

(1990) 08 KL CK 0043

High Court Of Kerala

Case No: A.S. No. 52 of 1982

K. Devabalan and
Others

APPELLANT

Vs

M. Vijayakumari and
Others

RESPONDENT

Date of Decision: Aug. 16, 1990

Acts Referred:

- Hindu Minority and Guardianship Act, 1956 - Section 3(1)
- Hindu Succession Act, 1956 - Section 2(1)

Citation: AIR 1991 Ker 175 : (1991) 1 DMC 323

Hon'ble Judges: P.K. Shamsuddin, J

Bench: Single Bench

Advocate: Raghunathan and Babu Mathur, General, for the Appellant; S. James Vincent, P. Sukumaran Nair and A.K. Chinnan, for the Respondent

Judgement

P.K. Shamsuddin, J.

Plaintiffs 1 to 5 in O.S. No. 133 of 1978 on the file of the Court of Addl. Subordinate Judge, Trivandrum, are the appellants. The suit is for declaration of the title of the plaintiffs and the 4th defendant over the plaint schedule property and for an injunction restraining the defendants 1 to 3 from entering into the plaint schedule property and alternatively to recover possession of the property if the Court finds that the 3rd defendant is in possession of the suit property during the pendency of the suit. There is also a prayer for partition of the suit property if the Court finds that the document Ext. 17 dated 13-3-1975 is not void in its entirety.

2. It is the plaintiffs' case that the plaint schedule property was obtained by Adichan Nadar, the father of the 4th defendant, under the partition deed of the year 1079 evidenced by Ext. A-1, that the plaintiffs, the 1st defendant and Santhakumari are the children of the 4th defendant, that they are Hindu Nadars governed by Hindu Mithakshara

Law, that the properties obtained by Adichan Nadar devolved on the 4th defendant and he was in possession of the same as Manager of the joint family, and that the plaintiffs obtained right over the properties of the joint family by birth. It was also alleged in the plaint that on 13-3-1975 the 4th defendant representing himself as the sole owner of the property, executed a gift deed Ext. B-7 in respect of the suit property in favour of the 1st defendant, but that document is void as the 4th defendant was incompetent to execute the document for the following reasons:

1. The properties are coparcenary properties and hence the fourth defendant is not competent to execute any document without family necessity or consideration.
2. The gift deed was executed as dowry for the marriage of the first defendant which is prohibited under the Dowry Prohibition Act and therefore no legal right follows to defendants under the document.
3. Even if the 4th defendant had any right to execute the gift deed in respect of the properties within the reasonable limits, he has exceeded those limits in the execution of the document. There were 9 members including the first defendant to be maintained by the 4th defendant at the time of the execution of the gift deed. The family was not in good financial circumstances and many properties were outstanding on mortgage at that time. Besides the execution of the gift deed the 4th defendant has given jewels and utensils worth more than Rs. 10,000/- to the first defendant at the time of her marriage. He has encumbered and alienated many item of immovable properties for meeting the marriage expenses of the first defendant. There was another daughter, San-thakumari, to be married. The status of the family and its poor circumstances were not considered by the 4th defendant when he executed the document.
4. The plaint schedule property is the best of the entire properties and is yielding an annual income of Rs. 1,000/- by executing the said document the family has been deprived of the best of the properties. The 4th defendant is not competent to execute such a document.

The plaintiffs also averred that though the document was executed, the 1st defendant did not get possession of the property, since many relations of the plaintiffs intervened and informed the 4th defendant about the unjust way in which he dealt with the properties, and therefore the 4th defendant subsequently cancelled the gift deed. The plaintiffs as members of the coparcenary are in possession of the property and they were taking income from the property, that when the plaintiffs came to know that the defendants were attempting to execute the sale deed in favour of the 3rd defendant they issued a registered notice to the defendants setting out the fact that the 1st defendant had no right to the property. Notwithstanding this, defendants 1 and 2 executed the sale deed in favour of the 3rd defendant on 20-5-1978 and Ext. B-10 is the sale deed. It is the plaintiffs' case that on the strength of Ext. B-10 sale deed, the 3rd defendant was attempting to trespass into the plaint schedule property and the document executed by the 4th defendant had

caused cloud of title for the plaintiffs and it was in those circumstances that the suit was filed for a declaration of title and for injunction restraining the defendants from entering into the plaint schedule property.

