APPELLATE CIVIL.

Before Mr. Justice Wadsworth.

1938, August 19.

PATURI VEERAYYA AND ANOTHER (DEFENDANTS 1 AND 2), APPELLANTS,

v.

PATURI CHELLAMMA (PLAINTIFF), RESPONDENT.*

Hindu law—Maintenance—Widow—Suit for enhancement of maintenance fixed by a decree of Court—Circumstances to be considered—Principles in fixing the rate—Date from which arrears at the enhanced rate to be calculated.

In a suit by a Hindu widow for the enhancement of maintenance already fixed by a decree of Court,

held: (i) The maximum which could be awarded to the widow would be the amount of the income of the share to which her deceased husband would have been entitled had he been alive and a coparcener at the date of the suit for enhancement.

(ii) In assessing a claim based on changes of circumstances the Court is entitled to have regard to the changes not only in the needs of the widow but also any changes of those other circumstances to which the Court had regard in fixing the original rate of maintenance, provided that those changes were not foreseen or allowed for at the time when the original decree was passed. A change in the wealth of the family and the growth of the income of the family are circumstances to which the Court must have regard.

(iii) The date from which arrears at the enhanced rate should be calculated is the date of the suit for enhancement and not the date when the payments under the old decree ceased or the date of the decree of the trial Court in the suit for enhancement.

Ekradeshwari Bahuasin v. *Homeshwar Singh and others*(1) referred to.

Sreeram Bhuttacharjee v. *Puddomookhee Debia*(2) applied.

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* Second Appeal No. 4 of 1935.

(1) (1929) I.L.R. 8 Pat. 840 (P.C.). (2) (1868) 9 W.R. 152.

VEERAYYA v. CHELLAMMA.

APPEAL against the decree of the District Court of East Godavari at Rajahmundry, dated 1st October 1934, and passed in Appeal Suit No. 20 of 1934 preferred against the decree of the Court of the Subordinate Judge of Cocanada, dated 13th February 1934 and passed in Original Suit No. 59 of 1930.

Ch. Raghava Rao and *M. Sriramamurthi* for appellants.

P. Somasundaram for respondent.

JUDGMENT.

WADSWORTH J.

WADSWORTH J.—This appeal arises out of a suit for the enhancement of maintenance ordered to a Hindu widow by a decree of the year 1899. The original rate of maintenance was Rs. 10 per mensem. The Courts below have raised this figure to Rs. 50 per mensem, allowing also a lump sum for pilgrimage not provided for in the original decree and another lump sum for the replacement of worn out utensils. The lower appellate Court differing from the trial Court allowed arrears only from the date of the trial Court's decree instead of arrears from the date on which payment under the earlier decree had ceased. This question of the date from which arrears are to be paid forms the subject-matter of the memorandum of cross objections.

There are findings of fact, into which it is unnecessary for me to enter, that in the interval from the first decree of 1899 to the date of the present suit, the income of the family property had arisen from Rs. 1,100 a year to a little over Rs. 7,000 a year, that is to say, the increase in the rate of maintenance allowed is something less than the proportionate increase having regard to the rise in the income of the family. The plaintiff herself in her evidence regarding

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the prices of the main items of expenditure during this period estimated the rise in the price of paddy as from Rs. 60 to 150 and the rise in the price of clothes as from Rs. 5 to 12 to 15. This would indicate, if the evidence were accepted as correct, that the rise of prices of the principal commodities required for her consumption, amounts to something less than 300 per cent.

The basis upon which the maintenance of a widow is to be fixed in the first instance is well settled. It should be fixed, so far as means are available, at an amount which will enable her to live comfortably, according to the standard of comfort obtaining in the community to which she belongs. In fixing the figure regard will be had to the amount of money available and the ordinary rule is that the maximum allowance which she should get would be an amount equal to the income of her husband's share in the property; *Rangathayi Ammal* v. *Munusawmi Chetty*(1) and *Subbarayulu Chetty* v. *Kamalavalli Thayaramma*(2). In the cases just quoted the income of the husband's share was taken to be the income of the share which he would have got if a division had taken place in his lifetime. That appears also to be the basis of the decision in *Jayanti Subbiah* v. *Alamelu Mangamma*(3), where the rate of maintenance is treated as being limited to the share of the deceased husband which has come by survivorship to the coparcener. But on this question of the date with effect from which the husband's share is to be estimated, there is a very clear ruling of a Bench of this Court in *Manikka Mudaliar* v. *Soubagia Ammal*(4), which is later than the cases just referred to and, so far as I know, has not

