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applicable to the present case are not the same. They are quite different. The case of *Chatar Singh v. Amir Singh* (1) has also been referred to. The facts of that case more closely resemble those of the present. That, like the present, was a case of a decree payable by instalments where there had been a default. It was an appeal under the Letters Patent and if reference is made to the decision by the single Judge of this Court (reported in 38 Allahabad at p. 204, it will appear that the decree provided that on default of payment of any one instalment as it fell due, the whole of the decretal amount remaining due would become payable at once. In the judgement on appeal (at page 207) it is said "undoubtedly on the face of the decree it was directed that payment of the full amount should be made when default was made in payment of any instalment." It will thus be seen that the decision proceeded upon the basis that the decree had in the events which had occurred, expressly directed the payment of the entire amount on a certain date, namely, the date of default. We think that the case of *Chatar Singh v. Amir Singh* (1) is clearly distinguishable from the present case on this ground. We may also mention the case of *Shankar Prasad v. Jalpa Prasad* (2), where the facts were very much the same under the corresponding article in the Limitation Act of 1877. We think the order of the court below was correct and it should be restored. We accordingly allow the appeal, set aside the decree and order of the learned Judge of this Court and restore the decree of the lower appellate court. We make no order as to costs.

Appeal allowed.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Walsh.

DEBI SARAN SHUKUL AND ANOTHER (DEFENDANTS) v. DAULATA SHUKLAIN (PLAINTIFF).*

Hindu law—Maintenance—Wife's right to maintenance forfeited by unchastity.

Under the Hindu Law a wife is not entitled to maintenance from her husband if at the time of the suit she is living in adultery and persists in her vicious course of life. *Subhaya v. Bhavani* (1) followed.

*Second Appeal, No. 778 of 1915, from a decree of E. E. P. Rose, Additional Judge of Gorakhpur, dated the 20th of February, 1915, reversing a decree of Muhammad Muzaffar Inam, Munsif of Bansaon, dated the 20th of November, 1913.

(1) (1916) I. L. R., 38 All., 204.

(2) (1894) I. L. R., 16 All., 371½

(3) (1914) 24 Indian Cases, 390.

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THE plaintiff respondent brought a suit against her husband, her father-in-law and other members of her husband's joint family claiming maintenance at Rs. 8 per mensem and a room in the house belonging to the joint family. The defence was that she was unchaste and was not entitled to any maintenance or residence in the family dwelling-house. The court of first instance found that she had given birth to an illegitimate child shortly after her marriage and had then been turned out of the house, and that this took place about six years before the suit. Upon this finding the suit was dismissed. The lower appellate court upon the same finding of facts came to the conclusion that the plaintiff was entitled, although unchaste, to a pittance from her husband and decreed the claim to the extent of Rs. 2 per mensem for maintenance. The claim for a room in the family dwelling-house was not pressed before the lower appellate court. The defendants appealed to the High Court.

Munshi *Iswar Saran*, for the appellants :—

Under the Hindu Law the right of women to obtain maintenance is conditional on their remaining chaste, "preserving unsullied the bed of their lord." This right is forfeited and the allowance of maintenance is resumed when the woman becomes unchaste. There is a text of Narada which distinctly lays this down; *Narada*, XIII, section 26. (Sacred Books of the East, Volume 33). This text is quoted and adopted by both the *Dayabhaga* and the *Mitakshara*; *Dayabhaga*, Chapter XI, section I, pl. 48. (Colebrooke's Translation, 1822 edition, p. 177; *Mitakshara*, Chapter II, section I, pl. 7. (Colebrooke's Translation, 1822 edition, p. 326). Other texts also formulate the same rule and further lay down that an unchaste woman should be expelled: *Mitakshara*, Chapter II, section X, pl. 14, 15; where a passage from *Yajnavalkya* is also quoted, (Colebrooke's Translation, 1822 edition, p. 363); *Viramitrodaya*, Chapter III, Part I, section 13; where a passage from *Katyayana* is also quoted, (Golap Chandra Sarkar Sastri's Translation, 1879 edition, p. 174); *Viramitrodaya*, Chapter VIII, section 10 (at p. 255); *Smriti Chandrika*, Chapter V., pl. 42, 43, (T. Krishna-sastry Iyer's Translation, 2nd edition, p. 70). In the case of

