PETITIONER:
AMMATHAYEE AMMAL & ANR.

Vs.

RESPONDENT:
KUMARESAN & OTHERS

DATE OF JUDGMENT:
15/09/1966

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
SHELAT, J.M.
MITTER, G.K.

CITATION:
1967 AIR 569 1967 SCR (1) 353
CITATOR INFO :
R 1971 SC2352 (14)
F 1987 SC1775 (19)

ACT:
Hindu Law-Immovable property belonging to joint family-Husband whether can gift such property to his wife-Doctrine of 'pious obligation' applicability.
Indian Evidence Act, 1872, s. 112-Presumption of legitimacy under.

HEADNOTE:
R was a man of considerable property. He married four times. The third wife bore him a son. When R made a gift of some joint family property to his second wife the third wife gave a notice that the gift was not valid. R, in his reply to the notice alleged, that she had deserted him and that the son born of her was not his. These allegations were denied by the third wife. After the death of R a suit was instituted by the said son claiming a half share of the property left by R. The two living step mothers, namely, the second and fourth wives of R contested the suit. The questions were whether the plaintiff was the son of R and whether the gift deed was valid. The trial court held on both points in favour of the plaintiff and the High Court also decided against the two step-mothers who thereupon appealed to this Court. The appellants contended that (1) the courts below had wrongly held the Plaintiff respondent to be the legitimate son of R (2) R,s gift of ancestral immovable property was valid because it was a gift for 'pious purposes.
HELD: (i) Section 112 of the Evidence Act raises, inter alia, a conclusive presumption that a child born during the continuance of a valid marriage between his mother and any man is the legitimate son of the man, and this conclusive presumption can only be rebutted if it is shown that the parties to the marriage had no access to each other at any time when he could have been begotten. The appellants had completely failed to prove the non-access of R to his third wife at any time when the plaintiff-respondent could have been begotten. In these circumstances there was no reason to interfere with the concurrent finding of the courts below

that the plaintiff-respondent was the legitimate son of R. [357 E-F]
(ii) The contention of the donee appellant that the gift in her favour by her husband of -ancestral immovable property made out of affection should be upheld must fail because no such gift is permitted under Hindu Law insofar as immovable ancestral property is concerned. The scope of the expression 'pious purposes' cannot be extended to include such gifts. [359 D]
Kamala Devi v. Bachu Lai Gupta, [1957] S.C.R. 452 and Guramma Bharatar Chanbassappa Deshmukh v. Malappa, [1964] 4 S.C.R. 497, referred to.
(iii) Nor can the proposition be accepted that a father-in-law can make a gift of ancestral immovable property in favour of his daughter-in-law at the time of her marriage. The case of a daughter-in-law who would become entitled to property in the father-in-law's family in her own right stands on a very different footing from the case of daughter who is being married and to whom a reasonable gift of ancestral immovable property can be made. [360 A-B]
The rule of Hindu law that gifts made in token of love by a fatherin-law to his daughter-in-law are permitted and become the stridhan pro-
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perty must be taken to refer to gifts of movable properties and such immovable properties as are not joint family properties. [360 C-E]
Ws gift of immovable ancestral property to his second wife could not therefore be considered to be valid even if it was in purported compliance with the wishes of his father at the time of her marriage. [360 G-H]

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 618 of 1964.
Appeal from the judgment and decree dated November 29, 1960 of the Madras High Court in Appeal Suit No. 207 of 1957.
Sarjoo Prasad and M. S. Narasimhan, for the appellants.
S. V. Gupte, Solicit6r-General and A. G. Ratnaparkhi, for respondents Nos. 1 and 2.
R. Ganapathy Iyer, for respondent No. 3.
The Judgment of the Court was delivered by
Wanchoo, J. This is an appeal on a certificate granted by the Madras High Court and arises in the following circumstances. One Rangaswami Chettiar was a man of considerable property and used to live in Poolathur village. He first married one Bappini and had a son by her. But both the son and Bappani died. He therefore married Ammathayee, who was defendant No. 2 in the suit and is appellant No. I before us. He had a son and two daughters by her. But unfortunately all the three children died. Thereafter Rangaswami Chettiar married Lakshmiammal in 1943. She was the first defendant in the suit. It appears that no child was born to Lakshmiammal for about three years and therefore Rangaswami Chettiar married a fourth time. His fourth wife was the sister of his second wife named Supputhayee. In February 1949 Lakshmiammal gave birth to a son. There is dispute as to the question whether Lakshmiammal had left her husband about 1945 or so because of frequent quarrels between the two. Anyhow the fourth wife had also no children. In June 1953 Rangaswami Chettiar fell ill. He was first treated as an out-patient in Batlagundu hospital and later admitted as an in-patient. On June 16, 1953 he executed a registered deed of gift in favour of his second

wife Ammathayee of certain immovable joint family property. Lakshmiammal when she came to know of this gift published a notice in a newspaper accusing the second and fourth wife of trying to deprive her and her minor son of their due share in the joint family property by having the gift deed executed and claimed that the gift deed was not valid. On September 4, 1953, Rangaswami Chettiar sent a notice in reply to the notice published by Lakshmiammal. Ili that notice Rangaswami Chettiar accused Lakshmiammal of having left Wm a year and a half after the marriage after quarrelling with him. He also accused her of living a life of promiscuity thereafter. Finally

