

**Seshi Ammal and anr. Vs. Thaiyu Ammal**

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**Court** : Chennai

**Decided On** : Apr-17-1963

**Reported in** : AIR1964Mad217

**Judge** : S. Ramachandra Iyer, C.J. and ;Venkataraman, J.

**Acts** : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 25

**Appeal No.** : Letters Patent Appeal No. 78 of 1962

**Appellant** : Seshi Ammal and anr.

**Respondent** : Thaiyu Ammal

**Advocate for Def.** : V.S. Ramakrishnan, Adv.

**Advocate for Pet/Ap.** : A. Nagarajan and ;A. Viswanathan, Adv.

**Disposition** : Appeal dismissed

**Judgement** :

S. Ramachandra Iyer, C.J.

1. The short question for determination in this appeal is whether a Hindu wife who had agreed to receive maintenance at a particular rate, binding herself not to claim a higher rate even if the circumstances were to change, could maintain a suit for increase of maintenance under Section 25 of Act. 78 of 1956. The respondent is the widow of one Rama Aiyar, who took to a second wife, and later, adopted a son. In O.S. No. 329 of 1924 on the file of the District Munsif, Tiruyarur, the respondent sued for maintenance from her husband. There was a compromise of that suit, by which the defendants therein agreed to pay her a sum of Rs. 85 per year; it was also stipulated that the respondent had no right to ask for anything more. A decree was passed in terms of the compromise, which charged certain properties for the due performance of the maintenance. After the passing of the Hindu Adoption and Maintenance Act, 1956, the respondent came forward with a claim that the maintenance fixed under the compromise decree in O.S. No. 329 of 1924 was insufficient to meet her needs, having regard to the present changed circumstances, and that she should be paid something more. On a contest being raised by the second wife, and the adopted son of the respondent's deceased husband, the suit was dismissed by the trial Court. That decision was affirmed on appeal. But on a further appeal by the respondent to this Court, Ananthanarayanan, J., has set aside the judgments of the lower Courts and remanded the case for fixing proper maintenance.

2. In this appeal against the judgment of the learned Judge, Mr. A. Nagarajan contends that, as the maintenance decree was one made on the basis of a compromise, it would no longer be open to the respondent to ask for an enhancement of the maintenance. In support of the contention, learned counsel referred to the decisions in *A. Surya Chandra Mohanleswara Rao v. A. Durgamba*, 46 MLJ 189 : AIR 1924 Mad 687 and *Kameswaramma v. Thammanna*, : AIR1939Mad798 . It was held in those cases that, where a widow agreed to receive a fixed sum for her maintenance giving up expressly her right to claim an increase in future even if circumstances were to change, it would be a valid agreement which would bind her for the rest of her lifetime. There can be no doubt that, if the respondent were to rely on her right under the Hindu law for being maintained out of the properties of her husband, the principles recognised in these decisions will preclude her from obtaining an enhancement of the maintenance, having regard to the covenant she entered into at the time and as part of the compromise decree aforesaid.

3. But notwithstanding such an agreement, the statute has provided now for a widow being maintained in accordance with the changed circumstances of the times. Section 25, which is relevant in this connection, says:

'The amount of maintenance whether fixed by a decree of Court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.'

The terms of the section are very clear; the right given thereunder would supersede any contract disabling the wife from asking for more. After all the true principle is that a person liable to maintain must do so and it will be indeed inequitable for that obligation to be whittled down by technical rules like *res judicata* and binding nature of a contract. The statute has therefore provided for the agreed maintenance to be enhanced if need be in conformity with the changed circumstances in the case. Mr. Nagarajan however contends that Section 25 has done nothing more than to codify the preexisting law and that it cannot be read as meaning that additional right is given to a wife or a widow, who, under a solemn agreement, had agreed to take for all time a fixed rate of maintenance. We do not find any warrant for any such contention. The section plainly says that, whatever might be the nature of the agreement, whether it precluded the maintenance-holder from asking for more or not she would be entitled to obtain from the persons liable what is necessary if there is a material change in the circumstances since the fixation of the original rate of maintenance. Learned counsel then contended that the section would have no application to a case like the present where there was not a mere agreement, but a compromise decree. According to him, a compromise decree is neither a decree nor an agreement, and, therefore, the provisions of Section 25 will not apply to such a case. Reliance was placed for the contention on the decision in *Raja Kumara Venkata Perumal v. Thatha Ramaswamy Chetty*, ILR 35 Mad 75, where the learned Judges pointed out that, although a contract was the basis of any compromise decree, the decree which superseded such contract could not be regarded as a mere contract, as such a decree would have a sanction far higher than an agreement between the parties. But that does not and cannot mean that a compromise decree is not a decree at all. That decision only recognises the familiar principle that, if an agreement between the parties were to be adopted by a Court and passed into the realm of a judgment of the Court, it acquires all the solemnity of a judicial pronouncement and will be binding upon the parties thereafter, and, if the decree so says, will be executable as such. But even otherwise it is a well-accepted proposition that a compromise decree partakes

the character of an agreement in certain respects, and the character of a decree in regard to its finality and executability, etc. It can perhaps be said that the award of maintenance under the decree was not the result of any decision by the Court; it was the result of a contractual agreement between the parties, which was adopted by the Court for the purpose of making it executable at the instance of the maintenance holder. Such a case will be one where the maintenance is fixed by a decree of Court, though basis of it was an agreement. It will come directly under Section 25. We are therefore in entire agreement with the learned Judge in holding that the respondent will be entitled to have an enhancement of maintenance, once she proves that there has been a material change in the circumstances justifying the enhancement.

4. The appeal fails and is dismissed with costs.

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