

## APPELLATE CIVIL—FULL BENCH.

*Before Sir Lionel Leach, Chief Justice, Mr. Justice Krishnaswami Ayyangar and Mr. Justice Somayya.*

JONNALA LAKSHMIDEVAMMA (PLAINTIFF),  
APPELLANT,

1939,  
March 24.

v.

JONNALA VEERA REDDI AND TWO OTHERS  
(DEFENDANTS 2, 3 AND 1), RESPONDENTS.\*

*Hindu law—Maintenance—Widow of deceased member of joint Hindu family—Bona fide partition after husband's death between surviving members and allotment of his share to his son by a pre-deceased wife—Widow's right to maintenance in case of, against her step-son's share only or against entire family property.*

The appellant's husband was at the time of his death a member of a joint Hindu family consisting of himself and the respondents who were his father, his brother, and his son by a pre-deceased wife. Some years after her husband's death and while the family was still joint, the appellant made a formal demand for maintenance but subsequently and, as a result of the appellant's demand, a partition was effected by a registered deed as a result of which the appellant's step-son obtained the share in the family properties which his father would have obtained had he lived. The partition was, however, a genuine partition. The appellant then filed a suit for maintenance and for arrears of maintenance claiming a decree against all the respondents on the ground that her status as a widow gave her the right to be maintained out of the family estate as a whole and not merely out of that portion allotted to her step-son on partition.

*Held by the Full Bench.*—(i) For the amount due to the appellant for maintenance after the date of the partition her step-son's share alone was liable and in respect of that amount the appellant was entitled to a charge on her step-son's share only.

\* Letters Patent Appeal No. 97 of 1936.

LAKESEMIDEV-  
AMMA  
v.  
VEERA REDDI,

A widow's right to maintenance merely attaches to her husband's share and on partition she has no claim against the assets forming the shares of the other members.

*Narasimham v. Venkatasubamma*(1) and *Jayanti Subbiah v. Alamelu Mangamma*(2) approved.

*Subbarayalu Chetti v. Kamalavallithayaramma*(3) and *Rangappaya v. Shiva*(4) overruled.

(ii) For the amount representing arrears of maintenance due to the appellant before the date of the partition, however, all the respondents were liable and in respect of that amount the appellant was entitled to a charge against all the family properties.

APPEAL under Clause 15 of the Letters Patent against the decree and judgment of VENKATARAMANA RAO J., dated 27th March 1936 and passed in Second Appeal No. 1535 of 1931 preferred to the High Court against the decree of the District Court of Guntur in Appeal Suit No. 250 of 1929 preferred against the decree of the Court of the District Munsif of Tenali in Original Suit No. 547 of 1927.

*V. Govindarajachari* for appellant.—*Subbarayalu Chetti v. Kamalavallithayaramma*(3) is in favour of the appellant.

[THE CHIEF JUSTICE.—In that case was there a partition among the surviving members ?]

There was a partition after the filing of the suit for maintenance. *Narasimham v. Venkatasubamma*(1) is against the appellant. [Reference was made to *Rangappaya v. Shiva*(4) and *Jayanti Subbiah v. Alamelu Mangamma*(2).]

[Reference was also made to Mayne's Hindu Law, tenth edition, page 828 (notes), paragraph 690, page 828, and to the Smriti Chandrika.]

[THE CHIEF JUSTICE.—Suppose the husband dies after selling his share or mortgaging his share up to the hilt but the family remains joint, would the right to maintenance of the widow of the deceased cease or would it remain ? If it would cease, *Narasimham v. Venkatasubamma*(1) would be right ; if not, that case would be wrong.]

(1) (1931) I.L.R. 55 Mad. 752.

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

(3) (1911) I.L.R. 35 Mad. 147.

(4) (1933) I.L.R. 57 Mad. 250.

[Reference was made to Mayne's Hindu Law, latest edition, pages 829, 490 and 493.]

LAKSHMIDEV-  
AMMA  
v.  
VEERA REDDI.

[THE CHIEF JUSTICE.—In order to succeed you must go the length of contending that the widow is entitled to be maintained out of the family property even in cases in which her husband was not entitled to a share during his lifetime by reason, say, of his having received a share and dissipated it.]

The appellant admits that she would not have been entitled to be maintained out of the joint family property if there had been a partition in her husband's lifetime and he had dissipated his share. [Reference was made to *Elkradeshwari Bahusain v. Homeshwar Singh and others*(1) and *Pachayammal v. Paramasiva Mudaliar* (2).] If the widow had filed a suit for maintenance immediately after her husband's death she would have been entitled to a decree against all the surviving members. The right of the widow has to be decided as on the date of her husband's death. The surviving members must be viewed as a corporation which becomes entitled to the deceased's share by survivorship. [Reference was made to *Adhibai v. Cursandas Nathu*(3), *Madhavrav Keshav Tilak and others v. Gangabai*(4) and Mulla's Hindu Law, page 595.]

*P. Satyanarayana Rao* for respondents was not called upon.