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he said in the notice that the son born to Lakshmiammal in Feb-ruary 1949 was not his son. Lakshmiammal gave a reply to this notice of Rangasmami Chettiar on September 15, 1953, in which she maintained that the child was Rangaswami Chettiar's. She also claimed that Rangaswami Chettiar's mind had been poisoned against her by his two other wives. She denied that she had any connection with any other man besides Rangaswami Chettiar. In, December 1963 Rangaswami Chettiar died.

The present suit was filed a year later on January 3, 1955 on behalf of the minor son. He claimed half share in the joint family properties left by Rangaswami Chettiar. To this suit the three widows who between them have half share were defendants Nos. 1, 2 and 3. Three other defendants were made parties to the suit to whom we shall refer later as they are not concerned with the main controversy between the plaintiff and the two step-mothers (i. e. second and third defendants).

The main defence of the two step-mothers, who are now appel-lants before us, was that the, plaintiff though born to Lakshmiammal was not the son of Rangaswami Chettiar and was therefore not entitled to any share in his properties. Further Ammathayee pleaded that the gift deed in her favour was valid and that even if the plaintiff was the son of Rangaswami Chettiar he would be entitled to half share of the properties other than those gifted to her by R angaswami Chettiar before his death. There were other issues in the suit, but we are not concerned with them in the present appeal.

On the main question, namely whether the plaintiff was the son of Rangaswami Chettiar, the trial court found in his favour. Further on the question whether the gift deed in favour of Ammathayee was valid, the trial court was of opinion that it was not competent for Rangaswami Chettiar to make a gift of immovable joint family property to his wife. The trial court therefore held the gift to be invalid and gave the plaintiff a decree for his half share in the pro-perty left by Rangaswami Chettiar, including the properties gifted to Ammathayee before his death.

Thereupon the two step-mothers went in appeal along with two other defendants and contested the finding of the trial court on both these issues. The High Court however upheld both the findings. On a consideration of the evidence, the High Court came. to the conclusion that the heavy burden that lay on those who disputed the paternity of the plaintiff-respondent in view of s. 112 of the Indian Evidence Act, No. 1 of 1872, had not been discharged in this case and it had not been proved that Rangaswami Chettiar had no access to Lakshmiammal on or about the time when the plaintiff-respondent could have been conceived. On the question of the gift deed, the High Court held that Hindu law did not permit a husband to gift joint family immovable

property to his wife in
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the circumstances in which the gift was made in this case. The High Court therefore dismissed the appeal so far as the stepmothers of the plaintiff-respondent were concerned. The High Court however allowed the appeal of defendants Nos. 4 and 5 who were the brothers of the two step-mothers of the plaintiffrespondent and set aside the decree of the trial court with respect to them by which they were made accountable. There was also a crossobjection before the High Court with respect to certain properties which were in the possession of the sixth defendant. That crossobjection was dismissed on the ground that the plaintiff-respondent had failed to prove that those properties were joint family properties left by Rangaswami Chettiar. Thereafter the two widows who are the appellants before us applied for and obtained a certificate to appeal to this Court as the decree of the High Court was that of variance, and that is how the matter has come before us.

The two main questions which have been argued before us are-

(i) whether the plaintiff-respondent was the son of Rangaswami Chettiar, and

(ii) whether the deed of gift was valid.

