Guramma Bhratar Chanbasappa Deshmukh and Another

Vs

Malappa

Civil Appeal Nos. 334 and 335 of 1960

(M. Subha Rao, Raghuvar Dayal, J. R. Mudholkar JJ)

19.08.1963

JUDGMENT

SUBBA RAO J. –

These two appeals by certificate arise and out of Special Civil Suit No. 47 of 1946 filed by Nagamma, wife of Chanbasappa, for petition and possession of one-sixth share in the plaint scheduled properties with means profits. Chanbasappa died possessed of a large extent of immovable property on January 8, 1944. He left behind him three wives, Nagamma, Guramma and Venkamma and two widowed daughters, Sivalingamma and Neelamma, children of his pre-deceased wife. It is alleged that at the time of his death Venkamma was pregnant and that she gave birth to male child on October 4, 1944. It is also alleged that on January 30, 1944, Nagamma, the senior most widow, took her sister's son, Malappa, in adoption. A few days before his death, Chanbasappa executed gift and maintenance deeds in favour of his wives, widowed daughter, a son of an illegitimate son, and a relative. Long before his death, he also executed two deeds - one a deed of maintenance and another a gift deed of some property in favour of Nagamma. We shall deal with these alienations in detail in appropriate places.

The plaintiff, one of the three surviving windows of Chanbasappa, filed the aforesaid suit for recovery of her share after setting aside the alienations made by her husband on January 4 and 5, 1944. To that suit, Guramma and Venkamma, the other two widows of Chanbasappa, were made defendants 1 and 2; the alleged adopted son, defendant 3; the alleged posthumous son, defendant 4; and the alinees, defendants 5 to 8.

Defendant 3 naturally supported the plaintiff, and the other defendants contested the suit. The contesting defendants denied the factum and validity of the adoption of defendant 3 by the plaintiff; and they assured that defendant 4 was the posthumous son of Chanbasappa by Venkamma, the second defendant. The alinees sought to sustain the validity of the alienations in their favour.

As many as 12 issues were framed in the case. The learned Civil Judge found that defendant 3 was taken in adoption by the plaintiff on January 30, 1944, but it was invalid in law; that defendant 4 was born to defendant 2 by the deceased; that the plaintiff had failed to prove that the deeds executed by Chanbasappa on January 4, 1944 in favour of defendants 2, 5, 6, 7 and 8 were vitiated by fraud; and that the plaintiff was entitled to one-sixth share in the suit property and for partition and recovery of the same. In the result he passed a decree for partition and delivery of the plaintiff's one-sixth share in the property. He also held that defendants 1 and 2 would each be entitled to one-sixths share and that defendant 4 would be entitled to three-sixths share therein. He declared that the deeds executed by the deceased in favour or the plaintiff as well as in favour of the defendants were

binding on the parties to the suit. He directed an enquiry as to the future mesne profits from the date of the suit. The plaintiff and defendant 3 preferred an appeal to the High Court, being First Appeal No. 341 of the 1950 against the decree of the Civil Judge insofar as it went against them. The High Court agreed with the learned Civil Judge that defendant 4 was the posthumous son of the deceased by the second defendant; it accepted the finding of the learned Civil Judge that the adoption took place; but it also held that it was valid in law. It declared that the deeds executed by the deceased on January 4 and 5, 1944 in favour of defendants 6, 7 and 8 were invalid as also the gift over in favour of defendant 5. It held that, as defendants 1 and 2 were getting a share in the property, they were not entitled to separate maintains given to them under the deed executed by their husband and directed that that property also should be brought into the hotchpot and divided between the parties. It declared that the plaintiff and defendants 1 and 2 were each entitled to 4/27 share in the suit property, that defendant 3 was entitled to 1/9 share therein, and defendant 4 was entitled to 4/9 share therein. It also gave further directions in the matter of partition, costs and mesne profits.

Plaintiff and defendant 3 preferred Civil Appeal No. 335 of 1960, and defendants 1, 2, 4 and 5, the legal representatives of defendant 7 and defendant 8 preferred Civil Appeal No. 334 of 1960 to this Court against the decree of the High Court insofar as it went against them.

At the outset it would be convenient to clear the ground and focus our attention on the outstanding points of difference between the parties. The factum of adoption of defendant 3 by the plaintiff is accepted, but its legality is questioned. The fact that the 4th defendant, is the posthumous son of Chanbasappa by the 2nd defendant is also disputed. In the result the following questions only remain to be answered in the present appeals : (1) Whether the adoption of defendant 3 by the plaintiff was void as it was made at a time when defendant 4 had already been conceived. (2) Whether the alienations in favour of defendants 2, 5, 6, 7 and 8 are binding on the members of the family. And (3) What is the share of an adopted son of sudra in competition with the natural born son ?

