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Then, as regards the second point, there is a difference of opinion between Abu Hanifa and his two disciples, Abu Yusuf and Mohammed, upon the question whether a woman can refuse herself to her husband after consummation upon the ground of non-payment of the prompt dower, the former answering the question in the affirmative and the two latter in the negative. (See Hedaya, Book II, Chap. 3, Grady's Edition, page 54.) But upon this point the practice of later jurisconsults has been to follow the two disciples, though they agree with Abu Hanifa upon the question of the wife's right to refuse to accompany the husband on a journey.—Baillie's Digest, 2nd Edition, page 125. And this view has been approved by a Full Bench of the Allahabad High Court in the case of *Abdul Kadir* v. *Salima* (1).

That being the state of the authorities bearing upon the question, we think the learned District Judge was right in holding that the non-payment of prompt dower was not a sufficient plea in this case, the marriage having been consummated. The result is that this second appeal must be dismissed with costs.

A. A. C. *Appeal dismissed.*

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Banerjee.

1890 *April* 1.

ROMA NATH *alias* RAMANUND DHUR PODDAR (DEFENDANT No. 1) v. RAJONIMONI DASI FOR SELF AND AS MOTHER AND NEXT FRIEND OF JAGOBUNDO DHUR, AND OTHERS, MINORS (PLAINTIFFS).*

Hindu widow—Maintenance—Incontinence—Forfeiture of rights—Starving maintenance.

*It is a settled principle of Hindu law that a Hindu widow's right to claim maintenance is forfeited upon her unchastity. This rule is not to be restricted to women espoused, who are not of the rank of *patni* or wife.

Where a widow became unchaste after her husband's death, and was leading an unchaste life at and about the date of suit, *held* that she was not entitled to maintenance of any sort. *Quere*, whether if she were to begin to lead a moral life, she would not be entitled to a starving maintenance.

Honamma v. *Timannabhat* (2) and *Valu* v. *Ganga* (3) referred to.

*Appeal from Appellate Decree No. 88 of 1889, against the decree of C. B. Garrett, Esquire, Judge of 24-Pergunnahs, dated the 28th of July 1888, modifying the decree of Baboo Krishna Chunder Chatterjee, Subordinate Judge of 24-Pergunnahs, dated the 30th of June 1887.

(1) I. L. R., 8 All., 149. (2) I. L. R., 1 Bom., 559.

(3) I. L. R., 7 Bom., 84.

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THIS suit was brought by one Rajonimoni Dasi, the widow, and the minor son and minor daughters of one Ram Narain Dhur, through their mother and next friend the said Rajonimoni Dasi, against the present appellant, the executor to the estate of Ram Narain Dhur, and certain other persons who were legatees under his Will. The plaintiffs prayed (inter alia) for a declaration that they were entitled to the properties left by the deceased Ram Narain Dhur, and that his Will might be construed as to such portions (if any) as might be found valid, and for maintenance and other relief.

The claim for maintenance was resisted upon the ground that Rajonimoni was an unchaste widow, and that her son and daughters were not the children of Ram Narain Dhur; and certain questions as to the validity and construction of the Will were raised by the plaintiffs and decided by the Courts below, but the decision arrived at was in no way impugned by either side in the present appeal.

Upon the question of maintenance the First Court held that the evidence was not sufficient to prove Rajonimoni's unchastity during her husband's lifetime, but that she was actually carrying on an illicit intercourse since his death with one Hurry Mohun; and the Subordinate Judge was therefore of opinion that she was entitled to what is called a "starving maintenance," that is, bare food and raiment, from the estate of her husband. The legitimacy of the children was also considered to have been established, and the rights of the parties under the Will were declared.

Against this decision allowing a "starving maintenance" to the widow, the defendant No. 1, the executor to the estate of Ram Narain, preferred an appeal to the District Judge, but no appeal or cross objections were filed on behalf of any of the plaintiffs. The judgment of the Subordinate Judge was confirmed by the Lower Appellate Court. Upon the question of maintenance the District Judge observed:—"On the whole I think that the weight of authority is not so clearly against the Subordinate Judge's decision that I ought to refuse it; and it seems a legitimate deduction from the decision in *Keri Kolitani's* case (1) that if a woman who has succeeded to property on her husband's death does

(1) I. L. R., 5 Calc., 776.

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not forfeit it by subsequent unchastity, a less fortunate woman who has succeeded on her husband's death to bare allowance for food and clothing shall not forfeit it by subsequent unchastity."

The defendant No. 1 appealed to the High Court. At the hearing the minor plaintiffs sought to raise the question whether, their legitimacy having in the opinion of the Courts below been established, they would not be entitled to maintenance apart from the widow, and whether, even if the widow's claim to maintenance were found to be unsustainable, the decree for maintenance given by the Courts below might not be sustained upon the ground that the minors who were living under her protection were entitled to maintenance. They prayed in the alternative that they might be allowed to withdraw from the suit.

