APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

1909. *October 6.*

PARAMI KOM RAMAYYA (ORIGINAL PLAINTIFF), APPELLANT, *v.* MAHADEVI KOM SHANKRAPPA (ORIGINAL DEFENDANT), RESPONDENT.*

Hindu Law—Maintenance—Maintenance allowed by will of husband to wife—Unchastity of wife after husband's death—Maintenance not affected—Widow—Unchastity—Starving maintenance.

A Hindu widow was entitled to maintenance at the rate of Rs. 24 a year under her husband's will. After the husband's death, the widow led for some time an unchaste life and gave birth to a child: but since then she remained chaste. She sued to recover maintenance allowed to her under her husband's will. It was contended in reply that the plaintiff, on account of the unchaste life which she had led for some time after her husband's death, had forfeited her right even to bare or starving maintenance.

Held, negativing the contentions, that though the annuity was granted by the will as "maintenance" that word could not be understood as imposing any condition or restriction so as to cut down or extinguish the right to Rs. 24 a year given by the will.

The rule that the will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity. Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship.

The general rule to be gathered from the texts 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. If, however, she repents, returns to purity and performs expiatory rights, she becomes entitled to all conjugal and social rights, unless her adultery was with a man of a lower caste, in which case, after expiation, she can claim no more than bare maintenance and residence.

Honamma v. *Timannabhat*(1); *Valu* v. *Ganga*(2); and *Vishnu Shambhog* v. *Manjamma*(3), discussed.

SECOND appeal from the decision of C. C. Boyd, District Judge of Kanara, reversing the decree passed by R. R. Sane, Subordinate Judge of Sirsi.

*Second Appeal No. 763 of 1908.

(1) (1877) 1 Bom. 559.
(2) (1882) 7 Bom. 84.
(3) (1884) 9 Bom. 108.

Suit to recover maintenance.

The plaintiff, Parami, was the widow of one Ramayya who died in 1890. Ramayya had a daughter Mahadevi (defendant) by his first and predeceased wife.

Previous to his death, Ramayya had made a will whereby he left the whole of his property to his daughter Mahadevi, and provided for maintenance at the rate of Rs. 24 a year for his wife, Parami. The provision as to maintenance ran as follows:—

"But if the said Parami and Timappa Hegadi (the executor) should not pull on harmoniously, then, from the date on which the difference arises, the said Timappa Hegadi or the *Mane Aliya*† who may take possession of the property according to this will should go on paying to her, only as long as she lives, maintenance at the rate of Rs. 24 per annum on the responsibility of my property."

It appeared that after Ramayya's death, Parami had led an unchaste life and had a son born of her. But she soon returned to a chaste life which she had maintained upwards of eight years before suit.

In 1906, Parami sued to recover the arrears of six years' maintenance before suit.

The defendant contended that the plaintiff was disentitled to maintenance on account of the unchaste life she had led.

The Subordinate Judge examined the Hindu Law texts bearing upon the subject: and arrived at the conclusion that there was nothing in Hindu Law to deny to a widow even starving maintenance on the ground of her past unchastity. Upon her right to receive the maintenance under the will, he remarked as follows:—

Even apart from these considerations there is another strong reason to hold that the plaintiff is entitled to get the said allowance from defendants. The plaintiff's husband's will (exhibit 15), under which the defendants hold his property, contains an express direction, that the defendants should maintain plaintiff, or in case of disagreement, should annually pay her Rs. 24 as a separate allowance. It is not stated in the will that the allowance should be payable to plaintiff so long as she would remain chaste. Plaintiff's chastity was not made a condition precedent to her getting the allowance. In the absence

† A son-in-law who makes his home in his father-in-law's house.

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of any express direction to that effect in the will, I do not think that the plaintiff has forfeited her right to the allowance, which to all intents and purposes is like an annuity for life. The defendants are bound to respect the wishes of the testator.

On appeal, this decree was reversed by the District Judge on considerations which he expressed as follows :—

The learned Subordinate Judge has written an interesting and careful judgment. But, when all is said, it simply amounts to this: that he prefers the *dicta* in *Kandasami* v. *Murugammal* (19 Mad. 6) and *Roma Nath* v. *Rajonimoni* (17 Cal. 674), to the definite pronouncements of the Bombay High Court in *Valu* v. *Ganga* (7 Bom. 84) and *Vishnu* v. *Manjamma* (9 Bom. 108). I do not think that such a course is open to us. We are bound to follow the decisions of our own High Court, even if the other High Courts disapprove of those decisions. I arrive at this conclusion with regret, as the maintenance sought is only a pittance of Rs. 2 a month and defendants are cruel in refusing it.