(1) (1911) 21 M.L.J. 706.
(2) (1911) 21 M.L.J. 493.
(3) (1902) I.L.R. 27 Mad. 45.
(4) (1914) 27 M.L.J. 291.

been challenged by subsequent rulings of this Court in the twenty-four years which had elapsed since the decision was passed. In that case, it was definitely laid down that the maximum amount of maintenance of a widow should be fixed with reference to the income from the husband's share, not calculated as on the date of his death, but as on the date of the suit, regard being had to the increase of the family property which had taken place in the interval between the date of the husband's death and the date of the suit. That decision must be taken as authoritative, at least so far as I am concerned. I think it follows that in a suit for enhancement of maintenance the maximum which could be awarded to the widow would be the amount of the income of the share to which her deceased husband would have been entitled had he been alive and a coparcener at the date of the suit for enhancement.

What are the considerations which must govern the Court in dealing with a claim for enhancement of maintenance already fixed by the Court's decree? Clearly, the matter must not be treated as *res integra*. The Court cannot proceed to fix the maintenance without any regard to the judicial decision already passed and binding on both the parties. The only grounds upon which this decision can be said to lose its force are such changes in the circumstances governing the widow and the family as were not foreseen and allowed for at the time when the original decree was passed. It has been argued by Mr. Raghava Rao for the appellants that it is only a change in the needs of the widow and the prices of those needs that should be taken into consideration. That, to my mind, is overstating the case of those who have to pay the maintenance. In assessing a claim based on changes

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of circumstances the Court is entitled, in my opinion, to look into the changes not only in the needs of the widow but also any changes of those other circumstances to which the Court had regard in fixing the original rate of maintenance. For instance, the Court must have regard to any rise of prices ; it must have regard to additional expenses necessitated by the deterioration of the health of the maintenance holder ; it must also have regard to any reasonable change in the standard of comfort and in the conventional necessities of the widow due to the improvement in the circumstances of the family to which she belongs. If it is obvious that in fixing the original rate of maintenance, you have regard to those conventional necessities and conventional comforts which can reasonably be expected by a member of the community to which the widow belongs, any change in those circumstances can be made a ground for enhancement or reduction of maintenance in a subsequent suit, always provided that these changes were not foreseen or allowed for in the original decree. To this extent, a change in the wealth of the family is a valid factor for it is common experience that conventional standards of comfort and conventional necessities grow with the growth of income. Finally, the Court must have regard to the growth of the income of the family in order to ascertain the maximum which must govern the maintenance allowance having regard to the rule laid down in *Manikka Mudaliar* v. *Soubagia Ammal*(1).

It does not seem to me that these principles have, to any considerable extent, been ignored by the lower appellate Court. In fact, to a very large extent, they are set forth clearly and succinctly by the learned District Judge and the learned District Judge has

(1) (1914) 27 M.L.J. 291.

quite rightly referred to the observations of the Privy Council in *Ekradeshwari Bahuasin* v. *Homeshwar Singh and others*(1) in which their Lordships deprecate interference with a lower Court's estimate as to what is a proper rate of maintenance, provided that the principles on which the rate has been calculated are sound. There is, to my mind, no apparent error in the application of the correct principles so far as the basic rate of maintenance allowance is concerned. It is true that the rate has been raised five-fold whereas, according to the evidence, prices have risen something less than three-fold. But the Court was entitled to take into consideration, as it did, the fact that the declining years of the widow and the weakness of her health made it necessary for her to have extra comforts in the shape of a servant to attend upon her and the Court was also entitled to take into consideration the fact that the family has very greatly increased in wealth and consequently, the widow could reasonably expect a standard of comfort higher than that which was permissible in 1899 and similar to that which the other members of the family have enjoyed after their income has very greatly appreciated. Moreover, the Court was also entitled to take into consideration the facts that the amount available for providing the widow with maintenance is something like six times the amount which was available in 1899 and that, consequently, there was no financial necessity to stint the widow in the matter of satisfying her conventional needs and providing her with the conventional standard of comfort such as presumably prevailed when the first decree was passed.

