

BOMBAY HIGH COURT

Ramchandra Doddappa Naik

Vs

Hanamnaik Dodnaik Patil

(Divatia, J.)

27.07.1935

JUDGMENT

Divatia, J.

1. This appeal has been preferred by the defendants in a suit by the plaintiffs for a declaration that defendant No. 1, Ramchandra, was neither a legitimate nor an illegitimate son of one Doddappanaik and that he was not entitled to a share in the property of the said Doddappanaik, and for consequential reliefs.

2. The facts are shortly these : Doddappanaik was admittedly a Shudra. He had two wives, and one woman who was a Brahmin widow, named Gangava, was his mistress and lived in a state of continuous concubinage with him. The plaintiffs are the legitimate son and nephews of Doddappanaik and defendant No. 1 is found to have been born of Gangava by Doddappanaik. The trial Court found that defendant No. 1 was an illegitimate son of Doddappanaik and as the latter was a Shudra, his mistress Gangava, though a Brahmin widow, became a Shudra by living with him, and that, therefore, defendant No. 1, being born of Shudra parents, was entitled to a share in Doddappanaik's property although he was an illegitimate son, as under the Hindu law, the illegitimate son of a Shudra is entitled as a dasiputra to a share of the inheritance, provided his mother was in the exclusive keeping of his father.

3. That decision has been reversed by the appellate Court and the learned Judge in appeal has discussed a number of ancient texts as well as authorities on this point and has come to the conclusion that defendant No. 1 was an illegitimate son of Doddappanaik, but he was not a dasiputra and therefore not entitled to a share in the inheritance, though he can claim maintenance from his father's estate'. The ground of his decision is that a son of a Shudra by a Brahmin mistress is not dasiputra, which term is confined only to a son of a Shudra by a Shudra mistress.

4. The exact point that falls to be decided in this case does not seem to have been the subject-

matter of decision by any of the High Courts in India. So far as our High Court is concerned, it has been decided that an anuloma marriage, i.e. a marriage by a person of a, higher caste with a woman of a lower caste, is valid and the children of such marriage are legitimate and can claim their share in the property ; but a pratiloma connection, by way of marriage in the reverse order, i.e. between a woman of any of the regenerate classes with a man of a lower caste, is forbidden under the Hindu law and therefore illegal, and that therefore their children are not only illegitimate but cannot claim any share in their father's property, although if the connection of the parents is continuous, they are entitled to maintenance. That refers to the validity or otherwise of marriages. In the case of illicit connection outside the relationship of marriage, it has been held that the case of a Shudra father is an exception to the case of other regenerate classed inasmuch as an illegitimate son of a Shudra man by a Shudra woman is entitled not simply to maintenance but also to a share in his father's property. So far the authorities are quite clear. But what would happen if the illicit connection is between a Shudra man and a Brahmin woman as is the present case ? On this point, as I said, there is no express decision although some guidance can be obtained from several ancient texts as well as observations and remarks made in some cases where, although this particular point did not arise for decision, the general connection between a Shudra male and his mistress is considered. The learned Judge has based his decision on some of these texts. Amongst the several texts which he cites, the important ones are-a passage from Aushansa Smriti that " one born of the connection of a Shudra with a Brahmin woman is a chandala," and a passage from Vishnu Samhita that " sons born of pratiloma women do not take any share (in their father's property), nor do their sons share in the property of their grandfathers. They are to be maintained by those who inherit the property." Nilakantha in his Vyavahara Mayukha says that " one who is free, by giving himself away, becomes a slave like a wife, so says Bhrgu. Slavery should be known to exist among three classes ; servitude can never exist for a Brahmin." It is conceded on the authorities that defendant No. 1 would not be entitled to a share in this property unless he is what in the technical language of Hindu scriptures is called a dasiputra, and the question is what is a dasiputra, and therefore, what is a dasi.

