FULL BENCH.

Before Mr. Justice Wazir Hasan, Acting Chief Judge, Mr. Justice Gokaran Nath Misra and Mr. Justice A. G. P. Pullan.

JAI NAND AND OTHERS (DEFENDANTS-APPELLANTS) *v.* MUSAMMAT PARAN DEI (PLAINTIFF-RESPONDENT).* 1929 *March* 6,

Hindu law—Joint Hindu family—Maintenance—Widow's right to maintenance in a joint Hindu family against her husband's brother obtaining by inheritance or survivorship the self-acquired property of her father-in-law.

It is now the accepted principle of Hindu law that where a self-acquired property of a father has been inherited by his sons, it becomes their duty to support the widow of one of their brothers, who has died in the life-time of the father and that this liability exists where the property goes into the hands of the sons either by inheritance or by survivorship. *Janki* v. *Nand Ram* (1), *Adhibai* v. *Cursandas Nathu* (2), *Kamini Dassee* v. *Chandra Pode Mondle* (3), *Devi Persad* v. *Gunwanti Koer* (1), *Siddessury* v. *Janardan Sarkar* (5), *Yamunabai* v. *Manubai* (6), *Rangammal* v. *Echammal* (7), and *Surampalli Bangaramma* v. *Surampalli Brambaze* (8), relied on. *Khetramani Dasi* v. *Kashinath Das* (9), *Savitribai* v. *Luximibai* (10), *Ganga Bai* v. *Sitaram* (11), *Kalu* v. *Kashibai* (12), *Musammat Hema Kooeree* v. *Ajoodhya Pershad* (13), *Musammat Lalti Kuar* v. *Ganga Bishan* (14) and *Rajjomoney Dossee* v. *Sibchunder Mullick* (15), referred to.

The case was originally heard by a Bench of two Judges who referred it to a Full Bench for decision. Their order of reference is as follows:—

HASAN, A. C. J. and PULLAN, J.:—At a previous hearing of this case we remanded a certain issue of fact

*Second Civil Appeal No. 253 of 1928, against the decree of Saiyed Asghar Hasan, District Judge of Gonda, dated the 18th of April, 1928, decreeing the plaintiff's claim.

(1) (1889) I. L. R., 11 All., 194.
(2) (1881) I. L. R., 11 Bom., 199.
(3) (1890) I. L. R., 17 Calc., 373.
(4) 1895) I. L. R., 22 Calc., 410.
(5) (1902) I. L. R., 29 Calc., 557.
(6) (1899) I. L. R., 23 Bom., 608.
(7) (1899) I. L. R., 22 Mad., 305.
(8) (1908) I. L. R., 31 Mad., 338.
(9) (1868) 2 Bengal L. R., 15.
(10) (1878) I. L. R., 2 Bom., 573.
(11) (1876) I. L. R., 1 All., 170.
(12) (1883) I. L. R., 7 Bom., 127.
(13) (1875) 24 W. R., 474.
(14) (1875) 7 N. W. P., H. C. R., 261.
(15) 2 Hyde, 103.

1929

JAI NAND v. MUSAMMAT PARAN DEI.

to the lower appellate court for trial and for a finding thereon. The finding is now before us, and on the case as it was agreed to at the previous hearing the appeal should have been allowed, but the learned Advocate for the respondent has, while accepting the finding, raised a question of law which requires consideration. It might well have been raised even at the previous hearing because it is discussed and decided in the order of remand passed by the lower appellate court at one stage of the hearing of the appeal in that court. Having regard, however, to the importance of the question we have allowed the respondent's learned Advocate to raise it now, and have formed the opinion that it should be decided by a Full Bench of this Court. We accordingly refer the following question to such Bench for decision.

"When a joint Hindu family consists of a father and sons, but is possessed of no family property, is the widow of one of the sons, who died in the lifetime of his father and brother, entitled to maintenance as against the property which the father had acquired after the death of her husband, and which on the death of the father came into the possession and enjoyment of the surviving son and the son of the latter, when such possession was (*a*) in the right of an heir and (*b*) in the right of a survivor?"

