

Nallamilli Subbi Reddi and another - - - - - *Appellants*

v.

Dwarampudi Sura Reddi and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 9TH DECEMBER, 1948.**

Present at the Hearing:

LORD UTHWATT
LORD MORTON OF HENRYTON
LORD REID
SIR MADHAVAN NAIR

[*Delivered by* LORD MORTON OF HENRYTON]

This is an appeal from a judgment and decree of the High Court of Judicature at Madras dated the 23rd August, 1944, varying a judgment and decree of the Subordinate Judge of Rajahmundry dated the 31st October, 1942. The appeal relates to certain landed properties which formerly belonged to one Mulayya. Mulayya died in or before the year 1869. He had a son Subbarayudu and two daughters Seshamma and Subbamma. His wife, his son and his daughter Seshamma all died in his lifetime. The son had no children, but his widow Gangamma was living with her father-in-law Mulayya for some time before the latter's death. Seshamma had four sons of whom one, Sattireddi, was also living with Mulayya for some time before his death and was selected as the person to perform Mulayya's funeral obsequies. It is contended by the respondents that Mulayya gave the properties in question, shortly before his death, to Sattireddi, under whom they claim. Sattireddi died in 1920.

Subbamma survived her father Mulayya. At the time of her father's death she was married, and was living in another village. At that time she had no children, but she subsequently had two sons, Veer Reddi and the first appellant Subbi Reddi. Veer Reddi died on 12th September, 1939, leaving a son Sur Reddi who is the second appellant. Subbamma died on the 13th September, 1939.

It was conceded by the respondents that, if Mulayya continued to own the properties in question up to the date of his death, according to the Hindu law of succession Subbamma would be entitled to enjoy them during her life and on her death in 1939 they would pass to the first appellant. The first appellant has purported to transfer a one third share in the properties to the second appellant. The suit from which this appeal arises was filed by the appellants on the 20th December, 1939. At one time many other properties were in question and many other persons were concerned in the litigation, but the issues have been considerably narrowed in the course of the proceedings in India.

The first question which arises on this appeal is whether Mulayya continued to own the properties in question up to his death, or whether he gave them away to his grandson Sattireddi during his lifetime. If the gift

to Sattireddi is established, it is common ground that the appeal must be dismissed. If, however, the gift is not established, further questions will have to be decided.

The Subordinate Judge rejected the oral evidence of two witnesses, who claimed to be ninety years old, in support of the story that Mulayya gave the properties in question to Sattireddi, and he was not satisfied that any such gift was established. The High Court also rejected the oral evidence, but drew the inference, from the course of events after the death of Mulayya, that there must have been a gift of the properties from Mulayya to Sattireddi during the former's lifetime.

Their Lordships agree with the conclusions arrived at by the High Court. It is not surprising that there is no reliable oral evidence as to a gift which is alleged to have been made, without any writing, at a date prior to 1869, but their Lordships think that the conduct of the parties concerned, and especially the conduct of Subbamma, is consistent, and consistent only with the view that there was such a gift and that Subbamma knew of it.

It is not disputed that a gift of the lands in question could have been made without any written document or registration during the period prior to 1869, and it is not suggested that there is anything inherently unlikely in the story put forward by the respondents that Mulayya, shortly before his death, gave these properties to Sattireddi, the grandson who was to perform his funeral obsequies. There are three possibilities:—(1) That Mulayya died without having made any gift of these properties, (2) That he gave them to his daughter-in-law Gangamma, (3) That he gave them to his grandson Sattireddi.

The undisputed facts as to the period of thirty years after the death of Mulayya are stated in the judgment of the High Court as follows:—
 “When he (Mulayya) died in 1869 his daughter Subbamma was living in another village with her husband. His daughter-in-law, Gangamma was living with him. Subbamma appears to have taken no steps to assert her right to the property as her father's heir. Gangamma took possession, and before very long either encouraged or acquiesced in the introduction of various of her own or Mulayya's relations as cultivators of most of the property. These accomplished facts are recorded in the revenue registers of the villages, where no reference at all is to be found to Satti Reddi. There was a re-settlement in 1900. In 1899 Subbamma petitioned the authorities to have her and her sons' names entered as pattadars of all the lands left by Mulayya. Gangamma sent a petition objecting to this, and pointing out who the real occupiers had been for the previous thirty years. Neither said a word about Satti Reddi's possible claims. Satti Reddi himself apparently took no action, and no rights of his were recognised at the re-settlement. At this time Satti Reddi and Gangamma were living together, Satti Reddi having married Gangamma's sister's daughter some ten years previously.” Later, the High Court ask the question “Why did Subbama take no action to enforce *her* claims during the years after Mulayya's death when a suit was open to her? She was a young girl, of course, when Mulayya died with no experience of business affairs, but she was married and had a husband to safeguard her interests. We find her indeed putting forward the claims of herself and her sons in 1899 in a petition, but there is nothing to show that that petition was pressed, and its object was certainly not achieved.” There seems no doubt that during the thirty years from 1869 to 1899 Subbamma must have known of the manner in which Gangamma was dealing with this property and it seems quite incredible that she should have made no claim to it as heiress unless she knew that her father had given it away during his lifetime.

