APPELLATE CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Rachhpal Singh

1933
October, 24

RAM KUMAR DUBE AND OTHERS (DEFENDANTS) *v.* BHAGWANTA (PLAINTIFF)*

Hindu law—Maintenance—Unchaste widow who has reformed and returned to chastity—Bare maintenance.

A Hindu widow who had become unchaste but has subsequently reformed herself and returned to a chaste life is entitled to a bare maintenance or starving allowance from the persons who are in possession of the estate which was jointly held by them and the deceased husband of the widow.

There appears to be no text of Hindu law having a direct bearing on the point. There is authority for holding that the texts relating to a starving allowance refer to women generally and are not confined to wives only. There is no text which says that a widow once unchaste must be deemed unchaste for ever and must for ever forfeit her claim to even a starving allowance although she reforms and gives up leading an immoral life.

Mr. *N. Upadhiya*, for the appellants.

Messrs. *Shiva Prasad Sinha, Sankar Saran, Harnandan Prasad, A. P. Pandey* and *H. C. Mukerji*, for the respondent.

RACHHPAL SINGH, J.:—This is a defendants' appeal arising out of a suit for recovery of maintenance allowance.

The plaintiff Mst. Bhagwanta is the widow of one Hazari Lal, who died as a member of a joint family consisting of himself and the defendants. In 1906 Mst. Bhagwanta instituted a suit against the defendants for her maintenance, but it was dismissed because the court found that she had been leading an unchaste life. The plaintiff again filed a fresh suit for the recovery of maintenance allowance in 1929 which has given rise to this appeal. She alleged that since the decision of the former suit by the appellate court she had been leading a chaste

*First Appeal No. 293 of 1930, from a decree of Bishun Narain Tankha, Additional Subordinate Judge of Gorakhpur, dated the 12th of March, 1930.

1933

RAM KUMAR DUBE v. BHAGWANTA

and pure life and was therefore entitled to get maintenance from the defendants. She claimed the same at the rate of Rs.60 per mensem. The defendants resisted the claim on the grounds that the plaintiff had all along been leading an immoral life and was not therefore entitled to any maintenance, that the suit was barred by the rule of *res judicata,* and that it was also not within limitation. The learned Subordinate Judge held that the plaintiff had been leading a chaste life and was therefore entitled to a bare maintenance from the defendants, which he awarded at the rate of Rs.15 monthly. The defendants have preferred this appeal against the decree of the court below. The plaintiff has also filed cross-objections, contending that the rate at which maintenance has been awarded to her is very low.

Reichhpal Singh, J.

The plaintiff is now about 60 years of age. The learned Subordinate Judge has found that at least for the last 22 or 23 years the plaintiff has been leading a chaste life and has been living in the house of her brother and nephew. This finding of the court below was not challenged before us by the learned counsel for the defendants appellants. The only question which has been argued before us by the learned counsel for the appellants was that under the Hindu law a widow who had become unchaste once could not get maintenance allowance from the other members of the joint family, even if she reformed. I proceed to consider this question.

The learned counsel for the appellants had to admit at the very outset that some of the recent decisions of Bombay and Madras High Courts were against the contention raised by him. There is, however, no decision of this Court bearing on the point. He has contended before us that the Bombay and Madras decisions are not in consonance with the texts of Hindu law and has asked us to hold that on a true interpretation of the texts a Hindu widow who once becomes unchaste loses her right of maintenance even after her reforma-

1933

RAM KUMAR DUBE v. BHAGWANTA

Rachhpal Singh, J.

tion. He relied on the following text of Narada which is referred to in chapter II, section 2, placitum 7 of the Mitakshara: "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his property, excepting the *stridhan* (of the widow). They should make provisions for the maintenance of his wives till their death, provided they preserve unsullied the bed of their lord. They may, however, cut it off, in case of those who behave otherwise." This text is an authority for the proposition that the right of a widow to get maintenance is dependent upon her leading a chaste life. It is now a fairly well settled proposition that a widow loses her right to the ordinary rate of maintenance if she is leading an impure life; but it is still a debatable question whether such a widow is not entitled even to a bare or, what is called, "starving" maintenance allowance. But the question which we are asked to decide in this case is somewhat different. It is whether a widow who has gone astray once can claim starving allowance after she has given up leading an immoral life. It appears to me that the old texts of Hindu law are silent on this point. The learned counsel for the appellant was unable to cite any text having a direct bearing on the point in issue before us.