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Moniram Kolita v. Keri Kolitani (1) the Privy Council quoted the text from *Narada* and said that the texts showed that maintenance was liable to resumption or forfeiture on account of unchastity. The rule laid down by the texts mentioned above has been given effect to by judicial decisions: *Strange*: Hindu Law, Volume II; (1880 edition), Appendix to Chapter II, p. 39; *W. Macnaghten*: Principles and Precedents of Hindu Law, 4th edition, Volume II, Chapter II, case V; *Ilata Shavatri v. Ilata Narayanan* (2); *Harkhu Singh v. Nanda Kuar* (3); *Vishnu Shambhag v. Manjamma* (4); *Daulta Kuari v. Meghu Tiwari* (5); *Roma Nath v. Rajonimoni Dasi* (6); *Kandasami Pillai v. Murugammal* (7); *Chirukala v. Visvanadha Sastri* (8); *Valu v. Ganga* (9). The lower appellate court has held that the respondent is entitled, notwithstanding her unchastity, to bare maintenance. It is contrary to all morality and principle to hold that a woman who is leading a vicious course of life is entitled to claim any maintenance from her husband or his relations. In the last five cases cited above it was held that a woman who was leading an unchaste life was not entitled to get any maintenance, not even bare or starving maintenance. Even by choosing to live apart from her husband the wife loses her right to obtain maintenance, *a fortiori*, when she is also leading an immoral life: *Sitanath Mookerjee v. Streemutty Haimabutty Dabee* (10), *Virasvami Chetti v. Appasvami Chetti* (11).

Munshi *Lakshmi Narain*, for the respondent:—

The texts relied upon by the appellants do not apply to the case of a wife claiming maintenance from her husband. The text of *Narada* relates to the right of maintenance of widows of deceased brothers as against the surviving brothers; and the passage from *Yajnavalkya* quoted in the *Mitakshara* is, as is stated there, with respect to the rights of wives of disqualified persons. Moreover, these passages are not cited in the *Dayabhaga* and the *Mitakshara* expressly in support of resumption of

(1) (1880) I. L. R., 5 Calc., 776 (786).

(2) (1863) 1 Mad. H. C. Rep., 372.

(3) Weekly Notes, 1885, p. 164.

(4) (1884) I. L. R., 9 Bom., 108.

(5) (1893) I. L. R., 15 All., 382.

(6) (1890) I. L. R., 17 Calc., 674.

(7) (1895) I. L. R., 19 Mad., 6.

(8) (1912) 29 M. L. J., 289.

(9) (1882) I. L. R., 7 Bom., 84.

(10) (1875) 24 W. R., 377.

(11) (1868) 1 Mad. H. C. Rep., 375.

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maintenance, but in the course of discussion of the question whether widows inherit a share of the property or only get maintenance. This was pointed out in the case of *Nehalo v. Kishen Lal* (1). The two passages cited from the *Vramitrodaya* relate, respectively, to widows of co-parceners and to wives of persons excluded from inheritance; and the passage from the *Smriti Chandrika* relates to the latter (vide pl. 43): *Mayne: Hindu Law*, 8th edition, p. 628. There are no texts of *Manu* which lay down that a husband is entitled to cast off entirely an unchaste wife without any maintenance. He may "abandon" her, that is, deprive her of all nuptial rites and divest her of ornaments and property, but he must maintain her. I am supported by the author's "Remark" at foot of the case cited by the appellants from *Strange's Hindu Law*, and by the observations on this point in the case of *Subhaya v. Bhavani* (2). *Vasistha* lays down that adultery on the part of a wife is an expiable offence and that an unchaste wife must not be absolutely abandoned; "to forsake her is not prescribed by the sacred law." He specifies certain aggravated sins for which a wife must be abandoned altogether: the present case is not one of those; *Vasistha: XXI*, sections 8, 10; *XXVIII*, sections 2, 3, 7. (*Sacred Books of the East*, Volume 14, pp. 111, 133). *Mayne: Hindu Law*, 8th edition, pp. 628, 629. Numerous texts, which are in my favour, from *Yajnavalkya*, *Apararka*, the *Mitakshara* and other law-givers are cited by CHANDAVARKAR, J., in the case of *Parami Kom Ramayya v. Mahadevi Kom Shankrappa* (3) and are summarised by him thus:—"The general rule to be gathered from these is that a Hindu wife cannot be absolutely abandoned by her husband. If she is living an unchaste life, he is bound to keep her in the house under restraint and provide her with food and raiment just sufficient to support life; she is not entitled to any other right." The cases relied on by the appellants are, with three exceptions, cases of unchaste widows claiming maintenance from their late husband's relations. The case of an unchaste wife claiming maintenance from her husband is very different. Marriage, among Hindus, is a religious

(1) (1879) I. L. R., 2 All., 150 (158). (2) (1914) 24 Indian Cases, 330.

(3) (1909) I. L. R., 34 Bom., 278, (282, 285).

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sacrament and the wife is regarded as forming half of her husband's body. The relation between husband and wife cannot be dissolved by any cause other than death. It is the husband's constant duty to maintain her, to guide her in the path of virtue and, in the event of her lapsing from it, to endeavour to bring her back to it. The husband refusing bare maintenance to a wife who has strayed from virtue would be forsaking this duty, for the result would be, as was pointed out in *Roma Nath v. Rajonimoni Dasi* (1), to deny her a *locus pœnitentiæ* and to compel her through sheer necessity to continue to lead an immoral life. Then, the husband's liability to support his wife is personal independent of the possession of any property: *Mayne: Hindu Law*, 8th edition, p. 626.