The minor plaintiffs were allowed to withdraw from the suit.

Baboo *Golap Chunder Sarkar* for the appellant.

Baboo *Krishna Komal Bhattacharjee* and *Baboo Una Kali Mookerjee* for the respondents.

The authorities cited and the arguments appear sufficiently from the judgment.

The judgment of the High Court (PETHERAM, C.J., and BANERJEE, J.) after setting out the above facts was as follows:—

The minor plaintiffs then being out of the record, the next question that arises is, whether the widow is entitled to the maintenance that has been decreed in her favour. Upon that question the finding arrived at is that she was leading an unchaste life at the date of the suit, and it is contended on behalf of the defendant, appellant, that whatever may be the rights of a Hindu widow who has taken one false step in her life but has afterwards repented, a Hindu widow who is actually leading an unchaste life is not entitled to maintenance of any sort, as against the heirs of her late husband, or those who represent his estate. On the other hand, it is contended for the respondent that if a widow is not unchaste at the date of her husband's death and becomes subsequently unchaste, the right to claim maintenance having once accrued, she is not divested of that right by her subsequent unchastity; and in support of this position the rule laid down in the case of *Moniram Kolita* v. *Keri Kolitani* (1) is cited.

(1) I. L. R., 5 Calc., 776.

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If this position of the respondent were tenable, then, upon the findings of fact arrived at in this case, namely, that the unchastity of Rajonimoni during her husband's lifetime is not made out, but that she subsequently became unchaste and was leading an unchaste life at the date of the suit, her claim for maintenance would be a valid claim. But we do not think that this contention is sound. The very case cited in its favour turns out really to be an authority against the position contended for. For the Privy Council, in that case, drew a clear distinction between a claim for maintenance and a claim to inheritance. Their Lordships observe (1)—"The right to receive maintenance is very different from a vested estate in property, and therefore what is said as to maintenance cannot be extended to the case of a widow's estate by succession. However the texts cited in regard to maintenance show that when it was intended to point out that the right was liable to resumption or forfeiture, clear and express words to that effect were used. Jímútaváhana in c. XI, s. 1, v. 48 of the Dáyabhága, refers to a text of Narada, in which he says:—'Let them allow maintenance to his women for life, provided they keep unsullied the bed of their lord; but if they behave otherwise, the brother may resume that allowance.'"

It was argued for the respondent that the passage of the Dáyabhága referred to in this part of their Lordship's judgment applies not to the *patní*, or wife, but relates merely to women espoused, but below the rank of *patní* or wife. As to that I shall have a word to say presently. For the present, it is enough to say that the authority cited is really in support of the opposite view, namely, that the right to maintenance may be forfeited for subsequent unchastity.

That being so, and the widow not having a vested right to maintenance by reason of her having been chaste at the date of her husband's death, the next question is whether the right to maintenance is conditional upon her continuing chaste.

The passage of the Dáyabhága which is quoted in the judgment of the Judicial Committee in the case of *Moniram Koilta* (1) is direct authority to show that the widow is entitled to maintenance only so long as she remains chaste, and that unchastity at

(1) I. L. R., 5. Calc., 776 (786).

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any period of widowhood would deprive her of the right to claim maintenance. It is true that Jímutaváhana, after quoting the text of Narada, observes that the text relates to women merely espoused and not having the rank of *patní* or wife; but on referring to his explanation of the term *patní* in the paragraph immediately preceding, that is the 47th paragraph of c. XI, s. 1, it would appear that the only distinction that he draws between a woman espoused and one having the rank of *patní* is seniority or superiority in point of caste, and that upon the death of the senior wife or wife of superior caste, the next in point of superiority in caste attains the rank of *patní*, or wife, without any further ceremony being gone through. That being so, we do not see any reason for restricting the rule laid down as to chastity being a condition for maintenance in the text of Narada in paragraph 48, s. 1, c. XI of the Dáyabhága, to the case of women espoused who are not of the rank of *patní*.

Of course, as regards the right to succession, there is a distinction observed, but we see nothing in reason or principle to make any distinction between women of the two classes, namely, those who are *patnís* and those who are merely espoused, as regards the conditions under which their claim for maintenance should be allowed.

This passage of the Dáyabhága is, therefore, in our opinion, sufficient authority for the position that the right to maintenance is conditional upon chaste living on the part of the widow. And this view has been followed by later writers on Hindu Law, and also by Courts of Justice. See Macnaghten's Precedents of Hindu Law, Volume 2, Chapter 2, Case 5; 1 Strange's Hindu Law, 173; 2 Strange 309, and the case of *Maharanee Busunt Koomaree* v. *Maharanee Kummal Koomaree* (1). See also the observations of the Madras High Court in the case of *Visalakshi Ammal* v. *Annasami Sastri* (2). That being so, we think it a settled principle of Hindu law that a Hindu widow's right to claim maintenance is forfeited upon her unchastity.