It is urged for plaintiff that no Hindu Law need be applied, as in this case the annuity of Rs. 24 a year was left to the widow as a legacy and defendant 1, her daughter, the residuary legatee, was bound to give effect to it under the common law. There would be force in this argument if the will did not clearly state that the annuity should be paid to plaintiff as maintenance allowance. But as it was ordered to be paid on that account, the fact that it was bequeathed (instead of being given in some other way) does not seem to absolve plaintiff from the duty of fulfilling such conditions as a Hindu widow drawing maintenance allowance must fulfil. And one of these conditions is chastity. It can hardly be supposed that the testator intended to free his widow from this duty.

I wish it could be held otherwise. But it is useless to waste time in bewailing the severity of the Hindu Law as interpreted by authority.

The plaintiff appealed to the High Court.

Nilkanth Atmaram, for the appellant.

D. G. Dalvi, for the respondent.

CHANDAVARKAR, J. :—This second appeal arises out of a suit brought by the appellant to recover arrears of maintenance from the respondents. Both the Courts below have found that the appellant's husband Ramayya died in February 1890, devising all his property by a will to the respondents. The will contains a provision that the respondents should maintain the appellant

in case she lived with them, but that, if owing to disagreement she lived apart they should give her Rs. 24 a year for her maintenance.

It is also found by the lower Courts that after the husband's death the appellant led for some time an unchaste life and gave birth to a child; but that since then she has been chaste.

Upon these facts the respondents contended in the Court of first instance that, on account of the unchaste life which the appellant had led for some time after her husband's death, she had forfeited her right even to bare or starving maintenance. In support of that contention they relied on two decisions of this Court—*Valu* v. *Ganga* [1] and *Vishnu* v. *Manjamma*.[2]

In an able judgment, which is to be commended for a careful collation and examination of original texts, the learned Subordinate Judge (Mr. R. R. Sane) held that these decisions were not applicable to the present case, first, because, "the rule there laid down seems to have been based on certain passages from the Mitakshara and the Mayukha, which refer to the maintenance either of the wives of disqualified heirs or of the widows of deceased coparceners;" and, secondly, because, "it did not clearly appear from the reports that the attention of the learned Judges, who were parties to the decisions in question, was drawn to some verses from the Smriti of Yajnyavalkya and Vijnaneshwara's commentary thereon, relating to the treatment to be given to degraded persons or outcastes in general." On the strength of these verses, cited in his judgment, and also of the provision in the will, the Subordinate Judge held that the appellant was entitled to "bare" maintenance and awarded the claim.

On appeal by the respondents, the District Judge of Kanara held that, whether the decisions of this Court in *Valu* v. *Ganga* [1] and *Vishnu Shambhog* v. *Manjamma* [2], were right or not according to the texts of Hindu Law, they were binding all the same on the subordinate Courts. As to the provision in the will, he held that the annuity of Rs. 24 a year, having been given to the

(1) (1882) 7 Bom. 84. (2) (1884) 9 Bom. 108.

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widow in express terms "as maintenance allowance", must be presumed to have been intended by the testator to be subject to the condition that the appellant should lead a chaste life. Accordingly, the District Judge reversed the Subordinate Judge's decree and dismissed the suit.

On second appeal it is argued that the texts, on which the learned Subordinate Judge has relied in his judgment apply to the facts of this case, and that the rule to be gathered from those texts is that a Hindu widow, who has at one time led an unchaste life, is entitled at least to starving or bare maintenance, if she has subsequently returned to a life of chastity.

The first set of texts (1) noticed by the Subordinate Judge occurs in Yajnyavalkya in the chapter on "marriage" in the section which treats of "Rituals." The first text, verse No. 70, relates to an adulterous wife, and, as correctly translated by the Subordinate Judge, it runs as follows: "She is to be allowed to live (by the husband in his own house), deprived of her rights, poorly dressed, fed with a view to sustain life only, dishonoured, sleeping on the ground." This obviously relates to a wife, who is leading a life of unchastity, is unrepentant, and is not purified by means of expiatory rites. In the case of one so purified, the general rule is that she is restored to all conjugal and social rights. As Apararka (2) puts it, "she, who has performed expiatory rites, becomes fit for conjugal and social association." And for that proposition he cites Manu, who says that "a wife, who has become purified after degradation, shall not be censured." This also follows from the next but one verse of Yajnyavalkya(3) and the explanation given of it by the Mitakshara. There the Mitakshara explains that only a certain class of degraded women must be "abandoned"—viz., a woman who has committed adultery with a man of a lower caste, and a woman who has committed any of the sins regarded as deadly by the *Shastras*. The Mitakshara also explains that even in the case of such women, "abandonment" (*tyaga*) does not mean entirely

(1) Verses 70 and 72:—The Mitakshara: (Moghe's 3rd Edition, page 18).

