A. L. V. R. S. T. Veerappa Chettiar

Vs

S. Michael etc.

Civil Appeals Nos. 131 and 132 of 1960

(Syed Jafar Imam, K. Subha Rao, N. Rajgopala Ayyangar JJ)

19.11.1962

JUDGMENT

SUBBA RAO, J. –

These appeals filed by a certificate issued by the High Court of Judicature at Madras raise a question of Hindu Law pertaining to marriage in 'Asura form'. The material facts may be briefly stated : To appreciate the facts and the contentions of the parties the following genealogy may be usefully extracted :-

Muthusami
Naicker_________________________________|____|

|Senior wife Junior wife | |Konda Bommu Naicker Kamayasami Naicker (died 23.10.1876) (died 31.7.1901) | | | Ponnuthayee | (died 13.3.1938) | | |
____ | | | | | | Dorairaja Muthusami Kamayasami Paramasivam | alias (2nd Plff.) (3rd Plff.) (4th Plff.) | Thanipuli | chami | (1st Plff.) |____| | |Shanmuga Valla married also 8 other wivcs Kandaswami NaickerKonda Bommu of whom the last to die were: (died 31.7.1881)Naicker (a) Meenakshi Ammal (died 21.1.1901) (died 5.6.1938) | (b) Krishna AmmalMarried Errammal (died 10.11.1938)(died 2.2.1933) (c) Vellayammal alias | ChinnathayammalBangaru Ammal (died 2.5.1940).(died 14.12.1930)##

Thevaram is an ancient impartible zamindari in Madurai District. Shanumugavalla Konda Bommu Naicker was zamindar from 23.8.1876 to 20.1.1901. On his death on January 21, 1901 Bangaru Ammal, his daughter, got his entire estate under the will executed by him. To discharge the debts incurred by her father Bangaru Ammal executed on March 13, 1913 a mortgage of her properties for a sum of Rs. 2,15,000/- in favour of one Chidambram Chettiar. On his death his son Veerappa Chettiar filed on April 16, 1921, C.S. 31 of 1925 against Bangaru Ammal in the Subordinate Judge's Court, Dindigul for the recovery of a sum of Rs. 5,49,633-8-7 being the balance of the amount due under the said mortgage. The suit was compromised and on July 28, 1928, a compromise decree was passed therein. Under the compromise decree the mortgaged properties were divided into three Schedules A, B & C and it was provided that if a sum of Rs. 3,75,000/- was paid by July 31, 1931, the mortgage must be deemed to have been fully discharged but in default the properties in Schedule A of the decree were to become the absolute properties of the plaintiff. B Schedule properties i.e., some of the plaintiff. B Schedule properties i.e., some of the pannai lands and the C Schedule properties, i.e., those already alienated by Bangaru Ammal were released from the mortgage. One K.V. Ramasami Iyer, the Manager of the estate was appointed Receiver of the A Schedule properties

and he was directed to deposit the surplus income into court towards the payment of the amount due under the compromise decree. Before the expiry of the period prescribed under the said decree Bangaru Ammal died on December 14, 1930, and her mother Errammal claiming to be her heir on the ground that Bangaru Ammal's marriage was held in 'Asura form' filed I.A. No. 190 of 1931 in the court of the Subordinate Judge, Dindigul, for directing the Receiver to hand over the estate to her. Veerappa Chettiar in his turn filed I.A. No. 170 of 1932 for directing the Receiver to deliver possession of A Schedule properties on the ground that the term prescribed under the compromise decree had expired and the balance of the amount due under the decree was not paid to him. In the petition filed by Errammal she raised the question of the validity and the binding nature of the compromise decree on her. After elaborate inquiry of February 1, 1933, the learned Subordinate Judge, though he held that the marriage of Bangaru Ammal was in 'Asura form', dismissed her petition for the reason that the mortgage was valid and binding on her and allowed the petition filed by Veerappa Chettiar directing the delivery of the possession of A Schedule properties to him. On February 2, 1933, Veerappa Chettiar had taken delivery of A Schedule properties and on July 19, 1933 he was registered as proprietor of Thevaram estate by the Collector of Madura.

On February 2, 1933, Errammal died executing a will dated January 30, 1933, in favour of her nephew Thangachami Naicker. It may also be mentioned that three of the co-widows of Shanmugavalla survived Errammal. They died one after another and the last of them Vellayammal passed away on May 2, 1940. Thangachami Naicker along with one of the widows filed appeals to the High Court against the said judgments but those appeals were dismissed by the High Court on the ground that they were not maintainable. As Thangachami Naicker interfered with the right of Veerappa Chettiar with regard to certain tanks and water courses in Zamindari he filed O.S. 2 of 1934 in the Subordinate Judge's court to Dindigul against Thanchami Naicker and obtained a decree declaring his right to the said tanks. The appeal filed by Thanchami Naicker against that decree was also dismissed with costs on April 10, 1940. In execution of the decree for costs Veerappa Chettiar got the property alleged to be in possession of Thanchami Naicker attached. One S. Michael (son of Thanchami Naicker) objected to the attachment of the said property on the basis of a sale in his favour by the alleged reversioners to the estate of Bangaru Ammal. That petition was dismissed on August 23, 1944. The said claimant S. Michael filed O.S. No. 52 of 1944 in the court of the Subordinate Judge, Dindigul for setting aside the said claim order. To that suit Veerappa Chettiar and Thangachami Naicker were made party defendants. On January 31, 1945 the alleged reversioners to the estate of Bangaru Ammal filed O.S. 14 of 1945 in the Court of the Subordinate Judge, Dindigul against Veerappa Chettiar, his younger brother and defendants 3 & 9 who were alleged to be the tenants in possession of some of the items of the plaint Schedule properties. The plaintiffs in that suit are the grandsons of one Kandaswamy Naicker shown in the genealogy a paternal uncle of Shanmugavalla Konda Bommu Naicker. They claimed that they are the reversioners to the estate of Bangaru Ammal on the ground that Bangaru Ammal was married in 'Asura form'. It is alleged in the plaint that succession opened in their favour when Vellayammal died on May 2, 1940 and that the compromise decree passed against Bangaru Ammal was not binding on them and that in any view the property set out in Schedule C and C-1 attached to the plaint did not pass to Veerappa Chettiar under the said decree.

