APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

1937

Dec. 14.

JAI RAM (PLAINTIFF) Appellant,

versus

MST. SHIV DEVI (DEFENDANT) Respondent.

Civil Regular Second Appeal No. 635 of 1937.

Hindu Law — Widow of a member of a Hindu co-parcenary — decree granted to her for maintenance allowance — subsequent change in her position — whether a ground for varying the decree.

The plaintiff, a Hindu, brought the present action against her widowed daughter-in-law for an injunction that she should not execute a decree against him, granting her Rs. 10 per mensem as maintenance allowance, as she was employed as a mistress in a Municipal Girls School and was earning more than Rs.50. It was found that the Municipal Committee had recently served her with a notice to relinquish her appointment in view of the financial stringency of the Committee and, faced with this situation, she had consented to work on a reduced salary and, further, that the plaintiff had misappropriated Rs.1,200 which was the separate property of her husband and the maintenance allowance had been fixed for her mainly on account of her having been deprived of this sum; while the plaintiff rejected the offer made in the High Court on her behalf that she was prepared to forego her claim for maintenance for ever if she was paid back that amount.

Held, that, in the circumstances, there was no reason to vary the decree obtained by the widow as her present income could not be treated as her permanent income and could not, strictly, be described as her 'means.'

Bahuria Saraswati Kuer v. *Bahuria Sheoratan Kuer* (1), relied upon.

Second appeal from the decree of Mr. G. D. Khosla, District Judge, Attock at Campbellpur, dated 2nd February, 1937, reversing that of S. S. Thakar *Bhagwan Das, Honorary Subordinate Judge, 4th*

(1) I. L. R. (1933) 12 Pat. 869, 875.

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Class, Attock at Campbellpur, dated 23rd December, 1935, and dismissing the plaintiff's suit.

M. L. PURI, for Appellant.

BISHEN NATH, for Respondent.

The order referring the case to a Division Bench, dated 12th November, 1937.

DALIP SINGH J.—In this case the plaintiff sued for an injunction against his daughter-in-law that she should not execute a decree obtained by her on the 14th of March, 1927, for Rs.10 per mensem as maintenance allowance against him either at all in the future or for arrears of the said maintenance. The ground urged was that the widow was earning Rs.52 per mensem salary and that the plaintiff was short of money and indebted, and had very little income from the land which was in his possession; hence the suit. The defendant admitted that she was earning Rs.52 per mensem but stated that she had educated herself by contracting debts and was liable to pay a large debt and therefore was not really better off than she had been previously. She also took other objections. DALIP SINGH J.

The trial Court held that the maintenance allowance fixed by the decree should, in the circumstances, be altered as the plaintiff's financial condition had become weak and the defendant was in a position to maintain herself without assistance. As regards the arrears of maintenance, however, he held that no relief could be given to the plaintiff. The defendant went in appeal to the learned District Judge who pointed out that a change in the position of the widow was not a ground for altering a decree which had already been passed fixing her maintenance at a certain amount. He relied on *Sundari Ammal* v. *Venkatarama* (1), a Single

(1) 1934 A. I. R. (Mad.) 384.

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Bench ruling, in which the learned Judge remarked that he had sought but not obtained any basis for the principle that where a widow had received a certain rate of maintenance from the family but subsequently improved her financial condition, either by her own efforts or by the generosity of others, she was liable to have that allowance reduced. This position was conceded by the learned counsel for the respondent plaintiff before the learned District Judge. The learned District Judge went on to find that the plaintiff had made no allegation in his plaint that there had been any deterioration in the family property or any reduction in the income derived from it. On this point after going into the evidence he held that there was nothing to show that the plaintiff's income had deteriorated after the decree had been passed in 1927. He therefore held that the plaintiff was not entitled to any relief whatsoever and dismissed the plaintiff's suit with costs throughout. The plaintiff has come in second appeal.

It seems to me that two points arise: (1) whether the learned Judge was right in holding that a subsequent change in the position of the widow was no ground for varying the decree for allowance granted; and (2) whether the learned District Judge was right in holding that no variation was proved in the plaintiff's position. The last point can be disposed of easily. It is essentially a question of fact and the findings given thereon are findings of fact which are supported by the facts, conceded before me, that there was no such allegation in the plaint itself.

On the first point, however, it has been contended by the learned counsel for the appellant that the rulings lay down that a widow's *stridhan* or private property should be taken into consideration in fixing

the rate or quantum of maintenance. It is true that a right to maintenance does not depend on the existence of the *stridhan*. But it is contended that the existence of the *stridhan* should be taken into account in fixing the quantum of maintenance. A large number of rulings have been cited by the learned counsel for the appellant:—

Mussammat Bhagwanti v. *Mani Ram* (1), *Sansar Chand* v. *Mst. Shanti Devi* (2), *Lingayya* v. *Kanakamma* (3), *Sidlingapa* v. *Sidava* (4), *Mayne's Hindu Law*, 8th edition, para. 459, page 636, and *Bhavanamma* v. *Ramasami* (5) and by the learned counsel for the respondent:—

Sundari Ammal v. *Venkatarama* (6), *Mussammat Bhagwanti* v. *Mani Ram* (1) and *Kalliani* v. *Utharankat Parakkal Eazuvan Raman* (7).