The matter does not end there. On 4th April, 1903, Subbamma and her sons Veer Reddi and the first appellant (by their father and guardian) executed a document headed “Deed of relinquishment of rights of heirship” addressed to Sattireddi. It is in the following terms:— “The late Medapati Moolappa (this is another name for Mulayya) who is the father

of Subbamma out of us, during his lifetime alone lost his son Subbarayudu who is my brother. As the said Subbarayudu had no issue at all and as I had no issue at all at that time, as you are the second son of my elder sister, as you are my late father's dāvhitra, you were declared as the kartha. As you were brought up with a view to perform his obsequies after his death, you your self have been from that day to this performing (his) obsequies accordingly. At that time, he gave me towards pasupu kunkuma (pin money), Re-survey No. 65-2, 1 acre 95 cents (in extent) out of the jeroyati lands situate in Lolla village and one mango tree standing in the middle of the mango garden in jeroyati land bearing No. 128, situate in Kuthukuluru village and he confirmed in your favour all the remaining immovable and movable properties consisting of the undermentioned jeroyati lands, house, house-site, cattle, etc., which were entered in the accounts in the name of my father and which were in his enjoyment and gave the same to you in the presence of some mediators. Therefore we have been enjoying the same accordingly till now. What we now state is as follows:—

As you feel a doubt that I may raise dispute saying that I have right in the properties which are entered in the accounts in the name of my father which are mentioned hereunder and as you have asked me to execute and deliver this deed of relinquishment of right, this deed of relinquishment of right has been executed and delivered. We shall not, at any time or in any way raise dispute saying that we have right in the said properties consisting of lands house, house-site, etc." Then follow particulars of the properties.

It is suggested by counsel for the appellants that the statements in this document were false, and that Subbamma was induced to execute it by having her own title confirmed to 1 acre 95 cents in Lolla village and one mango tree in Kuthukuluru village. Their Lordships regard this as extremely unlikely. The properties mentioned in the particulars are of considerable extent, and the 1 acre 95 cents of land and one mango tree seem a most inadequate bribe to induce Subbamma to give up for ever, not only her own right to enjoy these extensive lands for her life, but her sons' right to enjoy them on her death, should they survive her. It seems much more likely that Subbamma knew that the lands now in question had in fact been given to Sattireddi by her father during his lifetime, and was therefore willing to confirm his title if the small Lolla property and the mango tree were secured to herself.