(2) कृतप्रायश्चित्ता तु संव्यवहार्या भवति (Apararka: Anandashrama Series, Vol. I, page 98).

(3) Verse No. 72: The Mitakshara (Moghe's 3rd Edition, page 18).

forsaking and throwing them upon the world, helpless and hopeless. It means abandonment only "for the purposes of conjugal rights and religious ceremonies". That is, such women must be treated in the same way as women leading an unchaste life. They must be kept apart in the house and given just enough food and clothing to keep body and soul together, but all other relations of husband and wife must cease. The same view is taken by Nilakantha in his *Prayaschitta Mayukha*[1]. Referring to a text in the *Chatur Vimshati Smriti*, which provides that "there should be no abandonment of any woman except in the case of such sins as the murder of a Brahmin and the like," he explains that even in such cases, a woman should be made to do penance in the house. Madhavacharya in his *Parashara Dharma Samhita* explains the law to the same effect (Sanskrit Bombay Series Edition, page 352, Vol II, part I).

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. If, however, she repents, returns to purity and performs expiatory rites, she becomes entitled to all conjugal and social rights, unless her adultery was with a man of a lower caste, in which case, after expiation, she can claim no more than bare maintenance and residence.

The next set of texts of Yajnyavalkya[2] noticed by the Subordinate Judge occurs in the Section on "Penances."

In that section Yajnyavalkya first deals with the question of expiatory rites which a degraded man has to perform before he can be restored to his caste. Then in verse 297 he deals with the case of a "degraded woman." He says that the same expiatory

(1) यत्तु चतुर्विंशतिमते ।
स्त्रीणां नास्ति परित्यागो ब्रह्महत्यादिभिर्विना ॥
तत्राऽपि गृहमध्ये तु प्रायश्चित्तानि कारयेत् ॥
[Prayaschitta Mayukha: Benares Edition, page 91].

(2) The Mitakshara: Verses 297 and 298; (Moghe's 3rd Edition, page 432).

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rites that are prescribed for degraded men are ordained in the case of degraded women too, with this difference, however, that in the case of such women, even after their purification by means of expiatory rites, they do not become entitled to restoration of the conjugal and social rights which they had before degradation but they must be allowed to live "near" the house, provided with bare food and scanty clothing just to keep body and soul together, and they must be guarded. Literally interpreted, this would seem to apply to all degraded women, who have undergone purification. But Vijnaneshvara points out, in his remark introducing the next verse of Yajnyavalkya, that it applies only to a particular class of women, that is, to those whose degradation was caused by one of the sins considered deadly. It is such women only who, even after purification, must be *abandoned.* That is, while they become entitled to bare food and raiment and residence, they must be treated as unfit "for the purposes of conjugal rights and the performance of religious ceremonies." That is the definition and meaning of abandonment (*tyaga*) as given by Vijnaneshvara in his gloss on one of the verses of Yajnyavalkya in the first set of texts above noticed.

As is pointed out by Nilakantha in his *Prayaschitta Mayukha*[1], the word *tyaga* (*abandonment*) is explained in the Mitakshara as meaning the discarding of a woman so far as conjugal relations and religious ceremonies are concerned, but it does not mean driving her out of the house (that is, the husband's). No question of abandoning a woman for the purpose of conjugal relations and religious ceremonies can arise except as between a husband and his wife. The important question is whether this latter set of texts applies to the case of an unchaste widow or whether it applies only to the case of an unchaste wife. The learned Subordinate Judge thinks that the language of the texts is wide enough to cover both the cases. Nilakantha in his *Prayschitta Mayukha,* in the course of his discussion of the question as to the right of degraded women to the performance of

(1) मिताक्षरायां तु व्यवहारनिरोध एव त्यागः शब्देनोक्तो नतु गृहान्निर्वासनमपीति.
(Prayaschitta Mayukha : Benares Edn., page 91.)

expiatory rites, cites some of the texts and along with them he quotes a text of Parashara[1] which provides that "a woman, who conceives a child from a paramour when her husband is either dead or is not to be found or has gone abroad, should be regarded as degraded and sinful and driven out of the country." Nilakantha explains "driven out of the country" to mean "driven out of the house."

This text of Parashara, which includes the case of a widow, is explained by Madhavacharya[2] as relating only to a woman who is leading a life of unchastity, is unrepentant, and has not performed expiatory rites. As to a woman, whether she is wife or widow, who returns to a life of chastity after she has been unchaste, Madhavacharya explains that she, after expiation, cannot be cast out of the house, but that she must be maintained.