The following cases were referred to before us as they are also mentioned in the judgment of the court below. *Janki* v. *Nand Ram* (1) and *Adhibai* v. *Cursandas Nathu* (2).

Mr. S. N. Roy, for the appellants, *Mr. Kashi Prasad Srivastava*, for the respondent.

MISRA, J.:—The question referred to the Full Bench is as follows:—

" When a joint Hindu family consists of a father and sons, but is possessed of no family property, is the widow of one of the sons, who died in the lifetime of

(1) (1889) I. L. R., 11 All., 194. (2) (1881) I. L. R., 11 Bom., 199.

his father and brother, entitled to maintenance as against the property which the father had acquired after the death of her husband, and which on the death of the father came into the possession and enjoyment of the surviving son and the son of the latter, when such possession was (*a*) in the right of an heir and (*b*) in the right of a survivor?"

Misra, J.

After a consideration of the original texts of the Hindu law and of the case law on the subject I have come to the conclusion that the question referred to us must be answered in the affirmative.

In *Smritis* the Hindu Jurists have always considered it a duty to maintain the female members of the family. Manu in chapter VIII, sloka 389, lays down that a mother, a father, a wife and a son shall not be forsaken. He who forsakes either of them, unless guilty of a deadly sin, shall pay 600 panas to the King. The word "forsakes" means "does not maintain." Narada says, "A husband who abandons an affectionate wife, or her who speaks not harshly, who is sensible, constant, and fruitful, shall be brought to his duty by the King with a severe chastisement." Yajnyavalkya similarly says :— "He who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part *of his wealth; or if* poor, to provide a maintenance for that wife."

It will thus appear that the Hindu lawyers have made it a duty to support one's wife. This is not only found in Hindu law but in all systems of civilized law in the world.

Regarding the females of the family at large Manu lays down in chapter III, slokas 55, 56, 57, 58 and 59 as follows :—

"55. Married women must be honoured and adorned by their fathers and brethren, by

1929

JAI NAND
v.
MUSAMMAT
PARAN DEI.

Misra, J.

their husbands and by the brethren of their husbands, if they seek abundant prosperity.

56. Where females are honoured, there the deities are pleased; but where they are dishonoured, there all religious acts become fruitless.

57. Where female relations are made miserable, the family of him who makes them so very soon wholly perishes; but where they are not unhappy, the family always increases.

58. On whatever houses the women of a family, not being duly honoured, pronounce an imprecation, those houses, with all that belong to them, utterly perish, as if destroyed by a sacrifice for the death of an enemy.

59. Let these women, therefore, be continually supplied with ornaments, apparel, and food, at festivals and at jubilees, by men desirous of wealth."

In another part of his Smriti Manu says that ample support of those who are entitled to maintenance is rewarded with *bliss* in heaven; but hell is the portion of that man whose family is afflicted with pain by his neglect: therefore, let him maintain his family with the utmost care."

Yajnyavalka says, "Females must be honoured by their husbands, brothers, fathers, and paternal kinsmen; by the fathers, mothers, and brethren of their husbands; and by all kinsmen with gifts of ornaments, apparel and food."

From the above texts it will be clear that in a Hindu family it is incumbent upon the male members of that family to support the females. Dr. Guru Dass Banerjee

in the Tagore Law Lectures, 1878, observes on page 213 as follows :—

> "Considering the constitution of Hindu society, considering the extremely helpless condition of the Hindu widow, and considering that the obligation of the father-in-law or other near relation to give her food and raiment if she resides in his house, is not only enjoined by precepts, but is also confirmed by invariable usage."

It has, however, been ruled that in some cases it amounts to a legal duty while in other it only amounts to a moral duty, for instance, in the case of a husband it is his legal duty to support and maintain his wife, while in the case of a father-in-law possessed of no ancestral property it is only a moral duty. In the case of a joint family, however, which is possessed of a joint property in which every member of that family has an interest it is the legal duty of the family to support the wife of a member of that family. It has also been held that in the case of a joint family although the husband of a particular woman may die, a legal duty is cast upon the other members of the family to maintain her, and the reason is assigned that those who take the husband's share by survivorship must support after his death his wife.