5. The contention of the appellants is that dasi means either a slave or any female who lives in a continuous illicit connection with another person as opposed to merely adulterous or incestuous intercourse. On the other hand, the contention on behalf of the respondents is that the term " dasi " is generally applied only to the case of a Shudra, and dasi therefore means only a Shudra woman, and dasiputra therefore would only mean a son of a Shudra woman. The term " dasi" is generally applied to a low caste woman living in an illegal connection with another person. There is one reported case of this Court, viz., Bai Kashi v. Jamnadas , in which, although the point decided was not the exact one which falls to be decided in this case, the general question of relationship of a Shudra man with another woman is considered. There it was held that a

Brahmin woman cannot contract a valid marriage with a Shudra because it is a pratiloma connection, and that such a woman cannot claim maintenance from a Shudra as his kept mistress, unless the connection is of a continuous character. Now, in considering this question, the learned Judge has, in his judgment, quoted several texts dealing with the relationship of a Shudra man with a Brahmin woman as is the case here. The material text is Yajnavalkya's text No. 93 which says that " one begotten on a Brahman woman by a Kshatriya is a suta ; by a Vaishya, a vaidehaka ; and by a Shudra, a chandal, outcaste to all religion ", and he says that this exclusion from all religion necessarily implies that the connection of the parents, being sinful, is a prohibited connection and that the parents become on that account degraded from their respective castes; after a consideration of several other-texts he says that the authorities support the conclusion that Yajnyavalkya's. 'texts Nos. 93 and 94, dealing with nihrriages in the reverse order of castes, refer not to marriages valid in law but to adulterous connections of the most degraded character, and that according to Yajnyavalkya a son begotten by a Shudra on a Brahmin woman becomes a chandala, the most degraded of human being, and therefore " outcaste to all religion," and that is due to the fact that the: connection of the parents is contrary to the Shastras and therefore unlawful.

6. Thus the view of the Shastras is that any relationship between a Shudra male and a Brahmin female, whether it purports to be a relationship by so-called marriage or a state of concubinage, is not recognized by Hindu law. If, therefore, such children are regarded as chandalas and outcastes, it clearly follows that they cannot claim any right to a share in the property of their' father. At first sight it may seem strange that the son of a Shudra by a Shudra mistress can inherit to him while his son by a Brahmin mistress cannot, but the origin of this view is to be found in a sense of abhorrence towards any sort of connection between a Shudra man and a Brahmin woman leading to degeneration of the race, and it is in order to discourage such connections that the texts expressly enjoin that the children should be regarded as outcastes and therefore not entitled to any share in the property.

7. The trial Judge in this case was impressed by a passage from one of the scriptures, viz., Apastambha Smriti, that " Brahmins who eat the food of a Shudra for a month will become Shudras for ever in this life and after death they will be born as dogs ", and he therefore thought that a Brahmin mistress, by living with a Shudra became a Shudra and that the offspring of such connection was by a Shudra male with a Shudra female, and therefore entitled to a share, but that is not the general trend of the authoritative ancient texts. Such, a woman does not become a Shudra but becomes patita, that is to say, a degraded woman, and hence an outcaste.

8. There is a passage in the judgment in the case of Datti Parisi Nayudu v. Datti Bangaru Nayudu (1869) 4 M.H.C.R. 204, 215 which says that " there is authority for holding that the son of a

Shudra by a woman of one. of the regenerate or superior castes would similarly be excluded from participating in the inheritance of his natural, father ", and for this reliance is placed on Daya Bhaga, Chap. V, Article 14, Smriti Chandrika (Kristnaswamy Iyer's Translation), pp. 63, 64, Articles 11 and 14, and the texts cited and the comments thereon to be found in 3 Colebrooke's Digest, pp. 129, 143, 325 and 326. I might also refer to a recent decision of the Privy Council in the case of Raoji Rupa v. Kunjalal Hiralal (1930) I.L.R. 54 Bom. 455 : S.C. 32 Bom. L.R. 808, P.C., where it is observed that the term ' dasiputra' no doubt originally meant sons of a female slave, but in Western India, at all events, it has come to mean sons by a kept mistress of one of the lower castes, and for that proposition the cases, of Rahi v. Govind valad Teja (1875) I.L.R. 1 Bom. 97 and Sadu v. Baiza and Genu (1878) I.L.R. 4 Bom. 37 are quoted impliedly with approval.

9. For these reasons I agree with the view of the lower appellate Court that defendant No. 1 being born of a Shudra male and a Brahmin mistress is not a dasiputra who alone among the class illegitimate sons would be entitled to a share in the inheritance, and that defendant No. 1 is not therefore entitled to any share in his father's property. This is the only question arising in this appeal, and the decree of the lower appellate Court is, therefore, confirmed and the appeal dismissed with costs.