SAMOO PATTER v. ABDUL SAMMAD SAHEB.

100 of that Act. In the case of *Neelakantam Iyer* v. *Madasamy Tevan* (1) no one appeared for the respondent, and the passage in *Mithiram Bhat* v. *Somanatha Naickar* (2) is only a dictum. On the other hand the question is fully considered in *Royeuddi Sheik* v. *Kali Nath Mookerjee* (3), with which we agree, and the same view is taken by the Bombay High Court in *Narayan* v. *Lakshmandas* (4). This was the only question argued in the appeal which must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr Justice Sankaran-Nair.

1908. January 22, 28.

SURAMPALLI BANGARAMMA (PLAINTIFF), APPELLANT,

v.

SURAMPALLI BRAMBAZE (DEFENDANT), RESPONDENT.*

Hindu Law—Maintenance—Right of wife who had lived apart from her husband during his life-time to claim maintenance after his death—Father-in-law having ancestral property bound to maintain under such circumstances.

A wife living apart from her husband without any justifying cause, is not entitled to claim maintenance from him, as in so doing she commits a breach of duty to him.

After his death, however, she is entitled, though she lives apart, to claim maintenance from her father-in-law who has taken her husband's estate as there is no duty on her part to live with him, provided she does not live apart for corrupt purposes.

Per WALLIS, J.—A wife living apart from her husband for no improper purpose, may at any time return and claim to be maintained. Her right is not forfeited but only suspended during the time she commits a breach of duty by living apart and is revived when at his death such duty ceases to exist. The Court may under the circumstances be justified in awarding her maintenance on a less liberal scale than it otherwise would.

Per SANKARAN-NAIR, J.—The father-in-law is under a moral obligation to maintain his daughter in-law, which ripens into a legal obligation against the assets in the hands of his heirs.

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(1) 17 M.L.J., 39. (2) I.L.R., 24 Mad., 397.
(3) I.L.R., 33 Calc., 985. (4) 7 Bom. L.R., 934.

* Appeal No. 113 of 1904, presented against the decree of J. H. Munro, Esq., District Judge of Vizagapatam, dated 19th April 1904, in Original Suit No. 22 of 1903.

Rengammal v. *Echammal*, (I. L. R., 22 Mad., 305 at 307), referred to.

The husband is under a moral obligation to support a wife when she is living apart from no corrupt motive; and this moral obligation ripens into a legal obligation on the father-in-law when, on the death of the son, he takes ancestral property.

The rights of a wife and widow respectively to maintenance rest entirely on different grounds. The former is a personal obligation on the husband based on the identity arising from marriage relations and is not dependant on the possession of property.

The right of a widowed daughter-in-law to claim maintenance from her father-in-law is based on the possession of ancestral property by the latter and cannot be defeated by any breach of duty on her part towards her husband which might disentitle her to enforce a distinct claim in respect of a different relation and on account of considerations peculiar to that relation.

SUIT for maintainance by plaintiff against the defendant, her father-in-law. The defendant contended *inter alia*, that the plaintiff was not entitled to any maintenance as she lived apart from her husband till his death without any justifying cause. The judgment of the lower Court on this point was as follows:—

The defendant further contends that he is not liable to maintain the plaintiff by reason of her conduct. It is clearly established that the plaintiff after living with her husband for four or five years, left him, and refused to return to him, and even said he might marry again if he liked. No attempt has been made by the plaintiff to show that she had any justifying cause for leaving her husband. Some time after her final refusal to return, plaintiff's husband married a second wife who lived with him for a year or more until his death. During her husband's life-time plaintiff did not make any demand for separate maintenance. Had she done so, she must, as the evidence stands, have been unsuccessful, for she was living apart from her husband without any sufficient cause —*vide* Mayne's 'Hindu Law,' 6th edition, at p. 592. Thus, up to the moment of her husband's death, plaintiff was not in a position to claim maintenance, and defendant contends that her husband's death cannot place her in any better position. The point is not one touched upon by Mr. Mayne, nor has either side been able to refer me to any authority upon it. I think defendant's contention is reasonable. Plaintiff can only claim maintenance from defendant on the ground that he has taken the property of her deceased's husband. If during the life of her husband she was entitled to be maintained out of his property, she would be entitled to maintenance from defendant who has taken that property. But seeing

