APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Ramesam.

RAMA RAJA THAVAR (THIRD DEFENDANT), APPELLANT,

1925, February 3.

v.

PAPAMMAL AND ANOTHER (PLAINTIFF AND SECOND DEFENDANT), RESPONDENTS.*

Hindu Law—Maintenance—Concubine—Right to maintenance—Text of Hindu Law relating thereto—Conditions and limitations as to the right—"Avaruddha Stri," meaning of.

Under the Hindu Law, a permanently-kept concubine is entitled to maintenance out of the estate of her deceased paramour, in the hands of his heirs or their representatives.

The expression "Avaruddha Stri" found in Mitakshara, Chapter II, section I, placita 27 and 28, includes a permanently-kept concubine.

The decisions of Court have from time to time laid down the conditions and limitations subject to which a concubine is entitled to maintenance, namely, (1) that she must have been permanently and exclusively kept by her paramour, (2) that she must be the mother of illegitimate children by him, and (3) that she should be chaste and keep undefiled the bed of her lord and master.

Panchapagesa Odayar v. *Kanaka Ammal*, (1917) 33 M.L.J., 455, *Bai Monghibai* v. *Bai Nagubai* (1923) I.L.R., 47 Bom., 401, *Anandilal Bhagchand* v. *Chandrabai* (1924) I.L.R., 48 Bom., 203, followed.

APPEAL against the decree of T. M. FRENCH, the Subordinate Judge of Rāmnād, in O.S. No. 30 of 1918.

The plaintiff sues for a declaration that she is entitled to a maintenance of Rs. 150 per mensem out of the estate of one deceased Muthu Doraisami Thevar, in the hands of the first defendant. She claims to be the permanently-kept concubine of the deceased. She had previously instituted two suits, one for being recognized as land-holder of certain villages belonging to the deceased and

* Appeal No. 128 of 1922.

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the other claiming the allowance of Rs. 700 per mensem to which the late Muthu Doraisami Thevar was entitled as a rent charge on the Rāmnād Zamindari. Those two suits were dismissed on the ground that she was not the lawful wife of the deceased Thevar. She instituted the present suit for future maintenance at Rs. 150 as stated and for past maintenance for twelve years. The first defendant was the assignee of the rent charge of Rs. 700 per mensem from the reversioner to the estate of Muthu Doraisami Thevar after the death of the latter and his widow Ramamani. During the pendency of this suit the first defendant died and his son was brought on the record as his legal representative and impleaded as the third defendant. The second defendant was the Raja of Rāmnād. The plaintiff claimed also a right of residence in a bungalow of her late paramour in which she was living till ousted by the first defendant and Ramamani, against whom however the plaintiff had instituted a suit under section 9 of the Specific Relief Act and got back possession. It appeared that the plaintiff had a daughter by the deceased Muthu Doraisami Thevar, that she was a permanently-kept concubine of her deceased paramour, and that she was chaste before and after his lifetime. The Subordinate Judge awarded a decree for maintenance at Rs. 100 per mensem and also past maintenance at the same rate for twelve years, and decreed a right of residence in the bungalow as claimed by her.

U. S. Venkata Acharyar and *S. Sundararaja Ayyangar* for appellant.

A concubine is not entitled to maintenance. There is no warrant for it in the ancient texts. The only texts that are relied on are in Mitakshara, Chapter II, section I, placita 27 and 28. These placita do not refer to maintenance, the author is dealing there with succession,

See also Dayabhaga, page 78, placitum 48. Having regard to the context, Narada's and Katyayana's texts which are referred to in placitum 28 (Mitakshara) should be confined to cases of escheat. The only decided case on the point is the one reported in *Panchapagesa Odayar* v. *Kanaka Ammal*(1). The decision in the above case is wrong.

The concubine has no right of residence. See *Behari Lal* v. *Achraj Kunwar*(2), Sirkar's Hindu Law, page 561 (Ed. 5). A concubine is not entitled to the same rate of maintenance as the lawful wife. An illegitimate son was given only a reduced rate of maintenance: See *Gopalasami Chetty* v. *Arunachelam Chetti*(3). The estate was insufficient to meet the debts contracted by the deceased paramour.

