

Sathyabhama Vs. Kesavacharya

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Court : Chennai

Decided On : Apr-01-1915

Reported in : AIR1916Mad464; (1916)ILR39Mad658; 29Ind.Cas.397

Judge : Ayling and ;Seshagiri Aiyar, JJ.

Appellant : Sathyabhama

Respondent : Kesavacharya

Judgement :

1. This is a suit by a widow against her deceased husband's brother for maintenance. There was an agreement on on the 30th April 1906 by which the amount was fixed. The plea of the defendant is that since the date of the agreement, the plaintiff had been leading an immoral life and that consequently she is not entitled to claim maintenance. The Courts below have found that she did lead an immoral life, but that, at the time of the suit, she had reformed her ways and was living with her people. Mr. B. Sitarama Rao wanted to argue that she had gone wrong with a Sudra, that that entails upon her degradation from caste and that consequently she is not entitled to any maintenance. But there is no finding that the pregnancy which is found, was caused by cohabitation with the Sudra. We cannot allow that question to be argued in second appeal.

2. On the facts found by the Courts below the question for consideration is, whether the plaintiff is not entitled to what is called 'starving allowance' from the defendant. It was argued in appeal that the fact that the maintenance was secured by a deed differentiated this case from Nagamma v. Virabhadra 17 M.P 392. We cannot accept this contention. The instrument is only evidence of the amount which is payable as maintenance. The basis of the claim against the defendant being the duty to maintain, the fact that it is secured by a deed in writing is not a reason for holding that subsequent unchastity would not work a forfeiture. The decision in Bhup Singh v, Lachman Kunwar 26 A.P 321; A.W.N. (1904) 13 related to a compromise which was arrived at regarding the claim of the widow for possession of the property as heiress. It was held that the subsequent unchastity of the widow did not deprive her of this property. That decision has no bearing upon the present case. The right to maintenance is dependent upon texts which do not affect succession or inheritance.

3. There is no direct authority upon the question. The text of Manu in Chapter XI, Section 189, applies to all women entitled to maintenance. Under that text if a woman becomes unchaste, she is entitled to a starving allowance. The Prayaschitha Kanda of Yajnavalkya Smrithi, (verses 297 and 298) lays down the rules regarding provisions to be made for women who have misconducted themselves. It has been suggested by the learned Vakil for the respondent that the verses only apply to cases of women who

have committed sins other than , immorality; but the concluding portion of the commentary of Vijnaneswara on the Smrithi makes it clear that the two verses are intended to cover cases of unchaste women. The commentary is this: 'To those women who though have suffered degradation (from caste) and for whom the rites of presenting (disconnecting) water libations, etc., have been performed accommodation, (that is), a small cottage built of straws and leaves should be given in the proximity of the main (building of the) house. Similarly food that is just sufficient for the maintenance of life and also raiment of a low description along with (the protection) of preventing her from being enjoyed again by another man should be given.' This last sentence makes it clear beyond doubt that the commentator had in mind the case of fallen women. The text and the commentary, it is conceded, apply to all women alike whether they be wives, widows of co-parceners or mothers. Therefore, according to Manu and Yajnavalkya women who have gone wrong should be given some maintenance. The punishment for their unchastity is that they lose their right to the ordinary rate of maintenance. As against these two texts, the well-known text of Narada has been quoted which says that if a widow of a co-parcener is guilty of immorality, her maintenance should be resumed. This statement is quoted and commented upon by all the Smrithi writers (Mayukha, Section 8, placitum 6; Smrithi Chandrika, Chapter XI, Section 34, and Viramitrodaya, Chapter III, Part I, Section 10). But in none of these texts there is any provision for a woman who had repented and was subsequently leading an honest life. It is not to be presumed from the omission to provide for such a contingency, that the presumption once made is to be irrevocable and that the fallen woman who had reformed is to be denied even a starving allowance. This question was raised in *Visalatchi Ammal v. Annasamy Sastry* 5 M.H.C.R. 150 but was left undecided. In *Nagamma v. Virabhadra* 17 M. 392 the learned Judges, following certain Bombay decisions, held that a widow who had miscegnated herself was not entitled to maintenance. In the latest Bombay case, *Parami Ramayya v. Mahadevi* 5 Ind. Cas. 960 : 34 B.P 278 : 12 Bom. L.R. 196. (6) 19 M.P 6 the earlier cases are not approved. In the Madras case, the question whether subsequent reformation would make any difference was not considered. In *Kandasami Pillai v. Murugammal* 19 M.P 6 the learned Judges based the decision on the ground that the fallen woman had tried to foist upon her husband a child who had been born of adulterous intercourse and it was decided that such a woman was not entitled even to a starving allowance. This decision in *Kandasami Pillai v. Murugammal* 19 M.P 6 was considered by Miller and Sankaran Nair, JJ., in *Subhayya v. Bhavani* 24 Ind. Cas. 390 and the learned Judges were of opinion that it should be confined to cases where the woman was continuing to lead an immoral life. In *Chirukula Nagalakshamma v. Chirukula Visvanatha Sastri* 16 Ind Cas 389 : 23 M.L.J. 289 the wife was not shown to have repented of her misconduct. Mr. B. Sitarama Rao argued that the decision in *Subhayya v. Bhavani* 24 Ind. Cas. 390 should not be extended to widows of co-parceners. As pointed out already, both the text of Manu and that of Yajnavalkya make no distinction between wives and other women, and we see no reason on principle why the widow of a co-parcener should be in a less advantageous position than the wife on the question of being allotted a starving allowance. There are observations in *Roma Nath alias Ramanund Dhur Poddar v. Rajonimoni Dasi* 17 C.P 674 to the effect that widows who had repented of their misconduct should be given a bare maintenance. The recent decision in *Parami Ramayya v. Mahadevi* 5 Ind. Cas. 960 : 34 B. 278 : 12 Bom. L.R. 196 although it related to the case of a wife contains observations regarding the rights of other women to compassionate allowance. We see no reason for not applying the principle enunciated in that decision to the case before us. We think that the widow is entitled to some maintenance, although she is not entitled to the rate provided for in the

deed. The Courts below have found that Rs. 24 a year may be awarded to her in this behalf. We accept that finding. We reverse the decrees of the Courts below and decree maintenance at Rs. 24 a year, from January 1911 till the date of suit. Each party will bear his or her own costs throughout.

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