

the two letters together I find myself unable to hold that they show an authority to make an acknowledgment which would bar limitation.

WHITE, C.J.,
AND
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NAIR, J.
—
SHAIKH
MOHIDEEN
SAHIB
v.
OFFICIAL
ASSIGNEE
OF MADRAS.

With regard to the question of costs though the appeal succeeds the case was complicated by a question as to nonjoinder and the question of jurisdiction, and I think the proper order would be the first defendant will bear his own costs throughout.

The second and third defendants will pay to the Official Assignee the costs of the plaintiff in the Court of First Instance.

The Official Assignee may take his costs of the appeal out of the estate.

SANKARAN-NAIR, J.—I agree.

Messrs. Branson and Branson, attorneys for first respondent.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Munro.

T. SUBBARAYALU CHETTI AND OTHERS (DEFENDANTS NOS. 1, 3, 4,
AND 5) APPELLANTS,

1911
April, 7.

v.

T. KAMALAVALLITHAYARAMMA, LATE A MINOR BY M. VARA-
DARAJULU CHETTI, HER NEXT FRIEND, BUT NOW OF AGE
(PLAINTIFF), RESPONDENT.*

Hindu Law—Maintenance—Right to maintenance of widow in undivided family enforceable against the whole family and not only against the branch to which the husband belonged.

Where a member of an undivided family, comprising several branches dies, his widow's right to maintenance is enforceable against the whole family and not only against the branch to which her husband belonged and which took by survivorship his undivided share. A suit for partition, subsequent to the widow's suit for maintenance, will not effect her right as aforesaid.

APPEAL from the judgment of SANKARAN-NAIR, J., dated the 12th day of January 1910, in Civil Suit No. 264 of 1908.

The facts of this case are fully set out in the judgment.

C. V. Anantakrishna Ayyar for appellants.

Messrs Venkatasubba Ayyar and Radhakrishnaayyar for respondent.

THE CHIEF JUSTICE—This is an appeal from a judgment of SANKARAN-NAIR, J., awarding the plaintiff Rs. 25 a month by way

* Original Side Appeal No 9 of 1910.

WHITE, C.J., of maintenance and giving a decree in her favour for a sum of Rs. 700 which represents the value of certain jewels which she claimed as her property.

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(PETIT)
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RAMMA.

Three points were raised on behalf of the appellants. The first was that the decree was wrong inasmuch as it was given against all the members of the family of the plaintiff's deceased husband. The second point was that Rs. 25 a month was too much for her maintenance. The third point was that the learned judge was wrong in giving plaintiff a decree for Rs. 700 for the jewels which she claimed.

I can deal with the second and third points quite shortly and I will take them first. I am not prepared to hold that the learned judge was wrong in assessing the maintenance at that amount. The third point was not seriously pressed by Mr. Anantakrishna Ayyar. The learned Judge says that he is inclined to accept the evidence of the plaintiff that the jewels claimed belonged to her and accordingly found in her favour. I am not prepared to say he was wrong.

We come now to what is really the important point in this case. The contention on behalf of the appellant is that the Judge was wrong in giving a decree against all the members of the undivided family of the plaintiff's husband. The actual form of the decree is that the first, third, fourth and fifth defendants do pay to the plaintiff her arrears of maintenance and a further sum of Rs. 25 a month and that the arrears and the monthly maintenance be a charge on a certain house, No. 334, Mint Street, which forms part of the family property. Now it appears from the genealogical tree which has been furnished to us that the fifth defendant is the brother of the deceased husband of the plaintiff and represents the plaintiff's husband's branch of the family. The plaintiff's husband was the grandson of the common ancestor Rangiah Chetti, he and the fifth defendant representing one branch of the family. The fourth defendant is the grandson of the common ancestor through another son and the first defendant is a son of the common ancestor. The third defendant is the grandson of the common ancestor through another son. There are thus four branches of the family of which Rangiah Chetti was the common ancestor.

