

## Appellate Jurisdiction. (a)

*Special Appeal No. 238 of 1868.*

SUBBU HEGADI.....*Appellant.*

TONGU.....*Respondent.*

A female who is a member of a family governed by the Aliyasantana system of law living apart from the family with her husband is not entitled to a separate allowance for maintenance out of the income of the family property.

*Semle.*—The husband is bound to maintain his wife out of his self-acquired means so long as she continues to live with him.

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**T**HIS was a Special Appeal against the decree of J. C. St. Clair, the Acting Civil Judge of Mangalore, in Regular Appeal No. 534 of 1866, modifying the decree of the Court of the Principal Sadr Amin of Mangalore in Original Suit No. 10 of 1864.

The plaintiff sued on behalf of herself, her children and grandchildren, for maintenance, secured on family property producing annually rupees 1,434-12-0, with a house and furniture, amounting altogether in value to rupees 1,599-14-8.

The defendants 1, 2, and 3 denied the relationship alleged in the plaint, and stated that the plaintiff was a woman under coverture, and as such entitled to no maintenance during the life of her husband who was bound to provide for her according to the usage obtaining in Canara.

Three issues were settled as follows :—

I. Whether the plaintiff has a right of action.

II. Whether her alleged relationship is true.

III. If so, whether the usage pleaded is good in law.

The Principal Sadr Amin found in favor of the plaintiff upon the 1st and 2nd issues. Upon the third issue his finding was as follows :—

“In regard to the third question, that Aliyasantana women live with their husbands, and are not visited by them at their family mansions as in Malabar, are facts recognized in the appeal decree 82 of 1843. Nor is there

any contention about the fact, the question at issue being who is bound to maintain her, whether the husband or the family. Marriage under the Aliyasantana rules is barely a contract between man and woman to co-habit with each other, and certainly not an institution that fixes the status of persons to which alone civil rights can attach themselves. To hold that Aliyasantana men are to maintain their wives from their family funds, is a direct violation of the rule of Bhutal Pandiya.—‘ That the husband is not to be permitted to confer upon his wife any gifts but the marriage present, if he give one pice more, the family may resume it.’ The usage cannot therefore be held to bar the right of a woman to seek for maintenance from her family, and to return to it, whether she is a virgin or a widow or under coverture.”

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The decree was that the defendants should pay the plaintiff rupees seven a month with the arrears sued for at the same rate and provide her with a house and furniture as mentioned in the plaint or pay their value, and that the rest of the claim be dismissed, and that costs be assessed proportionately ; and that in the event of defendants committing default in paying the maintenance decreed, land producing 84 rupees a year be placed in her possession.

Upon appeal, the Civil Judge reduced the annual allowance to rupees 24 with arrears for 4 years at the same rate and disallowed the house, furniture, cattle, ploughing implements, &c., awarded to plaintiff by the Principal Sadr Amin.

The Civil Judge's Judgment contained the following remarks :—

“ With regard to the 3rd point, namely, whether a woman living under the protection of her husband can claim maintenance from her own family under the Aliyasantana law, I have considerable doubts as to the correctness of the decision arrived at by the Principal Sadr Amin, and I cannot agree with him that a husband is not bound to support his wife or children. The Principal Sadr Amin states that ‘ marriage under the Aliyasantana rules is barely a contract between man and woman to cohabit with

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each other, and certainly not an institution that fixes the status of persons to which alone civil rights can attach themselves. To hold that Aliyasantana men are to maintain their wives from family funds is a direct violation of the rule of Butal Pandiya that the husband is not to be permitted to confer upon his wife any gifts but the marriage present; if he give one pice more, the family may resume it. The usage (of women living with her husband's family) cannot therefore be held to bar the right of a woman to seek for maintenance from her family, and to return to it, whether she is a virgin, widow, or under coverture.'

