

APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice
Venkatasubba Rao.

1923,
October 17.

MOHIESWARA RAO, MINOR BY GUARDIAN RANGAMMA
AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

AYYADEVARA DURGAMBA ALIAS MAHALAKSH-
MAMMA (PLAINTIFF), RESPONDENT.*

Hindu Law—Contract by a widow to receive a fixed maintenance undertaking not to claim more—Validity of.

A contract by a Hindu widow with her husband's co-parceners to receive a fixed maintenance per annum and not claim any increase in future even in case of change of circumstances is a valid agreement binding upon the widow. *Venkamma v. Kristayya*, Appeal No. 12 of 1920 and *Narasimha Rao v. Rattamma*, C.M. A. No. 316 of 1918 followed.

APPEAL against the decree of K. SAMBASIVA RAO, Subordinate Judge of Bezwada, in Original Suit No. 34 of 1919.

The facts are given in the Judgment.

P. Narayanamurthi for *V. Suryanarayana* for appellants.—A contract by a Hindu widow agreeing to receive a certain maintenance and not to claim anything higher in the future is valid and binding upon her. *Subramanian Pattar v. Vembammal*(1), *Venkamma v. Kristayya*(2) *Narasimha Rao v. Rattamma*(3).

V. Ramdoss and *N. Rama Rao* for respondents. Such an agreement is invalid and not binding upon the widow. See *Gopikabai v. Dattatraya*(4), *Rajah Venkatappa Nayanim Varu v. Rajah Thimma Nayanim Varu*(5), *Banguru*

* Appeal No. 68 of 1921.

(1) (1904) 14 M.L.J., 339.

(2) Appeal No. 12 of 1920 (Unreported).

(3) C.M.A. No. 316 of 1918 (Unreported). (4) (1900) I.L.R., 24 Bom., 386.

(5) (1914) 27 M.L.J., 656.

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Moreover the agreement is not binding for want of a corresponding obligation on the other side not to ask for a reduction of maintenance even on a change of circumstances in the future.

JUDGMENT:—

In this case the plaintiff is the widow of the deceased brother of the first defendant's father and she brought this suit for maintenance and obtained a decree. The defendants now appeal.

When the plaintiff brought her suit originally she ignored the existence of certain documents executed in 1913, Exhibits II and IV, whereby her right to maintenance was fixed at Rs. 75 per annum but after the written statement was filed she amended her plaint and alleged that these documents were not binding on her and that she was entitled to maintenance at a higher rate. The Subordinate Judge found that the documents of 1913 were not obtained by undue influence and that the plaintiff had executed her counterpart with full knowledge of its contents and effect; but he held that the stipulation in that document that she would not claim any higher rate of maintenance in the future was not binding on her apparently because the first defendant's father had not similarly undertaken that he would never claim a right to reduce the rate of her maintenance. On this ground he held that the plaintiff was not bound by her agreement.

The argument advanced by Mr. Ramdoss on behalf of the respondent is that in no circumstances can a Hindu widow enter into a valid agreement agreeing to relinquish her right to claim enhanced maintenance in future;

(1) (1889) 1 L.R., 22 Mad., 175.

(2) (1915) 20 M.L.J., 87.

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but we have been referred by the learned vakil for the appellant to cases of this Court in which the right of a widow to relinquish her right to enhanced maintenance in the future has been recognized, and in two unreported cases *Venkamma v. Kristayya*(1) *Narasimha Rao v. Rutamma*(2), it has been definitely held that an agreement by a widow not to claim enhanced maintenance is a binding agreement and must be enforced. The case in *Sub-ammian Patter v. Vembammal*(3) is not a direct authority, because in that case there was only an agreement to receive maintenance at a certain rate for life and it was there held that that did not amount to a release of the widow's right to increased maintenance in the future; but it is clear from the judgment that the learned Judges recognized the possibility of a widow releasing her right, such a release being binding upon her. As against this Mr. Ramdoss has referred us to several cases, not one of which is exactly in point, but which go to show that an agreement or a decree for maintenance at a specific rate is always subject to alteration in the future if the circumstances of the family necessitate such a change—vide *Gopikabai v. Dattstraya*(4), *Rajah Venkatappa Nayanim Varu v. Raja Thimma Nayanim Varu*(5) and *Bangaru Ammal v. Vijayamachi Reddiar*(6). They undoubtedly recognize the fact that an agreement to receive maintenance at a particular rate is not binding for all time; but none of them is authority for holding that, when the agreement goes further and binds the widow not to claim a higher rate even in changed circumstances, it is not binding on her. The cases we have already referred to, cited by the appellant, are authority to the contrary and we entirely