T. R. Ramachandra Ayyar, *B. Sitarama Rao* and *S. R. Muthuswami Ayyar* for respondents.

Mitakshara, Chapter II, section I, placita 27 and 28, Saraswathi Vilasa (Setlur's Edition), page 176, section 517 *et seq* and section 531, Narada (Sacred Books of the East, Vol. 33, page 96) relate to maintenance of concubines. Mitakshara, Chapter I, section II, placita 27 and 28 explain the expression "Avaruddha Stri" as including concubines. If the woman satisfies the conditions included in that expression, she is entitled to maintenance. The text-books and the decided cases have understood these ancient texts in that sense. See West and Buhler's Hindu Law, page 164—Strange's Hindu Law, Vol. II, page 174; Mayne's Hindu Law, paragraph 450. See *Khemkor* v. *Umiashankar*(4), *Yeshwantrav* v. *Kashibai*(5), *Ningareddi* v. *Lakshmawa*(6), *Ramanarasu* v. *Buchamma*(7), *Panchapagesa Odayar* v.

(1) (1917) 33 M.L.J., 455.
(2) (1922) 68 I.C., 394.
(3) (1904) I.L.R., 27 Mad., 32.
(4) (1873) 10 Bom., H.C.R., 381.
(5) (1888) I.L.R., 12 Bom., 26.
(6) (1902) I.L.R., 26 Bom. 163.
(7) (1900) I.L.R., 23 Mad., 282.

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Kanaka Ammal(1) and *Bai Monghibai* v. *Bai Nagubai*(2).

As a dependent member an indigent daughter was awarded maintenance in *Mokhoda Dassee* v. *Nundo Lall Haldar*(3). An illegitimate daughter was awarded maintenance in C.S. No. 615 of 1919 (Madras High Court, Original Side).

Residence is included in the general right of maintenance. In this case the plaintiff (the concubine) lived in the family house, was treated in the same way as the wedded wife by the relations and the paramour and in these castes continuous concubinage was regarded as equivalent to marriage. See *Soundararajan* v. *Arunachelam Chetty*(4). She is therefore entitled to substantial maintenance. More money was realized out of the assets than would be necessary to pay off the real debts of the deceased paramour.

JUDGMENT.

SPENCER, J.

SPENCER, J.—The plaintiff was the permanent mistress of Muthu Doraisami Thevar, who was in receipt of Rs. 700 per mensem as a rent charge on the estate of the Raja of Rāmnād. This sum of Rs. 700 has been erroneously described in various places as an annuity, perhaps for the reason that the liability to pay it accrues annually, but it is not strictly an annuity as it is not for the duration of any one life, but is a charge on the revenue of the estate of the Raja of Rāmnād in perpetuity. The right to the rent charge was established as against the Raja of Rāmnād in a suit brought by Ramamani Ammal, the mother of Muthu Doraisami Thevar, which went up to the Privy Council [vide

(1) (1917) 33 M.L.J., 455.
(2) (1923) I.L.R., 47 Bom., 401.
(3) (1900) I.L.R., 27 Calc., 555.
(4) (1916) I.L.R., 39 Mad., 136 (F.B.).

Rajah of Ramnad v. *Sundara Pandigasami Tevar*(1).] The right has been mortgaged to a Chetti who is not a party to the present suit. The plaintiff claimed in this suit maintenance against the first defendant who was the assignee from a reversioner of Muthu Doraisami Thevar's estate, and the first defendant having died during suit, the claim was continued against his son, the third defendant. After Muthu Doraisami Thevar's death, the plaintiff was responsible for other litigation before the present suit. There was a suit under the Specific Relief Act for possession of the bungalow in which she lives, and another suit for a declaration that she was a landlord in respect of certain villages which were in the possession of the deceased Muthu Doraisami Thevar. In the first suit she succeeded, but she lost the second suit based on the footing that she was the wife and heir of Muthu Doraisami Thevar.

Two questions have been argued in this appeal. Firstly whether a concubine is entitled to maintenance against the estate of the man who kept her, and secondly whether the rate of maintenance of Rs. 100 per mensem (with 12 years' past maintenance) is a fair rate and one to which the plaintiff is entitled.