It, however, appears that according to some of the texts an unchaste woman would be entitled to a starving maintenance allowance. Verse 70 in the Achara Adhyaya in the chapter relating to "Marriage", with Vijnaneswara's commentary thereon, is translated as follows by Srisa Chandra Vidyarnava in his translation of the Achara Adhyaya at page 136:

"The author now describes how unchaste women are to be treated:

Yajnavalkya

LXX.—The unchaste wife should be deprived of authority, should be unadorned, allowed food barely sufficient to sustain her body, rebuked, and let sleep on low bed, and thus allowed to dwell.

Mitakshara

She who commits adultery, 'should be deprived of authority', i.e. the control over servants and the management of the household, etc., should be taken away. She should be kept 'unadorned', i.e. without collyrium, ointments, white cloth or ornaments; 'with food enough to maintain her body' and sustain her life merely, and 'rebuked' with censure, etc., and 'sleeping on low bed', on the ground, and 'allowed to dwell', only in his own house. This should be done in order to produce repentance, and not for purification."

The learned counsel for the appellant has, however, argued before us that the Hindu law texts relating to starving maintenance allowance referred only to a degraded wife and not a widow who has been leading an unchaste life. About this argument it may be said that it was not accepted by the Bombay High Court. In *Bhikubai* v. *Hariba* (1) the learned Judges deciding that case expressed an opinion that passages about starving allowance referred generally to women and were not confined to wives. The same view has been expressed by Sarvadhikari in his Principles of the Hindu Law of Inheritance, 2nd edition, page 789, where on the authority of Raghunandan he says that "In the text of Katyayana, viz. 'let the childless widow preserve unsullied etc.' and in the first half of the next text of the same sage, viz. 'the wife who is chaste takes the wealth of her husband', the word wife is illustrative."

In *Parami* v. *Mahadevi* (2) CHANDAVARKAR, J., an eminent authority on Hindu law, expressed the view that according to the Hindu law texts an unchaste wife was entitled to a starving maintenance.

It is not necessary, in my opinion, to consider various texts bearing on the subject as they are not pertinent to the point in issue before us, which is whether an unchaste widow who has reformed is entitled to claim starving maintenance or not.

Let us consider the case law on the subject. The first ruling on which reliance has been placed by the learned

(1) (1924) I.L.R., 49 Bom., 459. (2) (1909) I.L.R., 34 Bom., 278.

1933

RAM KUMAR DUBE v. BHAGWANTA

Rachhpal Singh, J.

counsel for the appellants is *Valu* v. *Ganga* (1). It was held that an unchaste widow was not entitled even to a bare maintenance, except perhaps from her son. The second ruling cited by the learned counsel for the appellants is *Vishnu Shambhog* v. *Manjamma* (2). A similar view was expressed in this ruling and it was said that "a decree obtained by a Hindu widow declaring her right to maintenance is liable to be set aside or suspended in its operation on proof of subsequent unchastity given by her husband's relatives." In regard to these two cases I am of opinion that they do not help us in determining the point in issue. Both of them deal with the case of a widow who is unchaste and do not refer to the case of a widow who has reformed. The learned counsel for the appellants next relied on some observations made by MITTER, J., in the well known ruling of *Kery Kolitany* v. *Moneeram Kolita* (3). The observations on which the learned counsel relied are to be found on pages 21 and 22. At page 21 MITTER, J., observed as follows:

"It is the chaste widow, and the chaste widow alone, who is allowed to inherit the estate of her deceased husband, and she is expressly told to use that estate solely and exclusively for his spiritual welfare, subject to the condition of 'preserving his bed unsullied'; once unchaste, she must remain unchaste for ever, and, therefore, for ever incompetent to satisfy the condition upon which her title depends. Indeed, if expiation can bar the forfeiture, it can bar the disinherison also; but there is no authority whatever to support either of these propositions."