(1) Appeal No. 12 of 1900 (unreported).

(2) A.A.O. No. 316 of 1918 (unreported). (3) (1901) 14 M.L.J., 339.

(4) (1900) I.L.R., 24 Bom., 386. (5) (1911) 27 M.L.J., 658.

(6) (1899) I.L.R., 22 Mad., 175.

agree with the views therein expressed. In that view, these documents Exhibits II and IV are binding on the plaintiff and she is not entitled to any higher maintenance.

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It was then sought to support the decree of the lower Court on the ground that the finding, that Exhibits II and IV were executed with the plaintiff's knowledge of their contents and effect, was wrong. The argument put forward here was that the plaintiff being a woman had not had the opportunity of extraneous advice and that she had been induced by her brother-in-law, the first defendant's father, to execute these deeds. In the first place, that was not her case in the plaint where she alleged that she was deceived into putting her signature to some documents of the contents of which she had no idea and in her evidence she also stated that it was only after the written statement in this suit was filed that she understood that the maintenance deed was in existence. In the evidence as put forward the only thing that appears, even if we believe the witnesses, is that neither the plaintiff's father nor her brother were present when the maintenance deed was executed; but it is admitted that one Virabhadra Ayya, who is closely connected with the plaintiff's uncle and manages his estate, not only attested the document but identified the plaintiff at the Registration office. On this evidence we think that the Subordinate Judge's conclusion is perfectly right.

It is then urged for the respondent that she ought to be given a right of residence because that was not expressly released in the documents executed by her and it is contended that the right of residence is a separate right from that of maintenance. Without our deciding that point, however, the first defendant has agreed that the plaintiff should be allowed a room which is to be built on a site adjoining the family house in Nandigama or her residence. Therefore while allowing the appeal

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and setting aside the decree of the lower Court, we give a direction that the plaintiff be given one room to be built as above.

The respondent will pay the appellants' costs throughout.

N.B.

APPELLATE CIVIL.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,
Mr. Justice Coultts Trotter and Mr. Justice Ramesam.*

1923,
October 24.

SATTAYYA PADAYACHI AND SIX OTHERS (APPELLANTS
AND DEFENDANTS NOS. 1 AND 3 TO 5 AND 7 TO 9),
APPELLANTS,

v.

SOUNDARATHACHI (RESPONDENT, PLAINTIFF),
RESPONDENT.*

Order 4, rule 1, Civil Procedure Code (V of 1908)--Plaint presented on last day of limitation to Judge at Club after office hours--Jurisdiction of Judge to receive.

On the last day of limitation and after the Judge had risen from Court for the day, a plaint was presented to him at 7-30 p.m. at his Club which he accepted by cancelling the stamp and initialling and dating it;

Held that the Judge had jurisdiction to constitute himself as the officer to receive plaints, that he could receive them at any time and place and that the suit was properly instituted within the meaning of Order 4, rule 1, Civil Procedure Code. *Thakur Din Ram v. Hari Das* (1912) I.L.R., 34 All., 482 (F.B.) followed.

APPEAL under clause 15 of the Letters Patent against the judgment of Mr. Justice VENKATASUBBA RAO in Appeal

* Letters Patent Appeal No. 9 of 1923,