These texts of the *Shastras*, as explained by the commentators of recognised authority, would seem to support the decision of this Court in *Honamma* v. *Timannabhat*[3] which has been dissented from in the two later decisions in *Valu* v. *Ganga*[4] and *Vishnu Shambhog* v. *Manjamma*[5]. Doubt has been expressed in *Roma Nath* v. *Rajonimoni Dasi*[6] and *Kandasami Pillai* v. *Murugammal*[7] as to the correctness of the decisions in *Valu* v. *Ganga*[4] and *Vishnu* v. *Manjamma*[5]. It is not necesary for the purposes of this second appeal to decide the question, which, having regard to the conflict of authority in this Court, will have to be settled, when it arises, by a Full Bench. We have referred to it only to notice the texts which bear on the question that they may be of use on a future occasion.

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(1) जारेण जनयेद्गर्भं मृते ऽव्यक्ते गते पतौ ॥
तां त्यजेदपरे राष्ट्रे पतितां पापकारिणीम् ॥
'अपरे राष्ट्र' इत्युक्तेर्गृहान्निष्काशनं गम्यते.

(The Prayaschitta Mayukha : Benares Edn., page 91.)

(2) Parashara Dharma Samhita, Bombay Sanskrit Series, Vol. II, Part I, page 352.

(3) (1877) 1 Bom. 559.

(4) (1882) 7 Bom. 84.

(5) (1884) 9 Bom. 108.

(6) (1890) 17 Cal. 674.

(7) (1895) 19 Mad. 6.

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In the present case the appellant has claimed maintenance not only under the Hindu Law but also under the provision in her husband's will allowing Rs. 24 a year to her as maintenance. The fact that the will expressly refers to the allowance as maintenance has led the learned District Judge to infer that chastity is an implied condition of the bequest. He thinks that the testator must be presumed from that expression to have intended that the allowance should be given subject to the condition of chastity on which the right of a Hindu widow to maintenance depends. No doubt "in construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property": *Mahomed Shumsool* v. *Shewukram*(1). But a Hindu's power to make a will has been held to be co-extensive with his power to make a gift *inter vivos*. Having regard to the texts relating to an unchaste wife discussed in the earlier part of this judgment and the rule propounded by Vijnaneshavara and Nilakantha, we must presume that the appellant's husband would have given her maintenance even in the event of her unchastity during his life-time. Such a presumption must be preferred to that which the learned District Judge has drawn on the construction of the word "maintenance" in the will, because the ordinary notions of the testator in such a case must be judged with reference to what he would have done if his wife had proved unchaste while he was alive. And what he would have done must be judged from what the *Shastras*, in the absence of usage to the contrary, ordain he was bound to do. According to the *Shastras*, he would have had to maintain his wife, unless she had misconducted herself with a man of a lower caste. There is no allegation against the appellant of such misconduct. Nor is it the case of the respondents that there is any custom which has broken in upon the rule of the *Shastras*. Further, though the annuity is granted by the will as "maintenance," that word cannot be understood as imposing any condition or restriction so as to cut down or extinguish the right to Rs. 24 a year given by the will. Where an implication

(1) (1874) L. R. 2 I. A. 7 at p. 14.

is to be made, it must be certain and necessary. The rule that the will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity. Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship. Here there is neither. The mere fact that the word maintenance is used cannot affect the unconditional terms of the bequest.

On these grounds the decree of the District Judge must be reversed and that of the Subordinate Judge restored with the costs of both the appeals on the respondents.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1909.
November 15.

MADHAVRAO MORESHVAR PANT AMATYA (ORIGINAL PLAINTIFF), APPELLANT, *v.* KASHIBAI KOM DATTUBHAI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Transfer of Property Act (IV of 1882), sections 55 (6) (b), 123—Registration Act (III of 1877), section 17—Exemption of assessment in lieu of services rendered or to be rendered—Document granting exemption not stamped or registered—Sale—Gift—Hindu Law—Nibandha.

In consideration of services already rendered or thereafter to be rendered by the defendant to the predecessor-in-title of the plaintiff, the latter executed two documents whereby he released the defendant from payment to him of the assessment on certain lands. Those documents were not stamped or registered. The plaintiff sued to recover arrears of assessment from the defendant, who pleaded exemption under the two documents. The lower appellate Court found the transaction to be one of sale, and applying section 55 (6) (b) of the Transfer of Property Act, 1882, ordered the plaintiff to pay to the defendant what the Court calculated to be the equivalent of purchase-money before he (the plaintiff) could recover the assessment:

Held, that the transaction evidenced by the documents could not be regarded as a sale, for the consideration could not be regarded as "price";

* Second Appeal No. 420 of 1908.