At another place at page 22 the learned Judge remarked:

"The widow having, by reason of her unchastity, once become incompetent to use the estate of her deceased husband, her right to use that estate ceases; and as, according to a well known principle of Hindu law, property can never remain in abeyance, the estate must immediately vest in the nearest heir of her husband, and having once gone there, no subsequent expiation on her part can bring it back to her. It has been said that,

(1) (1882) I.L.R., 7 Bom., 84. (2) (1884) I.L.R., 9 Bom., 108.
(3) (1873) 13 Beng. L.R., 1.

according to the Hindu law, an estate once vested cannot afterwards be divested. But not only is this rule not without exceptions, but its application must necessarily depend upon the nature of the estate in question . . . But the case of the widow stands upon a quite different footing. Her estate is one, as we have already shown, essentially in the nature of a trust estate, for she can use it only for particular purpose, and for no other; and if she has, by her own conduct, rendered herself totally incapable of using it for that purpose the divesting must follow as a necessary consequence."

It may be stated that the view expressed by the learned Judge was not accepted by the Full Bench of the Calcutta High Court, as will be seen by a perusal of the case. The question before the Full Bench consisting of ten learned Judges was whether under the Hindu law a widow who had once inherited the estate of her husband was liable to forfeit the estate by reason of her subsequent unchastity. The view taken by the majority of the Bench was that subsequent unchastity did not divest the estate which had already vested in the widow, and the contrary view expressed by MITTER, J., was not accepted. The view expressed by the learned Judge that a widow once unchaste must remain unchaste for ever, even if there be expiation, does not, I may say with great respect, appeal to me. It appears to be opposed to some of the texts of the Hindu law. Yajnavalkya says: "A woman guilty of unchastity shall be deprived of her position and possessions, shall wear dirty clothes, shall live upon starving maintenance, shall be humiliated and made to sleep on bare ground." (See Golapchandra Sarkar Sastri's Hindu Law, 1933 edition, page 664). Apararka, Anandashrama Series, Volume I, page 98, puts the law as follows: "She who has performed expiatory rites becomes fit for conjugal and social associations." Manu (verse No. 72 Mitakshara Moghe's edition, page 18) says: " A wife who has become purified after degradation shall not be censured." It is therefore clear to me that the rulings cited by the learned counsel for the appellants do not support his

1933

RAM KUMAR DUBE v. BHAGWANTA

contention. As pointed out by me, the rulings reported in *Valu* v. *Ganga* (1) and *Vishnu Shambhog* v. *Manjamma* (2) related to the case of a widow who did not reform.

Rachhpal Singh, J.

Coming to the cases which are opposed to the contention raised by the learned counsel for the appellants we find that the first is *Honamma* v. *Timannabhat* (3). In that case it was held that a Hindu widow was entitled to bare or starving maintenance and was not to be deprived of it by the fact that she had since become unchaste. The view expressed in this case that an unchaste widow in spite of her unchastity was entitled to a bare allowance was dissented from by the two rulings in *Valu* v. *Ganga* and *Vishnu Shambhog* v. *Manjamma* to which reference has been made above. Now for the purposes of the case before us it is unnecessary to enter into this controversy. We are not considering the case of a Hindu widow claiming a bare maintenance though she is unchaste, but what we have to decide is whether a reformed widow who has given up leading an immoral life is entitled to a bare maintenance. This question was considered by CHANDAVARKAR, J., in *Parami* v. *Mahadevi* (4), and he expressed the view that a Hindu wife could not be absolutely abandoned by her husband if she was leading an unchaste life. He was to provide her with food and raiments just sufficient to support life; she was entitled to no other right; but if she ever repented, returned to purity and performed expiatory rites she would become entitled to all conjugal and social rights. The question which we have to decide came up for decision before the Madras High Court in *Sathyabhama* v. *Kesavacharya* (5). A Bench of two learned Judges of that Court held that in a suit by a Hindu widow, who had been leading an unchaste life but had reformed her ways at the time of the suit for maintenance, she was entitled to a starving allowance.