*Cur. adv. vult.*

### JUDGMENT.

LEACH C.J.—This appeal raises a question with regard to a Hindu widow's right to maintenance out of the family properties after partition has taken place. The appellant was the plaintiff in the suit out of which the appeal arises. Her husband died some eight years before the suit. At the time of his death the joint family consisted of the first respondent (the appellant's father-in-law), the second respondent (her brother-in-law), and the third respondent (a son of her deceased husband by a previous wife). On

LEACH C.J.

(1) (1929) I.L.R. 8 Pat. 840 (P.C.).

(2) 1937 M.W.N. 785.

(3) (1886) I.L.R. 11 Bom. 199.

(4) (1878) I.L.R. 2 Bom. 639.

LAESHMIDEV-  
AMMA  
v.  
VEERA REDDI,  
LEACH C.J.

20th December 1925 the appellant made a formal demand for maintenance. The family was still joint, but on 17th March 1926 a partition was effected by a registered deed. The partition was no doubt the result of the appellant's demand, but it was a genuine partition. On the death of the appellant's husband his share in the family properties devolved upon the third respondent and as the result of the partition the third respondent obtained what his father would have obtained had he lived. The appellant then filed a suit in the Court of the District Munsif, Tenali, claiming that she was entitled to a decree against all the respondents on the ground that her status as a widow gave her the right to be maintained out of the family estate as a whole and not merely out of that portion allotted to her step-son on partition. The District Munsif found in the appellant's favour and granted her a decree against all the respondents. He held that she was entitled to arrears of maintenance for seven years at the rate of sixty rupees a year and to the payment of ninety rupees a year from the date of the suit. In addition he awarded a sum of twenty rupees for the purchase of utensils and directed the respondents to set aside a portion of the family house for the appellant to live in or to pay her a further sum of one hundred rupees. The decree so far as the first and second respondents were concerned was a personal decree, but so far as the third respondent was concerned it was limited to his share in the family properties. The first and second respondents appealed to the District Judge of Guntur, who confirmed the District Munsif's decree with slight modifications. He directed that the sum payable as arrears of maintenance should be calculated at sixty rupees per year for six years and at eighty-four rupees per year for

one year and that all the amounts under the decree were to be recovered from the respondents in equal shares. The District Judge also modified the order which the District Munsif had passed with regard to costs. The first and second respondents then appealed to this Court. The appeal was heard by VENKATARAMANA RAO J. who allowed it. In holding that the third respondent was alone liable the learned Judge followed the decision in *Narasimham v. Venkatasubbamma*(1), where a Division Bench of this Court (WALLER and JACKSON JJ.) held that when the widow of a coparcener sues for maintenance after the family has become divided, her claim is enforceable only against the coparcener to whom her husband's share has been allotted. The learned Judge felt unable to accept that decision as embodying the correct statement of the law, but as it was directly in point he felt bound by it. The decision in *Narasimham v. Venkatasubbamma*(1) runs contrary to the decision of WHITE C.J. and MUNRO J. in *Subbarayalu Chetti v. Kamalavallithayaramma*(2), and the present appeal, which is an appeal from the judgment of VENKATARAMANA RAO J. under Clause 15 of the Letters Patent, has been placed before a Full Bench in order that the conflict may be decided.

LAKSHMIDEV-  
AMMA  
v.  
VEERA REDDI.  
—  
LEACH C.J.

The decision in *Narasimham v. Venkatasubbamma*(1) is in accordance with the statement of the law made by BHASHYAM AYYANGAR J. in *Jayanti Subbiah v. Alamelu Mangamma*(3) where he said :

“ When an undivided Hindu family consists of two or more males related as father and sons or otherwise and one of them dies leaving a widow, she has a right of maintenance against the surviving coparcener or coparceners, *quoad* the share or interest of her deceased husband in the joint family

(1) (1931) I.L.R. 55 Mad. 752.

(2) (1911) I.L.R. 35 Mad. 147.

(3) (1902) I.L.R. 27 Mad. 45.

LAKSHMIDEV.  
AMMA  
v.  
VEERA REDDI.  
LEACH C.J.

property which has come by survivorship into the hands of the surviving coparcener or coparceners and though such right does not in itself form a charge upon her husband's share or interest in the joint family property, yet when it becomes necessary to enforce or preserve such right effectually, it could be made a specific charge on a reasonable portion of the joint family property, such portion of course not exceeding her husband's share or interest therein."

As authority for this statement BHASHYAM AYYANGAR J. gave the Full Bench decision in *Ramanandan v. Rangammal*(1). The judgment delivered in that case did not lay down expressly that a widow's right to a charge on the family property should not exceed her husband's interest therein, but it was recognised that she was entitled to a charge on the family property in the hands of her son.

I regard the statement of the law made by BHASHYAM AYYANGAR J. as being correct, and before commenting on the decision in *Subbarayalu Chetti v. Kamalavallithayaramma*(2) I will state my reasons. The *Smriti Chandrika*, XI, I, 34, according to the translation by the late T. Krishnaswami Ayyar (page 171), reads as follows :

"When the father-in-law and the like are qualified to maintain the widow and take themselves the property of the deceased undivided member of the family, they alone are to maintain the widow from the property so taken. Accordingly, Narada :—' Whichever wife (Patni) becomes a widow and continues virtuous, she is entitled to be provided with food and raiment by the elder brother of the deceased or by her father-in-law or by a Gotraja (a member born in the same family) or any other person.'