Mr. Viswanatha Sastri, appearing for defendants 1 and 4 (Appellants 1 and 3 in Civil Appeal No. 334 of 1960) contends that the adoption of defendant 3 was void inasmuch as at the time of the adoption defendant 4 had been conceived. He presses on us to extend the legal position, by analogy, of the right of a son in the womb at the time his father made an alienation of a family property to set aside that alienation, to that of an adopted son it similar circumstances.

The Hindu law texts do not throw much light on the subject. Dattaka Chandrika and Dattaka Mimamsa are the treatises specially composed on the subject of adoption. Nanda Pandita cites the following texts of Atri and Cankha in Dattaka Mimamsa :

> "By a man destitute of son only must a substitute for the same be adopted". (Arti).
>
> "One to whom no son has been born, or whose son has died having fasted, etc." (Cankha).

In section 13, Nanda Pandita explains that the term "destitute of a son" must be understood to include a son's son and grandson. In Dattaka Chandrika the relevant part of the text of Cankha is stated thus :

"One destitute of a son" - see s. I, 4.

> "One having no male issue" - see s. II. 1.

These texts ex facie do not equate a son in existence with a son in the womb. If the authors of the said treatises intended do equate the one with the other, they would not have left it in doubt, for such an extension of the doctrine would introduce an element of uncertainty in the matter of adoption and defeat, in some cases, the religious object underlying adoption. It is now well settled that the main object of adoption is to secure spiritual benefit to the adopter, though is secondary object is to secure an heir to perpetuate the adopter's name. Such being the significance of adoption, its validity shall not be made to depend upon the contingencies that may or may not happen. It is suggested that an adoption cannot be made unless there is certainty of not getting a son and that if the wife is pregnant, there is likelihood of the adopter begetting a son and, therefore, the adoption made is void. The texts cited do not support the said proposition. It acceptance will lead to anomalies. Suppose a husband who is seriously ill and who had no knowledge of the pregnancy of his wife, makes an adoption; in such an event, the existence of a pregnancy, of which he has no knowledge, invalidates the adoption, whether the pregnancy turns out to be fruitful or not. If he has knowledge of the pregnancy, he will not be in a position to take a boy in adoption, though ultimately the wife may have an abortion, or deliver a still-born child or the child born may turn out to be a girl. Further, as it is well settled law that a son include a son's son and a grandson of the son, the pregnancy of a son's widow or a grandson's widow, on the parity of the said reasoning, will invalidate an adoption. We cannot introduce such a degree of uncertainty in the law of adoption unless Hindu law texts or authoritative decisions compel us to do so. There are no texts of Hindu law imposing of condition of non-pregnancy of the wife or son's widow or a grandson's widow for the exercise of a person's power to adopt. The decisions of the High Court on the subject discountenance the acceptance of any such condition. But there is a decision of Sudra Adalut in Narayana Reddi v. Varadachala Reddi (S.A. No.223 of 1859, M.S.D. 1859, p.97.), wherein it was observed that it was of the essence of the power to adopt that the party adopting should be hopeless of having issue. Mr. Mayne commenting upon the said observation drew a distinction between a husband taking a boy in adoption knowing that his wife was pregnant and doing so without the said knowledge and stated :

> "If a wife, known to be pregnant at the time of adoption, afterwards brought forth a son, it might fairly be held he was then in existence to the extent of precluding an adoption ....".

A division Bench of the Madras High Court in Nagabhushanam v. Seshammagaru ((1878-81) I.L.R. 3 Mad. 180) criticized the opinion of the pandits as well as the observation of Mr. Mayne, and came to the conclusion that an adoption by a Hindu with knowledge of his wife's pregnancy was not invalid. The Bombay High Court in Shamavahoo v. Dwarkadas Vasanji [(1888) I.L.R. 12 Bom. 202] accepted the said view. A division Bench of the Allahabad High Court in Daulat Ram v. Ram Lal [(1907) I.L.R. 29 All. 310] followed the Madras and Bombay decisions. No other decision has been brought to our notice either taking a different view or throwing a doubt thereon. All textbooks - Mayne, Mulla, Sarkar Sastri - accepted the correctness of the said view without any comment.