The contesting defendants in both the suits pleaded that the marriage of Bangaru Ammal was not in'Asura form', and therefore the plaintiffs in O.S. 52 of 1944 were not the reversioners to the estate of Bangaru Ammal, that the compromise decree was binding on the estate and that C and C-1 Schedule properties also passed to the decree holder thereunder and that in any view the suit was barred by time.

It is seen from the foregoing narration of facts that the same questions of fact and law arise in both the suits for the title of the plaintiffs in O.S. No. 52 of 1944 was derived under a sale deed from the plaintiffs' in O.S. No. 14 of 1945. Therefore the plaintiffs' claim in the former suit will stand or fall on the plaintiffs' title in the latter suit. For that reason both the suits were heard together by the Subordinate Judge and appeals arising from his common judgment by the High Court.

The learned Subordinate Judge held on the evidence that the marriage of Bangaru Ammal with the Mannarkottai zamindar was in Asura form as Mannarkottai zamindar had spent Rs. 300/- to Rs. 575 for Bangaru Ammal's marriage and that circumstance was in view of certain decisions of the High Court would make it an Asura marriage. He further held that the aforesaid compromise decree was binding on the plaintiffs.

As regards C and C. 1 Schedule properties he held that they had passed to Veerappa Chettiar under the compromise decree as part of the Thevaram Zamindari and that the plaintiffs were not in possession within 12 years of the suit in regard to item 70 of the C Schedule. On those findings he dismissed O.S. No. 14 of 1945 with costs. In O.S. 52 of 1944 he held that the plaintiff therein acquired a valid title as he purchased the land in dispute therein from the plaintiffs in the other suit who are the reversioners to the estate of Bangaru Ammal and that the decree in execution of which the said property was attached was not binding on the estate of said Bangaru Ammal. In that view he decreed the said suit.

As against the decree passed in O.S. 52 of 1944, Veerappa Chettiar filed an appeal in the High Court of Madras being A.S. No. 816 of 1947. As against decree in O.S. 14 of 1945 dismissing the plaintiffs' suit they filed an appeal to the High Court being A.S. 83 of 1948. Veerappa Chettiar filed cross-objections therein. Both the appeals were heard together by the High Court. The High Court held that in Bangaru Ammal's marriage the practice of giving Kambu or flour or what is called the taking of Mappetti (millet flour box) before the betrothal was followed and that the marriage expenses were entirely borne by the Mannarcottai Zamindar presumably in pursuance of the practice existing in the community or in pursuance of an arrangement between the parties and therefore the marriage was Asura. The High Court further held that under the compromise decree only Melwaram right in C and C. 1 Schedule properties passed to Veerappa Chettiar but as there was no clear evidence as to who was in actual possession of the said lands and as the persons in actual occupation of the land were not impleaded in the suit, it was necessary in the interest of the parties to reserve the right of the plaintiffs to recover possession of C and C. 1 Schedule lands in an appropriate proceedings instituted for the purpose. In regard to item No. 70 of C. Schedule land the High Court agreed with the finding of the Subordinate Judge. The High Court also negatived the plea of limitation, with the result A.S. No. 816 of 1947 was dismissed with costs and A.S. No. 83 of 1948 subject to the said modification was dismissed with costs. Hence the appeals.

Both the appeals were heard together as they raised common points. The arguments of Mr. A.V. Viswanatha Sastri, the counsel for the appellant, may be summarised thus : The marriage of Bangaru Ammal with a Mannarcottai Zamindar was not held in Asura form and therefore the plaintiffs in O.S. 52 of 1944 being her father's uncle's grand-children were not reversioners to her estate. According to Hindu Dharamshastras the main distinction between Brahma and Asura form of marriages is that while in the former there is a gift of the bride, in the latter there is a sale of the bride. Except a bare allegation in the plaints that the said marriage was held in Asura form the plaintiffs did not give any particulars or set up any custom in the community to which the parties to the marriage belonged. They have adduced evidence to the effect that a sum of Rs. 1,000/- was paid as parisam by the Mannarcottai Zamindar to the bride's father for taking the bride but both the

courts having rightly held that the said payment was not established by the evidence erred in making out a case of a different consideration for the marriage. The first court held wrongly that the fact that Mannarcottai Zamindar spent Rs. 300/- to Rs. 575/- for the marriage expenses would make it an Asura marriage while the High Court went further and erroneously held that there was a general custom in the community to pay the bride's price by way of giving Kambu grain and Kambu flour at the time of the settlement of marriage and that for the bridegroom's party to bear the expenditure for celebrating the marriage and that in the case of Bangaru Ammal's marriage the said Kambu was given and that the expenditure for the marriage was incurred by the Mannarcottai Zamindar presumably in pursuance of the practice existing in the community or in pursuance of an arrangement between the parties. Apart from the fact that no such custom was pleaded, there was no evidence to sustain the said custom. That apart the mere giving of Kambu as a ceremonial relic of the past or the bearing of the expenditure on the marriage wholly or partly by the bridegroom's party could not be a bride's price as contemplated by the Sastras, for the bride's father in those events could not be said to have received any price for the bride. In short the learned counsel attacks both the legal and the factual findings arrived at by the High Court.

The gist of the learned counsel for the respondents, Mr. Bheemasankaran's contention may be briefly stated thus : According to Dharam Shastras there were eight forms of marriage in Hindu Law, four approved and four unapproved. But as centuries rolled by most of them became obsolete and at present there are only two forms of marriage, Brahmu and Asura. Whatever may have been their comparative merits in the bygone days, they have now come to be recognized as two valid forms of marriage that can be followed without any sense of inferiority by all the castes. Though in remote antiquity the Asura form of marriage might have involved a real sale transaction, at present it would be enough to constitute such a marriage if a ritual form was observed indicating the consciousness of the community or the parties contracting the marriage that it was an Asura marriage. This consciousness may be indicated by the ceremonial giving of Kambu at the time of betrothal or by the bridegroom's party meeting the expenses wholly-or substantially of the marriage. That apart in the present case there is clear evidence that the practice in the community to which Bangaru Ammal and her husband belonged that Kambu is given by the bridegroom's party to the bride's party at the time of betrothal and the bridegroom's party bears the expenditure of the marriage which clearly indicate that the bride's father or in his absence by the bride's relatives entitled to give her away in marriage get a clear benefit for giving the bride, and further there is evidence that the said practice was followed in the case of Bangaru Ammal's marriage. What is more to constitute a Brahmu marriage there should be a 'Kanyadhan' but in this case it has been found that there was no 'Kanyadhan' and therefore if the marriage of Bangaru Ammal could not have been in 'Brahma form' it could have been only in the alternative form, namely Asura form.

