APPELLATE CIVIL.

Before Mukerji and Mitter JJ.

SAJANISUNDARI DASI
v.
JOGENDRACHANDRA SEN.*

1930

Aug. 7, 12.

Maintenance—Chaste Hindu widow—Living with her family—Forfeiture of maintenance, if any—Invalid adoption of her husband, effect of—Estoppel, if any—Scale of maintenance.

A chaste Hindu widow does not forfeit her right to property or maintenance merely on account of her going and residing with her family or leaving her husband's residence from any other cause than unchaste or improper purpose.

Where such a widow's husband had gone in for an adoption at a time when he was perfectly *sui juris* and with the object of getting better advantages and pecuniary benefits than he could get in his natural father's family,

held that he could not be considered to have made an election, which precluded him from turning back and claiming his rights as his father's son, on his adoption being invalid. There is no estoppel, or relinquishment, in such a case, and no principle, which may work a forfeiture, is applicable to it.

Where the husband's family were millionaires and the widow, who had no source of income, had got a house for herself and the trial court had fixed her maintenance at Rs. 20 per month, in the above circumstances,

held, that the amount of maintenance should be fixed at Rs. 80 per month payable from the estate of the widow's husband's natural father, as that amount would enable such a widow to live with the same degree of comfort and with the same reasonable luxury and neither on too penurious, or miserly, nor too extravagant a scale.

Ekradeshwari Bahuasin v. *Homeshwar Singh* (1) followed.

FIRST APPEAL by the plaintiff.

The facts of the case out of which this appeal arose appear in the judgment under report herein.

Rupendrakumar Mitra and *Hiralal Ganguli* for the appellant.

Brajalal Chakravarti, Saratchandra Basak, Bhupendrachandra Guha and *Bipinchandra Basu* for the respondents.

Cur. adv. vult.

*Appeal from Original Decree, No. 101 of 1928, against the decree of Gopeswar Banerjee, Subordinate Judge of Dacca, dated Nov. 28, 1927.

(1) (1929) I. L. R. 8 Pat. 840; L. R. 56 I. A. 182.

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MUKERJI AND MITTER JJ. This appeal has arisen out of a suit by a Hindu widow for recovery of maintenance and of certain ornaments and for other reliefs. She instituted the suit as a pauper, obtained a decree in part and has preferred this appeal in *forma pauperis*.

Three brothers, Madanmohan, Jagamohan and Radhagovinda, lived as members of a Hindu family, joint in mess and property. Madanmohan had five sons, Rajani, Murali, Jadunath, Priyanath and Brajanath. Brajanath was taken in adoption by Jagamohan, but he died soon after; and, on that, Jadunath was so taken in 1311 B. S. Jadunath, at the time, was already married to the plaintiff and the latter had a child in her womb. Radhagovinda died leaving a daughter, and, it is said, after having taken Priyanath in adoption. Jadunath died in 1313 B.S. leaving his widow, the plaintiff, and the daughter, Gopeshwari. In 1317 B.S. Jagamohan separated from Madanmohan.

The plaintiff's case was that since 1317, when the separation took place, she was being maintained in the family of Madanmohan, but she was being ill-treated by the members and that ultimately in 1332 B.S. she was driven out. On these allegations she instituted the suit asking for a number of reliefs. Jagamohan was impleaded as the defendant No. 1; and he having died leaving a will, the three executors named in the will, who took probate of the will, were substituted in his place. Rajani is the defendant No. 2, Murali was the defendant No. 3 and after his death his heirs have been substituted in his place. Priyanath is the defendant No. 4. Radhagobinda's widow is the defendant No. 5. The defendant No. 6 is the receiver to the estate of Madanmohan and Jagamohan appointed in a certain suit.