3. Defendants 1 and 2 filed written statement contending that the plaintiffs and defendants are all Christians and not Hindus, that after the death of Adichan Nadar, the 4th defendant inherited his properties as his only son and that he was in possession of the property as absolute owner and not as the Manager of the joint family. It was also alleged that he embraced Christianity and married a Christian lady by name Mariya Augustina and adopted the name Yesudas and the plaintiffs who were born to the couple are Christians by birth and therefore no question of joint family arose. According to the defendants, the plaintiffs did not get any right by birth and the parties are not Hindus governed by Hindu Mithakshara Law. The 4th defendant being the sole and absolute owner of the property he was competent to execute the document Ext. B-7 and that it was valid and not void as alleged in the plaint. They also averred that the 1st defendant was in possession of the property ever since the date of Ext. B-7 gift-deed and the 3rd defendant got possession after the sale in his favour. According to them the plaintiffs had no possession of any part of the plaint schedule properties and it was the 4th defendant who was conducting the suit behind the plaintiffs, and the suit was not maintainable in view of the provisions contained in the Joint Family Abolition Act and in the circumstances the suit is liable to be dismissed.

4. 3rd defendant in his written statement contended that the 4th defendant got himself converted into Christianity before his marriage and the parties are Christians and governed by Christian Succession Act and the 4th defendant who is the sole and absolute owner of the property was competent to dispose of the property as he liked and the gift deed evidenced by Ext. B-7 executed by him in favour of the 1st defendant is quite valid and does not suffer from any infirmity or illegality. By virtue of the sale deed he got possession of 1 acre and 25 cents out of the plaint schedule property and he paid Rs. 50,000/- as consideration for the sale deed in his favour and he was a bona fide purchaser and the suit was liable to be dismissed.

5. On a consideration of the evidence in the case, the court below came to the conclusion that there was no valid marriage between the 4th defendant and the mother of the plaintiffs and the plaintiff and the 4th defendant are not Hindus. The court below also found that the plaint schedule property was not absolute property of the 4th defendant and that the property is joint family property. The Court below also held that there is no case for the plaintiffs that the 4th defendant exceeded his limits in executing Ext. B13 settlement deed in favour of his another daughter Santhakumari at the time of her marriage, and in the circumstances of the case it cannot be said that the gift deed evidenced by Ext. B7 exceeded the permissible limits.

6. In this appeal, learned Advocate General has challenged the findings of the court below. Learned Advocate General submitted that there is no issue as to the validity of the

marriage between the 4th defendant and Mariya Augustina the mother of the plaintiffs, that none of the parties had a case that the marriage was invalid and the children born were illegitimate and that in the circumstances the court below went beyond the pleadings in finding that there was no valid marriage between the 4th defendant and Mariya Augustina. He also submitted that the Governments evidenced by Exts. A2, A3, A4, A5, A6 and A7 would show that the plaintiffs and the 4th defendant and his brother are all Hindus and the court below went wrong in brushing aside these documents as inadmissible in deciding the question whether the parties were Christians or Hindus. Ext. A2 is the S.S.L.C. mark of the 1st plaintiff issued by the Government and it cannot be considered as a record maintained by a private school. Ext. A4 is the admission register relating to the admission of the 4th plaintiff to the school. Ext. A5 is the extract relating to the admission of the 5th plaintiff, Ext. A6 is the extract of the admission register relating to the admission of the 4th defendant to the school and Ext. A7 in the S.S.L.C. Book of Gopalan Nadar, the brother of the 4th defendant. In all those documents admittedly, the plaintiffs 1, 2, 4 and 5 and the 4th defendant and his brother are all shown as Hindus.