Before we advert to the arguments advanced we would like to make some general observations. We are not concerned here with the relatives importance of the said two forms of marriages at the present day but only with the conditions laid down by Shastras for the said two forms of marriage and with a question as to which form was adopted in Bangaru Ammal's marriage. Nor are we concerned with a question whether the institution of marriage in Brahmu form is now maintained in its original purity. We are also in these appeals not concerned with any customary form of marriage but only with a marriage sanctioned by Hindu Law, for no custom was pleaded in derogation of Hindu Law. But there may be a custom in a community not in derogation of the Hindu Law but in regard to the manner of complying with a condition laid down by Hindu Law, that is to say if the criterion for an Asura marriage was that there should be a sale of the bride, there may be a custom in a community in regard to the manner of paying the consideration for the sale. It may be mentioned that in this case the learned counsel for the respondents does not rely upon any custom

even in the later sense but only on the practice obtaining in the community in support of the evidence that the said practice was followed in Bangaru Ammal's marriage.

The main question therefore is what are the ingredients of an Asura form of marriage. As the Manu Samhita has always been treated by sages and commentators from the earliest time as being of a paramount authority, let us look to it for guidance. The following verses from Manu Samhita as translated by Manmatha Nath Dutt Shastri read as follows :-

CHAPTER III, Verse 21 :

> They (different types of marriages) are known as the Brahma, Daiva, A'raha, Prajapatya, A'sura, Gandharva, Rakshasa and Paisacha, which forms the eighth.

Verse 24 :

> The four forms of marriage the seers have ordained as proper for Brahmanas : only the Rakshasa form as proper for Kshatriyas, and the A'sura form as proper for Vais'yas and S'udras.

Verse 25 :

> Thus out of these five forms of marriage, three are lawful, and two are sinful (unlawful). Let a man never marry a wife either in the Pisacha or in the A'sura form since these two forms are prohibited.

Verse 27 :

> The form (of marriage) in which well-attired bride, decorated with ornaments, is given in marriage to an erudite, good-charactered bridegroom especially invited by the bride's father himself to receive her, is called Brahma.

Verse 31 :

> The form, in which the bridegroom, on paying money to her father and to herself, out of the promptings, of his own desire, receives the bride in marriage, is called A'sura.

Verse 51 :

> An erudite father of a girl shall not take anything by way of Sulka from her bridegroom. By taking a dowry out of greed, he becomes the seller of his off-spring.

Verse 53 :

> Even the acceptance of abovine pair (by the father of the bride from the bridegroom) is designated as a dowry by certain authorities, (the acceptance of) a dowry be it costly, or be it of insignificant value, constitutes the sale of the girl.

Verse 54 :

> A marriage in which the bride's relations do accept the dowry (voluntarily presented by the bridegroom's father, etc.) is no sale (of the bride), since such a present is but

an adoration of the bride done out of love or affection.

Verse 98 (of Chapter IX)

> Even a S'udra must not take any price (lit. duty or pecuniary consideration) for the hands of his daughter when giving her away in marriage. Such acceptance of money constitutes a sale of the girl in disguise.

The gist of the verses is that before Manu Smriti came into existence the A'sura form was considered to be proper for Vaishs and Sudras but it was prohibited for the Brahmins and Kashatriyas. But Manu was emphatic that the said form of marriage was sinful for all castes including the Shudras. There is no ambiguity in the verses in regard to the general prohibition to all castes, for Verse No. 98 emphasizes that even a S'udra must not take any price for the hand of his daughter when giving away in marriage.

The next question is what is the criterion of an A'sura marriage according to Manu. A contrast between the terminology in the definition of Brahma marriage and that of A'sura marriage brings out clearly his intention. The following words stand out in the definitions. They are 'dana' (giving) 'Kanyapradanam' (the taking of the bride), 'Dravina' (wealth), 'dattava" (after having given), 'Saktitah' (as much as he can), 'Svacchandya' (as according to his will). The word 'Apradana' is used in the definition of A'sura marriage in contradistinction to the word 'dana' in Brahmu form of marriage, while in the Brahmu form of marriage the father makes a gift of the bride, in the A'sura form the bridegroom takes the bride otherwise than by a gift. In the former the father gives the bride decorated with ornaments, while in the latter the bridegroom takes the bride after giving wealth to the father of the bride and the bride. While in the former the father voluntarily give the bride in the latter the bridegroom out of his own will pays as much money as he can to the father and takes his bride. The words 'Saktitah' and 'Svacchandya' imply that the payment is made because the bridegroom can and the girl is taken because he wills, that is to say a bridegroom who seeks the hand of a bride takes her as he can afford to buy her from her father. The transaction is equated to that of sale, for all the ingredients of sale were present. If there is any ambiguity that is dispelled by Verse 51 and Verse 54. In Verse 51 Manu makes it clear that by taking a dowry out of greed the father becomes the seller of his off-spring. `Sulka' means the taking of a gratuity or price. The expression 'dravina' in Verse 31 is clarified by the use of the word 'Sulka' in Verse 51. What is prohibited is Sulka or the price for the bride. Verse 54 brings out the distinction between 'Sulka' or 'dravina' paid by the bridegroom as a price for the bride and the dowry given for the bride as a present out of love or affection or in adoration of the bride. Verse 98 further emphasizes that what Manu prohibits is the sale of a bride for price. A'sura marriage, according to Manu, is a transaction of sale in which the girl is sold for a price.

Practically, the same meaning though expressed in different phraseology is given by other Hindu Law-givers. The following translations given by Max Muller in the 'Sacred Books of the East', of the various sages may now be extracted :-

Baudhayana text I, II, 20(7) :

> '(If the bridegroom receives a maiden) after gladdening (the parents) by money (that is) the rite of the Asuras (asura).'

Verse 2 :

'Now they quote also (the following verses : It is declared that a female who has been purchased for money is not a wife. She cannot (assist) as sacrifices offered to the Gods or the manes. Kasyapa has stated that she is a slave.'

