

(1923) 10 BOM CK 0002
In the Bombay High Court
Case No : Appeal No. 432 of 1922

Anandilal Bhagchand Marwadi

APPELLANT

Vs

Chandrabai Tatya Patil

RESPONDENT

Date of Decision : 09-10-1923

Acts Referred:

Citation : AIR 1924 Bom 311 : (1924) 26 BOMLR 63

Hon'ble Judges : Lallubhai Shah, J;Crump, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Lallubhai Shah, A.C.J.

1. The plaintiff in this case claimed maintenance as the kept mistress of the deceased Chauthmal from his heirs. She alleged that for nearly four years prior to his death she had been living with Chauthmal practically as his wife, and on his death she was entitled to be maintained out of his estate. In defence it was pleaded that the plaintiff's husband Tatya was alive, that the connection between the plaintiff and the deceased Chauthmal was adulterous and that she was not entitled to maintenance from the estate of Chauthmal. Both the lower Courts have disallowed this defence and decreed the plaintiff's claim.

2. The defendants have appealed and it is urged in support of the appeal that though she might be an avaruddha stree so far as the mode of her living with Chauthmal was concerned, her husband was throughout alive, that the connection was adulterous, and that a person in the position of the plaintiff is not entitled to maintenance, as she cannot be properly speaking an avaruddha stree, who would be entitled to be maintained out of the estate of her keeper. On the other hand it is urged that the decision in *Khemkor v. Umashankar* (1873) 10 B.H.C.R. 381. is a clear authority on this point, and that if she has lived as an avaruddha stree would live, the nature of her connection cannot affect her right to be maintained.

3. A woman, who has lived an adulterous life while her husband is alive, has a limited right of maintenance against her husband according to Hindu law. Verse 70 of the Yajnavalkya Smriti (Achara Adhyaya) and Vijnanesvara's commentary thereon show that she is entitled to bare maintenance from her husband. The translation of this portion as given in the Translation of Achara Adhyaya by Srischandra Vidyamana (published by the Bhuvaneshwar Press, p. 136) is as follows:--

The author now describes how unchaste women are to be treated.

Yajnavalkya. LXX --The unchaste wife should be deprived of authority, should be unadorned, allowed food barely sufficient to sustain her body, rebuked, and let sleep on low bed, and thus allowed to dwell 70.

Mitakshara.

She who commits adultery, "should be deprived of authority" i. e. the "control over servants and the management of the house-hold etc., should be taken away. She should be kept "unadorned" i. e. without collyrium, ointments, white cloth or ornaments; "with food enough to maintain her body and sustain her life merely, and "rebuked" with censure and c., and "sleeping on low bed," on the ground, and "allowed to dwell," only in his house. This should be done in order to produce repentance, and not for purification.

4. It is needless to quote the other texts bearing on this point. They have been referred to and the result stated by Mr. Justice Chandavarkar in *Parami v. Mahadevi* ILR (1909) 34 Bom. 278 : 12 Bom. L.R. 196 as to the right of an adulterous wife to have maintenance from her husband. In the present case we are not concerned with the exact limits of that right nor are we concerned with the right of a widow who has led an unchaste life to such maintenance. There is conflict of decisions as to the right of such a widow as pointed out by the learned Judge in *Parami's* case. But as regards the right of the wife there does not appear to be any such conflict in this Presidency, and I refer to the judgment of Chandavarkar J. to save unnecessary elaboration of a point which according to the Hindu law is clear. It is also settled that the connection between a married woman and a man other than her husband would be adulterous according to law. The observations in *Rahi v. Govind* ILR (1875) 1 Bom. 97 are clear on that point. Such a woman cannot be an *avaruddha stree* such as could acquire the right to be maintained out of the estate of her paramour. All along her rightful residence would be with her husband and the residence with her paramour wholly wrongful. The idea of *avaruddha stree* is inconsistent with the position which such a woman occupies. Further the obligation to lead a chaste life after the death of the man with whom she lived an adulterous life is not possible of fulfilment according to law when the husband is alive at the time of her paramour's death. The view taken in *Yeshvantrav v. Kashibai* ILR (1888) 12 Bom. 26 as regards the obligation of a woman kept in concubinage to lead a chaste life can have no application to a woman kept in that manner when her

husband is alive.

5. The meaning of an avaruddha stree (a woman kept in concubinage), who is entitled to maintenance, is discussed in *Bai Monghibai v. Bai Nagubai* ILR (1922) 47 Bom. 401 : 24 Bom. L.R. 1009. The point that now arises for consideration did not arise in that case. It is clear to my mind that a woman in the position of the plaintiff cannot claim to be maintained out of the deceased paramour's estate when her husband has been alive during the whole period of her adulterous connection.

6. But it is urged that this view is contrary to the decision in *Khemkor v. Umashankar* and the observations of Mr. Justice Crowe in *Ningareddi v. Lakshmawa* ILR (1901) 26 Rom. 103 : 3 Bom. L.R. 647. We have examined the facts in *Khemhor*'s case. It is not clear that the husband of *Khemkor* was alive when *Ranchhor*, the person with whom she lived as mistress, died. The principal point considered in that case was whether the marriage between *Khemkor* and *Ranchhor* was valid in view of the fact that the husband of *Khemkor* was alive at the time. The connection continued after that invalid marriage for a long time, namely twenty years: and there is nothing to show that the husband was alive at the time of *Ranchhor*'s death or that he was alive during the best part of that period of twenty years. The effect of *Khemkor*'s husband being alive during the period of her connection with *Ranchhor*, upon her claim to maintenance has not been adverted to either in the letter of reference or in the judgment. There was apparently no argument in the case: and this aspect of the point does not appear to have been adverted to by the learned Judges. It is true that the case has been referred to in the recognised books on Hindu law as if the existence of the husband would make no difference in the result; but I do not think that the decision could be read as going so far. I find it difficult to reconcile that reading of the judgment in *Khemkor*'s case with the observations of Westropp C.J. in *Rahi v. Govind* ILR (1875) 1 Bom. 97 to which I have already referred. On the contrary the reference to *Khemkor*'s case in those observations seems to suggest that the decision was treated by the learned Chief Justice as applying to a case where the husband was not alive at the time of her paramour's death. I find it equally difficult to reconcile the broader interpretation put upon *Khemkor*'s case, with the view taken by Nanabhai Haridas J. in *Yeahvantrav v. Kashibai* as to the obligation of a woman, who has lived as an avaruddha stree, to lead a chaste life. Though the decision in *Khemhor v. Umashankar* has stood for a long time and though it has been understood as applying to a case where the husband may be alive, I think it is clearly distinguishable on the ground that the fact does not appear from the original record of the case on the file of this Court; and further that that aspect of the point does not appear to have been expressly considered. The observations of Crowe J., which were not necessary for the precision of *Ningareddi*'s case, are referable to this reading of *Khemhor*'s case, which, for the reasons I have just stated, is not justified by the facts in that case.

7. I should have referred this point for decision to a Full Bench if I were satisfied that the point which we have to decide was covered by the decision in Khemkor's case. As on the facts the case is distinguishable and as I am clear that a kept mistress whose husband is alive cannot be treated as an avarutIdha stree who is entitled to maintenance on the death of her paramour out of his estate, I see no objection to give effect to that view.

8. I would, therefore, allow the appeal, reverse the decree "and dismiss the suit. Under the circumstances each party should bear his or her costs throughout.

Crump, J.

9. I agree.