PRIVY COUNCIL.

RAJANIKANTA PAL

v.

SAJANISUNDAREE DASEE.

P. C.*
1933

Nov. 16.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Hindu Law—Maintenance—Bengal School—Widow of deceased son—Liability of undivided sons after father's death—Invalid adoption of deceased husband—Widow not residing with husband's family—Amount of maintenance.

Although a Hindu governed by the Bengal school is under only a moral liability to maintain the widow of his deceased son, the liability, when transmitted on his death to his surviving sons, becomes in their persons a legal liability, the measure of which, however, is restricted to the amount of the estate to which they have succeeded from their father.

The widow has the above right to maintenance although her husband, when *sui juris,* has been a party to a deed invalidly adopting him out of his natural father's family; nor does she forfeit the right by ceasing to reside with her husband's family, otherwise than for unchaste or improper purposes.

The Judicial Committee will not interfere with the amount decreed by the High Court for maintenance unless the Court has proceeded upon inadmissible evidence or upon an erroneous principle.

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

Decree of the High Court (2) affirmed.

Appeal (No. 91 of 1931) from a decree of the High Court (August 12, 1930), which reversed, so far as material to the present appeal, a decree of the Subordinate Judge of Dacca (November 28, 1927).

The plaintiff-respondent was the widow of Jadunath Pal, who died in 1906. He was one of three sons of Madanmohan Pal; the family was undivided and governed by the Bengal school of Hindu law. Madanmohan died in 1913. He was survived by his

**Present* : Lord Macmillan, Sir John Wallis and Sir George Lowndes.

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

(2) (1930) I. L. R. 58 Calc. 745.

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son Rajanikanta Pal (the appellant), and by his son Murali, who died in 1926 and was represented by his executor, the appellant; neither son had issue. In 1904, Jadunath had been formally adopted by his paternal uncle, Jagamohan, a registered deed of adoption being signed by Madanmohan, Jagamohan and Jadunath. At that time, Jadunath was of age and married to the respondent, and she was with child.

In 1925, the respondent instituted the present suit, claiming maintenance from Jagamohan, or, alternatively, from the appellant and his brother (since deceased), the alternative claim being made in case the adoption was held to be invalid; the receiver in a partition suit, which had been brought in or about 1910 by Jagamohan against Madanmohan, was joined as a defendant. The plaintiff had been residing with Madanmohan and, after his death, with Murali, but had left the family residence, alleging ill-treatment; at the time of the suit, she was residing with her father. She also claimed to recover certain ornaments.

The trial judge held that the adoption was invalid and that the claim against Jagamohan, therefore, failed. He was of opinion that the plaintiff was entitled to be maintained by her brothers-in-law. He found, however, that she had not been ill-treated in the family residence and that her brothers-in-law were willing to maintain her in the family residence, and that, therefore, she was not entitled to a separate maintenance allowance. Accordingly, he dismissed the claim for maintenance; he made a decree in respect of the ornaments.

The plaintiff appealed to the High Court in *forma pauperis*. The present appellant, for himself and as executor of his brother, filed cross-objections against the finding that the adoption was invalid, and against there being any liability upon him to maintain the plaintiff.

At the hearing of the appeal, the validity of the adoption was not pressed, and it was conceded that, having regard to the judgment of the Board in *Ekradeshwari Bahuasin* v. *Homeshwar Singh* (1), the fact that plaintiff had left the family residence, not for unchaste purposes, did not preclude her from claiming a maintenance allowance.

The High Court (Mukerji and Mitter JJ.) rejected a contention that the invalid adoption, deliberately entered into by the plaintiff's husband when *sui juris*, resulted in a forfeiture of the right to maintenance claimed. Applying the principles laid down by the Privy Council in the case mentioned above as to the amount of maintenance to be awarded to a widow, the learned Judges made a decree against the present appellant for the payment of Rs. 80 per month, to be a charge upon his father's estate (2).

Wallach for the appellant. The *Dâyabhâga* wholly denies that a Hindu has, by birth, an interest in the ancestral family property, the doctrine which is the corner stone of the *Mitâksharâ* joint family system and the rights thereunder: Mayne's Hindu Law, par. 37; Mulla's Hindu Law, ss. 273, 543. In *Khetramani Dasi* v. *Kashinath Das* (3), a Full Bench of the Calcutta High Court held that there is no legal obligation to maintain the widow of a deceased son but only a moral obligation in appropriate circumstances. It is true that it was there laid down that, after the father's death, the moral obligation became a legal liability attaching to the inheritance; that view was expressed *obiter*, but it has been applied in *Kamini Dassee* v. *Chandra Pode Mondle* (4), a Bengal case, and in other cases which were not under the *Dâyabhâga*: *Janki* v. *Nand Ram* (5), *Meenakshi Ammal* v. *Rama Aiyar* (6). There is, however, no decision of the Privy Council to that effect, and it is submitted that, according to the

(1) (1929) I. L. R. 8 Pat. 840; L. R. 56 I. A. 182.
(2) (1930) I. L. R. 58 Calc. 745.
(3) (1868) 2 B. L. R. (A. C. J.) 15.
(4) (1889) I. L. R. 17 Calc. 373.
(5) (1888) I. L. R. 11 All. 194.
(6) (1912) I. L. R. 37 Mad. 396.