Baudhayana Prasna I-Adhyaya 11, Kandika 21-Verse 3 :

'Those wicked men who, seduced by greed, give away a daughter for a fee, who (thus) fall (after death) into a dreadful place of punishment and destroy their family down to the seventh (generation). Moreover they will repeatedly die and be born again. All (this) is declared (to happen), if a fee (is taken).'

Vasishtha-Chapter I-Verse 35.

'If, after making a bargain (with the father, a suitor) marries (a damsel) purchased for money, that (is called) the Manusha-rite.'

Narada - Chapter XII-Verse 42.

When a price is (asked for the bride by the father and) taken (by him), it is the form termed Asura.

'Gautama, 'Chapter IV-Verse 11.

'The form of marriage in which a bride is purchased for money, is called the A'suram.'

Vishnu-Chapter XXIV-Verse 24.

'If the damsel is sold (to the bridegroom), it is called an Asura marriage.

'Yagnyavalkya': 'The asura by largely giving of money; the Gandharva by mutual consent; the Rakshasa by forcible taking by waging war and Paisacha by deceiving the girl' - Transaction of Srisachandra Vidyaarnava : 1918 Edition page 126 :

In the Mitakshara the said text is commented upon thus :-

"The Asura marriage is that in which money is largely given (to the father and others in exchange for the girl).

'Apastamba' : 'If the suitor pays money (for his bride) and marries her (afterwards) that (marriage is called) the Asura-rite.'

'Kautilya' : Arthasastra :

'Sulkadanat Asura' - the word used is "Sulka"

Medhatithi, in his commentary on Verse 54 of Manu Samhita points out that the receipt of money or money's worth for the benefit of the girl (Kanyarthe) does not amount to her sale, and is desirable as it tends to enhance her self-esteem and also raises her in the estimation of others, and concludes with the observation that receipt of a dowry for the girl (kanyartham dhanagrahanam) is prescribed by thus stating the good arising from it (arthavadena) : Vide (1941) 2 M.L.J. 770 at 772.

Apte's Dictionary : page 239 : Col. III.

Asura is explained thus : 'One of the eight forms of marriage in which the bridegroom purchases the bride from her father or other paternal kinsmen'... Manu 331 and Yagnayavalkya 1.61 are cited.

The said sages and commentators accepted the view expressed by Manu and in effect described A'sura marriage as the transaction where a bride-groom purchases a girl for a price paid to the father of the girl or to kinsmen who are entitled to give her in marriage. The distinction between the bride's price and the presents to the bride is also recognized.

The learned Judges of the High Court relying upon the text of Apasthamba observed that the payment to the bride's father is for the purpose of complying with Dharma and not as a consideration for a commercial transaction. The interpretation may explain away on Dharmic principles the sordid nature of the transaction, but does not detract from its essential incidents. We, therefore, hold that A'sura marriage is nothing more than a transaction of marriage whereunder a bridegroom takes a bride for the price paid by him to the bride's father or others entitled to give her and therefore in substance it is a sale of the bride.

It is said that the incurring of the expenditure of the marriage by the bridegroom is also a consideration for giving the bride. In this context reliance is placed on the Law and Custom of Hindu Castes by Arthur Steel. This book was written in 1868. The author appears to have collected the laws and customs obtaining in the Presidency of Bombay, and had compiled them for the purpose of convenience of reference. At page 24 the author says : ' There are eight kinds of marriages recognized in the Sisters :- 1, Brahm, where the charges are incurred solely by the girl's father; X X X X X 5, Usoor, where she is taken in exchange for wealth, and married; this species is peculiar in the Wys and Soodra castes, B.S. (Mit), See Munoo, 3.20, 34. It is considered as Uscorwiwuha, and stree-soolk, and the money, if unpaid, is an unlawful debt, B-2, 199.

The definition of Asura by the author does not carry the matter further, for it is consistent with that given in the Hindu law Texts but what is relied upon is his definition of Brahmu marriage as one where charges are incurred solely by the girl's father. From the said definition a converse proposition is sought to be drawn viz : that marriage would be Asura marriage if the charges were incurred mainly by the bridegroom's father. Firstly the definition of Brahmu marriage by the learned Author does not conform with the definition of the said marriage by the law-givers. Secondly it does not follow from the passage that if the bridegroom's father incurs the expenditure the marriage is an Asura marriage. If that be so, the author would have stated in his definition of Asura marriage that such incurring of the expenditure would make a marriage an Asura marriage. This valuable compilation of the laws and customs of the day does not throw any light on the question now raised before us.

Let us now see whether there is any merit in the contention that the concept of sale for a price has by progress of time lost its content and that at the present time a mere form of sale irrespective of a real benefit to the bride's father would meet the requirements of an Asura marriage. No text or commentary taking that view has been cited to us. Indeed the case law on the subject does not countenance any such subsequent development.

The earliest decision on the subject cited to us is that the Divisional Bench of the Bombay High Court "Jaikisondas Gopaldas v. Harkisondas Hulleshandas' ((1876) I.L.R. 2 Bom. 9.). Green J, defines the Asura marriage at page 13 : "The essential characteristic of the Asura form of marriage

appears to be the giving of money or presents by the bridegroom or his family to the father or parental kinsmen of the bride, or, in fact, a sale of the girl by her father or other relation having the disposal of her in marriage in consideration of money or money's worth paid to them by the intended husband or his family.'

In 'Vijarangam and Damodhar v. Lakshuman and Lakshmi ((1871) 8 Bom. E.C. Reports 244.) West J. gives in interesting background to the origin of the institution of the Asura marriage and observes : "Of the several Shastras called by the plaintiffs and the defendants in this case, all agree that the giving and receiving of money for the bride is the distinctive mark of the Asura form of marriage."

In 'Muthu Aiyar v. Chidambara Aiyar ((1893) M.L.J. 261.), the money was paid by the bridegroom's people to the bride's father to meet expenses of marriage. The Subordinate Judge found on the evidence that the bride's father received the money for his own purposes and not for bride's benefit and therefore the marriage was an Asura one. The High Court in a short judgment accepted the finding and said. "it being found that a money payment was made to Thailu's father we are not prepared to differ from the courts below in their opinion as to the nature of the marriage." This decision is relied upon in support of the contention that where the bridegroom incurs the expenditure of the marriage, such a marriage is Asura marriage. But this decision is not a considered one. The appeal being a second appeal, the learned Judges accepted the finding of fact given by the Subordinate Judge, namely that the money payment was made to the bride's father and were not prepared to differ from it. The disinclination of the learned Judges to interfere in the second appeal on a question of fact cannot throw any light on the point that has directly arisen before us.