The defendant No. 1, Jagamohan, denied the *factum* as well as the validity of the adoption of the plaintiff's husband and repudiated all liabilities and said that, if the plaintiff was to get any maintenance,

she might get Rs. 7 or Rs. 8 per month. On the death of defendant No. 1, the executors under his will, who have been substituted in his place, have adopted this defence and have further pleaded that, as executors and devisees under the will, they are not liable for the plaintiff's maintenance. The defendants Nos. 2 and 3, Rajani and Murali, the elder brothers of the plaintiff's husband, denied the allegations of ill-treatment and stated that, though they are not bound to do so, they have maintained the plaintiff, and that they have treated the plaintiff's daughter with affection and have given her in marriage. They further pleaded that the plaintiff has to look to the adoptive father of her husband for her maintenance, and in any event she cannot get more than Rs. 10 a month on account of maintenance.

The Subordinate Judge has dismissed the suit except for the amount of Rs. 1,326 on account of the value of the ornaments, for which there are two cross-objections before us on behalf of the legal representatives of the defendant No. 1, Jagamohan, deceased, and of the defendant No. 2, Rajani, respectively; but they have not been pressed. In the appeal by the plaintiff there were grounds with regard to the portion of the claim on the head of ornaments disallowed, but they have not been urged.

The appeal relates to the claim for maintenance and the other reliefs, which the Subordinate Judge has disallowed. For reasons, which we are not called upon to examine—because they have not been challenged by any of the parties before us—the Subordinate Judge has held that Jadunath's adoption was not valid. He was of opinion that, even if the adoption was valid, Jadunath himself would have no right to restrict the alienation by Jagamohan of his properties, because, under the Bengal School of law, the latter's right of disposal in respect of his properties was absolute; and that though, in that case, Jagamohan would have a moral obligation to maintain the plaintiff, the plaintiff had no legal right to maintenance, which she could enforce against

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the executors or the devisees under the will. He held further that by the invalid adoption Jadunath did not forfeit his rights in his natural family; and although Madanmohan had a moral obligation to maintain the plaintiff and that moral obligation became a legal one, when, on Madanmohan's death, his sons inherited his properties, the plaintiff was not entitled to succeed, as her story of ill-treatment was not proved. His reasons may well be put in his own words:—

"Nobody says that she is of immoral or bad "character; she is a chaste widow and everybody looks "upon her with pity and affection; even now they are "willing to take her into their family and to give her "maintenance and a house. From the plaintiff's own "showing, she is not entitled to a separate "maintenance; the plaintiff said that the defendants "have opened an almshouse in this town and are "feeding many poor people daily; so it is not likely "that they would not give her food and meals. The "thing is that the father of the plaintiff is now "reduced to poverty and is in debt and is in great "difficulties; the father and the brother took it into "their head to bring this suit in the name of the "plaintiff."

The respondents have entered appearance in this appeal in two sets. We have heard the learned advocate, who has appeared on behalf of those who represent Madanmohan's branch. He is unable to dispute the position that the whole fabric of the Subordinate Judge's reasoning, as a ground for disallowing the plaintiff's claim to separate maintenance, fails in view of the decision of the Judicial Committee in the case of *Ekradeshwari Bahuasin* v. *Homeshwar Singh* (1). Their Lordships, quoting the principles enunciated in the case of *Pirthee Singh* v. *Rajkooer* (2), observed:—"These "principles have never been gone back upon or "modified. They are still the law of India." The

(1) (1929) I. L. R. 8 Pat. 840; L. R. 56 I. A. 182.

(2) (1873) 12 B. L. R. 238; L. R. I. A. Sup. 203.

principles were thus enunciated by Sir Barnes Peacock in delivering the judgment of the Board in that case:—"It therefore appears that a Hindu "widow is not bound to reside with the relatives of "her husband; that the relatives of her husband have "no right to compel her to live with them; and that "she does not forfeit her right to property or "maintenance merely on account of her going and "residing with her family, or leaving her husband's "residence from any other cause than unchaste or "improper purposes."

The learned advocate has, however, argued that Jadunath, by having deliberately gone in for an adoption, at a time, when he was perfectly *sui juris* and with the object of getting better advantages and pecuniary benefits than he could get as one of the sons of Madanmohan, he should be held to have made an election, which precludes him from turning back and claiming his rights as Madanmohan's son. It is difficult to appreciate on what precise ground this bar is put forward; it is clear, however, that it can neither be estoppel, nor relinquishment, nor any principle, which may work a forfeiture. The deed evidencing the adoption (Ex. A), on which reliance has been placed in this behalf, does not, in our judgment, assist this argument.

