APPELLATE CIVIL.

1915. March 13 and April 1.

Before Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.

SATHYABHAMA (PLAINTIFF), APPELLANT,

v.

KESAVACHARYA (DEFENDANT), RESPONDENT.*

Hindu widow—Maintenance secured by deed—Subsequent unchastity—Living chaste at the time of suit, effect of.

Where, in a suit by a Hindu widow against her deceased husband's brother for maintenance at the rate fixed by agreement, it was found that the plaintiff had since lived an immoral life but reformed her ways at the time of the suit,

Held that she lost her right to the rate fixed in the deed but was entitled to a starving allowance.

Texts and case law reviewed.

SECOND APPEAL against the decree of V. VENUGOPAL CHETTI, the District Judge of South Canara, in Appeal No. 46 of 1913, preferred against the decree of K. APPAJI Rao, the District Munsif of Puttur, in Original Suit No. 334 of 1912.

The facts appear from the judgment.

H. Balakrishna Rao for the appellant.

B. Sitarama Rao for the respondent.

AYLING AND SESHAGIRI AYYAR, JJ.

The following judgment of the Court was delivered by SESHAGIRI AYYAR, J.—This is a suit by a widow against her deceased husband's brother for maintenance. There was an agreement on the 30th April 1906 by which the amount was fixed. The plea of the defendant is that since the date of the agreement the plaintiff had been leading an immoral life and that consequently she is not entitled to claim maintenance. The Courts below have found that she did lead an immoral life, but that, at the time of the suit, she had reformed her ways and was living with her people. Mr. B. Sitarama Rao wanted to argue that she had gone wrong with a Sudra, that that entails upon her degradation from caste and that consequently she is not entitled to any maintenance. But there is no finding that the pregnancy which is found, was caused by cohabitation with the Sudra. We cannot allow that question to be argued in Second Appeal.

* Second Appeal No. 2506 of 1913.

On the facts found by the Courts below, the question for consideration is, whether the plaintiff is not entitled to what is called starving allowance from the defendant. It was argued in appeal that the fact that the maintenance was secured by a deed differentiated this case from *Nagamma* v. *Virabhadra*(1). We cannot accept this contention. The instrument is only evidence of the amount which is payable as maintenance. The basis of the claim against the defendant being the duty to maintain, the fact that it is secured by a deed in writing is not a reason for holding that subsequent unchastity would not work a forfeiture. The decision in *Bhup Singh* v. *Lachman Kunwar*(2), related to a compromise which was arrived at regarding the claim of the widow for possession of the property as heiress. It was held that the subsequent unchastity of the widow did not deprive her of this property. That decision has no bearing upon the present case. The right to maintenance is dependent upon texts which do not affect succession or inheritance.

There is no direct authority upon the question. The text of Manu in Chapter XI, section 189, applies to all women entitled to maintenance. Under that text if a woman becomes unchaste she is entitled to a starving allowance. The Prayaschitha Kanda of Yagnavalkya Smrithi (verses 297 and 298) lays down the rules regarding provisions to be made for women who have misconducted themselves. It has been suggested by the learned vakil for the respondent that these verses only apply to cases of women who have committed sins other than immorality; but the concluding portion of the commentary of Vijnaeswara on the Smrithi makes it clear that the two verses are intended to cover cases of unchaste women. The commentary is this: "To those women, who have suffered degradation (from caste) and for whom the rite of presenting (disconnecting) water libations, etc., have been performed, accommodation, (that is), a small cottage built of straws and leaves should be given in the proximity of the main (building of the) house. Similarly food that is just sufficient for the maintenance of life and also raiment of a low description *along with (the protection) of preventing her from being enjoyed again by another man should be given.*" This last

(1) (1894) I.L.R., 17 Mad., 392. (2) (1904) I.L.R., 26 All., 321.

SATHYABHAMA v. KESAVACHARYA.

AYLING AND SESHAGIRI AYYAR, JJ.

sentence makes it clear beyond doubt that the commentator had in mind the case of fallen women. The text and the commentary, it is conceded, apply to all women alike whether they be wives, widows of co-parceners or mothers. Therefore according to Manu and Yagnavalkya women who have gone wrong should be given some maintenance. The punishment for their unchastity is that they lose their right to the ordinary rate of maintenance. As against these two texts, the well-known text of Narada has been quoted which says that if a widow of a co-parcener is guilty of immorality, her maintenance should be resumed. This statement is quoted and commented upon by all the Smrithi writers (Mayuka, section 8, placitum 6; Smrithichandrika, chapter XI, section 34 and Viramitrodaya, chapter III, part I, section 10). But in none of these texts is there any provision for a woman who had repented and was subsequently leading an honest life. It is not to be presumed from the omission to provide for such a contingency, that the resumption once made is to be irrevocable and that the fallen woman who had reformed is to be denied even a starving allowance. This question was raised in *Visalatchi Ammal* v. *Annasamy Sastry*(1) but was left undecided. In *Nagamma* v. *Virabhadra*(2), the learned Judges following certain Bombay decisions held that a widow who had misconducted herself was not entitled to maintenance. In the latest Bombay case—*Parami* v. *Mahadevi*(3)—, the earlier cases are not approved. In the Madras case, the question whether subsequent reformation would make any difference was not considered. In *Kandasami Pillai* v. *Murugammal*(4), the learned Judges based the decision on the ground that the fallen woman had tried to foist upon her husband a child born of adulterous intercourse; and it was decided that such a woman was not entitled even to a starving allowance. This decision in *Kandasami Pillai* v. *Murugammal*(4)—was considered by MILLER and SANKARAN NAIR, JJ., in *Subbannaya* v. *Bhavani*(5) and the learned Judges were of opinion that it should be confined to cases where the woman was continuing to lead an immoral life. In *Nagalakshmamma* v. *Visvanatha Sastrulu*(6), the wife was not shown to have repented of her misconduct.

(1) (1870) 5 M.H.C.R., 150.
(2) (1894) I.L.R., 17 Mad., 392.
(3) (1910) I.L.R., 34 Bom., 278.
(4) (1896) I.L.R., 19 Mad., 6
(5) Second Appeal No. 725 of 1912.
(6) (1912) 23 M.L.J., 289.

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.