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it is more correct to say that the burden is originally upon the defendant, or upon the plaintiff. But where the defendant has something substantial to say to the contrary the real burden must inevitably fall upon the plaintiff to establish the right which he claims. The lower appellate Court has committed no error and these appeals must be dismissed with costs.

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APPELLATE CIVIL.

*Before Mr. Justice Waller and Mr. Justice Jackson.*

JAYANTI BHAGAVANULA NARASIMHAM  
(EIGHTH DEFENDANT), APPELLANT,

v.

JAYANTI VENKATASUBBAMMA AND ELEVEN OTHERS  
(PLAINTIFF AND DEFENDANTS NOS. 1 TO 7 AND 9 TO 11  
AND PARTY-RESPONDENT), RESPONDENTS.\*

*Hindu Law—Widow—Maintenance—Suit for, after there has been a partition—Right of widow not enforceable against surviving coparceners who have not taken her husband's share.*

When the widow of a coparcener sues for maintenance after there has been a partition, she cannot enforce her right against any of the surviving coparceners except those who have taken her husband's share.

*Jayanti Subbiah v. Alamelu Mangamma*, (1902) I.L.R. 27 Mad. 45, applied.

APPEAL against the decree of the Court of the Subordinate Judge of Bezwada in Appeal Suit No. 101 of 1926 preferred against the decree of the Court of the

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\* Second Appeal No. 2214 of 1927.

District Munsif of Nuzvid at Bezwada in Original Suit No. 591 of 1924.

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*V. Ramadoss* for appellant.—While the coparcenary subsists the widow's claim is against the coparcenary property though limited to her husband's share. But after partition the widow's claim is only against her son and she has no right to claim maintenance from the shares of the other coparceners. *Subbarayalu Chetti v. Kamalavalli Thayaramma*(1) is distinguishable because the family was joint when the widow sued for her maintenance. In such a case any subsequent partition will not affect her right. [*Jayanti Subbiah v. Alamelu Mangamma*(2), per BHASHYAM AYYANGAR J., was referred to. Also Mayne's Hindu Law, page 651, paragraph 455, as to the nature of a wife's claim for maintenance.] The observations in *Rambhabai v. Doongersi*(3), though *obiter*, are directly in favour of appellant's contention. Further that decision correctly explains *Subbarayalu Chetti v. Kamalavalli Thayaramma*(1); see also Mayne, page 646. A widow's rights are limited to the rights of her husband in the family; see *Gopalu Pattar v. Parvathi Ammal*(4) and *Krishna Pattar v. Alamelu Ammal*(5). *Karuppa v. Chinna Nallammal*(6) throws no light upon the point for decision in the present case. Sons are bound to maintain their mother out of their father's property whether divided or undivided.

*P. Somasundaram* for twelfth respondent.—So long as the coparcenary subsists the widow's claim is against the entire coparcenary property, though the amount is limited to the extent of her husband's share; see *Jayanti Subbiah v. Alamelu Mangamma*(2). The widow's claim stands on the same footing as a family debt. If that is so, partition cannot affect her claim to maintenance; see *Subbarayalu Chetti v. Kamalavalli Thayaramma*(1) where the principle is stated. *Subramania Ayyar v. Sabapathy Ayyar*(7) holds that partition does not affect liability for pre-partition debts. *Sivanananja Perumal Sethuroyer, Zamindar of Oorcaud v. Meenakshi Ammal*(8) was no doubt a case of a step-son. But the ground on which the widow's claim was made to rest was that the claim to maintenance is in the place of her original right to a share, and it was

(1) (1911) I.L.R. 35 Mad. 147.

(2) (1902) I.L.R. 27 Mad. 45.

(3) A.I.R. 1929 Sind 102.

(4) A.I.R. 1929 Mad. 47, 48.

(5) (1914) 16 M.L.T. 551, 586.

(6) A.I.R. 1927 Mad. 1189.

(7) (1927) I.L.R. 51 Mad. 361 (F.B.).

(8) (1870) 5 M.H.O.R. 377.