"The extract quoted by the Principal Sadr Amin prohibits merely the permanent alienation of family property by a manager in favor of his wife and children, and not their maintenance by him. Moreover, it is expressly stated in the next sentence that a man may give any self-acquired property he likes to his children, and there is nothing in the Aliyasantana law which relieves a man from the natural obligation of supporting, by his own exertions if necessary, his wife and children. It would be strange to maintain that a person is not civilly bound to do that which he is criminally punishable if he neglects or refuses to do. I think that there can be no doubt that a man is, under the Aliyasantana law, bound to support his wife and children, but the real question now at issue is whether while this obligation lasts the wife can claim an allowance from her own family. Under the Malabar law members of a family are not entitled to maintenance out of the family mansion; but the case is hardly analogous, as it is customary in Malabar for married females to continue to reside in the family mansion, and not, as in Canara, to live in their husband's houses. From the analogy of Hindu Law, however, under which a female cannot, during the lifetime of her natural supporter, claim maintenance from his family, to which she belongs, I think it is doubtful whether under the Aliyasantana law a married female living with her husband is entitled to any from her own family. But as I am not aware of any authoritative ruling on the subject, I do not feel justified in reversing the decision of the Principal Sadr Amin on this point."

The 1st defendant presented a special appeal to the High Court from the decree of the Civil Judge upon the ground that the plaintiff, being a woman under coverture and living with her husband in his house and under his protection, was not entitled to any maintenance from the defendants.

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Upon the first hearing, the High Court directed that an issue be sent to the Civil Judge whether there was a custom in existence in Canara by which married women whilst living with their husbands and apart from their own family could claim maintenance from their own family.

The return of the Civil Judge stated that there was no such custom in existence in Canara.

*Sanjiva Row*, for the special appellant, the first defendant.

*Rama Row*, for *Srinivasa Chariyar*, for the special respondent, the plaintiff.

The Court delivered the following

JUDGMENT :— The plaintiff and the defendants in this case are members of a family which is governed by the Aliyasantana system, and the question the Court is called upon to determine is whether the plaintiff is entitled to a separate allowance for maintenance out of the income of the family property whilst living with her husband apart from the family.

The suit was obviously not brought to recover the necessary means of support but to obtain under the name of maintenance the separate enjoyment of a portion of the income of the property equivalent to the share of it which the plaintiff had failed to recover by her suit for a division. The claim in the plaint is very similar to that in the case of *Kunigaratu v. Aarrangaden*, 2, *Madras High Court Reports* 12, in which the suit was held not to be maintainable on the ground that it was an attempt to obtain indirectly relief which the plaintiff could not obtain directly. However, both the Lower Courts have considered the claim to simple maintenance open on the plaint, and we cannot say that they were wrong. The Principal Sadr

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Amin, refusing to entertain the prayer for relief in the plaint on the ground that to do so would be an evasion of the Aliyasantana law prohibiting division, has decided that the plaintiff, although living apart with her husband, is entitled to an allowance sufficient to maintain her in a position in life similar to that of the other members of her family and decreed the payment to her in future of a monthly sum and the use of a house and furniture. The Civil Judge, taking the same view of the plaintiff's right but not it appears without doubt, has simply modified the decree of the Principal Sadr Amin's Court by reducing the sum ordered to be paid and disallowing the use of a house and furniture.

There is so little extant in the form of text or decision on the Aliyasantana system as to make doubtful questions of right under it dependent more or less on evidence of prevailing custom, and as in the present case the question turned materially on the existence or non-existence of a custom in Canara with respect to the residence and support of women after marriage, an issue on the point was sent to the Acting Civil Judge who decided the case on which he has returned the finding "That there exists no established custom amongst the inhabitants of Canara (following the Aliyasantana law) by which married women whilst living with their husbands and apart from their own family can claim maintenance from the latter."

The effect of this finding we understand to be that the Aliasantana system of Canara, unlike it seems the kindred Maroomakatayam system in Malabar, (*Strange's Manual, Section 388,*) permits but does not require married women to reside with their husband's apart from their own families, but that it is not an established custom that maintenance should be afforded by their families whilst they are so resident. It seems probable from one or two of the observations of the Judge, which accompany the finding, that claims of this kind have been made only since the decision in the case of *Munda Chetti v. Timmagee Hensu*, 1 *Madras High Court Reports*, 380, settling the law in regard to the non-divisibility of the family property at the suit of one member.

The case is thus left to be decided on the reasonable effect to be given to the Aliyasantana law in regard to the rights of the family collectively and individually in the family property, and to the nature of the marriage relation. The rule of law derivable from the recognized work of authority Bhutala Pandiya, (which we regret to find is still untranslated into English) and decided cases we take to be:—That the legal right to the family property is vested in the female members of the family jointly, but for little other practical purpose than regulating the course of succession. No severance of the joint estate can be effected compulsorily, and the possession and control of the property belongs exclusively to the yejaman or manager of the family who is ordinarily the senior of the female members, but subject to the obligation of providing proper support for all the other members, and they individually have no right to anything beyond such support.