7. The court below relied on a decision of a single Judge of this Court in *Vijayan v. State of Kerala* 1961 KLJ 1007 where it was held that the entry in the admission register of a private school even if it is taken into account is of no help without the evidence of the person who took the boy to the school and signed the application and gave the details recorded in the register. The case referred to above, related to a prosecution u/s 149, I.P.C. There was some difference in the name of the father shown in the charge-sheet and in the extract of the admission register which was sought to be pressed into service to prove that the 1st accused was a different person. The 1st accused was correctly identified by the victim and also by other officers and there was no scope for any doubt about identity. 1st accused was described in the charge-sheet as Velikkoth Vijayan, son of Kunhihannan. The 1st accused on his own free will surrendered in court without mentioning a word about the mistake in the description given in the charge. Even in the committal court the accused did not say a word about his father not being Kunhihannan or that he was not Velikkoth Vijayan. It was in that context that this court said that without evidence from the person who took the boy to the school and signed the application and gave the details in the admission register in a private school alone cannot be looked into for the purpose of coming to the conclusion that the accused was not the person who was mentioned in the charge-sheet. In the instant case, the S.S.L.C. book cannot be considered as a document maintained by the private school. The admission registers produced in this case came into existence after the commencement of the Kerala Education Act and the Rules. Documents like admission registers etc. are maintained under the provisions of the Kerala Education Rules. In the circumstances the observations contained in the above judgment can hardly apply to the facts of this case. This apart, it is not disputed that the 4th defendant was born as a Hindu. The case of defendants 1 to 3 is that the 4th defendant embraced Christianity and married a Christian lady according to the Christian rites. In Exts. A9 to A14 Registered documents relating to transfer of immovable property in which 4th defendant is a party, he is

described as Karunakaran Nadar and not as Yesudas. I do not find any reason not to describe the 4th defendant Yesudas if he embraced Christianity and changed his name as Yesudas. If as a matter of fact, the 4th defendant had embraced Christianity, I do not also find any reason not to describe 4th defendant as Yesudas in Exts. A7 and B13 which are documents produced on the side of the defendants.

8. The court below has relied on Exts. B1, B2, B 15, C2 and A1 in holding that parties are Christians. Ext. A1 is alleged to be as entry in the Baptism Register kept in the Kappikhed Church relating to the baptism of a child named Annamma whose parents are Yesudas and Karin Augustina of Lelikkakushi House on 29-3-1956. Ext. 12 is another entry in the Baptism Register of the said Church relating to the Baptism of another child named Alphonsa Ammal whose parents are also shown Yesudasan and Mariya Augustina of Lelikkakuahi House on 28-3-1957. Ext. B15 is a marriage certificate issued to the 1st defendant by the priest of the C.B.I. Church. It can be seen from Ext. B15 that the 1st defendant married the 2nd defendant at the C.B.I. Church on 21-5-1975, and Ext. XI is the marriage register maintained in the St. Antony's Church, Kappikkad. Ext. B4 is a copy of the judgment in C.C. No. 155 of 1974 on the file of the Sub-Divisional Judicial Magistrate's Court, Leyyattinhara. Reference has been made in the judgment about Ext. XI register which was produced in that case. Entry relating to the marriage between Mariya Augustina and Yesudasan was marked in that case as Ext. D3. That was case charge-sheeted by Sub-Inspector of Police, Kanjiramkulam against the accused in that case alleging that he kidnapped the present 1st defendant. D.W. 2 who was the priest of the St. Antony's church Kappikkad was summoned by the Magistrate to produce the Marriage Register and he produced the Register. D.W.2 deposed that there was an entry relating to the marriage of Yesudas with Augustina at page 66 of Ext. XI at the time when he produced the same before the Magistrate's Court and that entry was not now seen in Ext. XI. Ext. XI was produced by P.W. 1 the present Priest at Kappikkad Church as per summons. The court below found that from the facts and circumstances disclosed, the pages which contained the original page numbers 66 and 67 and which contained Ext. C2 entry were removed and the pages were renumbered by some interested parties before the production of Ext. XI before this Court. The court below held that Ext. C2 would prove that Yesudasan, son of Adichan Nadar and Kunjamma of Lelikhakuzhi House married Mariya Augustina, daughter of Xavier Kuthu and Mariya Thankammal of Kappikkadu House on 26-5-1955. I do not think that it is safe to enter a finding on the basis of the entry in Ext. C2 that Karunakaran Nadar embraced Christianity and became a Christian and continued to be a Christian, especially when the original register does not contain any such entry. The documents evidenced by Exts. A1 to A14 and Exts. B7 and B13 mention the name of the 4th defendant as Karunakaran Nadar and not Yesudas and in any view, the court below was not justified in brushing aside these documents, the entries in Exts. A2 and A3 and extracts of the admission register evidenced by Exts. A4, A5 and A6 and in holding that Karunakaran Nadar ceased to be a Hindu. The evidence of the 4th defendant who was examined as D.W. 6 is also to the effect that he never embraced Christianity. P.W. 1, the plaintiff deposed that his mother was a Christian at the time a