(1) (1882) I.L.R., 7 Bom., 84. (2) (1884) I.L.R., 9 Bom., 108.
(3) (1877) I.L.R., 1 Bom., 559. (4) (1909) I.L.R., 34 Bom., 278.
(5) (1915) I.L.R., 39 Mad., 658.

SESHAGIRI AYYAR, J., who delivered the judgment considered the various texts of Hindu law on the subject and came to the conclusion that there was no direct authority upon the question. In his opinion the text of Manu in chapter 11, section 189, applied to all women entitled to maintenance He held that under that text if a woman became unchaste she was entitled to a starving allowance. It was argued in that case that the above verses only apply to the case of a woman who had committed sins other than immorality. In repelling this argument the learned Judge made the following observations:

". . . but the concluding portion of the commentary of Vijnaneswara on the Smrithi makes it clear that the two verses are intended to cover cases of unchaste women. The commentary is this: 'To those women, who have suffered degradation (from caste) and for whom the rite of presenting (disconnecting) water libations, etc. have been performed, accommodation, (that is), a small cottage built of straws and leaves should be given in the proximity of the main (building of the) house. Similarly food that is just sufficient for the maintenance of life and also raiment of a low description *along with (the protection of) preventing her from being enjoyed again by another man should be given.*' This last sentence makes it clear beyond doubt that the commentator had in mind the case of fallen women. The text and the commentary, it is conceded, apply to all women alike whether they be wives, widows of co-parceners or mothers. Therefore according to Manu and Yajnavalkya women who have gone wrong should be given some maintenance. The punishment for their unchastity is that they lose their right to the ordinary rate of maintenance. As against these two texts, the well known text of Narada has been quoted which says that if a widow of a co-parcener is guilty of immorality, her maintenance should be resumed. This statement is quoted and commented upon by all the Smrithi writers (Mayukha, section 8, placitum 6; Smrithi-Chandrika, chapter XI, section 34; and Viramitrodaya, chapter III, part 1, section 10). But in none of these texts is there any provision for a woman who had repented and was subsequently leading an honest life. It is not to be presumed from the omission to provide for such a contingency, that the resumption once made is to be irrevocable and that the fallen woman who had reformed is to be denied even a starving allowance."

1933

RAM KUMAR DUBE v. BHAGWANTA

Rachhpal Singh, J.

This ruling is a clear authority for the proposition that a reformed widow is, in any case, entitled to a starving maintenance allowance. The question also came up for consideration in the case of *Roma Nath* v. *Rajonimoni Dasi* (1), but the point was left undetermined. The learned Judges made the following observations in the case: "We do not decide in this case what her rights would be if she were to give up her present way of living and begin to lead a moral life; we do not say that she would not, even in that case, be entitled to claim a starving maintenance. All that we say now is, that under the existing state of things she is not entitled to maintenance of any sort." The latest ruling on the subject is *Bhikubai* v. *Hariba* (2). The various texts of Hindu law bearing on the subject were considered by SHAH, A. C. J., in a very well considered and elaborate judgment, and it was held that where a Hindu widow who had been unchaste was proved to have given up the life of unchastity she was entitled to a bare maintenance. KINCAID, J., agreed with the view taken in the rulings reported in *Sathyabhama* v. *Kesavacharya* (3) and *Parami* v. *Mahadevi* (4), and held that a Hindu widow who becomes unchaste but subsequently reforms herself is entitled to what is called a starving allowance from the persons who are in possession of the estate which was jointly held by them and the deceased husband of the widow. I follow the view taken in these two rulings.

The learned Subordinate Judge has found that the estate held by the defendants pays a land revenue of 3,500 rupees yearly and he has allowed the plaintiff a sum of Rs.15 monthly as bare maintenance. In my opinion this amount is quite reasonable. I do not see any reason for increasing the allowance to Rs.60 per month as claimed by the plaintiff in her cross-objections.

NIAMAT-ULLAH, J.:—I concur.

(1) (1890) I.L.R., 17 Cal., 674 (679). (2) (1924) I.L.R., 49 Bom., 459.
(3) (1915) I.L.R., 39 Mad., 558. (4) (1909) I.L.R., 34 Bom., 278.