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So far the law appears to be settled, and imports clearly we think the preservation of the unity of family, as the only effectual mode of securing to the members severally a full share of the beneficial enjoyment of the joint estate. The obvious effect of allowing one or more members to quit the family and live apart on a portion of the income of the estate sufficient to support a position like that enjoyed by the other members would be to reduce the benefits to the family in a greater or less degree according to the number of the members who might choose to live separately on such allowances: and nearly as much so as by apportioning shares of the corpus of the property on a division. It seems to us therefore that the peculiar beneficial interest of the members individually in the family property is in its nature incompatible with separation from the family.

But as bearing against this view reliance was placed by the vakil for the respondent on the passage from Bhutala Pandiya, which is to be found accurately translated in the 4th Volume of the *Madras High Court Reports*, p. 30.—“The other living persons shall act in union. In this if misunderstandings arise between the elder and younger sisters, the elder shall provide the younger with a

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house and household articles and have the management herself having a right (or claim) to urisiri." This passage, we think, imports no more than that the senior member should in case of disagreement charge the household arrangements in the way pointed out, for the sake of the quiet and good order of the family. Read with the context, it is in our opinion a confirmation of the view that living in the circle of the family under the management of its head is necessary to the right of support. Whatever too there is to be found of express authority on the question supports this view. The judgments of the Civil Court and this Court in the case of *Kunigarata v. Arrangaden* indicate the strong impression of two judges conversant by long experience with the customs of Malabar, that the members of a family governed by the Maroomakatayam law are only entitled to maintenance in the family house. Again in the chapter on Malabar Law in the *Manual* by Mr. Strange who had also considerable judicial experience in Malabar, it is laid down (Section 388) that "females whether in alliance with males or not reside in their own families," and we have no reason to suppose that there has been any distinction in that respect between the Maroomakatayam and Aliyasantana systems. We are on the contrary warranted in concluding that both systems enjoin the same condition. Mr. Strange in the same chapter, Section 392, states that "in its details the law of Aliyasantana corresponds with that of Maroomakatayam saving that the principle that the inheritance vests in the females in preference to the males is in practice better carried out in Canara where the management of property vests ordinarily in the females," and this is confirmed in the judgment of Mr. Justice Holloway in *Nunda Chetti v. Timmaju Hensu*, *Madras High Court Reports*, 380. Referring to the Aliyasantana system, he observes "This system of inheritance differs only from that of Malabar in more consistently carrying out the doctrine that all rights to property are derived from females."

It remains to consider whether for any special reason arising out of the relation of husband and wife under the Aliyasantana system, a wife's residence with her husband should not be treated as a separation from her family. The

relation is in truth not marriage but a state of concubinage into which the woman enters of her own choice and is at liberty to change when and as often as she pleases. From its very nature then it might be inferred as probable that the woman remained with her family and was visited by the man of her choice ; but the case in this respect is not left to mere probability. Such has undoubtedly been the invariable habit under the Maroomakatayam law, and although women in Canara under the Aliyasantana system do it seems in some instances live with their husbands, still there is no doubt that they do so of their free-will, and that they may at any time rejoin their own families. We do not therefore see that residence with a husband can be regarded differently from any other separation by the voluntary act of the wife, and this conclusion is strengthened by the fact that Bhutala Pandiya is silent on the subject of residence after marriage.

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The ground of the husband's non-liability for maintenance on which alone apparently the Principal Sadr Amin's decision rests, is, we think, altogether unsound. He may be right in saying that a wife cannot legally be maintained out of the funds belonging to the family of her husband for the very reason that living with the husband is not a necessary duty of the wife. It does not, however, follow as the Civil Judge remarks in his judgment that a husband is not bound to afford necessary maintenance to the woman from his self-acquired means so long as she continues to live with him as a wife. It will probably be found that the general law does impose such an obligation, but even supposing that it does not, still his non-liability to support her could not alter in any way the legal effect of the wife's residence with him or her right to maintenance out of the property of her family.

For these reasons the plaintiff is not in our judgment entitled to enforce an allowance as for maintenance from her family. The decree appealed from must therefore be reversed and the suit dismissed.

With regard to costs, we think the case is one in which the parties should each bear her own costs in both the Lower Courts, but that the appellant's costs in this Court should be paid by the respondent.