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held that the entire family property was liable. *Srinivasa Iyengar v. Thiruvengadathaiyangar*(1) expressly decides that in a divided family the divided member is liable. It also approves of the principle enunciated in the *Oorcaud Zamindar's* case. *Bala Tripura Sundaramma v. Suryanarayana*(2) was also a case of a step-son, and the right to maintenance was said to be a relic of the right to a share. *Subbayya v. Ananta Ramayya*(3) held that a divided son was liable for the expenses of his sister's marriage. At page 92 the right of a daughter to the expenses of her marriage is stated to be in lieu of her right to a share. A daughter's right is stated to stand on the same footing as that of her mother; see pages 97 and 99. As to how *Jayanti Subbiah v. Alamelu Mangamma*(4) has been understood, see *Subbarayalu Chetti v. Kamalavalli Thayaramma*(5) and *Krishna Pattar v. Alamelu Ammal*(6). The other cases cited for the appellant are cases relating to the extent of the charge, whether it is against the entire family property or not.

*V. Ramadoss* in reply.—The widow's right to maintenance is not analogous to a family debt, because the widow's claim has in all cases been postponed to the claims of creditors and it has never been held to be as good as a debt. The decision in the *Oorcaud Zamindar's* case(7) is based upon the text of the Hindu Law relating to step-sons. See *Srinivasa Iyengar v. Thiruvengadathaiyangar*(1).

*P. Satyanarayana Rao* for respondents two to four.

*K. Subba Rao* for respondents five to seven.

*Cur. adv. vult.*

The JUDGMENT of the Court was delivered by

WALLER J.

WALLER J.—The plaintiff, who is the first respondent in this second appeal, is the widow of one Narasimham. He died about thirty years before the suit and she adopted the second respondent, one of the sons of her husband's brother Kakulayya. In 1919 a suit for partition was brought and the family property was divided. The second respondent and his sons got a

(1) (1912) I.L.R. 38 Mad. 556, 556, 575.

(3) (1928) I.L.R. 53 Mad. 84.

(5) (1911) I.L.R. 35 Mad. 147, 153.

(2) (1914) 17 M.L.T. 188.

(4) (1902) I.L.R. 27 Mad. 45.

(6) (1914) 18 M.L.T. 551.

(7) (1870) 5 M.H.C.R. 377.

three-eighths share, the other three branches, now represented by the appellant and by various respondents, being allotted the remaining five-eighths. In 1924 the first respondent filed a suit for maintenance, impleading all the former coparceners as defendants. The suit was defended only by the second respondent and his sons (the first, second and third defendants). The fifth, seventh and ninth to eleventh defendants appeared by a pleader, but filed no written statements, and the rest of the defendants did not appear at all. In the result, the first respondent was given a decree for certain sums of money, three-eighths of which were to be paid by the second respondent and his sons and the other five-eighths by the other three branches, the District Munsif observing that the pleaders on both sides had agreed "to the division of the liability in accordance with the shares of the different sets of the defendants." The plaintiff lodged an appeal, claiming a higher rate of maintenance and the eighth to eleventh defendants filed a memorandum of objections, pleading that they should not have been made liable at all. The fourth to seventh defendants appeared by a pleader, but filed no memorandum of objections. The Subordinate Judge enhanced the rate of maintenance and at the same time dismissed the memorandum of objections, holding that the plaintiff's right to maintenance out of the entire family property was not affected by the partition. The eighth defendant has now filed a second appeal, putting forward the same plea that the plaintiff's claim for maintenance was sustainable only against the share allotted to the first three defendants as representing her husband. We have been referred to no decision that bears directly on the question at issue. The Subordinate Judge relied on two cases of this Court. One was *Subbarayalu Chetti v. Kamalavalli*

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*Thayaramma*(1), where it was held that a widow's right to maintenance was enforceable against the whole family and not merely against her late husband's branch of it and that her right would not be affected by a suit for partition filed after her suit for maintenance—in other words her claim was to be treated as that of a widow of a member of an undivided family. To that rule Mr. V. Ramadoss for the appellant takes no exception, his argument being that it does not apply to a case like this, where the suit for maintenance was brought after the partition. The other decision, which is referred to in *Subbarayalu Chetti v. Kamalavalli Thayaramma*(1), is *Jayanti Subbiah v. Alamelu Mangamma*(2). It laid down that the widow of an undivided coparcener had a right of maintenance against the surviving coparcener or coparceners, but only to the extent of her husband's share or interest in the joint family property and that, wherever it becomes necessary to enforce her right, it should be made a specific charge on a reasonable portion of that property, not exceeding in value her husband's share. In *Subbarayalu Chetti v. Kamalavalli Thayaramma*(1) this view of the law was accepted, the Judges observing :

“It may be that a decree would not be enforceable against a member of a joint family which gave something more than the interest of the deceased husband which passed by survivorship to the surviving members.”