marriage, that his father had married her in the Hindu form, that after the marriage his mother had never gone to the Church and that his father and all his children are living as Hindus. The third defendant who was examined as D.W. 3 has sworn that he is a classmate of 4th defendant and that the 4th defendant became Christian at the time of his marriage which took place of Kappikkad church. He has purchased ext. B7 property from 1st defendant, 1st defendant also gave evidence that her father is a Christian. Both of them are interested witnesses and in view of the materials adverted to above, it is difficult to accept their evidence. It is true that the mother of the plaintiff was a Christian and there is no acceptable evidence to hold that she became a Hindu. The question that falls for consideration is whether her marriage with the 4th defendant who is a Hindu is valid in law.

9. Learned Advocate General who appeared for the appellants submitted that a marriage between a Hindu male and a Christian female is valid in law and the finding of the court below that there was no valid marriage between the 4th defendant and Mariya Augustina is not legally correct. In this context, learned Advocate General invited my attention to a decision of the Allahabad High Court in *Mrs. Chandramani Dubey v. Rama Shankar Dubey* AIR 951 All 529: 1950 ALJ 932. In that case a Brahman went through the ceremony of marriage under the Indian Christian Marriage Act with a Christian lady. In that context, the court had to consider the question whether marriage of Hindu male with a Christian female is forbidden or invalid under the Hindu Law. The court relied on the decisions in *Gladys Sainapatti v. Sainapatti* AIR 1932 Lah 116 and AIR 1940 195 (Nagpur) and held on the basis of those decisions that marriages between a Hindu and a Christian woman was recognised as valid in India. In the course of the judgment the court observed as follows:

"It..... it appears that there is no rule forbidding the marriage of a Hindu with a non-Hindu. A marriage between a Hindu and non-Hindu does not seem to have been contemplated by the Hindu law givers. No doubt this was so because at the time when Manu and his successors expounded the law there was no such distinction as Hindu and Non-Hindu. The utmost that was possible was to class the Sudras as a category by themselves and as distinct from the class of the twice-born who were, to use modern phraseology, Hindus proper and marriages between the twice-born and Sudra woman were not forbidden in the earlier days. Even subsequent writers do not give expression to any absolute prohibition against the marriage of a Hindu with a non-Hindu. The only textbook writer who mentions this subject is Ganapatti Iyer who says at p. 404 (S. 565) :--

"Again the Hindu law of marriage contemplates that the parties of a marriage should be Hindus. The restrictions imposed by the Hindu texts to be referred to later on will indeed show that even when the parties are Hindus they should be of the same caste in order that the marriage may be valid. That being so, marriage between a Hindu and a non-Hindu such as Christian, Mohammadan etc. cannot possibly be recognised by the Hindu law. But in such cases where only one of the parties to a marriage or other transaction is a Hindu, the Hindu law can obviously have no application. There is a

conflict of laws and different considerations should guide Courts in such cases. One party is no doubt governed by the Hindu Law but the other party is not governed by such law but by his own law. If according to the personal laws of both parties, such a marriage is prohibited or permitted, no difficulty can arise. If, however, the personal law of one prohibits the marriage but there is no such prohibition according to the personal law of the other there is real conflict of laws and we have to see whether there is any governing principle applicable to such cases."

65. The learned author then discusses the case of Venigopal Chetti v. Venugopal Chetti LR 1909 67 and says about it:

"Now, although the respondent was a caste Hindu, i.e. a vaysia by caste, according to the custom of usage apart from the law laid down in the Smritis, he would be regarded as an outcast by reason of his going to England and it is very doubtful whether the prohibition in the Smritis as regards marrying out of caste would apply to him at all."

