially the same view was taken by the Allahabad High Court in *Rustam Singh* v. *Moti Singh* (2), in which it was ruled that, when a Hindu leaves an unmarried daughter, her mother, in order to raise money to meet the expenses of the daughter's marriage, may mortgage properties of her own which had come to her from her father, and that such an alienation was binding upon the reversionary heirs of her father. The decision of this Court in *Damoodur Misser* v. *Senabutty Misrani* (3), in which it was stated that properties sufficient to defray the expenses of the nuptials should be given to unmarried daughters, tends in the same direction. Upon the authority of the ancient texts and of the commentators, as also upon the judicial decisions to

(1) (1907) I. L. R. 30 Mad. 452. (2) (1896) I. L. R. 18 All. 474.
(3) (1882) I. L. R. 8 Calc. 537.

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which we have referred, there cannot, in our opinion, be any reasonable doubt that a gift by a Hindu widow of a reasonable portion of her husband's immoveable property to her daughter in connection with her marriage is within the scope of her authority as a qualified owner and is binding upon the reversionary heirs of her husband. It was strenuously contended, however, by the learned vakil for the respondents that the *gowna* ceremony would not, for the purpose of this rule, be treated as part of the marriage or necessarily connected with it. In our opinion, this contention is entirely unfounded. What is called the *gowna* ceremony is also known as the *dwiragaman* ceremony, that is, the ceremony performed when the young wife, upon the attainment of puberty, leaves her parental home to take up her residence in the house of her husband. The authorities, to which we shall presently refer, provide for the performance of ceremonies on the occasion, and it is well known that it is customary to make gifts to a daughter of the house at the time she leaves her parental abode. It is not, of course, suggested that the marriage ceremony is incomplete without the *dwiragaman* ceremony. The relationship of husband and wife is indissolubly created by the performance of the marriage ceremony. So far as that relationship is concerned, it is finally and conclusively established upon the completion of the ceremonies performed at the time of the marriage. Nevertheless, the *dwiragaman* ceremony is regarded as an essential complement to marriage, and it is an occasion of importance, on which, according to the customs prevalent in Behar, gifts have to be made to the daughter. Raghunandan in his Jyotishtawta (Institutes, Vol. I, page 360) quotes a verse from Narayan Paddhati, which defines *dwiragaman* as the second entrance of the bride into the house of her husband from that of her father after the celebration of the marriage. Such is the importance attributed to this ceremony, that Sanskrit works on law and ritual abound in minute rules as to the time when alone it can be performed. Thus Raghunandan in the work just mentioned quotes a verse from Kritya Chintamani to the effect that a bride, if her *dwiragaman* is celebrated in the eighth year, kills

her mother-in-law; if in the tenth year, kills her father-in-law; and if in the twelfth year, kills her husband. Raghunandan again relies upon a verse of Prachetas quoted in the Sripati-Sanhita, which prescribes that the *dwiragaman* ceremony can be performed only under certain constellations on defined auspicious moments. To the same effect are passages in the Dipika, Sat Kritya Muktabali, Jyotish Sara-Sangraha and Muhurta Chintamani (Benares edition, Sambat 1930, page 84). Similar restrictions are also prescribed by Gadadhar Dikhit, who flourished in Behar, in his commentary on the Parasara Girhyasutra of the Yajur Veda, Kanda I, Aphorism 2 (Benares edition, page 145). No reference to the *dwiragaman* ceremony is apparently to be found in the Vedas (Marriage Hymn in Mandal X, Sukta 85, Wilson's Rig Veda, Vol. VI, page 223) for the obvious reason that in Vedic times marriages of girls took place after attainment of puberty and the bride finally left the parental abode immediately upon the completion of the marriage ceremony. In later times, however, when the custom of marriage before puberty became firmly established, simultaneously the custom of *dwiragaman* grew up and came to be recognised in authoritative Sanskrit works on Hindu ritual. The works, to which we have referred, are fairly old; for instance, the writings of Raghunandan go back to the fifteenth century, the Muhurta Chintamani dates back to the sixteenth century, and the Jyotish Sara-Sangraha was composed at about the same period. But there are other works of a much earlier date which speak of the *dwiragaman* as an important ceremony in relation to marriage; for instance, in the Sanskara Ratnamala of Gopinath, one entire section is devoted to marriages (Poona edition, Vol. I, pages 454-603), and on page 570 the learned author describes *dwiragaman* as related to marriage and closely connected with it, on the authority of a text of Vyasa. The authenticity of the text of Vyasa can hardly be called in question, as the same text is quoted in Nirbandha Siromani and Nirnaya Sindhu (Bombay edition, 1901, page 243). These references amply show that the *dwiragaman* ceremony is treated in works of authority as a ceremony of importance closely

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connected with marriage. In our opinion, there is no substantial distinction between gifts made at the nuptial fire or in the bridal procession and gifts made at the time of the *dwiragaman* ceremony. In fact, gifts made at the time of the *dwiragaman* ceremony, may rightly be regarded as dowry deferred, and if it was competent to Janki Koer to make a gift to her daughter, Musammat Gango, on the occasion of her marriage, it was equally competent to her to make a gift on the occasion of her *gowna* ceremony. The only question is whether the gift was of a reasonable portion of her husband's immoveable property. On the principle laid down by Lord Gifford, to which we have already referred, this must be determined with regard to the circumstances of the particular disposition. Now the evidence shows that Amrita Lal died, leaving only one daughter; and his properties consisted of three houses, the total value of which according to the evidence given on behalf of the defendant, which is more detailed and more trustworthy than that adduced on behalf of the plaintiff, was approximately Rs. 3,800. The particular house, which was transferred by way of gift to the daughter, was worth about Rs. 1,200; in other words, the value was a little more than one-fourth and a little less than one-third of the total value of the three houses. In these circumstances, it is impossible to say that the gift was unreasonable in extent.

On all these grounds, we must uphold the contention of the appellants, that it is competent to a Hindu widow governed by the Mitakshara law to make a valid gift of a reasonable portion of the immoveable property of her husband to her daughter on the occasion of the daughter's *gowna* ceremony, and that such gift is binding upon the reversionary heirs of her husband. We further hold that in the circumstances of the case before us, the gift was proper and reasonable and conferred an absolute title upon the donee.

The result, therefore, is that this appeal must be allowed, the decree of the District Judge set aside, and the decree of the Subordinate Judge restored. We direct that each party do pay his own costs throughout the litigation.

S. A. A. *Appeal allowed.*