So far as the first question is concerned, there is a concurrent finding of the trial court as well as of the High Court that the plaintiffrespondent is the son of Rangaswami Chettiar. Ordinarily therefore this Court would not interfere with this concurrent finding of fact. But it is urged that the High Court did not accept the evidence on this point in the same measure as the trial court did, and that there are circumstances which should have led the High Court (when it did not accept the evidence in full) to hold that the plaintiffrespondent was not the son of Rangaswami Chettiar. It is also urged that the High Court was in error in holding on the basis of s. 112 of the Evidence Act that the paternity of the plaintiff-respon,dent had been proved. We are of opinion that there is no force in this contention. The main evidence on behalf of the plaintiffrespondent was that of his mother, Lakshmiammal. On the other hand the appellants relied on the notice sent by Rangaswami Chattiar to Lakshmiammal denying the paternity of the plaintiff-respondent, and it is urged that a notice of this kind is very strong evidence rebutting the presumption that the plaintiff-respondent is the son of Rangaswami Chettiar, and this is particularly so in the present case because Rangaswami Chettiar was keen on having a -son and had married four times for that purpose. He would not have thus denied the paternity of the son]born to his third wife in the circumstances if that was true. The High Court was not oblivious of the force of these circumstances. But the evidence of Lakshmiammal was that she never quarrelled with her husband and that her husband married again because she did not give birth to a
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child for about three years, and the fourth marriage of Rangaswami Chettiar took place with her consent. She also said that she had not left the house of Rangaswami Chettiar and that the plaintiffrespondent was Rangaswami Chettiar's son. She further said that her co-wives became jealous after the birth of the plaintiffrespondent to her and that is why they influenced Rangaswami Chettiar against her. This evidence was relied upon by the trial court and the High Court has not disbelieved it. It is also in evidence that Lakshmiammal was living in her father's house in the same village as Rangaswami Chettiar, even according to the

appellants' witnesses and that Lakshmiammal's father's house was only a furlong away from Rangaswami Chettiar's house. It was in these circumstances that the High Court had to consider the question whether the heavy burden which lies on a person denying the paternity of a child born during wedlock had been discharged. It is true that Rangaswami Chettiar had given the notice to Lakshmiammal in which he denied the paternity of the plaintiff-respondent; but that notice stands in no better position than would have been the statement of Rangaswami Chettiar even if he was alive when this suit was fought out in the trial court. Section 112 is in these terms-

> "The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

It raises inter alia a conclusive presumption that a child born during the continuance of a valid marriage between his mother and any man is the legitimate son of that man, and this conclusive presumption can only be rebutted if it is shown that the parties to the marriage had no access to each other at any time when he could have been begotten. The appellants therefore had to prove, as Rangaswami Chettiar would have had to prove even if he was alive when the suit was fought out in the trial court, that he had no access to Lakshmiammal at any time when the plaintiff-respondent could have been begotten. We have already said that even according to the appellants Lakshmiammal was only living one furlong away in her father's house from where Rangaswami Chettiar was living. In these circumstances the evidence produced in the present suit falls far short of proving that Rangaswami Chettiar had no access to Lakshmiammal at any time when the plaintiff-respondent could have been begotten. We have therefore no hesitation in agreeing with the High Court, particularly taking into account the evidence of Lakshmiammal which has not been disbelieved by the High Court, that the appellants had completely failed to prove non-

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access of Rangaswami Chettiar to Lakshmiammal at any time when the plaintiff-respondent could have been begotten. In these circumstances there is no reason for us to interfere with the concurrent finding of fact as to the paternity of the plaintiff-respondent and we hold that he is the legitimate son of Rangaswami Chettiar.

This brings us to the question of the validity of the gift deed ill favour of Ammathayee. The gift deed begins with the following recital:

> "As you happened to be my second wife and in accordance with the promise made to you by my father, K. K. Ramasami Chettiar at the time of my marriage with you, and according to the directions given to me also to execute a document in your favour and also in consideration of the affection you are having for me, and your obedient nature"

and then follow the words making the gift of certain immovable properties in her favour. According to the donee-appellant, the value of this immovable property was about one-tenth of the entire property left by Rangaswami

Chettiar. The argument on behalf of the donee-appellant is that the gift was valid as it was of a reasonable portion of the immovable property, firstly because it was made by a husband in favour of a wife out of love and affection, and secondly because it was made by her husband to carry out the pious obligation that lay on him to fulfil the wishes of his father to make some provision for Ammathayee, which his father had indicated at the time of her marriage.

Hindu law on the question of gifts of ancestral property is well-settled. So far as movable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift for example of the whole or almost the whole of the ancestral movable property cannot be upheld as a gift through affection: (see Mulla's Hindu Law, 13th Edn. p. 252, para 225). But so far as immovable ancestral property is concerned the power of gift is much more circumscribed than in the case of movable ancestral property. A Hindu father or any other managing member has power to make a gift of ancestral immovable property within reasonable limits for "pious purposes", (see Mulla's Hindu Law, 13th Edn. para 226 p. 252). Now what is generally understood by "pious purposes" is gift for charitable and/or religious purposes. But this Court has extended the meaning of "pious purposes" to cases where a Hindu father makes a gift within reasonable limits of immovable ancestral property to his daughter in fulfilment of an antenuptial promise made on the occasion of the settlement of the terms of her

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marriage, and the same can also be done by the mother in case the father is dead: [see Kamala Devi v. Bachu Lal Gupta. (1)]

In Guramma Bhratar Chanbassappa Deshmukh v. Malappa,(2) it was observed by this Court that "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. The 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 ..... Marriage is only a customary occasion for such a gift. But the moral obligation can be discharged at any time, either during the life time of the father or thereafter." But we have not been referred to a single case where a gift by a husband to his wife of immovable ancestral property if made, has been upheld. We see no reason to extend the scope of the-words "pious purposes" beyond what has already been done in the two decisions of this Court to which reference has been made. The contention of the donee-appellant that the gift in her favour by her husband of ancestral immovable property made out of affection should be upheld must therefore fail, for no such gift is permitted under Hindu Law insofar as immovable ancestral property is concerned.

