

# ANDHRA PRADESH HIGH COURT

Dalavai Nagarajamma

Vs.

State Bank of India

Letters Patent Appeal No. 139 of 1960, reported in AIR 1961 Andhra Pradesh 320

(P Chandra Reddy, C.J. and Chandrasekhara Sastry, J.)

14.08.1961

## JUDGMENT

### **Chandra Reddy, C.J.**

1. This appeal is filed by the first defendant in O.S. No.13 of 1955 on the file of the District Court, Cuddapah against the judgment of Umamaheswaram, J., under Clause 15 of the Letters Patent.
2. The facts leading up to this litigation are the following. One Dalavayi Ramaswami, who was a Deputy Superintendent of Police, died on 15-7-1954. He left a fixed deposit of Rs. 10,000/- with the Imperial Bank of India (State Bank of India) Cuddapah, in the joint names of himself and the appellant, payable to either or the survivor. During his life time, a sum of Rs. 4,000/- was borrowed by the parties on the security of the fixed deposit. The balance payable was only Rs. 6,092-7-0. As this amount was claimed by Ramaswami's brother, his wife, who at the relevant time was living away from him, and the appellant who described herself as another wife of Ramaswami the Imperial Bank of India instituted the inter-pleader suit (O.S. No.13 of 1955) for adjudication of title to the sum of Rs. 6,092-7-0 impleading all the three persons as parties to the suit, namely, the appellant as the first defendant, Ramaswami's brother as the second defendant and his, wife as the third defendant with regard to whose status there was no dispute.
3. The contention of the first defendant appellant was (i) that having regard to the term of the deposit, namely, that it is payable to either or survivor, on the death of Ramaswami, she was solely entitled to this amount, and (ii) that in any event, as one of the wives of Ramaswami, she was entitled to share the amount in question along with the third defendant.
4. The second defendant remained ex parte.
5. The third defendant pleaded that she was married to Ramaswami on 28-5-1921, that the first defendant, belonging to the Kalavanthula community of Markapur, was not the legally wedded wife of Ramaswami but was only his concubine and that as the sole heir of Ramaswami she was entitled to the deposit as it remained to be the absolute property of the deceased.

6. The trial Court decided both the issues in favor of the third defendant and against the first defendant. Its conclusion on the question of marriage was that the first defendant was only a mistress of Ramaswami and not his wife, notwithstanding their living together for a number of years having regard to the fact that the connection between them had an illicit origin. The finding of the District Judge on the point whether the first defendant-appellant could claim this amount for the reason that the fixed deposit stood in the joint names of Ramaswami and the appellant payable to either or survivor was that the amount deposited by Ramaswami belonged to his estate as there was nothing to indicate that he intended to make a gift of this amount to the appellant. In the result, the claim of the third defendant to this amount was recognized.

7. The appellant carried the matter in appeal to this Court. Umamaheswaram, J., who heard the appeal, confirmed the decision of the trial Court concurring in its opinion on both the issues.

8. In this appeal, we have first to decide whether the asset in question was the absolute property of the deceased or whether his object in making the deposit in the joint names of both was that it should be held for the advancement of the appellant whose name was joined with his in the fixed deposit receipt.

9. The law on the subject of deposits in the joint names of two people (either or survivor) is stated thus in *Guran Ditta v. Ram Ditta*<sup>1</sup>,

"the deposit by a Hindu of his money in a bank in the joint names of himself and his wife and on terms that it is payable to either or survivor does not on his death constitute a gift by him to his wife. There is a resulting trust in his favour in the absence of proof of a contrary intention, there being in India no presumption of an intended advancement in favour of a wife." This passage establishes that the doctrine of advancement is inapplicable in India.

10. This is also the rule stated by Venkataramanarao, J., in *S.K. Panikkar v. Travencore National and Quilon Bank Ltd.*<sup>2</sup>,

11. It was strenuously contended by Sri S.V. Kondapi for the appellant that the Privy Council modified this rule in *Shambhu Nath v. Pushkar Nath*<sup>3</sup>, There one Shivapuri made deposits in the joint names of himself and other persons. The question that was to be determined by their Lordships was whether notwithstanding his joining the names of others, the assets could be regarded as his absolute properties at the time of his death or whether he intended that they should constitute as gifts on his death to persons whose names were joined along with his name. Their Lordships while deciding whether the several amounts in dispute were intended to be gifted to persons whose names were joined with that of the deceased, stated that the law in India in that

<sup>1</sup> ILR 55 Cal 944

<sup>3</sup>1944-2 Mad LJ 348

<sup>2</sup>1942-1 Mad LJ 161

matter was not in doubt and was authoritatively stated in ILR 55 Cal 944 :

(AIR 1928 PC 172), and quoted the passage already extracted above. No doubt on the facts of the case, their Lordships agreed with the High Court that the evidence had established the intention of the deceased that the amounts in question should be held for the advancement of the persons whose names he had associated with him.

