

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

D. LINGAYYA (DEFENDANT), APPELLANT,

v.

D. KANAKAMMA (PLAINTIFF), RESPONDENT.*

1913.
February 11.

Hindu Law—Maintenance of widow, rate of—Possession by widow of other property yielding income—Right to get maintenance from husband's estate.

The fact that a Hindu widow is able to maintain herself out of other property is no ground for not giving her some maintenance out of her husband's estate; but it is a factor to be taken into account in determining the quantum of maintenance to be decreed to her.

The right of a widow of a coparcener in a Hindu family to maintenance is an absolute right due to her membership in the family and does not depend on any necessity arising from her want of other means to support herself.

Ramawati Koer v. Manjhari Koer (1906) 4 C.L.J., 74, dissented from. .

SECOND APPEAL against the decree of T. V. ANANTAN NAIR, the Temporary Subordinate Judge of Masulipatam, in Appeal No. 722 of 1910, preferred against the decree of S. NILAKANTAM, the Additional District Munsif of Masulipatam, in Original Suit No. 451 of 1909.

The plaintiff, a Hindu widow, instituted the suit for maintenance against the defendant, her husband's brother. Both the lower Courts found that the defendant was in possession of family property yielding about Rs. 100 a year. The plaintiff had private property out of which she could get Rs. 40 or 50 a year. The lower Courts awarded to the plaintiff Rs. 20 a year, on the ground that the plaintiff's income from her own sources of Rs. 40 or 50 was not sufficient to cover her maintenance. The defendant was the only other member of the family.

The defendant filed this Second Appeal.

V. Ramesam for V. Ramadas for the appellant.

P. Naghabhushanam for the respondent.

JUDGMENT.—The plaintiff, a Hindu widow, instituted the suit which has given rise to this Second Appeal for maintenance against the defendant, her husband's brother. Both the lower

BENSON AND
SUNDARA
AYYAR, JJ.

* Second Appeal No. 1845 of 1911.

LIN ATYA
 v.
 KANAKAMMA.
 —
 BENSON AND
 SUNDARA
 AYYAR, JJ.

Courts have found that the defendant is in possession of family property yielding about Rs. 100 a year. The plaintiff has private property out of which she could get Rs. 40 or 50 a year. The lower Courts have awarded to the plaintiff Rs. 20 a year, Mr. Ramesam for appellant contends in Second Appeal that the income of the family property being small, and plaintiff having independent means of maintenance is not entitled to get maintenance out of her deceased husband's estate. His argument is that a widow who is able to maintain herself out of other property has no right to claim out of her husband's estate anything for that purpose. In our opinion this view cannot be supported. It is based on an entirely wrong conception of the right sought to be enforced. The wives of the male coparceners in a Hindu family are not entitled to equal shares with the males in the family estate, nor do they take their husbands' shares by representation on their death, but in place thereof they are entitled to a portion of their estate for their enjoyment during their lifetime sufficient to maintain them in comfort according to the means of the family. This is an absolute right due to their membership in the family and does not depend on their necessity arising from their want of other means to support themselves. At a partition made by the husband during his lifetime between his sons his wife was at one time entitled to an equal share with his sons. Mitakshara, chapters 1 and 2, slokas 8 and 9. According to the Dayabhaga the husband's undivided share descends to his widow in its entirety. According to Katyayana the widow may claim either a portion of the estate or an allowance for her maintenance. The same view is maintained by Vrihaspati—See G. Sirkar Sastri's Viramitrodaya, page 173. Mr. Ramesam, relies on *Ramavati Koer v. Manjhari Koer*(1) in support of his contention. That case no doubt is in his favour. But with all deference, we are unable to concur in the view taken there. The authorities cited in the judgment do not support the view. The passage cited from Mr. Mayne's work shows only that the private means of a widow may be taken into account in determining the quantum of maintenance to be decreed to her. The decision of the Privy Council in *Narayanarao Ramchandra Pant v. Ramabai*(2) has

(1) (1906) 4 C.L.J., 74.

(2) (1879) 6 I.A., 114; s.c. I.L.R., 3 Bom., 415.

really no bearing on the point. Mr. Sirkar Sastri's view in his book on Hindu Law is not to the effect that the right to maintenance can be extinguished by the possession of other property by the widow. We must hold that the plaintiff is entitled to some maintenance out of her husband's estate. We cannot say that the amount awarded is excessive. We dismiss the Second Appeal with costs.

LINGAYYA
v.
KANAKAMMA.
—
BENSON AND
SUNDARA
AYYAR, JJ.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

SRI RAJAGOPALASWAMI TEMPLE THROUGH ITS TRUSTEE
RAMA AYYANGAR (PLAINTIFF), APPELLANT,

1913.
February
11 and 12.

v.

JAGANNADHA PANDIAJIAR (DEFENDANT), RESPONDENT.*

Landlord and Tenant—Inam Register—Object of mentioning the tax payable for the land—Inam authorities, duties of—Right of melvaramdar to trees in case of lands which were topes at the Inam Settlement.

In cases where the holding of a tenant was at the time of the Inam Settlement and has subsequently been, a tope consisting of trees the melvaramdar has a right to a portion of the value of the trees and the ryot is not entitled to cut them down for his sole appropriation, the portion due to the melvaramdar being determinable according to the evidence.

The incidents of the tenure of a tenant under an Inamdar are governed by the law applicable to landlord and tenant and not by the Inam patta or the Inam Register whose object in mentioning the tax payable by the tenant was only to enable the Inam authorities to fix the quit-rent payable to Government by the Inamdar.

Bodda Goddeppa v. The Maharaja of Vizianagaram (1907) I.L.R., 30 Mad., 155, *Rangayya Appa Rao v. Kadiyala Ratnam* (1890) I.L.R., 13 Mad., 249, *Apparau v. Narasanna* (1892) I.L.R., 15 Mad., 47, *Narayana Ayyangar v. Orr* (1903) I.L.R., 26 Mad., 252, and *Kakarla Abbayya v. Raja Venkata Pappayya Rao* (1906) I.L.R., 29 Mad., 24, distinguished.

SECOND APPEAL against the decree of F. D. P. OLDFIELD, the District Judge of Tinnevely, in Appeal No. 378 of 1910, preferred

* Second Appeal No. 1827 of 1911.