SURAMPALLI BANGARAMMA v. SURAMPALLI BRAMBAZE

that during her husband's life-time she had no claim for maintenance upon his property, I know of no principle upon which it can be held that such a claim will attach upon that property in the hands of defendant. I therefore find that defendant is not bound to maintain the plaintiff.

The District Judge dismissed the suit.

The plaintiff appealed.

P. R. Sundaram Ayyar for appellant.

T. R. Ramachandra Ayyar and *T. Ramachandra Rau* for respondent.

JUDGMENT (WALLIS, J.).—The question we are called upon to decide in this case is whether a wife who without sufficient cause leaves her husband and lives apart from him during his life-time forfeits her right of maintenance against his estate after his death.

It is undoubtedly the duty of a Hindu wife to live with her husband and under his protection; and if, without due cause she leaves him and lives apart she cannot claim to be maintained by him. There is, however, no authority for saying that after leaving him she has no right to return and live under his protection. Hindu law does not recognise any divorce or dissolution of the marriage tie; and in the absence of clear authority to the contrary I am of opinion that it is her right and also her duty to return to her husband. I am not referring to cases of unchastity which is not alleged here. If she is entitled to be maintained by her husband during his life on her returning to him, it appears to follow that her right to maintenance is only suspended so long as she goes on committing a breach of her duty by living away from him. After his death it is no longer possible for her to live with him, and she is not committing any breach of duty in failing to do so. Consequently there is nothing to prevent her from enforcing a widow's claim to maintenance. It might not be an unreasonable rule to punish the misconduct of a Hindu wife in leaving her husband without due cause by depriving her of her right to maintenance either during his life or after his death, and if there were any such well-established rule we should of course be bound to enforce it. It is not however in my opinion the function of this Court to create such a rule; and that no such rule now exists is clear to my mind from the failure of the respondent's vakil to produce any direct authority in support. It is however

in my opinion open to the Court to have regard to the conduct of the widow in fixing the amount of her maintenance; and I am inclined to think that under the circumstances of this case, it should be fixed at a less liberal rate than would otherwise be awarded. Under the circumstances I think an allowance of Rs. 7 a month will be sufficient. The decree of the lower Court must be set aside and decree given for the plaintiff from the 15th March 1903, the amount to be payable on the 1st of every month, with proportionate costs throughout.

SANKARAN-NAIR, J.—This is an appeal from the decree of the District Judge of Vizagapatam dismissing the plaintiff's suit brought by her to recover arrears of maintenance from the defendant her father in-law, who is found by the Judge to be in possession of ancestral property, on the ground that, up to the moment of her husband's death, she was not in a position to claim maintenance from him as she was living apart without any sufficient cause and that her husband's death cannot place her in a better position.

It is not alleged that the plaintiff was unchaste or that her conduct was otherwise improper. It is also not contended that she was bound to live with the defendant.

It is true that the plaintiff claims maintenance from her father-in-law on the ground that he has taken the property of her deceased husband. But I am not aware of any rule of Hindu law that a widow is entitled to maintenance out of the property in the possession of a member of her husband's family only if she would have been entitled to claim maintenance from the person whose property is now vested in such member. In that case a widow who had no legal claim to maintenance against the father-in-law, who had no ancestral property, could acquire none against the heir who takes his assets. But it has now been held by all the High Courts that the father-in-law is under a moral obligation which ripens into a legal one against his assets in the hands of his heir to maintain his daughter-in-law. In Madras it has further been held that the rule of non-liability established with reference to the self-acquired property of the father-in-law ought not to be extended to other property which may not be liable to partition at the instance of the husband, as ancestral property, if not self-acquired, for instance property acquired from a maternal grandfather. (See *Rangammal* v

SURAMPALLI BANGARAMMA v. SURAMPALLI BRAMDAZE.

