

Appellate Jurisdiction.(a)*Special Appeal No. 474 of 1875.*SIKKI.....(*Plaintiff*) *Special Appellant.*VENKATASAMY GOUNDEN...(*Defendant*) *Special Respondent.*

A woman living in adultery formed a temporary connexion with a man by whom she had a son. *Held*, that she could not maintain a suit for maintenance against her paramour.

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THIS was a Special Appeal against the decree of Mr. F. M. Kindersley, the Acting District Judge of Coimbatore, in Regular Appeal No. 107 of 1874, reversing the decree of the Court of the District Munsif of Coimbatore in Original Suit No. 465 of 1873.

The plaintiff alleged that she cohabited with the defendant by whom she had a son now about 12 years of age. The defendant maintained the plaintiff and her child up to eleven months before the institution of this suit, but that as the defendant then discarded the plaintiff and her son, this suit was brought to recover maintenance for the plaintiff during her life-time, and for her minor son during his minority.

The District Munsif held that for a series of years plaintiff and defendant had been living as husband and wife, and that the boy was the fruit of their intimacy.

Taking into consideration the means and position of the parties, the District Munsif gave the plaintiff a decree for maintenance during her life of two rupees a month from the date of the suit and four rupees annually for cloth. He allowed the plaintiff's son maintenance during his minority at the rate of one rupee a month, and a sum of one rupee annually for cloth.

From this decree the defendant appealed for the following, among other reasons:—

The plaintiff adduced no evidence that she was defendant's concubine for any length of time.

Plaintiff has no legal right to sue defendant for maintenance, she admitting that her husband is still alive, and that she has been leading a life of adultery.

(a) Present:—Sir W. Morgan, C.J., and Innes and Kindersley, JJ.

The Judgment of the Acting District Judge was as follows :—

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“ The first question is whether the plaintiff is entitled to any maintenance at all, and this I am inclined to decide in the negative. The question was raised in the Lower Court and embodied in the first issue, but seems to have been decided by the District Munsif solely on the ground that because the child was born to defendant, therefore defendant was bound to maintain the mother.

“ Reference was of course made to Section 196 of Strange’s Manual of Hindu Law, which refers again to pages 67, 68 and 132 of Sir Thomas Strange’s treatise, as showing that illegitimate children and their mothers are entitled to maintenance.

“ That such a doctrine is so stated there is no doubt, but I think that on looking into the authorities it will be found that it is not every illegitimate child or the mother of every such child that is entitled to maintenance. Were it so, the result would be that a man might be compelled to maintain a woman of notoriously bad character, perhaps a common prostitute, because owing to a casual connection with her she had given birth to a child, and such a woman might in the same way claim maintenance from several men should she happen to have several children. Such a result is repugnant to common sense, and the doctrine is so monstrous that it is impossible to conceive it to have been intended by Hindu Law unless the same is most clearly defined and laid down.

“ Now referring to the Mitákshará, the sections applicable seem to me to be contained in Chapter II, Section I, §§ 7, 12, 20, 27, 28 : and if we read these I think there can be little doubt but that they refer to women having a recognized position in the house as concubines or “ female slaves,” a position which was undoubtedly recognized by Hindu Law, and that they do not refer to any woman with whom a man may have had intercourse and by whom he may have had a child. I would refer too to Vyavahára Mayúkha, Chapter IV, Section 8 § 5 which discusses

1875. the same text as in the Chapter of the Mitákshará above
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 it is said "subsistence is to be given to the females," the
 text must be read to mean females belonging to, and forming
 as it were part of the household, and not to every woman
 kept by a man. For the above section of the Vyavahára
 Mayúkha explains that it relates to the "women set apart"
 and Section 7, §§ 18, 19 of that same Chapter show
 the "woman set apart" means what were called "female
 slaves," which expression cannot possibly be held to be the
 same as a "kept woman" in the ordinary sense of the
 words.

"Now I am quite satisfied, though I agree with the
 Lower Court in thinking it is proved that defendant did
 keep the plaintiff for some time and that the child was born
 to him, that the plaintiff was not defendant's "concubine"
 in the proper sense of the term. The evidence to my mind
 does not show more than that defendant kept the plaintiff
 for a time, sometimes in his own house, sometimes in a house
 where he visited her. But this does not, I think, constitute
 concubinage within the legal meaning of the term. A con-
 cubine is something more than a mere "kept woman."

"And more than this, I am satisfied that the plaintiff
 could not have been defendant's concubine properly so-called
 seeing that she was already married to another man, and
 was therefore an adulteress when living with defendant. Such
 a woman could never have been a "female slave" or "concu-
 bine" within the meaning and definition of the term given
 by the Hindu Lawyers. And I am, I think, warranted
 in this conclusion by the Judgment of the High Court in
 the case of *Parisi Nayudu v. Bangaru Nayudu*(1) in which
 the opinion is expressed that though the illegitimate son of
 a Sudra by a concubine is entitled to inherit, yet the illegiti-
 mate son of a Sudra by a Sudra woman living with him in
 adultery would be excluded from inheriting. This shows
 that every woman living with a man is not necessarily his

(1) 4 Madras H. C. Rep., p. 204.

wife or concubine, and that it is not every illegitimate son who comes under the broad doctrine of the Hindu Law that illegitimate sons of a Sudra have a right of inheritance. 1875.
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“I think on the above grounds that plaintiff herself has certainly no right of maintenance against defendant. As to the child the question is somewhat different, for it may be said that every man is bound to contribute at all events towards the support of his own child. At the same time it is a question whether this is not a rule to be enforced more for public convenience than a rule of Hindu Law giving every son a right to claim maintenance from his father. The law now provides by the Criminal Procedure Code for the maintenance of all illegitimate children *not able to support themselves*, and that rule is easily understood. But if the plaintiff’s son is entitled by Hindu Law to maintenance, he is entitled to it not only while he is unable to support himself, but for his life-time, since the Hindu Law provides no limit for the payment of maintenance.

