

For the reasons given above we dismiss this application for leave to appeal to His Majesty in Council with costs.

Application dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

THAKUR SHEO MANGAL SINGH (DEFENDANT-APPELLANT) v.
THAKURAIN BODHI KUAR (PLAINTIFF-RESPONDENT)*

*Hindu Law—Widow—Maintenance fixed by family settlement—
Income of property subsequently reduced—Amount of maintenance, if can be reduced.*

The amount of maintenance of a Hindu widow fixed under a family settlement can be subsequently reduced by the Court, if the income of the family property is considerably reduced. *Rajendra Nath Roy v. Rani Puttoo Soondery Dasse* (1), *Ruka Bai v. Ganda Bai* (2), and *Gopika Bai v. Dattatraya* (3), referred to.

Mr. K. P. Misra, for the appellant.

Mr. L. S. Misra, for the respondent.

ZIAUL HASAN, J.:—This is a second appeal against a decree of the learned Subordinate Judge of Rae Bareilly.

One Thakur Gur Bux Singh had three sons, namely Sheo Narain Singh, Ram Ghulam Singh and Sheo Mangal Singh. Sheo Narain Singh, who was the eldest son, died in 1911 leaving his widow Musammat Bodhi Kuar, the present plaintiff-respondent, and his two brothers Ram Ghulam Singh and Sheo Mangal Singh. On the 7th of January, 1912, Musammat Bodhi Kuar executed a deed of relinquishment (exhibit 2) in respect of the property left by Sheo Narain Singh and on the same day Ram Ghulam Singh and Sheo Mangal Singh executed an agreement (exhibit 1) in her favour binding

*Second Civil Appeal No. 341 of 1934, against the decree of Babu Avadh Behari Lal, Subordinate Judge of Rae Bareilly, dated the 17th of August, 1934, upholding the decree of Pandit Brij Nath Zutshi, Munsif, Dalmau, Rae Bareilly, dated the 12th of May, 1934.

(1) (1879) 5 C.L.R., 18.

(2) (1878) I.L.R., 1 All., 594.

(3) (1900) I.L.R., 24 Bom., 386.

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themselves to pay to her Rs.1,000 annually in consideration of her relinquishment of her rights in the family property. It may be mentioned that the three brothers were admittedly members of a joint Hindu family.

The suit from which this appeal has arisen was brought by Musammat Bodhi Kuar for recovery of Rs.500 from Ram Ghulam Singh and Sheo Mangal Singh as her Guzara instalment due under exhibit 1 in Jeth 1340 Fasli with interest. The suit was contested by the defendants who admitted the execution of the agreement (exhibit 1) but contended that owing to the increase of encumbrances on the family property and reduction of rents they were unable to pay to the plaintiff maintenance at the stipulated rate. Their case was that in view of the present circumstances of the family, the plaintiff was entitled to no more than Rs.200 a year. Both the courts below have overruled the plea of the defendants and decreed the plaintiff-respondent's suit in full. The defendants have filed this appeal and Ram Ghulam Singh being dead Sheo Mangal Singh is now the sole appellant.

The question is whether, having regard to the documents (exhibits 1 and 2), any reduction can be made in the allowance of the plaintiff-respondent and I am clearly of opinion that the question must be decided in the affirmative. The case of *Rajendra Nath Roy v. S. M. Rani Puttoo Soondery Dasse* (1) is exactly in point. In that case a Hindu widow brought a suit for possession of her husband's estate against her husband's adopted son. This suit was compromised and the defendant agreed to pay to the plaintiff a certain sum for her maintenance. Subsequently the holding, the rents of which were assigned to the widow, became unfit for cultivation by reason of an inundation of salt water and the defendant became greatly impoverished. On a suit brought by the widow for recovery of her maintenance it was held that inasmuch as the amount of

(1) (1879) 5 C.L.R., 18.

maintenance must be taken to have been fixed with reference to the extent and value of the property the court had power to reconsider the allowance and to readjust it to the altered circumstances. In the course of his judgment JACKSON, J., said, "So long as the circumstances remain unaltered the maintenance, of course, will be paid at the rate agreed upon, but if by circumstances not arising out of the default of the holder of the property, the assets of it are gradually reduced, so that he can, no longer, be reasonably called upon to pay the amount of maintenance fixed, I think it is open to the court to reconsider the allowance and to readjust it to the altered circumstances." In the case of *Ruka Bai v. Ganda Bai* (1), in which a Hindu lady had obtained a decree for maintenance at a certain fixed rate the person liable to pay the maintenance brought a suit for reduction of the lady's allowance on the ground that the business of his firm was gradually failing and PEARSON, J., held that it would be unreasonable to hold that even if the income of the estate should come to an end altogether the allowance should still continue and that therefore it must be liable to be reduced in proportion to the existing income. Similarly in the case of *Gopika Bai v. Dattatraya and others* (2) it was held that a suit will lie to obtain a reduction in the amount of maintenance decreed to a Hindu widow on a change of circumstances, such as a permanent deterioration in the value of the family property.

It is a matter of common knowledge that the letting value of the agricultural property has been greatly reduced from before 1340 Fasli (the year for which the maintenance was claimed by the respondent) and therefore it will be very unfair for the appellants to be made to pay the same amount of maintenance to the respondent which was fixed so long ago as 1912.

The learned counsel for the respondent strenuously argued that the two documents (exhibits 1 and 2) taken

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together show that there was a family settlement between the parties and cited some cases in support of the proposition that the validity of the family settlement cannot be subsequently questioned by the parties to the settlement. The appellant in this case is not, however, seeking to question the validity or even the binding nature of the agreement of the 7th of January, 1912, and all that he wants is that the maintenance of the plaintiff-respondent should be fixed in view of the altered circumstances of the family. The prayer of the defendant-appellant is, to my mind, perfectly reasonable and it would, in my opinion, be most unjust to hold that the plaintiff is entitled to her Rs.1,000 a year even though the income of the family property should be considerably reduced.

It was also urged that the courts below have found that no circumstances have been proved which should justify a reduction of the allowance payable to the plaintiff. No doubt the learned Munsif considered that the reasons for reduction "were wholly unconvincing", but the learned Subordinate Judge has not recorded a definite finding on the point in appeal and all that he says is that he agrees with the learned Munsif that nothing has been shown which will justify a court in interfering with the *Guzara* already fixed. Moreover, the reduction in the profits of zamindari property is a fact which is known to everybody and which can be taken judicial notice of.

I, therefore, allow this appeal and setting aside the court's finding that no reduction can be made in the allowance fixed by exhibit 1 send back the case to the trial Court through the lower appellate Court for decision in the light of the finding given above.

Costs hitherto incurred by parties will abide the result.

Appeal allowed.