Chandavarkar J. in 'Chunilal v. Surajram' ((1909) I.L.R. 33 Bom. 433.) accepted the aforesaid definition when he said : "Where the person who gives a girl in marriage received money consideration for it, the substance of the transaction makes it, according to Hindu Law, not a gift but a sale of the girl. The money received is what is called bride-price; and that is the essential element of the Asura form. The fact that the rites prescribed for the Brahmu form are gone through cannot take it out of that category, if there was pecuniary benefit to the giver of the girl. The Hindu law-givers one and all condemn such benefit and the Shastras, regarding it as an ineradicable sin, prescribe no penance for the sale of a bride." The learned Judge also accepted the presumption that every marriage under the Hindu Law is according to the Brahma form but it can be rebutted by evidence.

In 'S. Authikesavulu Chetty v. S. Ramanujan Chetty' ((1909) I.L.R. 32 Mad. 512.) at the betrothal ceremony a married woman of the caste to which the parties belonged proceeded from the bridegroom's house to the house of the bride carrying certain presents consisting of cocoanuts, betel and nut, garlands, black-beads, saffron red powder, etc. in a tray. There was also a pagoda and a fanam in it. There was also an arrangement at that time that the bridegrooms' father had to pay certain amount to the bride and the bride's father had also to give some jewels to the bridegroom. It was contended that the marriage was an Asura marriage. The learned Judges said that the distinctive mark of the Asura marriage was the payment of money for the bride, and that the payment of a pagoda and 2 1/2 annas could not have been intended to be the consideration for the bride where the bride's father spend thousands of rupees himself and gave presents of considerable value to the bride and the bridegroom. This decision, therefore, emphasises that mere payment of small amounts as a compliment to one of the parents cannot be treated as a consideration for the sale of the bride. It also lays down that all the circumstances of the case will have to be looked into to ascertain whether any amount was paid as price for the bride.

A Divisional Bench of the Madras High Court in 'Gabrielnathaswami v. Valliammai Ammal' (A.I.R. 1920 Mad. 884.) negatived the contention that the mere fact that a bride's parents received what is known as 'parisam' it would lead to the conclusion that the marriage of the girl took place in Asura form and not in Brahma form. The learned Judges observed : "It may be that parisum is a relic of what in old days was regarded as the price for the bride. x x x x The real test is whether in the community or among the parties the payment of 'parisam' was tacitly understood as being substantially a payment for taking the girl in marriage. That will depend generally upon the evidence in the case." They also reaffirmed the presumption under Hindu Law in the following words :- 'Ordinarily the presumption is that what ever may be the caste to which the parties belong, a marriage should be regarded as being in the Brahma form unless it can be shown that it was in the Asura form'. This decision deals with 'parisam' with which we are also concerned in these appeals. This is an authority for the proposition that the use of the word 'parisam' is not decisive of the question that it is a bride's price, but that it must be established in each case whether the payment small or large, in cash or kind, is made as a bride's price i.e. as consideration for the bride.

In "Ratnathanni v. Somasundara Mudaliar" ((1921) 41 M.L.J. 76.) a sum of Rs. 200/- was paid to the bride's mother for the expenses of the marriage as a term of the contract of the marriage. On that finding Ramesam J. concluded that the payment was made for the benefit of the bride's mother as in the absence of the payment, she would have had to find the amount in some other way, by borrowing or pledging her jewels or other properties and therefore the marriage was in Asura form. The learned Judge relied upon Steel's observation that the parents should incur the expenditure of the marriage in the Brahma form and presumably drew a contrary inference that if the brideg-room's party met the expenditure it would be an Asura marriage. The learned Judge also relied upon the decision in 'Muthu Aiyar v. Chidambara Aiyar' ((1893) 3 M.L.J. 261.) Spencer, J. in a separate judgment agreed with him. As we have pointed out we do not see any justification in the Hindu Law texts in support of the view that the bearing of the expenditure of the marriage by the bridegroom is a test of an Asura marriage. The fact that the expenditure of the marriage is borne by bridegroom's party cannot in any sense of the term be a consideration given to the father for taking the bride.

Ramesam J. sitting singly in 'Samu Asari v. Anachi Ammal' ((1925) 49 M.L.J. 554.) restated his view in a more emphatic form. He observed : 'It seems to me immaterial whether it is the whole of the expenses of the marriage or a substantial portion of it. To the extent the bride's father gets contribution of that kind from the bride groom's father, he benefits by it; though he does not pocket it, but he spends for the marriage.........' At the same time the learned Judge observed that under certain circumstances payments made to the bride's parents which are either small or relatively small having regard to the scale in which the expenses of the marriage are incurred do not made a marriage an Asura marriage. This decision therefore makes a distinction between courtesy presents given to the bride's parents and whole or substantial portion of the expenditure incurred by the bride-groom's father. While we agree that courtesy presents to the bride's parents cannot by themselves conceivably make a marriage an Asura one, we find it difficult to hold that the incurring of expenditure by a bridegroom satisfies the test of consideration for the bride.

In 'Kailasanatha Mudaliar v. Parasakthi Vadivanni' ((1934) I.L.R. 58 Mad. 488.), Varadachar J., speaking for the Court lays down the test of the Asura marriage in the following manner : 'The distinctive feature of the Asura form of marriage is the giving of money or money's worth to the bride's father for his benefit or as consideration for his giving the girl in marriage." The learned Judge distinguishes the case of 'Samu Asari v. Anachi Ammal' ((1925) 49 M.L.J. 554.) on the ground that there money was held to have been paid for the father's benefit though utilized by him to meet the expense of the marriage which he must have defrayed out of his own fund and points out

also the distinction between payment to the father for his own benefit and payments to the bride received by kinsmen not for their own use. In that case a jewel was presented by the bride's father and placed on the bride's neck at the time of the betrothal ceremony as 'parisam' and the value of the jewel was not even the subject of a bargain but merely left to the pleasure of the bridegroom's father. The learned Judge observed that such a gift could in no sense be called bride's price.