12. It is seen that far from qualifying the principle enunciated in ILR 55 Cal 944 , the Privy Council reiterated it in the later case. There is, therefore, no substance in the submission of Sri Kondapi that having regard to the later pronouncement of the Privy Council in 1944-2 Mad LJ 348 , we should lay down the rule that when once the deposit is made in the joint names of two persons, payable to either or survivor; there is a presumption of advancement in favor of the other person and (there is no resulting trust in favor of the person who made the deposit, in the absence of proof of a contrary intention. We are not shown any piece of evidence which would establish a contrary intention in this case.

13. For these reasons, we agree with the finding of the trial Court, concurred in by Umamaheswaram, J., that the deposit should be treated as the absolute property of the deceased Ramaswami and should be paid to his heirs.

14. This leads us to the question whether the appellant is the wife of Ramaswami. It is true that on several occasions Ramaswami described her as his wife. Is this circumstance conclusive in the decision of this question? The evidence on this issue mainly consists of the testimony of D.Ws.1 to 3. The appellant deposed that she was married to Ramaswami in or about the year 1935 and ever since lived in that capacity till his death. On the other hand, it was the case of D.W.3 the respondent before us, that Ramaswami came into contact with the appellant who belongs to the Kalavanthula or dancing girl community while he was serving in Markapur in or about: the year 1937 and that when later on she was brought into the house the third defendant protested against it with the result that she was sent away by her husband to Bezwada. It was categorically stated by her that Ramaswami never married the appellant. The testimony of the third defendant commenced itself to the trial Court as also to our learned brother. The District Judge observed that the evidence of D.W.3 was preferable to that of D.Ws.1 and 2 which proved that the connection between them was illicit in its origin and that there was never any marriage between them. If the evidence of D.Ws.1 and 2 is rejected and that of D.W.3 is accepted, the presumption of marriage arising out of continued cohabitation for a number of years is rebutted.

15. It cannot be disputed that the presumption in favour of marriage and against concubinage is a rebuttable one, as stated in *Gokal Chand v. Parvin Kumari*<sup>4</sup>, Fazal All, J., observed as follows :

"But the presumption which may be drawn from long cohabitation is rebut able, and if there are circumstances which weaken or destroy that presumption,

<sup>4</sup> AIR 1952 SC 231

the Court cannot ignore them."

This result also flows from the following observations of the Privy Council in *Ma Wun Di v. Ma Km*<sup>5</sup>,

"it is necessary before applying this presumption to make sure that we have got the

conditions necessary for its existence. It is not superfluous to suggest that, first of all, there must be some body of neighbours, many, or few, or some sort of public large or small before repute can arise. Again, the habit and repute, which alone is effective is habit and repute of that particular status which in the country in question, is lawful marriage. The differences between English and Oriental customs about the relations of the sexes make such caution especially necessary. Among most English people, open cohabitation without marriage is so uncommon that the fact of cohabitation in many classes of society of itself sets up, as a matter of fact, a repute of marriage. But, in countries where customs are different, it is necessary to be more discriminating more especially owing to the laxity with which the word 'wife' is used by witnesses in regard to connexions not reprobated by opinion, but not constituting marriage".

16. On the evidence on record, there can be little doubt that the appellant] belongs to the Kalavanthula community and was treated prior to her becoming the mistress of Ramaswami as a devadasi. Ex. B-11 establishes that she was one of the inamdars of the devadasi inam in Markapur. D.W.2 her brother, admitted that their fore-fathers were entitled to Devadasi inam in Markapur temple. The evidence on record and the surrounding circum stances clearly establish that the appellant was not lawfully married to Ramaswami but went to him as his concubine and lived with him in that status till his death.

17. For these reasons, we uphold the judgment under appeal and dismiss this appeal with costs.

Appeal dismissed.

<sup>5</sup>18 Mad LJ 3 (PC)