On examining these rulings, however, I find that the precise point arising in this case did not really arise except in *Sundari Ammal* v. *Venkatarama* (6).

The question appears to me to turn on whether the personal property or *stridhan* of the widow should or should not be taken into account in fixing the quantum of maintenance. One way of looking at the matter would be that the right to maintenance arises from the fact that the lady in question is the widow of a member of a Hindu co-parcenary which owned a certain estate and her right to maintenance depends solely on the existence of an estate, the quantum of that estate, the needs of the other members and her own needs and the habits of the family and caste to which she belongs.

(1) 1935 A.I.R. (Lah.) 543.
(2) 1926 A.I.R. (Lah.) 539.
(3) I.L.R. (1915) 38 Mad. 153.
(4) I.L.R. (1878) 2 Bom. 624, 630 (F.B.).
(5) I.L.R. (1882) 4 Mad. 193.
(6) 1934 A.I.R. (Mad.) 384.
(7) (1915) 30 I. C. 897.

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If this is so, then the mere fact that she owns private property, whether inherited or acquired, would have no bearing either on her right to maintenance or on the quantum of her maintenance. On the other hand, it is possible to consider that while she has an indefeasible right of maintenance, her own circumstances are necessarily relevant in order to determine her needs and therefore the existence of private property would fix the rate of maintenance allowed. If this latter view is correct, then I am unable to see why the rate fixed by decree should not be varied by a change in the widow's circumstances. The point has never really been clearly decided so far as I have been able to see at present. It is of importance and may arise more frequently in the future than in the past. An authoritative decision would, in my opinion, be helpful in fixing the rights of people in this province.

I would therefore refer the case to a Division Bench for decision.

The judgment of the Division Bench was delivered by—

DIN MOHAMMAD J.—The sole question involved in this appeal is whether after a decree has been passed in favour of a widow for maintenance, the amount so decreed can be reduced if the widow happens to make her own living by personal exertions. Counsel for the appellant has referred us to certain authorities which lay down that the amount of maintenance may even after the passing of the decree be increased or decreased whenever there is such a change of cicumstances as would justify a change in the rate. For instance, if the income of the estate has materially increased it may be enhanced and if the income of the estate has diminished it may be reduced. But these

authorities are not applicable to the present case. Nor are those authorities in point which lay down that in calculating the amount of maintenance the widow's *stridhan* should be taken into account unless it is of an unproductive character such as clothes and jewels, inasmuch as no such property is involved in the present case. Here, the main reason for the father-in-law's suit for the reduction of maintenance is that the widow is employed as a mistress in a Municipal Girls School and that she is earning more than Rs.50 a month. In our view, this cannot be treated as permanent income of the widow so as to justify any interference with the previous decree obtained by her. In fact, counsel for the respondent has produced a certified copy of the proceedings of the Municipal Committee showing that the widow was only recently served with a notice to relinquish her appointment in view of the financial stringency of the Municipal Committee and that faced with this situation she had consented to work on a reduced salary. It cannot be denied that this income is liable to be stopped at any time when her employers choose to do so and it is obvious that she cannot be forced to work for her own living if she does not wish to do so. Such income, therefore, cannot and should not be taken into account. In *Bahuria Saraswati Kuer* v. *Bahuria Sheoratan Kuer* (1), Wort J. who delivered the judgment has observed "there is no doubt that under the general Hindu Law a widow claiming maintenance claims it on the basis of her position in life and the position of the estate, having regard also to her means. But, in my judgment, a voluntary payment of a sum of Rs.250 (by her brother) quite clearly cannot be taken into con-

(1) I. L. R. (1933) 12 Pat. 869, 875.

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sideration in fixing the amount which she is entitled to from her husband's estate. A sum which is paid voluntarily cannot strictly be described as her 'means,' by which term I apprehend is meant the sum to which she is either legally entitled or can lay claim to or the income of her *stridhan* estate." We entirely agree with the interpretation put on the word 'means' in this judgment and conclude on that basis that the widow's present earnings cannot be utilised for reducing the maintenance allowed to her.

Before concluding we may remark that the father-in-law had in a way misappropriated Rs.1,200, which was the separate property of the widow's husband, and the maintenance was fixed for the widow mainly on account of her having been deprived of this sum. The father-in-law has all along been in possession of this amount and has been using it for his own purposes and now that he is said to have lost it, he cannot be allowed to urge that the maintenance should be reduced as the estate has diminished in value. Counsel for the widow was prepared to forego her claim for maintenance for ever if the father-in-law was prepared to disgorge the sum so misappropriated by him, but counsel for the father-in-law refused to accept this proposal.

Taking all the circumstances of the case into consideration, we uphold the decision of the District Judge and dismiss this appeal with costs.

A. N. K.

Appeal dismissed.