66. The law thus expounded does not indicate an absolute prohibition within the meaning of that word as used in the authorities to which reference has already been made."

Kidwai J. then proceeded to consider various authorities on the point and also the provisions of the Hindu Marriages Validity Act and came to the following conclusion :

"These authorities clearly establish the proposition that there is no rule of Hindu Law which forbids the subsistence of a marriage, one of the parties to which is a non-Hindu that is to say that the Hindu Law does not refuse to recognise a conjugal union merely by reason of a difference of religion.

Ghulam Hassan J. who concurred with the main judgment added as follows :

"The factum of marriage being admitted, the burden of showing that the marriage was not valid rested upon the plaintiffs. In order to succeed the plaintiffs will have to point to some distinct and specific provision of the Hindu law which prohibits the marriage of a Hindu with a Christian. Any analogy from the texts of the Hindu law or from judicial decisions showing that certain marriages are not recognised or approved by the Hindu Law will afford no assistance in construing Section 38. As the ancient Hindu law gives never contemplated the marriage of a Hindu with a non-Hindu it follows there could be no injunctions of that law upon the subject and a fortiori no sanction or prohibition of such a marriage. The history of legislation in India extending over a century shows trends which far from placing any restrictions upon inter-communal and mixed marriages have on the contrary inclined towards removing or softening the rigour of restrictions imposed by the personal law of the communities. The numerous Acts referred to in the judgment of my learned brother furnish ample evidence of this tendency. Unless, therefore, an express prohibition of an unambiguous character to be found in the Hindu law can be shown to exist, I should for my part be extremely chary of characterising such marriages as forbidden by the Hindu Law and therefore null and void."

The learned Advocate General also invited my attention to a decision of the Mysore High Court in *Rajammal v. Mariyammal* AIR 1954 Mys 38. In that case Hindu married a Christian and the Commissioner for Workmen's compensation disallowed the claim for compensation on the ground that she being a Christian, her marriage with the employee who at the time of the marriage was a Hindu was invalid and could not be recognised according to law. The Mysore High Court held that (at page Mysore 38, AIR 1954):

"Succession and inheritance in Hindu Law do not exclude illegitimate children and their mothers more particularly among the Sudras. There is besides, no rule of Hindu Law which forbids the subsistence of a marriage one of the parties to which is a non-Hindu, that is to say, Hindu Law does not refuse to recognise a conjugal union merely by reason of a difference of religion."

The Court sought support from the decision in *Mrs. Chandramani*'s case cited earlier.

Our High Court also had occasion to consider a similar question in proceedings u/s 488, Cr. P. C. in *Kunhiraman Nair v. Annakutty* 1967 KLT 24. In that case, the husband was a Hindu and he married a lady who was Roman Catholic. This Court held that the Indian Christian Marriage Act does not stand in the way of a Christian marrying a non-Christian. The said marriage was not registered under the Special Marriage Act. The Court however held that it does not stand in the way of the woman being treated as the wife of the man and the spouses conducting themselves as man and wife.

10. Learned Advocate General submitted that the Madras High Court has taken judicial notice of the custom of Nadars of Travancore Area who are Hindus entering into marriage with Christian ladies and cited the decision of the Madras High Court in *Seethalakami Ammal v. Ponnuswamy Nadar* 1967 2 KLJ 334. In that case it was alleged that one Perumal Nadar who was a Hindu married Annapazham. Perumal denied the marriage and also contended that even if the marriage is true that is valid as Annapazhan was a Christian. Dealing with the question, the Madras High Court observed :

"On the other hand, there is sufficient evidence to show that it is customary among the Hindu Nadar community in Travancore area to enter into marriage alliances with Christian women. Such marriages have been recognised by the community as valid in law, and usually after the marriage the married woman follows the customs and manners of her husband.