As to the contention that Rangaswami Chettiar was merely carrying out his father's wishes when he made this gift in favour of his wife and that act of his was a matter of pious obligation laid on him by his father, we are of opinion that no gift of ancestral immovable property can be made on such a ground. Even the father-in-law, if he had desired to make

a gift at the time of the marriage of his daughter-in-law, would not be competent to do so insofar as immovable ancestral property is concerned. No case in support of the proposition that a father-in-law can make a gift of ancestral immovable property in favour of his daughter-in-law at the time of her marriage has been cited. There is in our opinion no authority to support such a proposition in Hindu law. As already observed, a Hindu father or any other managing member has power to make a gift within reasonable limits of ancestral immovable property for pious purposes, and we cannot see how a gift by the father-in-law to the daughter-in-law at the time of marriage can by any stretch of reasoning be called a pious purpose, whatever may be the position of a gift by the father or his representative to a daughter at the time of her marriage. One can understand such a gift being made to a daughter when she is leaving the

(1) [1957] S.C.R. 452.
(2) (1964) 4 S.C.R. 497.
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family of her father. As it is the duty of the father or his representative to marry the daughter, such a gift may be and has been held by this Court to be for a pious purpose. But we see no pious purpose for such a gift by a father-in-law in favour of his daughter-in-law at the time of marriage. As a matter of fact the daughterin-law becomes a member of the family of her father-in-law after marriage and she would be entitled after marriage in her own right to the ancestral immovable property in certain circumstances, and clearly therefore her case stands on a very different footing from the case of a daughter who is being married and to whom a reasonable gift of ancestral immovable property can be made as held by this Court.

Learned counsel for the donee-appellant further refers to the fact that gifts made in token of love by her father-in-law to a daughter-in-law are permitted and become her stridhan property. That is so. But that does not mean that a father-in-law is entitled to make a gift of ancestral immovable property to a daughter-inlaw so as to convert it into her stridhan. Generally such gifts are of movable property. But even if gifts of immovable property in such circumstances are possible,the two provisions must be read harmoniously. If therefore Hindu law does not permit a father-inlaw to make a gift of ancestral immovable property to his daughterin-law, he cannot make such a gift for purposes of stridhan. Further if gifts by the father-in-law to the daughter-in-law which become stridhan include gifts of immovable property, they can only refer to such immovable property as is not ancestral immovable property, for that is the only way in which the two provisions can be reconciled. We have therefore no difficulty in holding that there is no warrant in Hindu law in support of the proposition that a father-in4aw can make a gift of ancestral immovable property to a daughter-in-law at the time of her marriage. If that is so, we cannot see how what the father-in-law himself could not do could be made into a pious obligation on the son as is claimed in this case, for that would be permitting indirectly what is not permitted under Hindu law directly. Further in any case gifts of ancestral immovable property can only be for pious purposes, and we doubt whether carrying out the directions of the father-in-law and making a gift in consequence can be said to be a gift for a pious purpose, specially when the fatherin-law himself could not make such a gift. We are therefore of opinion that this gift cannot be upheld on the ground that Rangaswami Chettiar had merely carried out the wishes of his father indicated on

the occasion of the marriage of Ammathayee.
The appeal therefore fails and is hereby dismissed with costs to to the plaintiff-respondent.
Before we part with this appeal, we should like to refer briefly to the case of Natarajan Chettiar who was defendant No. 6 in the
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trial court and is respondent No. 3 before us. He was made a party with respect to certain properties in schedule D to the plaint. His case was that the properties in schedule D were not liable to be partitioned. This contention of his was upheld by the trial court. That is why the decree does not provide for partition of D schedule properties. It was therefore unnecessary for the appellants to make him a party to the present appeal unless the appellants claimed some relief against him. Learned counsel for the appellants has stated that no relief is being claimed against Natarajan Chettiar respondent No. 3. The appeal therefore must fail as against Natarajan Chettiar who will get his costs from the appellants but no hearing fee.
Further among the properties to be divided where a gold chain (item 6) and certain promissory notes (items Nos. 2 to 4) of schedule B. The trial court held that there was no proof that these items existed. In the decree however this has not been made quite clear. We therefore direct that the trial court will correct the decree to bring it into line with its finding on these items.
G. C.

Appeal dismissed.

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