In order to maintain the widow, the elder brother, or any of the others above mentioned, must have taken the property of the deceased ; the duty of maintaining the widow being dependent on taking the property."

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(1) (1888) I.L.R. 12 Mad. 260 (F.B.). (2) (1911) I.L.R. 35 Mad. 147.

The authority of the Smriti Chandrika is accepted. There is here a clear statement that the duty of maintaining the widow devolves on the persons who take the property of the deceased undivided member of the family and it is emphasised that the duty is dependent on the taking of the property. If the obligation to maintain the widow depends on the taking of the deceased husband's share in the family estate, it follows that there can be no right in the widow to claim to be maintained out of the shares which fall to the other members. While the family remains undivided the position is different. The property is held jointly and of necessity the amount required for a widow's maintenance has to be paid out of the estate regarded as a whole, but in no circumstances can she claim an allowance greater than the income of her husband's share in the estate. An adequate allowance may be less than the income of her husband's share, but it represents the maximum available. See *Savitribai v. Luximibai and Sadasiv Ganoba*(1), *Madhavrav Keshav Tilak and others v. Gangabai*(2) and *Pachayammal v. Paramasiva Mudaliar*(3). In *Savitribai v. Luximibai and Sadasiv Ganoba*(1) WESTROPP C.J. observed :

LAKSHMIDEV.  
AMMA  
v.  
VEERA REDDI.  
—  
LEACH C.J.

“It would need very strong and distinct authority, in the ancient treatises of Hindu law, to convince us that the widows of such separated husbands stand, as to maintenance out of such portion of the family estate as remains in the hands of the other ex-parceners, in a better position than the husbands themselves occupy with regard to any right to resort to that residue for a further share, albeit under the name and guise of maintenance.”

The ancient treatises of Hindu law do not furnish such authority. In the Smriti Chandrika there is, however, strong authority to the contrary.

(1) (1878) I.L.R. 2 Bom. 573, 586.

(2) (1878) I.L.R. 2 Bom. 639.

(3) 1937 M.W.N. 785.

LAKSHMIDEV-  
AMMA  
v.  
VEERA REDDI,  
—  
LEACH C.J.

The learned Advocate for the appellant has conceded that when there has been a partition during the husband's lifetime and the husband has dissipated his share in the family properties, his widow is not entitled to be maintained out of the properties falling to the shares of the other members. If the widow is not entitled in such circumstances to be maintained out of the properties in the hands of the other members of the family, the logical deduction is that her right to maintenance merely attaches to her husband's share and on partition she has no claim against the assets forming the shares of the others.

I will now turn to examine the decision in *Subbarayalu Chetti v. Kamalavallithayaramma*(1). In that case a widow sued for maintenance against the surviving members of her deceased husband's family and after the institution of the suit the defendants arranged a partition. The Court held that the partition could not prejudicially affect the plaintiff's claim. WHITE C.J. quoted the passage which I have quoted from the judgment of BHASHYAM AYYANGAR J. in *Jayanti Subbiah v. Alamelu Mangamma*(2), but he was not prepared to hold that the words of BHASHYAM AYYANGAR J. were intended to apply to the members of the branch of the family of which the deceased was a member and not the members of the joint family generally. I am unable to place this interpretation on the words used by BHASHYAM AYYANGAR J. and I am at a loss to understand how the fact that the partition took place *after* suit could make any difference. It was not suggested that the partition was a sham or in any way unfair. The members of the family had the right to divide and their rights in the family

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

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



properties could not be affected by the widow's suit. The decision in *Subbarayalu Chetti v. Kamalavallithayaramma*(1) was followed by KRISHNAN PANDALAI J. in *Rangappaya v. Shiva*(2) but the judgment in the latter case calls for no additional comment. In my opinion *Subbarayalu Chetti v. Kamalavallithayaramma* (1) was wrongly decided and *Narasimham v. Venkatasubbamma*(3) should be followed.

LAKSHMIDEV-  
ANNA  
v.  
VEERA REDDI.  
LEACH C.J.

The result is the appeal in the main fails, but the decree of the District Judge requires amendment. The provision that the maintenance be paid equally by the respondents must be set aside. The amount awarded to the appellant by the District Judge from the date of the partition, namely 17th March 1926, will be paid by the third respondent out of the properties which have come into his hands and represent the share of the deceased husband in the joint family estate. The amount representing arrears of maintenance before that date will have to be paid by all the respondents, and therefore there will be a charge against all the family properties in respect of the amount payable for maintenance before 17th March 1926. In respect of the amount due for maintenance after that date the charge will be on the third respondent's share only. The first and second respondents are entitled to their costs.

KRISHNASWAMI AYYANGAR J.—I agree.

SOMAYYA J.—I agree.

A.S.V.

(1) (1911) I.L.R. 35 Mad. 147. (2) (1933) I.L.R. 57 Mad. 250.

(3) (1931) I.L.R. 55 Mad. 752.