Mr. Viswanatha Sastri contends that under the Hindu law a son conceived or in his mother's womb is equal in many respects to a son actually in existence in the matter of inheritance, partition, survivorship and the right to impeach an alienation made by his father and that, therefore, logically the same equation must hold good in the case of adoption. When a son in his mother's womb is equated with a son in existence vis-a-vis his right to set aside an alienation or to reopen a partition, the argument proceeds, the father cannot validly adopt, as from the date of conception the son must be deemed to be in existence. But there is an essential distinction between an alienation, partition and inheritance on the one hand and adoption on the other : his right to set aside an alienation hinges

on his secular right to secure his share in the property belonging to the family, as he has a right by birth in the joint family property and transaction effected by the father in excess of his power when he was in embryo are voidable at his instance : but, in the case of adoption, it secures mainly spiritual benefit to the father and the power to adopt is conferred on him to achieve that object. The doctrine evolved wholly for a secular purpose would be inappropriate to a case of adoption. We should be very reluctant to extend it to adoption, as it would lead to many anomalies and in some events defeat the object of the conferment of the power itself. The scope of the power must be reasonably construed so as to enable the donee of the power to discharge his religious duty. We, therefore, hold that the existence of a son in embryo does not invalidate an adoption.

The next contention of Mr. Viswanatha Sastri is that the High Court, having set aside the alienations made by Chanbasappa, should have brought into hotchpot the property covered by the said alienations for the purpose of partition. The particulars of the alienations may be noticed at this stage.

#_____
____S. Exhibit Nature of PropertiesNo. No. Date In favour of document comprised of_____
____1. 362 4-1-44 D-1 Guramma Deed of Plt. Sch. A. maintenance2. 372 5-1-44 D-2 Venkamma Deed of Plt. Sch. A. maintenance & giftover to D-53. 369 4-1-44 D-6 Imam Deed of Gift. Plt. Sch. A. Sahib4. 370 4-1-44 D-7 Channappa Deed of Plt. Sch. A-35. 371 4-1-44 D-8 Neelamma Deed of Plt. Sch. A-3 maintenance ---------- ---------- 346 30-1-37 Plff. Nagamma Deed of maintenance 347 14-2-39 Plff. Nagamma Deed of Gift.----------
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This argument is based upon a misapprehension. The High Court, having set aside the alienations, including those in favour of defendants 1 and 2 directed the said property to be divided in accordance with the shares declared by it. This position is also conceded on behalf of the plaintiff and defendant 3. We need not, therefore, pursue this matter.

Mr. K. R. Chaudhri, following Mr. Viswanatha Sastri, further contends that the High Court went wrong in making a distinction between the documents executed in favour of the plaintiff in that while it confirmed the documents Exs. 346 and 347 executed in favour of defendants 1 and 2. There are no merits in this contention. The documents executed in favour of the plaintiff are Exs. 346 dated January 30, 1937 and 347 dated February 14, 1939. These two documents were executed by Chanbasappa at a time when he was the sole surviving coparcener, whereas he executed the documents in favour of defendants 1 and 2 after the 4th defendant was conceived. The former were executed when he had absolute power of disposal, whereas the latter were executed when he had ceased to have the said power. On the basis of this distinction the High Court rightly set aside the alienations made in favour of defendants 1 and 2.

Mr. Naunit Lal, appearing for some of the legal representatives of defendants 7 who are appellants 6, 9 to 11 and 12 in Civil Appeal No. 334 of 1960 and respondents 6, 9 to 11 and 12 in Civil Appeal No. 335 of 1960, contends that the gift deeds executed by Chanbasappa in favour of defendants 7 and 8 were binding on the members of the family. The High Court held that Chanbasappa could not have validly made these gifts of immovable property of the joint family after the 4th defendant was conceived and, therefore, they were void. Mr. Naunit Lal broadly contends that the alienations effected by Chanbasappa were voidable only at the instance of the 4th defendant, who was in the

womb on the date of the alienation and that as he has chosen to adopt them, the third defendant, who was adopted subsequent to the alienations, could not question their validity. Before we advert to the legal aspects of the argument, it may be stated at once that no question of consent of the 4th defendant can possibly arise in this case, as he was not born when the alienations were made and he was a minor at the time the suit was filed. We must, therefore, proceed on the basis that the alienations were made by one of the members of the joint family without the consent of the other members of the family. If so, at the time the alienations were made Chanbasappa had not the absolute power to alienate the family property, but only a limited one to do so for the purpose of necessity or benefit of the estate. The relevant principles are well settled. A coparcener, whether he is natural born or adopted into the family, acquires an interest by birth or adoption, as the case may be, in the ancestral property of the family. A managing member of the family has power to alienate for value joint family property either for family necessity or for the benefit of the estate. An alienation can also be made by a managing member with the consent of all the coparceners of the family. The sole surviving member of a coparcenary has an absolute power to alienate the family property as at the time of alienation there is no other member who has joint interest in the family. If another member was in existence or in the womb of his mother at the time of the alienation, the power of the manager was circumscribed as aforesaid and his alienation would be voidable at the instance of the existing member or the member who was in the womb but was subsequently born, as the case may be, unless it was made for purpose binding on the member of the family or the existing member consented to it or the subsequently born member ratified it after he attained majority. If another member was conceived in the family or inducted therein by adoption before such consent or ratification, his right to avoid the alienation will not be affected : See Avdesh Kumar v. Zakaul Hassain (I.L.R. [1944] All. 612); Chandramani v. Jambeswara (A.I.R. 1931 Mad. 550.); and Bhagwat Prasad Bahidar v. Debichand Bogra ((1941) I.L.R. 20 Pat. 727). In the instant case the impugned alienation were made at a time when the 4th defendant was in the womb i.e., at a time when Chanbasappa had only a limited right of disposal over the joint family property. The 4th defendant being in the womb, he could not obviously give his consent, nor ratify the alienations before the adoption of the 3rd defendant took place and he was inducted into the family. If the alienations were made by the father for a purpose not binding on the estate, they would be voidable at the instance of the 3rd or 4th defendant.

