APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1893.
October 25.
December 22.

ANANTHAYA (DEFENDANT), APPELLANT,

v.

VISHNU (PLAINTIFF), RESPONDENT.*

Hindu law—Illegitimate son—Maintenance.

Under the Mitakshara law an illegitimate son is entitled to maintenance as long as he lives, in recognition of his status as a member of his father's family and by reason of his exclusion from inheritance among the regenerate classes. The maintenance decreed to an illegitimate son may be secured on the family property.

SECOND APPEAL against the decree of W. C. Holmes, Acting District Judge of South Canara, in appeal suit No. 178 of 1891, modifying the decree of M. Mundappa Bangera, District Munsif of Mangalore.

The plaintiff, an illegitimate son of the defendant's father, a Brahmin by caste, sued to recover from defendant his maintenance as a charge on certain immovable family property. Both the Lower Courts decreed in favour of the plaintiff, and the defendant preferred this appeal.

Pattabhirama Ayyar for appellant.

Parthasaradhi Ayyangar for respondent.

JUDGMENT.—Both Courts have found that respondent is the illegitimate son of appellant's father Krishnaraya, who was a Brahmin by caste. As observed by the District Munsif, it is a settled rule of Hindu law that among the regenerate classes illegitimate sons are entitled to maintenance. The District Judge considered Rs. 4 a month to be a suitable provision for respondent and decreed to him future maintenance and arrears of maintenance for fourteen months before suit at the rate of Rs. 4 per mensem. From this decision the defendant has preferred this second appeal.

There can be no doubt that under the Mitakshara law, by which the parties are governed, an illegitimate son is entitled to

* Second Appeal No. 239 of 1893.

maintenance among the regenerate classes. The Smriti of Yajnyavalkya and its exposition in the Mit., chapter I, section XII, leaves no room for doubt on this point. An illegitimate son is one of that class of persons who, by reason of their exclusion from inheritance, are allowed maintenance by the Hindu law, and this is clear from the facts that among Sudras he shares his father's property together with the legitimate son. It is urged on appellant's behalf that respondent is not entitled to maintenance after he attains his age, but we are unable to accede to this contention. The Smriti of Yajnyavalkya awards maintenance to an illegitimate son not as a provision against starvation and vagrancy, but in recognition of his status as a member of his father's family and by reason of his exclusion from inheritance among the regenerate classes. As in the case of females of the family or of disqualified heirs, an illegitimate son is entitled to maintenance as long as he lives. We do not, however, desire to be understood as holding that his earnings, when he is able to earn, should not be considered in fixing the rate at which maintenance should be paid.

Another contention is that maintenance can only be decreed subject to the condition that he is 'docile' and our attention is drawn to the decision in *Hargobind Kuari* v. *Tharam Singh*(1) and to the words in Mit., chapter I, section XII, sloka 3, "but if he "be docile, he receives a simple maintenance." By docility, cited above in the text, is meant nothing more than showing such consideration and rendering such reasonable service as are ordinarily due to the head of the family by its members. It is not necessary to consider, for the purposes of this appeal, whether the text is more than directory, as there was no plea in the Courts below based on this ground.

The third contention is that the maintenance should not be made a charge on any immovable property belonging to the family. As the maintenance awarded is the result of exclusion from inheritance, and as the Hindu theory is that family property constitutes assets from which charges in the nature of maintenance, &c., are to be met, the maintenance decreed to an illegitimate son may be secured on the family property, as in the case of a female member, by being declared to be a charge.

The fourth contention for the appellant is that respondent's

(1) I.L.R., 6 All., 329.

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mother was a dancing girl by caste. But both Courts find that respondent is the illegitimate son of his father, and as this is a question of fact, the finding is binding upon us. The position of the mother as a dancing girl by caste is only important as showing that her connection with the father was casual and *not* continued concubinage, but in the present case the Judge referred to evidence showing that respondent's mother was the concubine of his father for a long period of years. This appeal cannot be supported and we dismiss it with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Shephard.

1893 July 10.

MUHAMMED ALIM OOLLAH SAHIB (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA (DEFENDANT), RESPONDENT.*

Suit against Secretary of State in Council—Dismissal of suit with costs—Review of taxation—Remuneration of the Advocate-General and Government Solicitor by fixed salaries—Liability of party condemned in costs.

Assuming that the arrangement between the Government and its Solicitor is that the latter should receive a salary and in addition the costs awarded to Government, this arrangement cannot affect a third party condemned in costs; neither is it illegal or contrary to public policy.

APPEAL against the judgment of Wilkinson, J., sitting on the Original Side in civil suit No. 128 of 1891.

The facts of the case appear sufficiently for the purposes of this report from the judgment of

WILKINSON, J.—"This is an application to review the taxa-"tion of the defendant's bill of costs in the above suit to set aside "the allocation of the taxing officer and to lay down the mode "in which and the principle on which the bill should be taxed.

"The suit was one by a private individual against the Secre-"tary of State. At the first hearing the Secretary of State was

* Appeal No. 16 of 1893.