In 'Sivangalingam Pillai v. K.V. Ambalavana Pillai (A.I.R. 1938 Mad. 479.), the bride's father gave a large amount and also jewels to the bride and plaintiff's brother-in-law on behalf of the bridegroom gave the bride's father a present of Rs. 1,000/- and a cloth worth Rs. 65/-. It was also agreed that all the expenses of the marriage should be borne by the bridegroom. It was contended that the said presents and the incurring of expenditure on the marriage was a consideration for the bride and therefore the marriage was in an Asura form. The Divisional Bench rejected the contention. Pandrang Row J. - observed at page 481 : "It is a well-known fact that, whatever the custom is, the bridegroom and his people also spend a considerable sum of money in respect of the marriage whenever they can afford it. Such expenditure obviously does not convert the marriage which is otherwise in the Brahma form into one which is in the Asura form." The learned Judge proceeded state at page 480 thus : "So far as our Presidency is concerned, all marriages among Hindus are presumed to be in the Brahma form unless it is proved that they were in the Asura form; in other words, it is incumbent on the party who alleges that a particular marriage was in the Asura form to prove that bride price was paid in respect of the marriage by the bridegroom or his people to the bride's father's and the present given to the bride's father the learned Judge remarked that this customary present would not necessarily amount to payment of bride's price.

Abdur Rahman J., added that 'if a party wishes to assert that the marriage was Asuric in form, he must establish that some price was paid for the bride in pursuance of either of an express or implied contract to the bride's father or on his account." This Judgment we may say so with respect puts the principle on a correct legal basis and brings out in bold relief the distinction between bride's price on the one hand and the presents and the expenditure incurred in respect of the marriage by one or the other of the parties on the other hand.

Patanjali Sastri J., in 'V.S. Velavutha Pandaram v. S. Suryamurthi Pillai' ((1941) 2 M.L.J. 770.) approached the case if we may say so from a correct perspective. There a sum of Rs. 500/- was paid by the bridegroom to the bride's father for the specific purpose of making jewels for the bride in pursuance of a stipulation for such gift as a condition of giving the girl in marriage. The learned Judge held that the said payment was not bride's price and did not make the marriage an Asura marriage. The learned Judge in passing referred to the case of 'Samu Asari v. Anachi Ammal' ((1925) 49 M.L.J. 554.) and observed as follows :- "As the father we benefited by such contribution in that he was relieved to that extent from defraying such expenses himself, the marriage was one in the Asura form. This view has been criticised in the latest edition of Mayne's Hindu Law as not really warranted by the Hindu Law texts, and the point may have to be reconsidered when it arises." Patanjali Sastri, J., again considered this point in Second Appeal No. 2272 of 1945. There on the occasion of the marriage one sovereign was given along with the other presents to the bride's father as Memmekkanom. The question was whether the mere adoption of this customary form per se brought the marriages within the category of an Asura or unapproved marriage. The learned Judge expressed the view that the payment of memekanom no longer signifies in substance and in truth consideration for the transfer of the girl but has survived as a token ceremonial payment forming part of the marriage ritual. The said judgment was confirmed by a Divisional Bench of the said High Court in 'Vedakummpprath Pillai Muthu appellant v. Kulathinkai Kuppan' ((1949) 2 M.L.J. 804.). Balakrishna Ayyar, J., speaking for the Bench neatly summarised the law on the subject at page 804

thus : "One essential feature of an Asura marriage, the feature which makes the form objectionable, is that the father of the bride, receives a gratuity or fee for giving the girl in marriage. Ordinarily, it would be expected of every decent and respectable father when he selects a husband for his daughter to make his selection uninfluenced by any considerations other than the welfare of the girl. But when he receives a payment for his personal benefit, a very objectionable factor would influence his selection and it is clearly this which the ancient law-givers took objection to and therefore relegated the form to the category we call 'disapproved'. When the father accepts money and allows his greed or avarice to sway his judgment, he thereby converts what is intended to be a sacrament into a commercial transaction." With respect we are in full agreement with the observations of the learned Judge. Commenting upon the argument built upon the payment of one sovereign to the bride's father the learned Judge observed : "In most, though not necessarily in all cases, the payment has lost all its original significance and survives only as a ritualistic form; it has become a ceremonial symbol devoid of any content or meaning or purpose. X X X X Now when a father gives such a large amount as stridhanam and receives one sovereign in compliance with traditional form, it would be very wrong to say that he had been selling or mortgaging the girl and that he received the sovereign from greed or love of gain."

The foregoing discussion leads to the following results :-

Under Hindu Law marriage is a sacrament and it is the religious duty of the father to give his daughter in marriage to a suitable person but if he receives a payment in cash or in kind as a consideration for giving his daughter in marriage he would be converting a sacrament into a commercial transaction. Brahma marriage satisfies the said test laid down by Hindu Law. But from Vedic times seven other forms of marriage were recognized based on custom and convenience. Asura form is one of the eight forms of marriage. The essence of the said marriage is the sale of a bride for a price and it is one of the unapproved forms of marriage prohibited by Manu for all the four castes of Hindu society. The vice of the said marriage lies in the receipt of the price by the bride's father or other persons entitled to give away the bride as a consideration for the bride. If the amount paid or the ornaments given is not the consideration for taking the bride but only given to the bride or even to the bride's father out of affection or in token of respect of them or to comply with a traditional or ritualistic form, such payment does not make the marriage an A'sura marriage. There is also nothing in the texts to indicate that the bearing of the expenditure, wholly or in part by the bridegroom or his parents is a condition or a criterion of such a marriage, for in such a case the bride's father or others entitled to give her in marriage do not take any consideration for the marriage, or any was benefit thereunder. The fact that the bridegroom's party bears the expenditure may be due to varied circumstances. Prestige, vanity, social, custom, the poverty or the disinclination of the bride's father or some of them may be the reasons for the incurring of expenditure by bridegroom's father on the marriage but the money so spent is not the price or consideration for the bride. Even in a case where the bride's father though rich is disinclined to spend a large amount on the marriage functions and allows the bridegroom to incur the whole or part of it, it cannot be said that he has received any consideration or price for the bride. Though in such a case if the bridegroom's father had not incurred the said expenditure in whole or in part, the bride's father might have to spend some money, on that account such as indirect result could not be described as price or consideration for giving the bride. Shortly stated Asura marriage is a marriage where the bride's father or any other person entitled to give away the bride takes Sulka or price for giving the bride in marriage. The test is twofold : There shall not only be a benefit to the father, but that benefit shall form a consideration for the sale of the bride. When this element of consideration is absent, such a marriage cannot be described as Asura marriage.