The next question is whether the two gifts were binding on the family. We shall now take the two gift deeds Exs. 370 and 371 executed by Chanbasappa - the former in favour of the 7th defendant and the latter in favour of the 8th defendant. The High Court, agreeing with the learned Civil Judge, set aside the gifts on the ground that the donor had no power to make a gift of the family property. Learned counsel for the legal representatives of the said defendants seeks to sustain the validity of the said two gifts. We shall consider the validity of the two gift deeds separately.

Ex. 370 dated January 4, 1944, is a gift deed executed by Chanbasappa in favour of Chanbasappa, the 7th defendant, in respect immovable property valued at Rs. 1,500/-. The donee was described as the donor's relative. The gift was made in token of love for the services rendered by the donee to the donor during the latter's lifetime. The gift was made, as it was narrated in the document, out of love and affection for the donee. It is contended that the said gift was for pious purposes and, therefore, valid in law. Can it be said that a gift of this nature to a relative out of love and affection is a gift for "pious purposes" within the meaning of that expression in Hindu law ? In Mitakshara, Ch. I, s. 1, v. 28, it is stated :

> "Even a single individual may conclude a donation, mortgage, or sale of immovable property, during a season of distress, for the sake of the family and especially for

> pious purposes."

In support of his contention that pious purposes include a charitable purpose; learned counsel relies upon certain passages in Mukherjea's "Hindu Law of Religious and Charitable Trust", 2nd Edn. The learned author says at p. 12 :

> "In the Hindu system there is no line of demarcation between religion and charity. On the other hand charity is regarded as part religion ..... All the Hindu sages concur in holding that charitable gifts are pious acts par excellence, which bring appropriate rewards to the donor .....".

The learned author proceeds to state, at p. 58 :

> "Religious and charitable purposes have nowhere been defined by Hindu lawyers. It was said by Sir Subrahmanya Ayyar J. in Partha Sarathi Pillai v. Tiruvengada ((1907) I.L.R. 30 Mad. 340) that the expression "dharma" when applied to gifts means and includes, according to Hindu text writers, what are known as Istha and Purtta works. As I have said already in the first lecture, no exhaustive list of such works has been drawn up by the Hindu lawgivers, and they include all acts of piety and benevolence whether sanctioned by Vedas or by the popular religion, the nature of the acts differing at different periods of Hindu religious history."

The learned author defined the words Istha and Purtta briefly thus, at p. 10 :

> "By Istha is meant Vedic sacrifices, and rites and gifts in connection with the same; Purtta on the other hand means and signifies other pious and charitable acts which are unconnected with any Srouta or Vedic sacrifice."

It may, therefore, be conceded that the expression "pious purposes" is wide enough, under certain circumstances, to take in charitable purposes though the scope of the latter purposes has nowhere been precisely drawn. But what we are concerned with in this case is the power of a manager to make a gift to an outside of a joint family property. The scope of the limitations on that power has been fairly well settled by the decisions interpreting the relevant texts of Hindu law. The decisions of Hindu law sanctioned gifts to strangers by a manager of a joint Hindu family of a small extent of property for pious purposes. But no authority went so far, and none has been placed before us, to sustain such a gift to a stranger however much the donor was beholden to him on the ground that it was made out of charity. It must be remembered that the manager has no absolute power of disposal over joint Hindu family property. The Hindu law permits him to do so only within strict limits. We cannot extend the scope of the power on the basis of the wide interpretation given to the words "pious purposes" in Hindu law in a different context. In the circumstances, we hold that a gift to a stranger of a joint family property by the manager of the family is void.