After the presentation of the plaint by the plaintiff in this case, an agreement was come to amongst the surviving members of the family for a partition of the family property. It is fairly

obvious that this was a counter move to the plaintiff's claim for maintenance. Of course the other members of the family are perfectly entitled in law to take any steps which the law allows to defeat a claim for maintenance which is raised by a widow of a deceased member of the family.

In regard to the partition agreement the learned Judge observes that no transaction amongst defendants subsequent to the plaint can prejudicially affect the plaintiff's claim and her claim must therefore be treated as that of a widow of a member of an undivided family. It was said on behalf of the respondent that the learned judge might have put the case higher than he did. His reference to the presentation of the plaint was of course with regard to the argument that was presented to him in the case, and it may well be that he could have put it that a completed partition among the defendants before the suit was instituted would not defeat the claim of a widow for maintenance. However it is not necessary for me to discuss that question. I prefer to deal with this case on the facts that actually arise. The case we have to deal with is a case where a widow presents a plaint for maintenance against the surviving members of her deceased husband's family, and after the institution of the suit, as a matter of fact in this case after the settlement of issues, a partition is arranged between the members of the family. Mr. Anantha-krishna Aiyar contended that the proposition of the learned Judge was wrong. He relied upon the authority of the decision in *Hemangini Dasi v. Kedarnath Kundu Chowdhry* (1). In that case there is to be found on page 766 this passage: "Where there are several groups of sons, the maintenance of their mothers must, so long as the estate remains joint, be a charge upon the whole estate; but when a partition is made, the law appears to be that their maintenance is distributed in accordance to relationship, the sons of each mother being bound to maintain her. The step-sons are not under the same obligation." In the course of the judgment reference is made to a passage in *Dayabhaga*, chapter III, section 1 referred to at page 764 of the report. It seems perfectly clear that the decision was given with reference to *Dayabhaga* law and with reference to the special facts of that particular case, where there were several groups of sons, and

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WHITE, C. J., the right to maintenance of their mothers had to be decided. I do not think the judgment in that case is binding upon us in any way with reference to the question which we have to decide under the Mitakshara Law as administered in this Presidency. I am of opinion therefore that the learned Judge was perfectly right when he says that the transaction subsequent to the suit cannot prejudicially affect the plaintiff's claim and that her plaint must be treated as that of a widow of a deceased member of an undivided family.

AND
MUNRO, J.
—
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Mr. Ananthakrishna Aiyar's argument was this, as I understood it, that the share or interest of the deceased husband of the plaintiff passed not to the members of the undivided family as a whole but to the surviving member of that branch of the family of which he and the fifth defendant were members and that the decree against the other members of the family was wrong. In support of that proposition he relied upon an observation of Mr. Justice BHASHYAM AYYANGAR in the case of *Jayanti Subbiah v. Alamelu Mangamma* (1) the observation appearing on page 48. The learned Judge there says: "When an undivided Hindu family consists of two or more males related as father and sons or otherwise and one of them dies leaving a widow, she has a right of maintenance against the surviving co-parcener or co-parceners, *quoad* the share or interest of her deceased husband in the joint family property which has come by survivorship into the hands of the surviving co-parcener or co-parceners and though such right does not in itself form a charge upon her husband's share or interest in the joint family property, yet when it becomes necessary to enforce or preserve such right effectually, it could be made a specific charge on a reasonable portion of the joint family property such portion of course not exceeding her husband's share or interest therein." Now Mr. Ananthakrishna Aiyar contended that the words "share or interest of the deceased husband in the joint family property which has come by survivorship into the hands of the surviving co-parcener or co-parceners" were only meant to apply to surviving co-parceners who derived an immediate benefit from the fact of their being the survivors in respect of the share or interest of the deceased member of the family. That is to say to put the case concre'ely with reference to the facts of this case, he contended

(1) (1904) I. L. R., 27 Mad., 45.

that the 'surviving co-parcener' meant the fifth defendant, the other member of the plaintiff's branch of the family, and not the other members of the undivided family. The expression 'into the hands of the surviving co-parceners' is of course figurative because nothing but an intangible share passes by way of survivorship. It is no doubt true here the fifth defendant's share increases *eo instanti* by right of survivorship on the death of the only other members of his branch of the family, and that the shares of the other members of the family do not increase *eo instanti*.