“And looking at the judgment above referred to holding that the son of a Sudra by a Sudra woman living with him in adultery is not entitled to inherit a share in the family property, and considering that all the authorities as to the maintenance of illegitimate sons seem to point to sons born by a concubine or female slave, and not to sons begotten by all casual or promiscuous intercourse with women, I think that such sons have no right to come into the Civil Courts and ask for maintenance. It seems to me that it can never have been intended that every child born to a man by casual and promiscuous intercourse with a woman should have the right to claim maintenance for life from his father’s family estate.

“I therefore reverse the judgment of the Court below and dismiss the plaintiff’s suit with all costs.”

From this decision the plaintiff appealed for the following, among other, reasons:—

The facts that the defendant kept plaintiff as his mistress sometimes in his own house and at other times in houses hired by him, and that the plaintiff’s son was begot-

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Ramachendraiyer, for the Pauper Special Appellant,
 plaintiff.

The mother of an illegitimate child is entitled in Hindu Law to receive maintenance. Sir Thomas Strange after laying down that the claim of illegitimate sons of regenerated tribes is to maintenance only, unless where custom intervenes in their favor, goes on to observe "nor are authorities wanting, that assign to the mothers of such children, the like provision." 1 Sir T. Strange's H. L. (3rd Edn.), p. 71. Again he says (p. 173) "It has been seen that, in the Sudra class, *illegitimate* sons succeed as heirs, wholly, or partially, according to the state of the family in that respect; and, in all classes, as with us, it is the duty of the parent to maintain issue of this description; an obligation that attaches to the survivors, and is to be provided for upon partition. The mothers of such children also have the like claim, which the providence of the law, not content with securing for them, in all ordinary cases, has been careful to charge upon heirless property, in the hands of the king."

As to the illegitimate issue, Sir Thomas Strange observes, at page 187, that where such issue "would inherit, in the case of the death of their putative father, they will have a claim to share on partition in his life; and they are, under other circumstances, entitled to be provided for to the extent of maintenance."

Nullathumby Moodelliar, for the Special Respondent,
 the defendant.

Mr. Justice Holloway points out the difference between the position of the illegitimate issue of Sudras, and of the regenerated classes, in *Pandaiyá Télaver v. Puli Télaver* (1). It is not every illegitimate son of a Sudra however who is entitled to inherit or to share in family property according to Hindu law.

(1) 1 Madras H. C. Rep., p. 478 at p. 484: affirmed on appeal, 13 Moore's I. A., 141; s. c. 3 B. L. R., (P. C.) p. 1. See the remarks of Mitter, J. in *Narain Dhara v. Rakhal Gain*, 1 Indian Law Reports, (Calcutta) p. 1, at p. 8.

It was held that "the illegitimate son of a Sudra by a concubine, not being a female slave, is entitled to maintenance according to Hindu Law." *Yettapa Naiker v. Venkatasubba Yettia*.⁽¹⁾ An illegitimate child is described as "the offspring of a woman, not legally married to the putative father; the definition extending to the case, where the man and woman are descended from the same stock, or where the marriage has not been according to the order of class." 1 Sir T. Strange's H. L., p. 68.

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In *Parisi Nayudu v. Bangaru Nayudu* (2) the offspring of incestuous intercourse were held not entitled to inherit or to share in the family property. The Court appears to have been of opinion that the exclusion extend to the offspring of a Sudra, and a Sudra woman living with him in adultery. In *Yettapa Naiker v. Venkatasubba Yettia* (1) the Court observed (page 295), "The right to maintenance, too, follows upon the exclusion from inheritance, and we are unable to see that there would be any justice in upholding the argument used at the bar that he may have been entitled to inherit, but, as he has lost the inheritance, has no rights to be maintained."

The adulteress living in concubinage is not entitled to maintenance.

The case put in West and Bühler, page 92, does not support the remark on page 93, and is unsupported by the Hindu Law, which gives the adulteress living in concubinage no right to maintenance from the man supporting her.

Ramachendraiyyer replied.

The Court delivered the following

JUDGMENT:—As to one of the questions argued in this appeal, viz., the right of the illegitimate son to maintenance, it is sufficient to say that it does not properly arise in the suit, which was brought by the mother alone, the son not being a party or represented.

(1) 2 Madras H. C. Rep., p. 293; on appeal, 12 Moore's I. A., 203.

(2) 4 Ibid., 204.

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We may, however, upon this question refer to the decisions of the Privy Council and of this Court in the case of *Muttusawmy Jagavira Yettapa Naikar v. Venkatasubha Yettia*,⁽¹⁾ which show that the natural son of a Hindu father, recognized by him as such, is entitled to maintenance, although he may not have been born in the house of his father or of a concubine possessing a peculiar status therein.

The right of the plaintiff to maintain this suit for her own maintenance has, we think, been properly disallowed upon the facts found by the Lower Appellate Court, according to which, the plaintiff, a married woman living in adultery some years ago, formed a temporary connexion with the defendant, during which a son was born. No authority of Hindu law has been produced to show that from such a connexion a right to maintain a suit like the present can arise.

The decision of the Lower Appellate Court is affirmed and this appeal dismissed but without costs.

Appeal dismissed.

(1) 2 Madras H. C. Rep., p. 293, on appeal.
 12 Moore's I. A., p. 203.