The second document is Ex. 371, dated July 4, 1944. Under that document, Chanbasappa created a life-interest in a property of the value of about Rs. 5,000/- in favour of his widowed daughter, the 8th defendant. In the document it is recited thus :

> "You are may own daughter and your husband is dead. After his death you have been living in my house only. For your well being and maintenance during your life time I have already given some property to you. As the income from the said property is not sufficient for your maintenance, you have asked me to give some more property for

> your maintenance. I have therefore gladly agreed (to the same) and passed a deed of maintenance in your favour regarding the below mentioned property and delivered it to your possession to-day only."

Under the said deed the daughter should enjoy the property during her lifetime and thereafter it should go to the 5th defendant. The gift-over would inevitably be invalid. But the question is whether the provision for the daughter's maintenance during her lifetime would also be invalid. The correctness of the recitals are not questioned before us. It is in evidence that the family possesses a large extent of property, worth lakhs. The short question is whether the father could have validly conferred a life-interest in a small bit of property on his widowed daughter in indigent circumstances for her maintenance. It is said that the Hindu law does not permit such a gift. In Jinnappa Mahadevappa v. Chimmava ((1935 I.L.R. 59 Bom. 459, 465), the Bombay High Court under accepted the legal position. Rangnekar J. held that under the Mitakshara school of Hindu law, a father has no right make a gift even of a small portion of joint family immovable property in favour of his daughter, although it is made on the ground that she looked after him in his old age. The learned Judge distinguished all the cases cited before him on the ground that they were based upon long standing customs and ended his judgment with the following observations :

> "Undoubtedly, the gift is a small portion of the whole of the property; but, if one were to ignore the elementary principles of Hindu law out of one's sympathy with gifts of this nature, it would be difficult to say where the line could be drawn, and it might give rise to difficulties which no attempt could overcome."

We agree with the learned Judge that sympathy is out of place in laying down the law. If the Hindu law texts clearly and expressly prohibit the making of such a gift of the family property by the father to the widowed daughter in indigent circumstances, it is no doubt the duty of the Court to accept the law, leaving it to the Legislature to change the law. We shall, therefore, consider the relevant Hindu law texts bearing on the subject.

At the outset it would be convenient to clear the ground. Verses 27, 28 and 29 in Ch. I, Mitakshara, describe the limitations placed on a father in making gifts of ancestral estate. They do not expressly deal with the right of a father to make provision for his daughter by giving her some family property at the time of her marriage or subsequently. That right is defined separately by Hindu law texts and evolved by a long catena of decisions, based on the said texts. The relevant texts have been collected and extracted in Vettorammal v. Poochammal ((1912) 22 M.L.J. 321). Section 7 of the Ch. I, Mitakshara, deals with provision for widows, unmarried daughters etc. Placitum 10 and 11 provide for portions to sisters when a partition is made between the brothers after the death of the father. The allotment of a share to daughters in the family is regarded as obligatory by Vignaneswara. In Ch. I, s. 7 pp. 10 and 11, he says :

> "The allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin."

He relies on the text of Manu to the effect that they who refuse to give it shall be degraded : Manu Ch. I. s. 118. In Placitum 11, Ch. I, withholding of such a portion is pronounced to be a sin. In Madhaviya, pp. 41 and 42, a text of Katyayana is cited authorizing the gift of immovable property by a father to his daughters beside a gift of movables upto the amount of 2,000 phanams a year. In Vyavahara Mayukha, p. 93, the following text of Brihaspati is also cited by the author of the Madhaviya to the same effect :

"Let him give adequate wealth and a share of land also if he desires."

Devala says :

> "To maidens should be given a nuptial portion of the father's estate" - Colebrooke's Digest, Vol. 1, p. 185.

Manu says :

> "To the unmarried daughters by the same mother let their brothers give portions out of their allotments respectively, according to the class of their several mothers. Let each give one-fourth part of his own distinct share and those who refuse to give it shall be degraded."

These and similar other texts indicate that Hindu law texts not only sanction the giving of property to daughters at the time of partition or at the time of their marriage, as the case may be, but also condemn the dereliction of the said duty in unequivocal terms. It is true that these Hindu law texts have become obsolete. The daughter has lost her right to a share in the family property at the time of its partition. But though the right has been lost, it has been crystallized into a moral obligation on the part of the father to provide for the daughter either by way of marriage provisions or subsequently. Courts even recognised making of such a provision not only by the father but also after his death by the accredited representative of the family and even by the widow. The decision in Kudutamma v. Narasimhacharyalu ((1907) 17 M.L.J. 528) is rather instructive. There, it is was held that a Hindu father was entitled to make gifts by way of marriage portions to his daughters out of the family property to a reasonable extent. The first defendant was the half-brother of the plaintiffs and the father and after the birth of the 2nd defendant he for himself and as guardian of the 2nd defendant executed a deed of gift to the plaintiffs jointly, of certain portions of the joint family property. The question was whether that gift was good. It will be seen from the facts that the gift was made by the brother to his half-sisters not at the time of their marriage but subsequently. Even so, the gift was upheld. Wallis J. in his judgment pointed out that unmarried daughters were formerly entitled to share on partition and that after marriage they were entitled to an endowment and that though that right fell into desuetude, a gift made to a daughter was sustained by Courts as a provision for the married couple. The learned Judge summarized the position thus, at p. 532 :