If this be the correct rule—and we must accept it as correct—it seems to us to follow that, when the widow of a coparcener sues for maintenance after there has been a partition, she cannot enforce her right against any of the surviving coparceners except those who have taken her husband's share. If her right to relief against the family property is limited to the value of

(1) (1911) I.L.R. 35 Mad. 147.

(2) (1902) I.L.R. 27 Mad. 45.

her husband's share and that share has already been defined and separated, it would be idle to give her relief against any of the coparceners other than those who have succeeded to that share; no other share is liable. If the value of her claim is less than that share, there is no reason why any other share should be resorted to. If it exceeds it, no other share is chargeable for the excess. Several other cases were cited for the respondents. Two of them, *Sivanananja Perumal Sethuroyer, Zamindar of Oorcaud v. Meenakshi Ammal*(1) and *Srinivasa Iyengar v. Thiruvengadathaiyanagar*(2), do not really touch the point. In the first, the only coparceners were the widow's sons and step-son, the latter of whom contended that his step brothers' divided share alone was liable and it was that contention that was overruled. The second was a similar case in which a similar contention was put forward and rejected. In another case, *Karuppa v. Chinna Nallammal*(3), a Bench of this Court followed *Jayanti Subbiah v. Alamelu Mangamma*(4) holding that, if a widow's right to maintenance was limited to the value of her husband's interest in the joint property, her maintenance might reasonably be charged against that interest alone. No doubt, in the result the Judges gave a charge over the whole property, but that was because another maintenance-holder had a prior charge over the whole, which might have been utilised to defeat a subsequent charge over a part of it. Another case cited, *Bala Tripura Sundaramma v. Suryanarayana*(5), resembles and follows *Sivanananja Perumal Sethuroyer, Zamindar of Oorcaud v. Meenakshi Ammal*(1).

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We are of opinion that the appeal must be allowed. A memorandum of objections has been filed by the fifth

(1) (1870) 5 M.H.C.R. 377.

(2) (1912) I.L.R. 38 Mad. 556.

(3) A.I.R. 1927 Mad. 1189.

(4) (1902) I.L.R. 27 Mad. 45.

(5) (1914) 17 M.L.T. 188.

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and seventh respondents, supporting the appellant. It must, we think, be allowed under Order XLI, rule 33, of the Code of Civil Procedure. In view of the course taken by the case in the Courts below, they and the appellant will pay their own costs. The first three defendants will pay the whole decree amount and the first respondent's costs throughout, and she will pay the fee due to the Government.

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## APPELLATE CIVIL.

*Before Mr. Justice Jackson and Mr. Justice Krishnan Pandalai.*

1932,  
 March 22.

P. C. MUTHU CHETTIYAR (PLAINTIFF), APPELLANT,

v.

MUTHUSWAMI AYYANGAR (FIFTH DEFENDANT),  
 RESPONDENT.\*

*Indian Limitation Act (IX of 1908), sec. 19 (1)—“Some person through whom he derives title” in—Meaning of—Mortgagor—Acknowledgment of mortgage debt by—Alienee of mortgaged property prior to date of—Binding nature of acknowledgment on.*

The words “some person through whom he derives title” in section 19 (1) of the Limitation Act ought not to be read as “some person through whom he derives title subsequently to the acknowledgment”.

*Per JACKSON J.*—An acknowledgment of a mortgage debt made by a mortgagor after he has alienated the hypotheca affects both the mortgagor and his alienee.

*Per KRISHNAN PANDALAI J.*—An acknowledgment of a mortgage debt made by a mortgagor who has sold a portion of the mortgaged property but remains personally or in respect of the unsold portion liable on the mortgage is effective to save limitation as against the property sold.

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\* Second Appeal No. 1206 of 1928.