Echammal and others(1).) The texts collected in *Savitribai* v. *Laxmibai and Sadasiv Ganoba*(2) seem to show that the husband is under a moral obligation to maintain his wife though living apart. If so the decisions above referred to, would support her claim.

As the father-in-law is under a moral obligation to maintain a daughter-in-law who lives apart without any sufficient excuse, but without any corrupt motives, and who may have been living apart from her husband, there is no reason why the possession of ancestral estate which converts it into a legal obligation should impose conditions on the exercise of the widow's claim. That such moral obligation at least exists cannot now be denied. (See the cases of *Kamini Dassee* v. *Chandra Pode Mondle*(3), *Devi Persad* v. *Gunwanti Koer*(4) and *Adhibai* v. *Cursandas Nathu*(5).) There is also no doubt that the plaintiff would have inherited any self-acquired property of the husband. The right to maintenance is one accruing from time to time. It depends upon her wants and exigencies. The liability to maintain her arises from various considerations.

The right of a wife to maintenance is a matter of personal obligation. It rests on the identity arising from the marriage relations and is not dependent on the possession of any property by the husband. He is bound to support her though he should have no property at all. Her home is in her husband's house; and if she quits him without any adequate excuse, he is not in law bound to maintain her obviously for the reason that she thereby disqualifies herself from performing her duties to him. There is no reason therefore why the plaintiff should not have been entitled to maintenance from the husband on returning to him or offering to return.

A widow's right rests on different considerations. While it has been held that she is entitled to maintenance from the son even if he is not in possession of ancestral property (*Subbarayana* v. *Subbakka*(6)), a similar right against the father-in-law is not admitted. His legal obligation to maintain her out of ancestral property is not now denied. That obligation became enforceable

(1) I. L. R., 22 Mad., 305 at p. 307.
(2) I. L. R., 2 Bom., 597.
(3) I. L. R., 17 Calc., 373.
(4) I. L. R., 22 Calc., 410.
(5) I. L. R., 11 Bom., 199.
(6) I. L. R., 8 Mad., 236.

on her husband's death. His moral obligation is due to the fact that the plaintiff by her marriage with his son "was born again in his family" in the language of the Hindu lawyers; and his legal liability arises on account of his possession of joint family property. That obligation cannot be discharged and her claim defeated by reason of her conduct towards her husband, which might disentitle her to enforce a distinct claim, arising out of a different relation and on account of considerations peculiar to that relation. She has not ceased to be a member of the family. We are therefore of opinion that her claim to maintenance must be allowed.

As to the rate, I am of opinion that Rs. 7 would be sufficient to provide for her in the style to which she is likely to be accustomed, and that such payment would not be an undue burden on the defendant.

We declare her right to maintenance at that rate, and award her that amount from the 15th March 1903, the date of her registered letter (exhibit III) by which she demanded maintenance. The amount will be payable on the 1st of every month.

She will be entitled to her proportionate costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Munro.

1908. March 13, 23.

VALLAMKONDU SUBBIAH AND OTHERS (DEFENDANTS NOS. 2, 4, 5 AND 6), APPELLANTS,

v.

MALUPEDDI VENKATARAMIAH (PLAINTIFF), RESPONDENT.*

Partners—Right of suit—One patner taking a promissory note from other members in respect of sums advanced to the partnership can sue on the promissory note.

Where one of several partners takes a promissory note from other members in repayment of an advance made by him to the partnership, it is competent to him to bring a suit on the note against the members executing it.

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* Second Appeal No. 741 of 1906, presented against the decree of M. Ghose, Esq., District Judge of Cuddapah, in Appeal Suit No. 98 of 1905, presented against the decree of M. R. Ry. V. V. S. Avadhani Garu, District Munsif of Proddatur, in Original Suit No. 234 of 1905.