The leading case on the subject in the United Provinces is a Full Bench decision of the Allahabad High Court reported in *Janki* v. *Nand Ram* (1) decided by SIR JOHN EDGE, KT., Chief Justice, Mr. Justice TYRELL and Mr. Justice MAHMOOD. The whole law on the subject has been so exhaustively dealt with in that case by Mr. Justice MAHMOOD that one feels it unnecessary to quote

(1) (1889) I. L. R., 11 All., 194.

1929

JAI NAND v. MUSAMMAT PARAN DEI.

Misra, J.

other authorities. The several propositions laid down by Mr. Justice MAHMOOD in that case are that though a widowed daughter-in-law has no legal right to claim maintenance from her father-in-law, who has only self-acquired properties in his hands and though the obligation to maintain her out of such property is merely moral, yet the obligation becomes a legal obligation when the property possessed by the father is inherited by his sons. The reason why a moral obligation becomes a legal obligation is pointed out by Mr. Justice MAHMOOD on page 208 of the report, it being that those who inherit the self-acquired property of the father take that property subject to such moral obligations as are conducive to the spiritual benefit of the father. This is quite in accordance with the spirit of the Hindu law. It is for instance the moral duty of the Hindu father to marry his daughter and to give her a suitable dowry at the time of the marriage. If the father dies and the property goes to his sons it becomes the legal duty of the sons who take the property of the father to provide for a suitable dowry for their sister out of the estate of the father inherited by them. The whole thing is discussed so clearly and dealt with so lucidly in that judgment that I need not repeat the same arguments. It is needless for me to say that I entirely agree with those observations.

This case has been followed by almost all the High Courts in India as would appear from the decisions which are quoted below.

In the Calcutta High Court this decision was followed in *Kamini Dassee* v. *Chandra Pode Mondle* (1). *Devi Persad* v. *Gunwanti Koer* (2), and *Siddessury Dassee* v. *Janardan Sarkar* (3).

(1) (1890) I. L. R., 17 Calc., 373. (2) (1895) I. L. R., 22 Calc., 410.
(3) (1902) I. L. R., 29 Calc., 557.

In *Kamini Dassee* v. *Chandra Pode Mondle* (1) it was held that the principle that an heir succeeding to property takes it for the spiritual benefit of the late proprietor, and is, therefore, under a legal obligation to maintain persons whom the late proprietor was morally bound to support, had ample basis in the Hindu law of the Bengal School and that it was immaterial whether the property so inherited was moveable or immoveable. It was further held in this case by Mr. Justice BANERJEE that the above principle was applicable to the case of a widow claiming maintenance from her husband's brothers, who had inherited her father-in-law's property, her own husband having predeceased his father. The case of *Janki* v. *Nand Ram* (2) was folowed in that case. This case was decided by Mr. Justice GURU DAS BANERJEE.

In *Devi Persad* v. *Gunwandi Koer* (3) it was decided by Mr. Justice MACPHERSON and Mr. Justice GURU DAS BANERJEE that in the case of a joint family governed by the Mitakshara law when a family was possessed of an ancestral property and a member of that family died there could be no question that his wife was entitled to being maintained out of the said property. It was pointed out that the reason for this was that since the husband of the lady had a vested interest in the ancestral property, and could have, even during his father's life-time, enforced partition of that property, and since the Hindu law provided that the surviving co-parceners should maintain the widow of a deceased co-parcener, the plaintiff (lady) was entitled to maintenance. The case of *Janki* v. *Nand Ram* (2) was referred to with approval in that case.

In *Siddessury Dassee* v. *Janardan Sarkar* (4) a Full Bench of the Calcutta High Court consisting of Sir

(1) (1890) I. L. R., 17 Calc., 373. (2) (1889) I. L. R., 11 All., 194.
(3) (1895) I. L. R., 22 Calc., 410. (4) (1902) I. L. R., 29 Calc., 557.

1929

JAI NAND v. MUSAMMAT PARAN DEI.

Misra, J.