On the point of law as to the right of a permanent concubine for maintenance from the family property of her deceased paramour, the leading decision in this Court is *Panchapagesa Odayar* v. *Kanaka Ammal*(2). But there are a number of decisions in the Bombay High Court, viz., *Khemkor* v. *Umiashankar*(3), *Vrandavandas Ramdas* v. *Yamunabai*(4), *Yashvantrav* v. *Kashibai*(5), *Bai Monghibai* v. *Bai Nagubai*(6).

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(1) (1919) I.L.R., 42 Mad., 581 (P.C.).
(2) (1917) 33 M.L.J., 455.
(3) (1873) 10 Bom. H.C.R., 381.
(4) (1875) 12 Bom. H.C.R., 229.
(5) (1888) I.L.R., 12 Bom., 26.
(6) (1923) I.L.R., 47 Bom., 401.

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After hearing arguments on both sides, I see no reason why we should not follow the decision in *Panchapagesa Odayar* v. *Kanaka Ammal*(1). The basis of the right of a concubine to be maintained is the text of *Mitakshara*, Chapter II, section 1, placita 27 and 28. In these placita Vignaneswara refers to the text of Katyayana and Narada, and he states that the word "Stri" includes a concubine. It is true that the purpose with which the definition was made in this passage was in order to show that a wife was entitled to succeed to her husband's property, but it is nevertheless established that the word "women" includes concubines in the ancient texts. The Courts have placed from time to time several limitations and conditions on the right of concubines to be maintained. In *Bai Monghibai* v. *Bai Nagubai*(2), it was made clear that the rule was not applicable to every kept woman but only to those who are continuously and exclusively kept in a man's family and are in other words what is known as "Avaruddha Stri" in Sanskrit. Another condition that has been put on the right of a concubine to be maintained is that she should be the mother of illegitimate children; See *Khemkor* v. *Umiashankar*(3), and Strange's Hindu Law, Chapter 8, page 174. Another is that she should be chaste and keep undefiled the bed of her lord and master. See *Yashvantrav* v. *Kashibai*(4), and *Anandilal Bhaychand* v. *Chandrabai*(5). In these two latter respects, it cannot be suggested that the plaintiff has lost her right to maintenance. She gave birth to a daughter when she was being kept by the deceased Muthu Doraisami Thevar, and it is not suggested that she has had anything to do with other men. It has been

(1) (1917) 33 M.L.J., 455.
(2) (1923) I.L.R., 47 Bom., 401.
(3) (1873) 10 Bom. H.C.R., 281.
(4) (1888) I.L.R., 12 Bom., 26.
(5) (1924) I.L.R., 48 Bom., 203.

argued by Mr. Venkata Achariyar that the rule in favour of the maintenance of concubines only applies to cases where there are no other heirs and the property would otherwise escheat to the sovereign, as those are the circumstances spoken of in the text of Katyayana. The argument that the rule is only applicable to cases of escheat was advanced before Mr. Justice ABDUR RAHIM and Mr. Justice SRINIVASA AYYANGAR, in *Panchapagesa Odayar* v. *Kanaka Amma*(1), and they rejected any attempt to put such a restrictive interpretation on the texts. It has also been brought to our notice that in the *Saraswati Vilasa* there is no restriction of the rule to cases of escheat only. In *Ramanarasu* v. *Buchamma*(2), it was held that a discarded concubine was not entitled to claim maintenance. This only amounts to saying that a man is not bound by law to keep a concubine, when he does not want her and so long as he is alive he can put an end to the relationship between himself and a kept woman. If he dies without putting an end to the relationship, the presumption is that he intended the concubinage to be permanent, and, as the learned Judges observed, there is a moral obligation on the part of the man's heirs to see that his concubine should not be left destitute after his death, and it has been imposed as a conditional liability upon those who succeed to his property. The question is not really so much one of the legal relationship between a man and a woman as of equity that a woman who has been kept for a number of years and given a position almost equal to that of a wife should not be left to starve after the death of the man who kept her. Thus it is a matter not of a contract during the lifetime of the parties but of obligations arising out of the personal law of Hindus as

(1) (1917) 33 M.L.J., 455. (2) (1900) I.L.R., 23 Mad., 282.

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defined by their religious texts. For these reasons, I am of opinion that the lower Court's judgment allowing maintenance to the plaintiff can be maintained.

