Mr. B. Sitarama Rao argued that the decision in *Subbannaya* v. *Bhavani*(1) should not be extended to widows of co-parceners. As pointed out already, both the text of Manu and that of Yajnavalkya make no distinction between wives and other women, and we see no reason on principle why the widow of a co-parcener should be in a less advantageous position than the wife on the question of being allotted a starving allowance. There are observations in *Ramanath* alias *Ramannad Thur Poddar* v. *Rajonimoni Dasi*(2) to the effect that widows who had repented of their misconduct should be given a bare maintenance. The recent decision in *Parami* v. *Mahadevi*(3), although it related to the case of a wife contains observations regarding the rights of other women to compassionate allowance. We see no reason for not applying the principle enunciated in that decision to the case before us. We think that the widow is entitled to some maintenance, although she is not entitled to the rate provided for in the deed. The Courts below have found that Rs. 24 a year may be awarded to her in this behalf. We accept that finding. We reverse the decrees of the Courts below and decree maintenance at Rs. 24 a year, from January 1911 till date of suit. Each party will bear his or her own costs throughout.

S.V.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Sadasiva Ayyar.

1915. July 12,

K. NARAYANA MOOTHAD *et al.* (PLAINTIFFS—PETITIONERS), APPELLANTS,

v.

THE COCHIN SIRKAR NOW REPRESENTED BY J. W. BHORE, THE DEWAN OF COCHIN (FIRST DEFENDANT—RESPONDENT), RESPONDENTS.*

29 M.L.J 667

Jurisdiction—Ruling Prince or Chief—Consent of Local Government—Submission to jurisdiction—Waiver—International Law—Civil Procedure Code (Act V of 1908), sec. 86, construction of.

Where His Highness the Rajah of Cochin was impleaded as a defendant in a suit in the capacity of a trustee of a temple, without the consent of the Local Government under section 86 of the Code of Civil Procedure (Act V of 1908),

(1) Second Appeal No. 725 of 1912. (2) (1890) I.L.R., 17 Calc., 674 at p. 678.
(3) (1910) I.L.R., 34 Bom., 278.
* Letters Patent Appeals Nos. 133 to 135 of 1913.

NARAYANA MOOTHAD v. THE COCHIN SIRCAR.

Held, that the suit was not maintainable as against the Rajah of Cochin in the absence of consent of the Local Government under section 86 of the Code of Civil Procedure.

Per OLDFIELD, J.—The recognition of cases of waiver, as excepted from the ordinary provision of International Law as understood in England, cannot be imported into the clear language of the Indian Code.

Chandulal v. Awad bin Umar Sultan (1897) I.L.R., 21 Bom., 351, dissented from.

Per SADASIVA AYYAR, J.—Objection to jurisdiction is enough to show that there was no voluntary submission by the defendant to the jurisdiction of the Court.

Parry & Co. v. *Appasami Pillai* (1881) I.L.R., 2 Mad., 407, approved.

Vesaraghava Iyer v. *Muga Sait* (1916) I.L.R., 39 Mad., 24, referred to.

APPEALS under clause 15 of the Letters Patent against the judgment of TYABJI, J., in *Narayanan Moothad* v. *Cochin Sirkar*(1).

The facts of the case appear from the judgment of OLDFIELD, J.

T. R. Ramachandra Aygar and *N. A. Krishna Ayyar* for the appellants.

C. V. Anantakrishna Ayyar for the respondent.

OLDFIELD, J. OLDFIELD, J.—The question in these appeals is whether His Highness the Rajah of Cochin was legitimately impleaded as a defendant in connected suits in the absence of consent by the local Government under section 86, Code of Civil Procedure.

It is urged firstly, that the absence of such consent is immaterial, because His Highness has waived his privilege by proceeding, after pleading it, to plead also on the merits. I do not consider whether the course of his pleading did in fact amount to a waiver or not, because in my opinion the recognition of cases of waiver, as excepted from the ordinary provision of International Law as understood in England, cannot be imported into the clear language of the Indian Code. The contrary view was no doubt taken in *Chandulal* v. *Awad bin Umar Sultan*(2). But with all respect I find the reasoning therein inconclusive and doubt whether reference to the supposed intention of the legislature is permissible or, if permissible, whether it is sufficiently comprehensive.

Secondly, it is argued that the suits are really against the deity of the suit temple, represented by the Rajah, and that, as they are not against the Rajah himself, the section is inapplicable. Reference to the plaints however shows that the suits are

(1) (1915) I.L.R., 38 Mad., 635. (2) (1897) I.L.R., 21 Bom., 351.

for relief against the Rajah and others on the ground that the first mentioned has usurped the position of trustees and has used the power thus obtained to plaintiffs' prejudice. The suits are therefore not against the deity, as represented by the Rajah.

NARAYANA MOOTHAD v. THE COCHIN SIRCAR.

In these circumstances the appeals fail and must be dismissed with costs.

OLDFIELD, J.

SADASIVA AYYAR, J.—I entirely agree with the judgment just now pronounced by my learned brother. Mr. Ramachandra Ayyar relied on certain *obiter dicta* found in the judgments of the learned Chief Justice and of Justice SESHAGIRI AYYAR in *Veeraraghava Iyer* v. *Muga Sait*(1) for the proposition that it is not enough merely to object to the jurisdiction to show that there was no voluntary submission by the defendant to the jurisdiction of the Court. *Parry & Co.* v. *Appasami Pillai*(2) distinctly held otherwise. The learned Chief Justice guardedly says that because there are two English cases, *Boissieri* v. *Brockner*(3) and *Guiard* v. *DeClermont and Donner*(4) which hold that such mere objection is insufficient, *Parry & Co.* v. *Appasami Pillai*(2) is probably no longer law. SESHAGIRI AYYAR, J., first says that he would hesitate to follow owing to the decision of CAVE, J., in the former case; the learned Judge then says that "the conditions of existence in this country may not justify the application of the principle enunciated by CAVE, J.", and finally says that it was "unnecessary to decide" in that particular case "which of the two" conflicting decisions *Parry & Co.* v. *Appasami Pillai*(2) or *Boissieri* v. *Brockner*(3) should be followed. I am prepared to follow *Parry & Co.* v. *Appasami Pillai*(2) as it has not been overruled and as the reasoning therein seems to me sound; I am not prepared to follow the English cases contra.

SADASIVA AYYAR, J.

I agree that the appeals should be dismissed with costs.

K.R.

(1) (1916) I.L.R., 39 Mad., 24.
(2) (1881) I.L.R., 2 Mad. 407.
(3) (1889) 6 T L.R., 85.
(4) (1913) 30 T.L.R., 511.