As the Asura marriage does not comply with the strict standards of Hindu Law it is not only termed as an unapproved marriage, but it has been consistently held that whenever a question arises whether a marriage is a Brahmu or Asura, the presumption is that the marriage is in Brahma form and the burden is upon the person who asserts the contrary to prove that the marriage was either an Asura or any other form.

With this background let us look at the facts of the case. Though in both the plaints it is stated that Bangaru Ammal had been married in Asura form, no particulars are given but in the evidence the plaintiff's witnesses in one voice depose that the custom in the Rajakambala caste to which Bangaru Ammal and her husband belonged, is to give money in the shape of 'parisam' to the bride's father at the time of the betrothal. The witnesses whom depose to Bangaru Ammal's marriage say that at the time of her betrothal a sum of Rs. 1,000/- was paid as 'parisam'. Both the Courts did not accept this evidence and they held that it had not been established that a sum of Rs. 1,000/- was paid as 'parisam' at the time of the betrothal of Bangaru Ammal. This finding is not attacked before us.

It is argued that the evidence discloses that there is a practice in the said caste to give Kambu as 'parisam' to the bride's father as a bride's price and the said practice supports the evidence that in the case of the marriage of Bangaru Ammal also such a 'parisam' was paid as consideration for the marriage. On the question of the said alleged practice the evidence does not support it. P.W. 1 to P.W. 10 depose that 'parisam' is paid in cash for marriages in their community varying from Rs. 150/- to Rs. 1,000/-. This evidence has been rightly disbelieved by both the courts. The evidence does not bear out the case of giving of 'parisam ' in Kambu. Some of the witnesses also depose to the payment of Rs. 1000/- as 'parisam' at Bangaru Ammal's marriage but that was not accepted by the courts. The evidence destroys the case that 'parisam' was paid at her marriage in Kambu. No witness examined in the two cases says that Kambu is paid at the marriages of the members of the community or was paid at the time of Bangaru Ammal's marriage as a consideration for the marriage but it is said that the witnesses whom had been examined in the earlier suit whose evidence has been marked by consent in the present case deposes to that fact. Errammal, the mother of Bangaru Ammal, whose evidence is marked as P. 11(R) deposes that when Thevaram Zamindar married her the 'parisam' was only Rs. 1000/- and that when her daughter was married, the 'parisam' was also Rs. 1000/-. In cross-examination she says that according to the custom of the community, it is the Practice to bring a mapelli for the nischithartham (betrothal function) and it is customary also to bring cumbu and flour at the time of the marriage and sprinkle it in the marriage hall. This evidence indicates that the 'parisam' is only given in cash but Kambu is brought at the time of the marriage and sprinkled in the marriage hall presumably for the purpose of purification. This evidence does not show that Kambu is given as 'parisam' for taking the bride.

Sermalai Naicker who gave evidence in an earlier suit which is marked as P. 11(a) belongs to Rajakambala caste. In his chief-examination he says that he paid Rs. 200/- as 'parisam' at the time of the marriage and paid Rs. 300/- as 'parisam' for the marriage of his son and received Rs. 200/- as 'parisam' for the marriage of his daughter. In cross-examination he says that on the betrothal day only one kalam of cumbu and cash are given to the bride's party and that the Kambu is used by the bride's people and that at the time of the marriage 3 or 4 marakkals of cumbu are again brought which is thrown over the bride and the bridegroom by way of blessing. He adds that throwing of the kambu is a ritual in marriage ceremonies and that Kambu and cash are called 'parisam'. This evidence brings out the distinction between cash paid as the 'parisam' and Kambu brought to conform with the traditional ritual.

R.W. 3 in the earlier suit whose evidence marked as D. 317 says that he was a guru of the

Rajakambala caste and that he performed the marriage of Moolipatti zamindar. He further says that Kambu is taken by the bridegroom's party to the bride's house when the betrothal takes place and that seven pieces of jaggery, a cloth etc. are also taken and that no money is given in the caste. We do not see how this evidence supports the practice of paying kambu as 'parisam'. Indeed his evidence shows that Kambu is taken only as a part of the ritual and he is definite that no 'parisam' is paid in the caste.

Ramasami Naicker Zamindar of Ammaianaickoor was examined in the previous suit and his evidence is marked as D-416. He is definite in the chief examination that no 'parisam' is paid in his community. He says that it is rather undignified to receive 'parisam' and that he has not seen any 'parisam' paid in his caste. Whether this witness is speaking truth or not, his evidence does not support the plaintiff.

From the aforesaid evidence it is not possible to hold that either there is a practice in the Rajakambala family to give Kambu as 'parisam' for the bride or kambu was paid as 'parisam' at the time of the betrothal ceremony in connection with Bangaru Ammal's marriage.

Reliance is placed upon Nelson's Manual of the Madura Country published in 1865. At page 82 of Part II in that Manual the following passage appears :-

> "After this, the price of the bride, which consists usually of 7 kalams of kambu grain, is solemnly carried under a canopy of white cloth towards the house of the bride's father its approach being heralded by music and dancing. The procession is met by the friends of the bride who receive the price, and allege together to the bride's house."

Similarly, in Thurston's Castes and Tribes of Southern India published in 1902 in Volume VII under the heading 'Thotti Naickers' at page 192, the following passage is given :-

> "The bride price is 7 kalams of Kambu and the couple may eat only this grain and horsegram until the wedding is over."

The evidence adduced in this case does not support the said statement. Even if those formalities are observed, they are only the relies of the past. That practice represents only a symbolic ritual which has no bearing upon the reality of the situation. Indeed the witnesses in the present case realizing the ritualistic character of the said observances seek to base the case of the Plaintiffs on a more solid foundation but have miserably failed in their attempt. These passages therefore do not help the plaintiffs.

The next question is whether the expenditure for the marriage was incurred by the bridegroom's party i.e. by the Mannarcottai Zamindar. The learned Subordinate Judge held on the evidence that Thevaram Zamindar spent a large amount of money for the marriage but the Mannarcottai Zamindar also spent a sum of Rs. 300/- or Rs. 575/- for the marriage expenses. He expressed the view that if the matter was res-integra, he would have held that the incurring of such an expenditure by the bridegroom's party would not have made the marriage an Asura marriage but felt bound by some of the decisions of the Madras High Court to come to the opposite conclusion. The learned Judges of the High Court came to the conclusion that the marriage expenses in their entirety were borne by the Mannarcottai Zamindar and it must have been either in pursuance of the custom or arrangement among the community. The evidence as regards the custom of the bride-groom's party incurring the

expenses of the marriage is unconvincing. Indeed the learned counsel for the respondent does not rely upon custom but he prefers to base his case on the finding of the High Court that the entire marriage expenditure was incurred by the Mannarcottai zamindar. Let us now consider the evidence in this regard in some detail.