As for the rate of maintenance, the lower Court fixed it at Rs. 100 a month, although the claim was for Rs. 150. The plaintiff was also given a right to reside in the bungalow where Muthu Doraisami Thevar was living. It appears that there are two bungalows and that she has been given a right of residence in the larger bungalow. It is suggested that the maintenance of Rs. 100 might be reduced on the ground that the plaintiff was letting out a portion of this bungalow which was more than sufficient for her use, and deriving a rent therefrom of Rs. 15 a month. That was only for a time when the bungalow was in good repair. As she is living as a single woman and has got her daughter married, the accommodation of the smaller bungalow would probably be sufficient for her, but as a matter of sentiment, she has been allowed to occupy the larger bungalow. I am of opinion that if she would give up her present residence to the appellant and occupy the smaller bungalow in which he now lives, there would be no reason to decrease her allowance of Rs. 100 per mensem but if she persists in living in the larger bungalow and occupying the whole of it, the allowance of Rs. 100 per mensem, when she has a free right of residence besides, is rather excessive, and the rate of maintenance should be reduced to Rs. 85 per mensem, provided that the third defendant keeps the bungalow in proper repair, and it is stated to be in bad repair now. The plantiff is willing to repair the big bungalow at her own cost if she is allowed to remain in it and to continue to receive Rs. 100 per mensem. The third defendant will be given three months' time from now to

put it in complete repair and if he does so the rate of maintenance will be reduced to Rs. 85 per mensem.

Muthu Doraisami Thevar died in 1905. The lower Court has allowed 12 years' past maintenance at the same rate of Rs. 100 till 1912. From July 1907, the plaintiff was in possession of four villages mentioned in the plaint and she has not accounted for her profits by showing how much was spent on the chattram Doraisami Thevar, whose son married the plaintiff's daughter and managed the four chattram villages, admits in Exhibit Q that the chattram was never in his management and he did not pay any quit rent to the Raja. The plaintiff has not accounted for the income of those villages during those five years. Under these circumstances, I am of opinion that she is not entitled to more than seven years' past maintenance, and the decree will be modified accordingly, maintaining the rate of Rs. 100. In the plaint the plaintiff asked that she should be given a charge for her maintenance either on the allowance payable by the Raja of Rāmnād to the third defendant or on the chattram villages. The Subordinate Judge directed that the amounts awarded by him should be a charge on the plaint mentioned villages and on the annuity (sic), payable by the second defendant. On issue 7 he found that the plaintiff was entitled to this charge as the defendants had not placed before the Court any materials for determining what income was required for the charity. There is no finding whether these villages were burdened with the trust or whether the whole income has been dedicated to charity. *Prima facie* the villages themselves cannot be made the subject of this charge, as they are trust properties or burdened with a trust. Unless and until it is found in a regular suit instituted by some one interested in the trust that the whole income is devoted

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to charity, the decree in the present suit must provide that the maintenance should be a charge on the surplus funds, if any, derived from these villages, and the lower Court's decree must be amended in so far as it created a charge on the villages themselves.

The lower Court has further granted a personal decree against the third defendant to pay maintenance. It is not contended that he is personally liable. The decree must therefore be amended by directing him to pay out of the assets of Muthu Doraisami Thevar in his hands and by charging the amounts payable as above stated, viz., Rs. 50, on the annual rent charge as agreed to in the compromise in Sigappa Achi's suit O.S. No. 5 of 1921 and the remainder on the surplus, if any, of the income from the villages after performing the charities.

The lower Court's decree, subject to these modifications, is confirmed. The plaintiff will get proportionate costs throughout and she will be liable for the Court fees due to Government.

RAMESAM, J.

RAMESAM, J.—I agree. The expression "Avaruddha Stri" was used by Vignaneswara not only in Mitakshara, Chapter II, section 1, placitum 28, and in chapter I, section 4, placitum 22, but also explained in the commentary on verse 290 of Vyavahara Adhyaya of Yagnavalkya. So long as a woman satisfies this interpretation of the term "Avaruddha Stri" (vide *Bai Monghibai* v. *Bai Nagubai*(1)) and satisfies the condition that she remains chaste, *Anandilal Bhaychand* v. *Chandrabai*(2), I do not see any reason why she should be deprived of her maintenance.

I agree with the order proposed by my learned brother.

K.R.

(1) (1923) I.L.R., 47 Bom., 401. (2) (1924) I.L.R., 48 Bom., 203.