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principle of the *Dâyabhâga,* there is no legal liability upon the family property. But, even if the above principle is right, it does not apply in this case, because Jadunath, having chosen to separate himself from his family of birth, there was no moral obligation upon his father. In any event, the amount decreed was too much; the learned Judges over-estimated the estate left by Madanmohan.

Pringle for the respondent was not called upon.

The judgment of their Lordships was delivered by

LORD MACMILLAN. This is a suit in which one Sreemati Sajanisundaree Dasee, widow of the late Jadunath, sues for maintenance and the recovery of certain ornaments, the defendants to the suit being her brother-in-law, Rajanikanta Pal, and others, who are called as representatives of her late father-in-law, Madanmohan.

In the first court, the plaintiff was held disentitled to any maintenance, though she recovered, their Lordships understand, the value of the ornaments which she claimed, but the learned judge indicated that, if there was any legal liability for maintenance, the appropriate allowance would be at the rate of 20 rupees per month.

On the case being taken to the High Court, the judgment of the Subordinate Judge was, in part, recalled and liability was held to be established against the defendants for the maintenance of this lady, and the rate of maintenance was fixed at 80 rupees per month.

In the present appeal, counsel on behalf of the defendant, Rajanikanta Pal, now the appellant, endeavoured to persuade their Lordships that there was no legal ground of liability for maintenance. That contention, their Lordships regarded as hopeless. The liability of Madanmohan towards the widow of his son was, no doubt, on the authorities, a moral liability, but that liability, when transmitted to his sons on his death, became, in their persons, a legal

liability, the measure of which, however, was restricted to the amount of the estate to which they succeeded from their father. These principles of law have been established by authoritative judgments and are applicable to a family governed, as was this family, by the *Dâyabhâga* law. The matter is not one which can be reopened before their Lordships.

This view having been indicated to counsel, the only question which remained was whether the extent of the maintenance, which had been fixed for this lady by the High Court, was or was not excessive. Their Lordships have before them what fell from Lord Shaw in delivering the judgment of the Board in the case of *Ekradeshwari Bahuasin* v. *Homeshwar Singh* (1), where, as here, a maintenance award of the High Court was in question :—

The courts below fixed the maintenance of the appellant at 4,200 rupees per annum. The learned Subordinate Judge, in doing so, says this : "This sum, I think, would enable the lady to live, as far as may be, consistently with the position of a widow, in something like the same degree of comfort and with the same reasonable luxury of life as she had in her husband's lifetime." That is as near to principle as can be got in such cases, and, with the addition to be presently noted, their Lordships entirely approve of that view. The addition is this : that there may be circumstances in which the past mode of life of the widow has been demonstrably on a penurious and miserly scale, or, on the other hand, on a quite extravagant scale, having regard to the total income of the husband. But if, as may be readily assumed, in such a case as the present, the scale was suited to his own position in life, that is a sound point from which to start the estimate.

Now, in the present case, so far as the circumstances of the parties are concerned, there does not appear to be anything to indicate that the sum of 80 rupees per month was fixed on any wrong principle. No doubt, if it could be shown that the High Court had erred in law, by applying an inapplicable principle in measuring the amount to be awarded to the plaintiff, there might be justification for review by their Lordships, but, in this case, counsel has failed to draw their Lordships' attention to any such error

(1) (1929) I. L. R. 8 Pat. 840 (846); L. R. 56 I. A. 182 (187).

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in law. The learned Judges of the High Court, in their judgment, say this :—

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 200 rupees per year. The papers are perfectly worthless as indicating the value of Madanmohan's estate. As regards Ext. 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 [just alluded to]. Bearing those principles in mind, we would fix the maintenance at 80 rupees per month. This amount, we think, will enable the plaintiff to live with the same degree of comfort and with the same reasonable luxury and neither on too penurious or miserly, nor on too extravagant a scale.

It is perfectly clear that the learned Judges of the High Court applied their minds exactly to the question which it was proper for them to consider, and they have arrived at a conclusion in conformity with the principles laid down by this Board. Counsel has entirely failed to show their Lordships that the learned Judges of the High Court proceeded upon any evidence which was inadmissible or committed any error as regards the principles applicable to the case.

In these circumstances, their Lordships have no hesitation in arriving at the conclusion that they must humbly advise His Majesty that the appeal be dismissed.

The respondent in this case is appearing *in forma pauperis*, and, accordingly, she will have such costs as are appropriate in the case of a respondent *in forma pauperis* who has been successful.

Solicitors for appellant: *Hy. S. L. Polak & Co.*

Solicitors for respondent: *Watkins & Hunter.*

A. M. T.