It has next been argued that by the adoption, invalid though it was, Jadunath forfeited such rights as he had in his natural family. The conflict, such as is said to exist on this question, has been pointed out and some decisions referred to. The case before us, however, is one, which comes under the general rule that, on the adoption being invalid, the adopted son does not acquire any rights in the adoptive family or forfeit his rights in his natural family. In this case the circumstances, which may prevent the person, whose adoption proves invalid, from reverting to his natural family are entirely absent.

As a branch of this contention, it has been argued that in view of the adoption, invalid though it proved to be, there was no moral obligation on the part of

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Madanmohan nor any legal obligation on the part of his sons, to maintain the plaintiff, because such obligations do not arise under all circumstances, and the present case is entirely out of the ordinary. This contention has no force, for it is conceded that the plaintiff has no source of income, and her father and brother are in indigent circumstances.

The question, that remains to be considered, is what should be the amount of maintenance. The Subordinate Judge has said: "No doubt the "defendants are very rich people of this town: they "are millionaires of the town of Dacca. In the "affidavit (Ex. 4) of Babu Shamchand Basak, one of "the executors, he stated that the value of one-third "share of Jagamohan would be about 12 lakhs or so. "They have got many houses in this town. But what "did Rajani say,—they seldom engage maid servants "for household purposes; their females cook their own "food and this is very good of them, I would say."

Upon an estimate, which the defendant, Rajani, presented in his evidence, the Subordinate Judge was of opinion that Rs. 20 a month would be sufficient or more for the plaintiff's maintenance, because she could not expect to have a cook, a maid servant and other establishment for herself.

It has been attempted to be shown on behalf of the defendants, by reference to certain income-tax papers, that Madanmohan's income from his business was assessed with a tax less than Rs. 200 *per* year. The papers are perfectly worthless as indicating the value of Madanmohan's estate. As regards Ex. 4, the Subordinate Judge perhaps made a mistake; but, that Madanmohan's estate is valued at several lakhs there is no question. The principles of assessment have been explained by their Lordships of the Judicial Committee in the case of *Ekradeshwari Bahuasin* v. *Homeshwar Singh* (1). Bearing those principles in mind, we would fix the maintenance at Rs. 80 *per* month. This amount, we think, will enable the plaintiff to live with the same degree of comfort and

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with the same reasonable luxury and neither on too penurious, or miserly, nor on too extravagant a scale.

It is conceded that the plaintiff left her husband's house in *Srâban* 1332 B.S. She will get the maintenance from *Bhâdra* 1332 B.S., as that is the time, from which she is so entitled according to the decision of the Judicial Committee referred to above.

As regards the plaintiff's prayer for setting apart and having in her possession a *pukka* house for her residence, the Subordinate Judge has pointed out that she has already got a house for herself and nobody has questioned her right to reside therein. If and when her possession will be disturbed, there will be a cause of action for a claim in this respect. For the present such a claim must be dismissed as premature.

The result, therefore, is that the appeal is allowed; that the plaintiff in addition to the decree for Rs. 1,326 made by the court below in her favour, and which will stand intact, will get a declaration that she is entitled to maintenance at the rate of Rs. 80 *per* month from the defendant No. 2 and the heirs of the defendant No. 3; that the said maintenance will form a charge on the estate of the late Madanmohan Pal; that the plaintiff will be entitled to recover such maintenance from the said defendants from *Bhâdra* 1332 B.S. up to the date of suit; and that the decretal amount will bear interest at the rate of 6 *per cent. per annum* from the date of the lower court's decree until realization. The plaintiff will also get proportionate costs from the said defendants both in the suit and in this appeal and the said costs will bear interest at the rate of 6 *per cent. per annum* from the date till realization. The usual order entitling the Government to realise the court-fees for the plaint and the memorandum of appeal will be made.

Both the cross-objections are dismissed.

Appeal allowed.

G. S.