11. In [Commissioner of Wealth Tax, Madras and Others Vs. Late R. Sridharan by L.Rs.,](#) the question arose whether a son born to a Hindu in marriage with a Christian woman could be considered as a member of the family. Discussing the question, the Supreme Court observed (1978) 104 ITR 442:

"Under the codifying Acts, namely, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act, 1956, the orthodox concept of the term "Hindu" has undergone a

radical change and it has been given an extended meaning. The aforesaid codifying Acts not only apply to Hindus by birth or religion, i.e. to converts to Hinduism but also to a large number of other persons. According to Explanation (b) to Section 2(1) of the Hindu Succession Act, 1956, Hindu Adoptions and Maintenance Act, 1956, and Hindu Marriage Act, 1955 as also according to Explanation II to Section 3(1) of the Hindu Minority and Guardianship Act, 1956 any child legitimate or illegitimate, one of whose parents is a Hindu by religion and who is brought up as a Hindu is a Hindu.

The Supreme Court held that the child born out of the marriage between a Hindu male and a Christian female is a member of the co-parcenary family.

12. Sri P. Sukmaran Nair, learned counsel for the respondents submitted that whatever be the law, on the point, before the commencement of the Hindu Marriage Act, after the commencement of the Act, a marriage between a Hindu male and a Christian female other than entered into under the Special Marriage act cannot be considered as a valid marriage. He invited my attention to Section 5 of the Hindu Marriage Act and argued that the law only recognised marriages between two Hindus. He referred to Section 4 of the Act and submitted that any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act ceased to have effect with respect to any matter for which provision is made in the Act. Learned counsel also placed much reliance on the decision of the Supreme Court in [Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another](#), . That decision mainly concerned with the violation of the conditions of valid marriage enumerated in Section 5. It was held in that decision that a marriage in contravention of the conditions is null and void. The Supreme Court held that the plea that the marriage should not be treated as void because such a marriage was earlier recognised in law and custom, cannot be accepted in view of the overriding effect of the provisions contained in Section 4 of the Hindu Marriage Act. In my view Section 5 is only dealing with the requirements for a valid marriage between two Hindus and it has no relevancy in considering the question whether a marriage between a Hindu male and a Christian female is a valid marriage. In this context, the decision in [Commissioner of Wealth Tax, Madras and Others Vs. Late R. Sridharan by L.Rs.](#), is very relevant where the Supreme Court specifically stated that under the codifying Acts merely .the Hindu Marriage Act 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act 1956 and the Hindu Adoption and Maintenance Act, 1956, an extended meaning has been given to the expression "Hindu" in view of the Explanation 1 to Section 2(1) of the Hindu Succession Act, 1956 and the Hindu Marriage Act 1955 and also Explanation II to Section 3(1) of the Hindu Minority and Guardianship Act, 1956. In this context I may point out that neither of parties had a case that there was no valid marriage between the 4th defendant and the mother of the plaintiffs. The finding of the court below that the plaintiffs and the 4th defendant are not Hindus cannot be held to be a correct statement of law in view of the extended definition contained in the codifying enactments referred to above.

13. The foregoing discussion would show that the finding of the court below that there was no valid marriage between the 4th defendant and Mariya Augustina is not correct and that it has to be held that the said marriage was valid. It also follows that the plaintiffs and the 4th defendant are Hindus and that they have to be treated as members of a co-parcenary family.

14. On the basis of its finding that the plaintiffs and the 4th defendant are not Hindus, the court below found that after the death of Adichan Nadar, the 4th defendant became the sole surviving member of the family and therefore he was competent to execute Ext. B7 gift deed in favour of the 1st defendant. As indicated above, in view of the extended meaning given to the expression "Hindu" in the codifying Acts, it is difficult to sustain that finding. It has to be held that the property belonged to the co-parcenary joint family. The 4th defendant was only a Manager or Kartha of the joint family and he had only restricted rights recognised by law in respect of disposal of the property by a Kartha and manager of a Hindu undivided family.

15. It is difficult to reconcile the finding of the court below at page 8 of the judgment that the property is a joint family property of the 4th defendant, with his finding under issue No. 3 page 7 that there is no joint Hindu family and that the property gifted by the 4th defendant to defendants 1 and 2 belonged absolutely to the 4th defendant. Sri P. Sukumaran Nair learned counsel for the third respondent pointed out that the 1st defendant was abducted by another person and there was some criminal case as can be seen from Ext. B4 judgment in respect of the incident, that the family was really finding it difficult to find out a proper marriage for the 1st defendant because of the incident which was the subject-matter of Ext. B4 judgment, that nobody came forward to marry the 1st defendant without offering substantial dowry and that it was under those circumstances that Ext. B7 happened to be executed. In deciding the question whether the disposal was within the permissible limits, learned counsel submitted that this aspect has to be taken into account. Learned counsel also invited my attention to the decision of the Supreme Court in [Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa](#), . IN that case the Kartha created a life interest in the property of the value of about Rs. 5000/- in favour of his widowed daughter, the 8th defendant. It was found by the court that the joint family had properties worth lakhs of rupees and creation of a life estate in favour of the widowed daughter of the Kartha, in respect of property worth Rs. 5,000/- is valid, since it was within the responsible limits permissible under the law. Discussing the question the Supreme Court summarised the legal position as follows AIR 1964 SC 519:

"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 normal (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 Courts, 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."

Learned counsel submitted that though in that particular case the joining family had much items of properties worth Lakhs and the gift was only of a life estate of a property worth of Rs. 5,000/-, it will be clear from the observations of the Supreme Court in the above cited case, that there is no hard and fast rule in regard to the qualitative limits of the power of disposal and it largely depends upon the circumstances of each case. There cannot be any quarrel with the proposition of the learned counsel so forcefully put on the basis of the above observation of the Supreme Court. In the instant case, however, there is no application of the mind of the court below on the question whether the Gift exceeded the permissible limit though the lower Court entered a finding that it can be justified on the basis that it is a reasonable portion that was disposed of under Ext. B7. Learned counsel for the appellant invited my attention to the evidence of D. W. 6. D. W. 6 has sworn that he had only two items with him as joint family properties and that the suit property is one of those items and all other items were his self acquisitions. Learned counsel Sri. P. Sukumaran Nair, appearing for the 3rd respondent and Sri James Vincent counsel for respondents 1 and 2 submitted that Ext. A1 partition deed dated 2-4-1079 would show that several items of properties were allotted to the share of Adhchan Nadar, the father of the 4th defendant. There is no enquiry as to the items available at the time when Ext. B7 was executed. It has come out in evidence that the 4th defendant sold one item for Rs. 3,000/-, and mortgaged another item under Ext. A13 for a consideration of Rs. 10,000/- for the purpose of raising funds for purchasing jewels and meeting the marriage expenses of 1st defendant. According to D.W. 6 the properties covered by Exts. A8, A9, A10, A11 and A12 are his self acquisitions. Learned Advocate General submitted that in the above circumstances there was no compelling necessity to dispose of the joint family properties to raise further funds or to gift the suit property which is a joint family property to defendants 1 and 2 under Ext. B7, as dowry. None of these aspects has been considered by the court below and in the circumstances I have no alternative but to set aside the judgment and decree of the court below and remit the matter to the court below to consider the question whether the gift made in favour of the 1st defendant and 2nd defendant under Ext. B7 is a reasonable provision permitted under law. Learned counsel for the respondents pointed out that the plaintiffs have not challenged a similar gift of a joint family property made to Santhakumari. It is the case of D.W. 6, that the property gifted to Santhakumari was his self acquisition. There is no finding on the question whether it was his self acquired property that was conveyed to Santhakumari by way of gift under Ext. B13. Even if it is found that Ext. B13 property is a joint family property, it does not follow that Ext. B7 gift is within reasonable limits. The lower court should consider all the circumstances, such as total extent of joint family properties and self acquired properties, the extra-ordinary situation mentioned by the learned counsel for

the respondents as a compelling circumstance which led to the execution of the gift deed in favour of the 1st defendant and also the question whether there was justification to gift the joint family property which 4th defendant was possessed of self acquired properties. Sri P. Sukumaran Nair, learned counsel for respondents submitted that 4th defendant acquired properties utilising the income of the joint family property and therefore they are also joint family properties and that this Court should not foreclose an enquiry into that aspect. Of course in determining the extent of the properties which belonged to the joint family and the self acquisitions of the 4th defendant, it is open to the court to consider all aspects relevant for determining this issue. The lower court also will afford opportunities to both parties to adduce fresh evidence on the above aspects.

In the result, the appeal is disposed of as above. Appellants are entitled to refund of court-fee paid- on the Memorandum of Appeal. The parties will suffer their costs. Parties will appear before the court below on 18th October, 1990.