Then there remains the further question whether, though she may not be entitled to maintenance as a source of wealth, she is not entitled to what has been termed "starving maintenance," that is, bare food and raiment. The Courts below have allowed her that,

(1) 7 Sel. Rep., 168, New Edition. (2) 5 Mad. H. C., 160 (160).

and the question is, whether they have done so rightly. It is true that there are texts of Hindu law which require the husband to give bare starving maintenance to a disloyal wife; see Colebrooke's Digest, Book IV, c. I, vv. 81 to 83; see also the case of *Honamma* v. *Timannabhat* (1). We should add, however, that this last case has been dissented from in a subsequent case by the Bombay High Court. See the case of *Vulu* v. *Ganga* (2). But though, if the facts of this case had been different, and if the woman Rojonimoni, notwithstanding that she had taken one false step during her widowhood, had been leading a chaste life at the date of suit, we should have felt inclined to take the view that the Bombay High Court took in the earlier case, and declared her entitled to bare food and raiment from the persons who are in possession of her husband's estate, yet, having regard to the facts found in this case, we do not think there is any reason for our applying the rule laid down in the case of *Honamma* vs. *Timannabhat* (1) in her favour. The facts found, as we have pointed out above, are, that she became unchaste after her husband's death, and was leading an unchaste life at and about the date of the suit. That being so, we do not think there is anything in reason or authority to entitle her to any maintenance. The reason why bare food and raiment are directed by the Hindu sages to be given to an unchaste woman is that she may have a *locus pœnitentiæ*, and that she may not be compelled by sheer necessity to continue to lead a life of shame and misery. That reason has no application to the present case, where the widow is still leading such a life and is claiming an allowance from the representatives of her husband to enable her to live comfortably. The reason of the rule, then, that prescribes a starving maintenance for an unchaste widow not being applicable to this case, we do not think that Rojonimoni is entitled to such maintenance.

It was said that such a decision may have the effect of confirming her in the immoral life that she is leading. We see no reason for such an apprehension. We do not decide in this case what her rights would be if she were to give up her present way of living and begin to lead a moral life; we do not say that she would not, even in that case, be entitled to claim a starving maintenance. All

(1) I. L. R., 1 Bom., 559. (2) I. L. R., 7 Bom., 84.

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that we say now is, that under the existing state of things she is not entitled to maintenance of any sort. In this view of the case, the decrees of the Courts below must be reversed and the plaintiff's suit dismissed with costs.

Appeal decreed.

A. A. C.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Banerjee.

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April 14.

BOIDYA NATH ADYA AND OTHERS (DEFENDANTS) *v.* MAKHAN LAL ADYA (PLAINTIFF).*

Appeal—Receiver, Appointment of—Appealable order—Jurisdiction, value for purposes of—Civil Procedure Code (Act XIV of 1882), ss. 503, 505, 588 (24), and 589—Bengal, North-Western Provinces, and Assam Civil Courts Act (XII of 1887), s. 21—Court Fees Act (VII of 1870), s. 7, cl. 4—Suits Valuation Act (VII of 1887), ss. 7, 8, and 11.

An appeal lies from an order rejecting an application for a Receiver under section 503 of the Code of Civil Procedure, and the order on appeal is final under section 588. *Gossain Dulmir Puri* v. *Tekait Hetnarain* (1) followed.

The Court to which such an appeal lies from the order of a Subordinate Judge is, under section 21 of Act XII of 1887, the High Court where the value of the suit is above Rs. 5,000, and the District Judge's Court in other cases.

For purposes of jurisdiction the words "value of the original suit" in section 21 of Act XII of 1887 are, in partition suits, to be taken to mean the value of the property in suit, and this is the valuation by which the Courts should be guided in such suits. *Kirty Churn Mittor* v. *Aunath Nath Deb* (2) followed.

The Court Fees Act (VII of 1870) s. 7, cl. 4, does not contemplate that a plaintiff should assign an arbitrary value to the subject-matter of the suit, and the provisions of the Suits Valuation Act (VII of 1887), ss. 7, 8, and 11, indicate that this was not the intention of the Legislature.

IN a suit for partition of moveable and immoveable property, consisting chiefly of trading concerns, the plaintiff valued the relief

* Appeal from Order No. 379 of 1889 against the order of F. McLaughlin, Esq., Judge of Hooghly, dated the 27th of November 1889.

(1) 6 C. L. R., 467. (2) I. L. R., 8 Calc., 757.