I am therefore of opinion that there are no grounds for interfering with the decision of the lower appellate

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

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Court so far as the basic rate of maintenance is concerned. But, in my opinion, the Courts below have erred in granting to the widow a lump sum to pay for a pilgrimage for the benefit of the soul of her deceased husband. If the necessity for such pilgrimage exists now, it existed even in 1899 and it is not apparent that any such expenditure was refused at the time of the original suit on grounds of lack of funds. Nor do I see why the widow should be allowed a lump sum for the replacement of utensils which have worn out in the interval between 1899 and 1933. It must be inferred that when the original maintenance decree was passed, the Court would make provision for reasonable replacements which could be foreseen and there is no more justification, to my mind, for allowing a fresh suit every time the utensils wore out than there would be for allowing a fresh action whenever the widow's clothes wore out. To the extent of these two minor items, I therefore set aside the decree of the lower Courts, confirming the decree for the amount allowed for maintenance pure and simple.

On the question of the memorandum of cross objections, it seems to me that both the Courts were wrong in the fixation of the date from which arrears should be calculated. The trial Court adopted as its starting point the date when the payments under the old decree ceased. A mere cessation of payment is no ground for an enhancement of maintenance and it does not appear that any formal demand was made for enhancement to the rate now claimed prior to the filing of the suit. The appellate Court has fixed the date from which arrears should be allowed as the date of the lower Court's decree. This, as is pointed out by the Privy Council in *Ekradeshwari Bahuasin* v.

Homeshwar Singh and others(1), is a very dangerous date to adopt, for, the adoption of such a criterion is an incentive to the defendants in a suit for maintenance to use every means at their disposal to delay the trial of the suit. As a matter of fact, the trial of the present suit was delayed from the beginning of 1930 until February 1934. I do not see why the plaintiff should be made to pay for the dilatoriness of the proceedings in the trial Court. Incidentally, the matter is covered by the express authority of a decision in *Sreeram Bhuttacharjee* v. *Puddomookhee Debia*(2) though it is not apparently a case of enhancement of maintenance decreed in a previous suit, but merely one of an enhancement of maintenance fixed by a family arrangement. But the principle enunciated in that case, viz., that the date from which arrears should be calculated should be the date of the suit and not the date from which former payment ceased, holds good.

In the result, therefore, the appeal is allowed and the lower Court's decree will be modified so as to exclude the sums decreed for the cost of pilgrimage and the cost of replacement of utensils.

The memorandum of cross objections is allowed and the date from which arrears will be calculated will be the date of the institution of the present suit. In other respects, the lower Court's decree is confirmed. Parties will pay and receive costs in both the appeal and the memorandum of cross objections proportionate to their failure and success.

I am reminded that the decree of the lower Court gives a charge over the whole of the family properties. It seems to me unreasonable to encumber the family properties to a greater extent than is necessary to

(1) (1929) I.L.R. 8 Pat. 840 (P.C.). (2) (1868) 9 W.R. 152.

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secure the payment of the maintenance. The charge will therefore be limited to properties sufficient to yield an income of Rs. 1,200, which will allow a sufficient margin in case there is any difficulty in realization. If the parties can agree as to the properties which shall be charged, they may file a statement in this Court within one month; otherwise further proceedings in this matter will go on in the trial Court.

V.V.C.

APPELLATE CIVIL.

Before Mr. Justice King and Mr. Justice Stodart.

1938, August 8.

VADREVU SANKARAMURTHY AND ANOTHER (DEFENDANTS 3 AND 4), APPELLANTS,

v.

VADREVU SUBBAMMA (PLAINTIFF), RESPONDENT.*

Hindu law—Maintenance—Widowed daughter-in-law—Donee or devisee of self-acquired property of her father-in-law—Legal right to maintenance against, or against such property—Donee or devisee surviving son's son of father-in-law.

A widowed daughter-in-law has no legal right to maintenance against the devisee or donee of the self-acquired property of her father-in-law or against the property itself if it descends not by inheritance but by will or gift.

Where A, a Hindu, executed and registered a document described as a will by which he bequeathed his self-acquired properties to his surviving sons' sons and handed over the properties to them and thereafter became a sanyasin,

held, accordingly, that, whether the said document was a will or a gift deed, the widow of a predeceased son of A had no legal right to maintenance either against his grandsons or

* Second Appeal No. 1227 of 1932.