P.W. 1 says in his evidence that Bangaru Ammal was the only child of the Thevaram Zamindar, that he was very affectionate to her and that he spent heavily for the marriage though he was not able to say how much he spends. P.W. 4 also says that Thevaram Zamindar gave her lot of jewels and finally gave her his entire estate. The evidence that Thevaram Zamindar spent large amounts on the marriage and gave lot of jewels to Bangaru Ammal must be true, for even in 1895 when the marriage of Bangaru Ammal took place it is inconceivable that the marriage would have been celebrated with a few hundred rupees that was given by the Mannarcottai zamindar. He must have spent much larger amount than that consistent with his status and position in life and particularly when he was celebrating the marriage of his only daughter.

Now coming to the documentary evidence in support of the contention that Mannarcottai Zamindar met the entire expenditure, the respondents relied upon P. 22, P. 23, P. 25, P. 26 and P. 28. P. 22 is a letter dated August 8, 1885, written by persons representing the Mannarcottai zamindar to the Thevaram Zamindar office. Therein he stated :- "You should soon get ready there all the materials and samans for the shed and 'panthal' in connection with muhurtham. We will start and come without fail." This letter does not show that Mannarcottai Zamindar gave the money for the materials and samans for the said 'Panthal'. It was only an intimation that everything should be made ready for the marriage as Mannarcottai people would be coming there without fail. Exhibit P. 23 is the account of expenditure incurred on Bangammal's marriage from 1.9.1895 to 5.9.1895. It is said that it represents the amount spent on behalf of Mannarcottai zamindar and the amount recouped from him. The document is not very clear. The account does not appear to represent the entire expenditure incurred at the time of marriage because the entry about charges for pounding 50 kalams of paddy shows that 50 kalams of paddy must have been supplied from Thevaram stores and there is nothing on the account to show that 50 kalams were purchased on Mannarcottai account. Be that as it may this account only shows that Mannarcottai zamindar paid about Rs. 300/- but the learned counsel for the respondents argued relying upon Ex. P. 27 that even the balance of Rs. 295/14/- in Ex. p. 23 shown as the excess amount spent by Thevaram Estate was paid off by the Mannarcottai zamindar to the Thevaram Zamindar. Exhibit P. 27 is an entry dated September 30, 1885 in the account book of Thevaram Zamindar. It show that the Maharaja meaning Thevaram Zamindar gave to Thevaram office Rs. 290. It does not establish the respondent's version. The only merit of the contention is that the two figures approximate each other. If that figure represents the amount paid by Mannarcottai Zamindar to Thevaram in full discharge of the amount due from the former to the latter, the entry would have run to the effect that the balance of the amount due from Mannarcottai under Ex. P. 23 was paid and it would have been credited in Mannarcottai account. It may have been that the sum of Rs. 290/- was the balance out of the amount that Thevaram Zamindar took with him when he went to Mannarcottai for meeting his expenditure. The other accounts P. 25 and P. 26 filed in the case are neither full nor clear and no definite conclusion could be arrived at on the basis of the said account. We therefore hold on the evidence and probabilities that Thevaram Zamindar had spent large amounts in connection with the marriage and Mannarcottoi zamindar spent only about Rs. 300/- in connection with the said marriage.

Such a finding does not bring the marriage within the definition of Asura marriage as explained by us earlier. The expenditure incurred by the bridegroom's party was not and could not have been the consideration for the Thevaram Zamindar giving his daughter in marriage.

It is contended that the High Court found that there was no 'Kanyadhan' at the time of the Bangaru Ammal's marriage and as 'Kanyadhan'was necessary ingredient of Brahmu marriage, Bangaru Ammal could not have been married in that form. The High Court relying upon the evidence of Veluchami Naicker who is stated to be the Guru of the caste held that 'Kanyadhan' had not been observed in Bangaru Ammal's marriage. The learned counsel for the appellant contests the correctness of the finding and he relies upon some invitations in support of his contention that 'Kanyadhan' was observed in Bangaru Ammal's marriage but the documents are not clear on the point. The Guru only narrates some of the ceremonies held in marriages in the community but he does not expressly state that the ceremony of 'Kanyadhan' was not observed at Bangaru Ammal's marriage. In this state of evidence the presumption in Hindu Law that the marriage was performed in Brahmu form must be invoked. As we have pointed out under the Hindu Law whether a marriage was in Brahmu form or Asura form the Court will presume even where the parties are Shudras that it was in the Brahmu form. Further where it is proved that the marriage was performed in fact the Court will also presume that the necessary ceremonies have been performed. See 'Mauji Lal v. Chandrabati Kumari" ((1911) L.R. 38 I.A. 122.). This presumption has not been rebutted in this case. That apart the argument of the learned counsel for the respondents mixes up an essential ingredient of the Brahmu marriage, namely the gift of the girl to the bridegroom with a particular form of ritual adopted for making such a gift. In both forms of marriages a girl is given by father or in his absence by any other person entitled to give away the girl to the bridegroom. In the case of Brahmu marriage it takes the form of a gift while in the case of Asura marriage as price is paid by the bridegroom it takes the form of a sale. As we have held that in Bangaru Ammal's marriage no consideration passed from the bridegroom to the bride's father, the father must be held to have made a gift of the girl to the bridegroom. To put in other words there was 'Kanyadhan' in Bangaru Ammal's marriage. We therefore reject this contention.

Lastly reliance is place on the conduct of the appellant in not questioning the correctness of the finding given by the learned Subordinate Judge in his application for delivery that the marriage was in Asura form. The learned counsel for the appellant sought to explain his conduct but in our opinion nothing turns upon it. If the marriage was not in Asura form as we held it was not, the conduct of the appellant could not possibly make it an Asura marriage. In this view it is not necessary to give opinion on the other questions revised in the appeals.

In the result the decrees of the High Court are set aside and both the suits are dismissed with costs throughout. One hearing fee.

Appeals allowed.

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