But I am not prepared to hold that the words of the learned Judge were intended to apply to the members of the branch of the family of which the deceased man was a member, and not to the members of the joint family generally.

We have been referred to various text-books and authorities by the learned vakil for the respondent and I daresay he would have cited more if we had not stopped him. I may refer to a few of them. I shall first take *paragraph* 470 in Mayne's book on 'Hindu Law': "Having ascertained what property there is to divide the next step is to ascertain its amount. For this purpose it is necessary first to deduct all claims against the united family for debts due by it, or other charges on account of maintenance, marriages or ceremonies, which it would have to provide for, if it remained united." So the obligation to maintenance is placed on exactly the same basis as an obligation to pay any other family debt.

Then in Bhattachariya's 'Law relating to Hindu Joint Family', edition of 1885, at page 390, the learned author observes: "I have already noticed that in many instances the right of a family member to maintenance founds itself upon two or three relationships. Thus since a mitakshara family may be composed of brothers or cousins of the first degree or those of second or third degrees; as soon as any of the members dies, his widow as such gets maintenance from all the surviving members together."

In West and Buhler on page 791, the learned authors say: "Other liabilities, that is 'provisions for the maintenance or portions of persons not entitled to shares may be distributed by agreement amongst the co-sharers. But the estate at large is liable, at least in the hands of the members of the family making a partition; and co-parceners who desire to limit their responsibilities must obtain the assent of the persons interested."

WHITE, C.J.,
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—
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WHITE, C J, I do not propose to cite more authorities.

AND
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With regard to so much of the decree as directs that the maintenance will be a charge on the house, No. 334, Mint Street, we are not satisfied that the sum of Rs. 25 a month, which the learned Judge has awarded to the plaintiff, is more than the value of the share of her deceased husband or the income deriveable therefrom. It may be that a decree would not be enforceable against a member of a joint family which gave something more than the interest of the deceased husband which passed by survivorship to the surviving members. But we have not to consider this. Rs. 25 a month does not represent more than the share to which the husband would have been entitled to if during his lifetime he had obtained partition of the joint family property. I think the learned Judge was right and I would dismiss the appeal with costs.

MUNRO, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Abdur Rahim.

CHINNASAMI PILLAI *alias* SUBRAMANIA PILLAI
(PLAINTIFF), APPELLANT IN APPEAL No. 68 of 1906,

v.

KUNJU PILLAI *alias* MUTHUSAMI PILLAI AND OTHERS
(DEFENDANTS NOS 1 TO 4, 6, 7, 11, 12, 17 TO 24, 26 TO 30,
32 TO 35, 45 TO 50, 55 TO 63 AND LEGAL REPRESENTATIVES
OF DEFENDANTS NOS. 58 AND 68), RESPONDENTS IN THE ABOVE.*
ANNAMALAI PILLAI AND ANOTHER (PLAINTIFFS), APPELLANTS,
IN APPELL SUIT No. 73 of 1907,

v.

KUNJU PILLAI AND OTHERS (DEFENDANTS NOS. 3 TO 6); RESPONDENTS
IN THE ABOVE.*

*Hindu Law, succession—Mitakshara Law—Succession among collateral sapindas
—'Brother's son' in Mitakshara does not include brother's grandson—Under
Mitakshara Law, test in determining priority among unenumerated heirs is
not spiritual efficacy but nearness of relationship—Brother's great-grandson
succeeds in preference to uncle's grandson.*

The word 'sons' in the text of the Mitakshara, chapter II, section I, verse 2, section IV, verses 7 and 8, and in section V, verse 1, should not be given an

*Appeal Nos. 68 of 1906 and 73 of 1907.