> "..... although the joint family and its representative, the father or other managing member, may not longer be legally bound to provide an endowment for the bride on the occasion of her marriage, they are still morally bound to do so, at any rate when the circumstances of the case of the case make it reasonably necessary."

If such a provision was not made at the time of marriage, the learned Judge indicated that such moral obligation could be discharged subsequently by a representative of the family. To quote his observations - "Mere neglect on the part of the joint family to fulfil a moral obligation at the time of the marriage, cannot, in my opinion, be regarded as putting an end to it, and I think it continued until it was discharged by the deed of gift now sued on and executed after the father's death by his son, the 1st defendant who succeeded him as managing member of the joint family". Another division Bench of the Madras High Court considered the question in Sundararamaya v. Seethamma ((1911) 21 M.L.J. 695, 699) and declared the validity of a gift of 8 acres of ancestral land by a

Hindu father to his daughter after marriage when the family was possessed of 200 acres of land. The marriage took place about forty years before the gift. There was no evidence that the father then had any intention to give any property to the daughter. The legal position was thus expounded by the learned Judges, Munro and Sankaran Nair JJ.

> "The father or the widow is not bound to give any property. There may be no legal but only a moral obligation. It is also true that in the case before us the father did not make any gift and discharge that moral obligation at the time of the marriage. But it is difficult to see why the moral obligation does not sustain a gift because it was not made to the daughter at the time of marriage, but only some time later. The moral obligation of the plaintiff's father continued in force till it was discharged by the gift in 1899."

Another division Bench of the Madras High Court in Ramaswamy Ayyer v. Vengidusami Ayyer ((1898) I.L.R. 22 Mad. 113) held that a gift of land made by a widow, on the occasion of her daughter's marriage, to the bridegroom was valid. Sundara Aiyer and Spencer JJ. held in Vettorammal v. Poochammal ((1912) 22M L.J. 321) that a gift made by a father to his own daughter or by a managing member to the daughter of any of his coparceners, provided it be of a reasonable amount, is valid as against the donor's son. After elaborately considering the relevant texts on the subject and the case law bearing thereon, the learned Judges came to the conclusion that the plaintiff's father was competent to make a gift of ancestral property to the 1st defendant, his brother's daughter. The learned Judges also held that the validity of the gift would depend upon its reasonableness. The legal basis for sustaining such a gift was formulated by the learned Judges at p. 329 thus :

> "No doubt a daughter can no longer claim as of right a share of the property belonging to her father, but the moral obligation to provide for her wherever possible is fully recognized by the Hindu community and will support in law any disposition for the purpose made by the father."

In Bachoo v. Mankorebai ((1907) I.L.R. 31 Bom. 373), the Judicial] Committee held that a gift by a father, possessed of considerable ancestral property, of a sum of Rs. 20,000/- to his daughter was valid. No doubt this was not a gift of immovable property; but there is no difference in the application of the principles to a gift of immovable property as illustrated by the decision of the Judicial Committee in Ramalinga Annavi v. Narayana Annavi ((1922) 49 I.A. 168, 173). There, both the Subordinate Judge and the High Court held that the assignments by a member of a joint Hindu family to his daughters of a sum of money and of a usufructuary mortgage were valid, as they were reasonable in the circumstances in which they were made. The Privy Council confirmed the finding of the High Court. In considering the relevant point, Mr. Ameer Ali observed at p. 173 thus :

> "The father has undoubtedly the power under the Hindu law of making, within reasonable limits, gifts of movable property to a daughter. In one case the Board upheld the gift of a small share of immovable property on the ground that it was not shown to be unreasonable."

Venkataramana Rao J. in Sithamahalakshmamma v. Kotayya ((1936) 71 M.L.J. 259) had to deal

with the question of validity of a gift made by a Hindu father of a reasonable portion of ancestral immovable property to his daughter without reference to his son. Therein, the learned Judge observed at p. 262 :

> "There can be no doubt that the father is under a moral obligation to make a gift of a reasonable portion of the family property as a marriage portion to his daughters on the occasion of their marriages. It has also been held that it is a continuing obligation till it is discharged by fulfilment thereof. It is on this principle a gift of a small portion of immovable property by a father has been held to be binding on the members of the joint family."