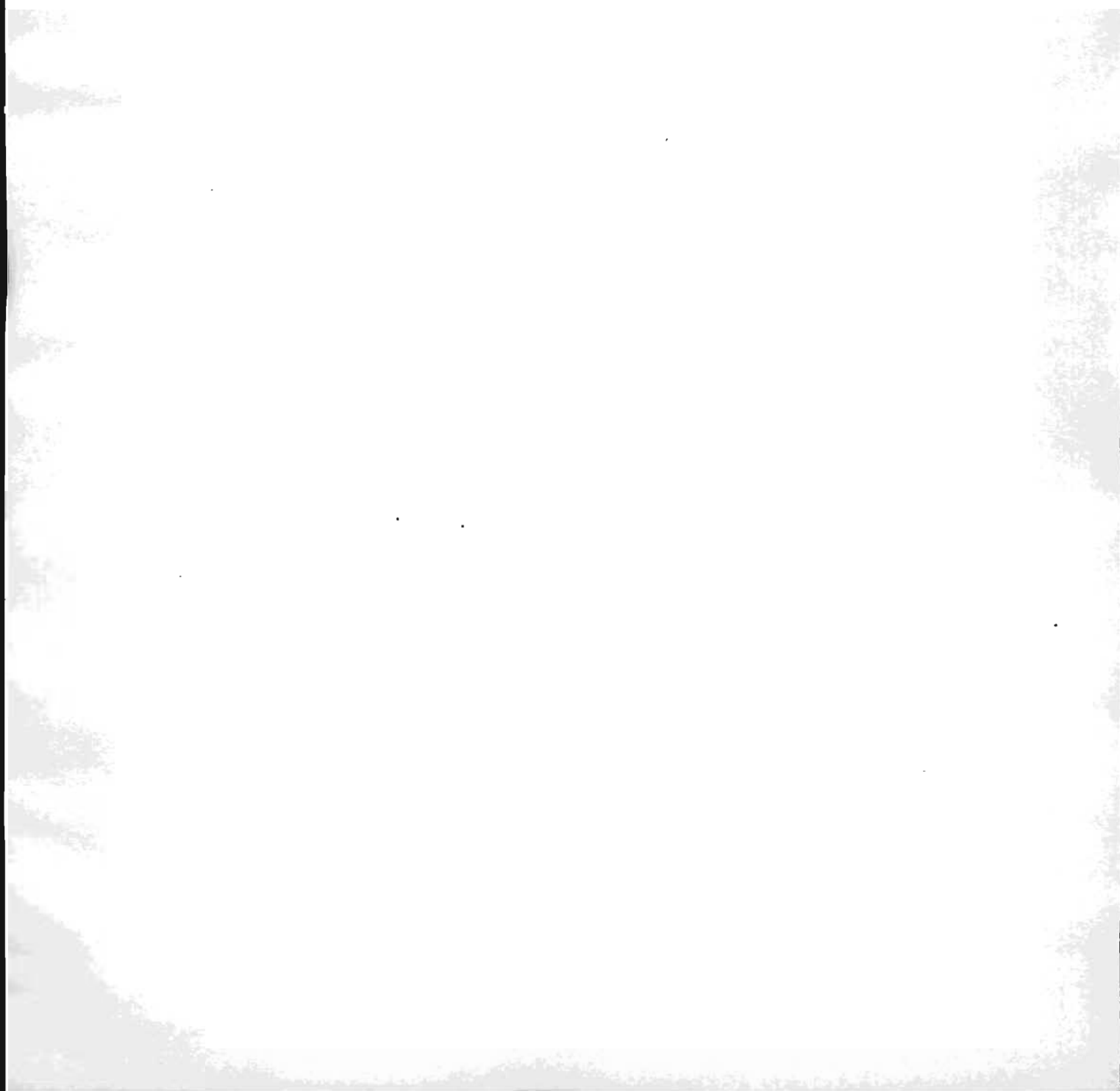
Subsequent events are summarised by the High Court as follows:—
 "The first sign of any assertion of title by Satti Reddi appears in 1903 when on 27th June Gangamma sent a petition to the Sub-Collector complaining that Satti Reddi was threatening obstruction to her cultivation. In 1904 Satti Reddi was impleaded as defendant in a suit by a lessee from Gangamma's brother's son, and in his written statement he himself asserted his claim as owner of all Mulayya's estate. In 1906 Gangamma herself filed a suit against Satti Reddi and Subbamma. Its subject-matter was nearly 7 acres of land in Kuthukuluru and 1 acre 95 cents in Lolla. She claimed that Mulayya had bestowed this property upon her. Both Satti Reddi and Subbamma resisted this suit, putting forward Satti Reddi's title to the lands in Kuthukuluru and Subbamma's title to the lands in Lolla. In 1907 the suit was decreed in terms of a compromise in which all three parties recognised the respective titles of Satti Reddi and Subbamma and Gangamma was given a life-interest in 3 acres 66 cents. It is clear from the subsequent actions of Satti Reddi and his sons that they dealt with the property thus conceded to be theirs as their own. One of these actions was the sale in 1919 of two items of this property to four vendees amongst whom were plaintiff 1 himself and his elder brother Veerreddi."

Having regard to the whole course of events, their Lordships think the inference irresistible that Mulayya gave away the properties in question during his lifetime. They need not consider the second possibility already mentioned, that the gift was to Gangamma. She acknowledged Sattireddi's title in 1907 and no separate claim is made on her behalf. The only

remaining possibility is that Mulayya gave the properties to Sattireddi, and their Lordships think that no other conclusion is consistent with the behaviour of the parties concerned after the death of Mulayya. It is true that Sattireddi appears to have been content to let Gangamma deal with the properties as if she were the owner, up to 1903, but this may be explained by the surrounding circumstances. At the time of Mulayya's death, Sattireddi was a young boy living in his grandfather's house. Gangamma was his uncle's widow, who had been installed in Mulayya's house for some years. It is not surprising that for some time after Mulayya's death Gangamma should have had the active management of the properties in question. As time went on, one would certainly have expected Sattireddi to begin to assert himself, but he may have been quite content to leave Gangamma in charge. He and she were living together; in or about the year 1890 Sattireddi married Gangamma's niece; and it would appear likely that all along Sattireddi, jointly with Gangamma and, (after 1890), his wife, was enjoying the rents and profits of the property. Their Lordships do not find it very surprising that Sattireddi took no steps to assert his title until he quarrelled with Gangamma in 1903; and even if Sattireddi's inaction were surprising, the appellants can derive no assistance therefrom. It would not assist them if their Lordships inferred, from Sattireddi's inaction and Gangamma's activity, that Mulayya must have given the property to Gangamma in his lifetime.

For these reasons their Lordships think that the High Court rightly inferred a gift to Sattireddi by Mulayya. This being so, no other question arises for decision.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the respondents' costs.



In the Privy Council

NALLAMILLI SUBBI REDDI
AND ANOTHER

v.

DWARAMPUDI SURA REDDI
AND OTHERS

DELIVERED BY

LORD MORTON OF HENRYTON