

Madras High Court

Chellammal And Ors. vs Ranganatham Pillai And Ors. on 23 March, 1910

Equivalent citations: (1911) ILR 34 Mad 277

Bench: A White, S Nair

JUDGMENT

1. The four plaintiffs sue to recover their Share of the properties left By "their deceased father Kanagasabai Pillai from the defendants Nos. 2, 3 and 4. who are also his sons, The defence is that the plaintiff's mother, the fifth defendant, was not the wife of their deceased father but a prostitute who was for some time his concubine.

2. The learned Judge who heard the case held that the fifth defendant was validly married to the deceased Kanagasabai Pillai and awarded to the plaintiffs the share claimed by them. The first question for decision is whether the finding is supported by the evidence in the case. Kanagasabai Pillai was the Superintendent of Post Offices at Calicut for about six or seven years between 1890 and 1897. He was then transferred to Mysore, afterwards to Nellora and finally to Madras and while he was the Superintendent of the Presidency Division died intestate at Conjeeveram in February 1906. The suit was filed in September 1906. The relations between the first defendant Chellammal his admitted wife and Kanagasabai were always strained and had been so for many years prior to his death so much so that the first defendant and her eldest son Somasundaram, the second defendant, lived separately from him. It is also proved that Parvathi, the fifth defendant, accompanied Kanagasabai when he left Calicut and was ever after living under his protection and control that he generally if not always lived with her, acknowledged the plaintiffs as his children, educated them, introduced them to his friends and to the teachers in their schools as his sons, told some of his friends that Parvathi was his wife and one witness swears that he told him that he had married a Vellala girl at Calicut. Kanagasabai was a Vellala belonging to Jaffna. These facts undoubtedly raise a strong presumption that Parvathi was his wife. There is also the evidence of some witnesses to the effect that they were invited to the marriage; Parvathi also swears to her marriage. The first witness for the defence is the village munsif of the Nagaram Amsom, Calicut. He says that Kanagasabai Pillai was his tenant when he first came to Calicut. He first lived in a house belonging to the witness in the Northern Allachi while Parvathi, the fifth defendant, with her mother Amma and maternal uncle Shuppan were living in another house also belonging to the witness in Southern Allachi. The village munsif says that they belonged to the Konkani dancing girl caste. Parvathi was Kanagasabai's concubine, not living with him in the same house but going to him in the evening and returning in the morning. She had two children born to her while living there. When Kanagasabai was transferred from Calicut he took her with him and on his death Shuppan told him that he was going to Madras to bring his niece Parvathi to Calicut though he did not bring her. The second witness Gulam Hussain, a neighbour whose brother was employed in the post office under Kanagasabai, and the third witness, a pensioned Mail Overseer, also state that the fifth defendant was his concubine. They also knew her and her relatives. To meet this evidence the plaintiffs have not examined any of Parvathi's relatives paternal or maternal. Parvathi says that both her parents died within three years of the marriage. But she admits she had relatives at Salem, None of them now gives evidence. The defendants' evidence that Parvathi belongs to the Konkani class and to the family referred to by them stands uncontradicted except by her own statement.

3. Again Kanagasabai was holding a high official position at Calicut. If there had been any marriage ceremony the leading native officials would have been invited to the marriage. Not only is no one examined to prove the marriage, but one of his friends, the editor of the leading vernacular paper who used to visit him often, says that Kanagasabai did not marry at Calicut to his knowledge and that he was keeping a concubine there. We do not attach any weight to the evidence of the three Nair witnesses who have been examined by the plaintiffs to say that they went to the marriage. They are not caste men of the parties; nor persons likely to be invited and their evidence is very unsatisfactory, Vythialingam Pillai, the nephew of the deceased and his successor in his office at Calicut, states that he did not see the fifth defendant with the deceased at Calicut and that he saw her for the first time only on the day of his death at Conjeeveram when Chellammal, the first defendant, and others wanted to keep her away from Kanagasabai. He says that at his intercession she was allowed into the room for a short time before his death. She had some conversation with him when he told her that everything would be done for her quite properly but that was neither the place nor time, He met her again some time after to receive the papers left by Kanagasabai when she asked him to pay her something for her maintenance as she was helpless, to which he replied he could not very well do that, The brother of this witness is married to first defendant Chellammal's daughter, and he is alleged by Parvathi, the fifth defendant, to have been on unfriendly terms with the deceased though this is denied by the witness himself. We do not think this is a sufficient ground to discredit the evidence of a witness of his position and respectability; moreover his evidence is consistent with and supported by the evidence of the Calicut witnesses. It is also remarkable that in Kanagasabai Pillai's application to be enrolled as a subscriber to the Pursevalkam Fund, he gives the number of the house in which his admitted wife the first defendant and her children were living as his own place of residence and she and her children are called therein his wife and children, without any reference to Parvathi. For these reasons we feel constrained to hold that the fifth defendant was not the wife of the deceased Kanagasabai. But the same evidence places it beyond any doubt and the facts found show that the plaintiffs are his illegitimate sons, entitled to recover the shares allowed to such Dasiputras by the Hindu Law. What that share is now remains to be determined. According to the appellant's contention where the father's property is divided between an illegitimate and a legitimate son of a deceased father, the father's share is one-half of what it would be if he were a legitimate son or in other words one-fourth of the property left by the father while, according to the respondents, he is entitled to get one-half of what the legitimate son takes or one third of the patrimony. The question turns upon the construction of the following text of Yagnavalkya which is generally relied upon to support either contention: "A son begotten by a Sudra on a female slave may take a share by the father's choice. But if the father be dead, the brethren should make him partaker of the moiety of a share." In the Mitakshara this text is explained thus: "After the demise of the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share: that is, let them give him half [as much as is the amount of one brother's] allotment," The words within the brackets are added by Subodhini and Balambhatta. See Stokes' Hindu Law Books, p. 426. No decision of the Madras High Court on the point has been brought to our notice. The observations of Bhashyam Ayyangar, J., in Ramalinga Muppan v. Pavadai Gounden (1902) I.L.R. 25 Mad. 519 at pp. 521, 523 relied upon by appellants and of Muthusami Ayyar, J., in Parvathi v. Thirumalai (1887) I.L.R. 10 Mad. 334 at pp. 343 and 344 and of Collins, C.J., and Subramania. Ayyar, J., in Karuppannan Chetti v. Bulckam Chetti (1900) I.L.R. 23 Mad. 16 were not made with reference to this question which was not before them for decision, Mr. Mayne is