FRANCIS MACLEAN, K.C.I.E., Chief Justice, Mr. Justice PRINSEP and Mr. Justice HILL, held that by the fact that a widowed daughter-in-law had taken up her residence apart from relations of her husband, she did not forfeit her right to a separate maintenance out of the property inherited from her father-in-law by reason of such non-residence with the family of her deceased husband unless such non-residence be for unchaste or immoral purpose. The case of *Janki* v. *Nand Ram* (1) was again quoted with approval.

Referring to the Bombay High Court we find that the question of maintenance was considered by FARRAN, J., in an original case decided by him and which will be found to be reported in *Adhibai* v. *Cursandas Nathu* (2). On page 209 he quoted a passage from *Khetramani Dasi* v. *Kashi Nath Das* (3) that the obligation of an heir to provide, out of an estate which descends to him, maintenance for certain persons, whom the ancestor was legally or morally bound to maintain was a legal as well as a moral obligation, for the estate inherited subject to the obligation of providing such maintenance. The learned Judge observed that the authorities justified him in holding that the defendant in that case was legally bound to provide the plaintiff, who was the widow of a deceased member of the family, with maintenance out of the property which he had inherited from his father. He further held that in such a case the widow would be entitled to a separate maintenance and that the defendant could not insist upon her living with him in the same house.

In *Yamunabai* v. *Manubai* (4) decided by Mr. Justice PARSONS and Mr. Justice RANADE it was held that the widow of a predeceased son, who lived in union with

(1) (1899) I. L. R., 11 All., 194. (2) (1881) I. L. R., 11 Bom., 199.
(3) (1868) 2 Bengal Law Reports, 15 (34). (4) (1889) I. L. R., 33 Bom., 608.

his father, had a legal right to maintenance from her mother-in-law out of the self-acquired property of father-in-law to which his widow had succeeded as his heir. It was pointed out that although a son's widow had no legal claim for maintenance against the self-acquired property in the hands of her father-in-law, but when such property devolved upon his heirs the daughter-in-law had a claim against it in their hands for maintenance if her husband had lived in union with his father. I would like to quote the following passage from the decision of RANADE, J., with which I am in entire agreement :—

> "The principle that a son's widow has no legal claim for maintenance against the self-acquired property in the hands of her father-in-law, has been affirmed in a series of decisions by this Court, as also by the other High Courts of Bengal, Madras and Allahabad—*Savitribai* v. *Luximibai* (1), *Khetramani Dasi* v. *Kashinath Das* (2), *Ganga Bai* v. *Sita Ram* (3), *Janki* v. *Nand Ram* (4), *Kalu* v. *Kashibai* alias *Lakshmibai* (5). The obligation to maintain the widowed daughter-in-law in such cases has been held to be only a moral and imperfect obligation, not enforceable in law. As against the father-in-law, the right of the son's widow to be maintained rests, not on her husband being a co-member of a joint family, but on being a joint owner of ancestral property with his father—*Musammat Hema Kooeree* v. *Ajodhya Pershad* (6), *Savitribai* v. *Luximibai* (supra.) (1); *Musammat Lalti Kuar* v. *Ganga Bishan* (7) and *Devi Persad* v. *Gunwanti Koer* (8).

(1) (1878) I. L. R., 2 Bom., 573. (2) (1868) 2 Beng. L. R., 15.
(3) (1876) I. L. R., 1 All., 170. (4) (1889) I. L. R., 11 All., 194.
(5) (1883) I. L. R., 7 Bom., 127. (6) (1875) 24 W. R., 474.
(7) (1875) 7 N. W. P., H. C. R., 261. (8) (1895) I. L. R., 22 Calc., 410.

1929

JAI NAND
v.
MUSAMMAT
PARAN DEI.

Misra, J.