Adverting to the question of the extent of property he can gift, the learned Judge proceeded to state :

> "The question whether a particular gift is reasonable or not will have to be judged according to the state of the family at the time of the gift, the extent of the family immovable property, the indebtedness of the family, and the paramount charges which the family was under an obligation to provide for, and after having regard to these circumstances if the gift can be held to be reasonable, such a gift will be binding on the joint family members irrespective of the consent of the members of the family."

This decision was followed by Chandra Reddy J. of the Madras High Court in Annamalai v. Sundarathammal ((1952) II M.L.J. 782, 784). A division Bench of the Calcutta High Court in Churaman Sahu v. Gopi Sahu ((1910) I.L.R. 37 Cal. 1) held that it was competent to a Hindu widow governed by the Mitakshara law to make a valid gift of a reasonable portion of immovable property of her husband to her daughter on the occasion of the daughter's gowna ceremony. The learned Judges have followed some of the aforesaid decisions of the Madras High Court.

It is, therefore, manifest that except the decision of a single Judge of the Bombay High Court in Jinnappa Mahadevappa v. Chimmava ((1935) I.L.R. 59 Bom. 459) all the decisions on the subject recognize the validity of a gift of a reasonable extent of joint family property to a daughter under varying circumstances. The observations of Rangnekar J. that Hindu law does not sanction the validity of such a gift and that the said decision were based only on long standing custom do not appear to be correct. The Hindu law texts as well as decided cases support such a gift.

The legal position may be summarized thus : The Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a moral obligation and it continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a hard and fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by Court, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances. If the father is within his rights to make a gift of a reasonable extent of the family property for the maintenance of a

daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or the reasonableness of a gift does not depend upon the plurality of document but on the power of the father to make a gift and the reasonableness of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed instead of one, cannot make the gift anytheless a valid one.

Applying the aforesaid principles, we have no doubt that in the present case, the gift made by the father was within his right and certainly reasonable. The family had extensive properties. The father gave the daughter only a life-estate in a small extent of land in addition to what had already been given for her maintenance. It has not been stated that the gift made by the father was unreasonable in the circumstances of the case. We, therefore, hold that the said document is valid to the extent of the right conferred on the 8th defendant.

Mr. Chatterjee, learned counsel for the respondents in Civil Appeals No. 334 of 1960 and appellants in Civil Appeal No. 335 of 1960, contended on behalf of the adopted son that in a competition between an adopted son and a subsequent born natural son among Sudras, each takes an equal share in the family property. A controversy was raised before us on the question whether the Lingayats, to which community the parties belong, are Sudras or dwijas. The Bombay High Court in Tirkangauda Mallanagauda v. Shivappa Patil (I.L.R. [1943] Bom. 706.), after considering the relevant authorities on the question, held as follows, at p. 742 :

> "Whether the Lingayats are Hindus or not, we are concerned to see what is the law by which they are governed, and ever since the ruling in Gopal Narhar Safray v. Hanumant Ganesh Safray ((1879) I.L.R. 3 Bom. 273), they have been subject to Hindu law as applied to Shudras."

In this case it is not necessary to express our opinion on the question whether Lingayats are Sudras or not, for we proceed on the assumption that they are, or at any rate that the Hindu law applicable to Sudras applies to them.

In Arumilli Perrazu v. Arumilli Subbrayadu ((1921) 48 I.A. 280) it was held by the Judicial Committee that among Sudras in the Madras Presidency an adopted son on partition of the family property would share equally with a son or sons born to the adoptive father after the adoption. The Judicial Committee based its conclusion mainly on the following ground :

> "..... the rule of the Dattaka Chandrika that on a partition of the joint family property of a Sudra family an adopted son is entitled to share equally with the legitimate son born to the adoptive father subsequently to the adoption had been accepted and acted upon for at least more than a century in the Presidency of Madras, as the law applicable in such cases to Sudras until the law on that subject was disturbed in 1915 by the decision of the High Court at Madras in Gopalam v. Venkataraghavulu ((1915) I.L.R. 40 Mad. 632)."