of opinion that the illegitimate son would take only half of what he would take if he were legitimate, i.e., half of a moiety. Mr. Sircar in his Hindu Law, also takes the same view, see p. 245. The opposite view is maintained by Mr. Sarvadacari. See Hindu Law of Inheritance, p. 943, and in West and Buhler's Hindu Law, p. 382, The two opinions of the two Sastries given in West and Buhler are in conflict with each other. One of them is in support of the former and the other supports the latter view. A similar difference of opinion exists as to the mode in which the fourth share of a daughter or of an adopted son in the case of the subsequent birth of a legitimate son is to be calculated, The texts are similar. In the case of the adopted son the High Courts of Madras and Bombay have held that the adopted son is to take one-fifth and the other son the four-fifths; though according to Nanda Pandita, the adopted son, is only entitled to a fourth of what he would have taken as a legitimate son or a fourth of one-half. See Mayne, Section 168. In the case of the daughter on the other hand the author of the Mitakshara, no doubt, adopts the construction similar to that advanced in favour of the legitimate son in this case: and this forms the basis of Mr. Sircar's opinion as he thinks that the principle on which the share is allotted is the same. But he allows that it has now been decided by the Judicial Committee, though in his opinion erroneously (see p. 232) that an illegitimate son is a coparcener in the ancestral estate with his legitimate brother and takes by survivorship (1887) I.L.R. 10 Mad. 334 at pp. 343 and 344. We will now turn to the commentaries. The Mitakshara, as quoted above, is not of course clear though the words within the brackets added by Subodhini and Balambhatta apparently support the contention on behalf of the illegitimate son. In commenting upon a text of Manu which refers to the claim of the illegitimate son to get a share by father's consent Medatithi, a celebrated commentator, refers to the text of Yagnavalkya as giving to the illegitimate son half of what his legitimate brother actually obtains, i.e., the latter gets two shares and the former one share. According to Daya Vibhaga of the Vjavahara Kanda of the Madahaviya commentary on the Parasarasmriti this text means that the legitimate sons must give the "half of a share such as they get." For the close connection between the Mitakshara and the commentary, see page (xii) of Burnell's Daya Vibhaga, The author of the Viramitrodaya gives the same meaning to this text. See Sircar's Viramitrodaya, p. 130. No commentary taking the opposite view has been cited before us. The only reported case Kesaree and Ors. v. Samardhan and Anr. (1873) 5 N.W.P.H.C. 94 takes the same view. It is true as pointed out by Mr. Rangachariar that the illegitimate son in Thangam Pillai v. Suppa Pillai (1880) I.L.R. 12 Mad. 401 claimed only the smaller share, But it is stated in the judgment of the High Court that both the lower Courts found that the plaintiff was entitled to a higher share than he claimed while in Rajagopala Chetty v. Dorasami App. No. 84 of 1885 (unreported), the claim of the illegitimate son to a third share was not denied and was decreed though it was contested on other grounds. We follow the decision of the High Court of North-West Provinces and the opinions of the commentators above referred to and hold that an illegitimate son gets half of the share allotted to his legitimate brothers. Each of the four plaintiffs is therefore entitled to one-tenth share and each of the three defendants to two-tenths share of the father's property. The decree of the learned Judge giving each plaintiff the same share as each defendant will be accordingly modified and the consequential declarations will be made. The respondents Nos. 1 to 4 will pay. half the appellants' costs on the original side and in appeal.