While the nature of the claim of a widowed daughter-in-law for maintenance by the father-in-law has been thus clearly defined, a distinction has been recognised by the High Courts of Bengal and Allahabad between the position of the father-in-law and those who succeed him as heir to his separate or self-acquired estate. The moral obligation of the father-in-law is held to be converted into a legal obligation when his self-acquired property devolves upon his heirs. Under certain circumstances and in the hands of such heirs, such property is held liable to provide maintenance to the widow of a predeceased son of the person who acquired the property when such son lived in union with him. This principle was first laid down in Bengal and has been more recently affirmed by the Allahabad High Court—*Rajjomoney Dossee* v. *Sibchunder Mullick* (1); *Janki* v. *Nand Ram* (2); *Kamini Dassee* v. *Chandra Pode Mondle* (3), *Devi Persad* v. *Gunwanti Koer* (4). The same distinction was recognized and given effect to in this Court in *Adhibai* v. *Cursandas* (5), where it was held that the self acquired property of the father, when it descended to one of his surviving sons, was to be regarded as ancestral property, and as such subject to the obligations of ancestral property to provide maintenance to the widow of a predeceased son living in union with his father. The Allahabad High Court in *Janki* v. *Nand Ram* (2) declined to sub-

(1) 2 Hyde, 103.
(2) (1889) I. L. R., 11 All., 194.
(3) (1890) I. L. R., 17 Calc., 373.
(4) (1895) I. L. R., 22 Calc., 410.
(5) (1881) I. L. R., 11 Bom., 199.

scribe to the view that such self-acquired property became ancestral in the hands of the original owner's heir, but rested the liability on the ground that the heir in such cases took the property for the spiritual benefit of the deceased owner, and so taking it, the old moral obligation was turned into a legal obligation which could be enforced. The Calcutta High Court rested this distinction on the ground that the heir in such cases is under a legal obligation to provide, out of the estate which descends to him, maintenance for the persons whom the ancestor was bound legally or morally to maintain, and the heir takes the estate, not for his benefit, but for the spiritual benefit of his ancestor—*Khetramani Dasi* v. *Kashinath Das* (1); *Devi Persad* v. *Gunwanti Koer* (2); *Kamini Dassee* v. *Chandra Pode Mondle* (supra). Though there is thus a divergence in the reason given by this Court and by the Calcutta and Allahabad High Courts, the conclusion they arrive at is identical."

Turning to the Madras High Court we find that in *Rangammal* v. *Echammal* (3) decided by Mr. Justice SUBRAMANIA AYYAR and Mr. Justice MOORE it was held, following *Janki* v. *Nand Ram* (4), *Kamini Dassee* v. *Chandra Pode Mondle* (5) and *Devi Persad* v. *Gunwanti Koer* (2) that according to these cases the correct view of law was that the moral obligation to support a son's widow, to which her father-in-law was subject, would, on his death, acquire the force of a legal obligation as against his assets in the hands of his heir.

(1) (1868) 2 Bengal L. R., 15. (2) (1895) I. L. R., 22 Calc., 410.
(3) (1899) I. L. R., 22 Mad., 305. (4) (1895) I. L. R., 11 All., 194
(5) (1890) I. L. R., 17 Calc., 373.

1929

JAI NAND v. MUSAMMAT PARAN DEI.

Misra, J.

In *Surampalli Bangaramma* v. *Surampalli Brambaze* (1) decided by Mr. Justice WALLIS and Mr. Justice SANKARAN-NAIR it was held that a father-in-law was under a moral obligation to maintain his daughter-in-law and this obligation ripened into a legal obligation against the assets in the hands of his heirs.

It would, therefore, be clear from the authorities which I have quoted above that it is now the accepted principle of the Hindu law that where a self-acquired property of a father has been inherited by his sons it becomes their duty to support the widow of one of their brothers who has died in the life-time of the father, and that this liability exists where the property goes into the hands of the sons either by inheritance or by survivorship. The question is discussed by Mr. Mayne in his well-known work on Hindu law in chapter XIV, which deals with maintenance (pages 645 to 649, ninth edition), where the learned author has reviewed the decisions of the various High Courts and has come to the same conclusion.

My answer, therefore, to the question referred to the Full Bench is in the affirmative.

HASAN, A. C. J. :—I concur and would answer the question in the affirmative.

PULLAN, J. :—I also concur and agree in the reply proposed.

(1) (1908) I. L. R., 31 Mad., 338.