It will be seen that the decision rested on the fact that Dattaka Chandrika was the recognized authority in the Madras Presidency and that the rule that an adopted son and an afterborn natural son take in equal shares the family property had been followed for over a century. On this decision Sarkar Sastri commented in his valuable book on Hindu Law, 8th Edn., at p. 211, thus :

> "Another novel rule enunciated for the first time by the Dattaka Chandrika is that a

> Sudra's adopted son should share equally with his begotten son, on the ground that a Sudra's illegitimate son may by the father's choice get an equal share with his legitimate sons. It is difficult to understand the cogency of his argument. This rule, however, has been followed by the Calcutta and Madras High Court, for this book is said to be of special authority in Bengal and Madras. But the Madras High Court, after consideration of the authorities on the subject, came to the conclusion, following an earlier decision of the same Court, that an adopted son of a Sudra was entitled to only a fifth share of what a natural born son gets. But in the case of Arumilli Perrazu ((1921) 48 I.A. 280) the above decision has been overruled and it has been finally settled by the Privy Council that an adopted son shares equally on partition with an after-born son of a Sudra."

In Bengal where Dattaka Chandrika is given same importance as in the Madras Presidency, the same rule has been followed in the matter of partition between an adopted son and an after-born natural son among Sudras : see Asita v. Nirode ((1916) 20 C.W.N. 901). It is not necessary to pursue that matter. It may be adopted that in Bengal and Madras the said rule governs the shares between them. But in Bombay, Dattaka Chandrika is not given the place of honour as in Madras and Calcutta. As early as 1892, a division Bench of the Bombay High Court in Giriapa v. Hingappa ((1892) I.L.R. 17 Bom. 100) had to consider the question of shares inter se between an adopted son and an after-born aurasa son. It held that in Western India, both in the districts governed by the Mitakshara and those specially under the authority of Vyavahara Mayukha, the right of the adopted son, where there was a legitimate son born after the adoption, extended only to a fifth share of the father's estate. The question therein was whether the adopted son takes one-fourth of the estate or one-fourth of the natural born son's share in the property. After considering all the relevant texts the division bench came to the conclusion that he takes one-fourth of a natural born son's share. After the decision of the Judicial Committee in Perrazu v. Subbrayadu ((1921) 48 I.A. 280) another division Bench of the Bombay High Court, in Tukaram Mahadu v. Ramachandra Mahadu ((1925) I.L.R. 49 Bom. 672, 679, 680, 684) reviewed the law and came to the same conclusion. Adverting to the Privy Council decision, the learned Judges of the Bombay High Court observed :

> "No doubt this case Perrazu v. Subbarayudu ((1921) 48 I.A. 280) is an authority for holding that in Madras and in Bengal among Sudras the rule is that for which the appellant's counsel contends."

Then the learned Judges posed the following question :

> "Assuming that the parties here are Sudras ought we to apply to this Presidency the rule which their Lordships of the Privy Council have laid down as prevailing in the Madras and Bengal Presidencies ?"

After citing the relevant extracts from the decision of the Judicial Committee, the learned Judges proceeded to answer thus :

> "In this Presidency where the rule of Dattaka Chandrika upon the question at issue has have been followed, for no case, and no kind to judicial or other pronouncement is forthcoming, (and as I have said the leading case is against it), ought we to accept the rule upon the authority of the Dattaka Chandrika alone ? In my opinion we should err if we did so. The authority of the Dattaka Chandrika has never been placed so high in Western India as in Bengal and Madras ..... The case is one where

> the principle of stare decisis should be maintained."

Coyajee J., said much to the same effect :

> "We have no reason to believe that the rule propounded in paras. 29 and 32 of sections V of the Dattaka Chandrika has been so accepted and acted upon in this Presidency; and there is therefore no justification for holding that the decision in Giriappa's case ((1892) I.L.R. 17 Bom. 100) is not applicable to the parties to this suit even if they were Sudras."

Steele in his valuable book on Hindu Law and Customs compiled as far back as 1868, did not find any justification for excepting the Sudras from the general rule. It is, therefore, manifest that in Bombay Presidency the rule accepted in Dattaka Chandrika has never been followed and the share of an adopted son in competition with a natural born son among Sudras has always been 1/5th in the family property, i.e., 1/4th of the natural born son's share. Nothing has been placed before us to compel us to depart from the long established rule prevalent in the Bombay State. We, therefore, cannot accept the argument of Mr. Chatterjee in this regard.

In the result, Civil Appeal No. 335 of 1960 filed by the plaintiff and defendant 3 is dismissed with costs, and Civil Appeal No. 334 of 1960 filed by defendants 1, 2, 4, 5, the legal representatives of defendant 7 and def. 8, except to the extent of the 8th defendant's right to maintenance under Ex. 371, is dismissed with costs. So far as the 8th defendant is concerned, the appeal filed by her is allowed with costs proportionate to her interest in the property throughout.

Appeal No. 335 dismissed.

Appeal No. 334 partly allowed.

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