The liability to support a widow is, on other hand, only an incident attaching to the possession of joint family property; there is no personal obligation to support her. The close and tender relations which exist between a husband and wife account for the special texts in her case which lay down that even the wife who has been guilty of unchastity should not be left in a state of perfect destitution: *Valu v. Ganga* (2). Out of the cases relied on by the appellants the following three were cases of an unchaste wife: The first of these cases was decided on general principles alone; no texts were referred to and the question of bare maintenance was not discussed. The second case merely followed the first and the third. The third case approved of the view that the wife was entitled to a bare maintenance, but refused to grant it on the ground that she persisted in leading a vicious course of life even at the date of her suit. Even if the law as laid down in the above case be assumed to be correct, it has not been found in the present case whether the plaintiff actually continued to lead an immoral life at or about the date of her suit. The findings of the lower courts are based simply on the fact that about six years prior to the suit she had given birth to an illegitimate child. It does not follow from this that she was living in adultery at the time of the suit: *Subhaya v. Bhavani* (3). Living in adultery denotes a continuous course of

(1) (1890) I.L.R., 17 Cal., 674 (679). (2) (1882) I.L.R., 7 Bom., 84 (89).

(3) (1914) 24 Indian Cases, 390.

immoral conduct: *Kallu v. Kuunsilia* (1); *Patala Atchamma v. Patala Mahalaksmi* (2). Even an unchaste and outcasted widow was held entitled to a bare maintenance in the case of *Honamma v. Timannabhat* (3).

Munshi *Iswar Saran*, in reply:—

The tie of kindred between a woman and her family ceases when she becomes unchaste and degraded. This applies with even greater force as between her and the members of her husband's family. It is her devotion to her husband that constitutes her the half of her husband's body; *Golap Sastri*: Hindu Law, 4th edition, 365. The father-in-law or the other members of her husband's family are certainly under no obligation to provide the unchaste wife with maintenance; no decree can be passed against them. The observations in *Parami Kom Ramayya v. Mahadevi Kom Shankrappa* (1) which are relied on by the respondent are *obiter dicta*; vide bottom of page 285 of the report; the case was decided upon the terms of a will. In the case of *Valu v. Gangā* (5) it was doubted whether the texts enjoining the grant of bare maintenance to an unchaste wife were mandatory and whether and to what extent they were likely to be enforced by the courts; vide p. 89. The point did not arise there, as that was a case of a widow. The cases in I. L. R., 26 All., 326, and I. L. R., 30 Mad., 332, were cases decided under section 488, clause (4) of the Criminal Procedure Code. That section merely furnishes a rough and ready method to the District Magistrate for the purpose of preserving peace; it does not contemplate the determination of the civil rights of parties; it has no bearing upon the determination of a point of Hindu Law.

BANERJI and WALSH, JJ. referred the following issue under order XLI, rule 25 of the Code of Civil Procedure.

“Has the plaintiff been leading a chaste life since the birth of her illegitimate son and was she leading such a life at the time when she instituted this suit?”

(1) (1904) I. L. R., 26 All., 326. (3) (1877) I. L. R., 1 Bom., 559.

(2) (1907) I. L. R., 30 Mad., 332. (4) (1909) I. L. R., 34 Bom., 278.

(5) (1882) I. L. R., 7 Bom., 84.

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On receipt of the finding the following judgement was delivered :—

BANERJI and WALSH, JJ. :—This appeal arises out of a suit brought by the plaintiff against her husband to recover maintenance. The defence to the claim was that the plaintiff was unchaste and was not therefore entitled to any maintenance from her husband. It has been found that the plaintiff gave birth to an illegitimate child, and it has also been found upon an issue referred by us to the court below that at the time of the institution of the suit she was living an unchaste life. Under these circumstances the question we have to consider is whether the plaintiff is entitled to any maintenance. The case of *Subhayya v. Bhavani* (1) was cited at the hearing. In that case it was held that a wife is not entitled to maintenance from her husband if at the time of the suit she is living in adultery and persists in her vicious course of life. This view seems to us to be in consonance with the Hindu Law. As in the present case it has been found that the plaintiff was leading an unchaste life at the time of the institution of the suit and persisted in her vicious course of life, she is not entitled to any maintenance. It was urged that she was entitled to bare maintenance in any case; but no authority has been brought forward before us in support of this contention. No doubt in the case to which we have referred above the learned Judges further held that a wife, who had given birth to an illegitimate child but at the time of the suit was not living in adultery, was entitled to maintenance. But it is not necessary for us to consider whether we would agree with that view. In the present case, it having been found that at the time of the institution of the suit the plaintiff was carrying on a career of immorality, it is unnecessary to determine whether she would have been entitled to maintenance had she led a chaste life after a single act of immorality. The result is that the appeal is allowed, the decree of the court below is set aside and that of the court of first instance is restored with costs in all courts.

Appeal allowed.

(1) (1907) 24 Indian Cases, 390.