
(1876) 05 AHC CK 0002
In the Allahabad High Court

Ganga Bai

APPELLANT

Vs

Sita Ram

RESPONDENT

Date of Decision : 08-05-1876

Acts Referred:

Citation : (1875) ILR (All) 170

Hon'ble Judges : Robert Stuart, C.J.;Turner, J;Spankie, J;Pearson, J;Oldfield, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Robert Stuart, C.J., Turner and Spankie, JJ.—As we understand the question put to us we must assume for the purpose of this reference that the father-in-law is in possession neither of ancestral nor Immovable property, that he has no fund with the disposal of which his son, if alive, could interfere, that he has inherited nothing from his son, nor have his rights in any property become enlarged by his son's death. Under these circumstances, the plaintiff's pleader has failed to satisfy us that her father-in-law is under any legal obligation to provide her with maintenance. No text has been cited from any work of authority in these Provinces which supports the claim, nor has any decision been produced in which it has been ruled by any Court in these Provinces or in this Presidency, or in those parts of the Presidency of Madras which are governed by the Mitakshara, that such a claim has been allowed. The right, then, of the daughter-in-law appears to be one of moral and not of legal obligation.

2. Hindu Law no doubt imposes on the daughter-in-law the duty of living in the house of her father-in-law, yielding him obedience and ministering to his needs, but the Privy Council, in *Raja Pirthee Singh v. Rani Rajkooer* 12 C.L.R. 238 has ruled that this is merely a moral obligation, and that she does not even forfeit her right to maintenance if she incapacitates herself from performing her duty to her father-in-law by electing to reside elsewhere than in his house. Except in so far as the possession of property liable to a charge of maintenance alters the nature of the obligation of the father-in-law to the daughter-in-law, there is no

more ground for holding that he is legally bound to support her than there is for asserting that she is legally bound to live in his house and minister to his wants. Of both duties the neglect is discreditable in this world, and may, according to the Hindu religion, subject the offender to punishment hereafter.

Pearson, J.

3. My answer to the question put to us must be in the negative. In the case of *Lalti Kuar v. Ganga Bishan* I.C.R. N.W.P. 1875, to which allusion is made in the referring order, I assented, not without doubt and hesitation, to the doctrine that a Hindu widow was entitled to be maintained out of the joint ancestral estate of the family of which her husband was a member, although he had predeceased his father. That doctrine, although not expressly laid down in the Hindu law, was supported by many considerations of reason and equity, and had been recognized by several decisions. But I am not prepared to go further and to allow that a widow is legally entitled to be maintained by her husband's relations after his death merely in consequence of such relationship. The texts which countenance such a view appear to be of the nature of moral or religious precepts. In the oral pleading before us it has indeed been mainly urged that the respondent is liable to the claim of the plaintiff, appellant, because he sold an ancestral house; but this argument was not the plea set forth in the first ground of the appeal, and we can only address ourselves to the question referred to us.

Oldfield, J.

4. The legal right of a widow to maintenance from her husband's family can, I apprehend, scarcely be supported with reference solely to those texts of Hindu Law which indicate the position a woman obtains by marriage in her husband's family, and those which generally inculcate the duty of maintenance of the female members of a family.

5. It is said that by marriage a woman leaves her own family or gotra and enters that of her husband, and her connection with her own family is at an end. There is the passage of *Vijnanesvara* translated in West and Buhler's *Digest of Hindu Law Cases* Bk. i, p. 141, declaring the wife and husband to be Sapinda relations to each other because they together beget one body (the son), the Sapinda-relationship arising by connection with one body, either immediately or by descent; and there are other texts on the connection formed by marriage, such as--"Women by marriage are born again into the family of the husband."--"By marriage a husband and wife become one person."

6. These texts admittedly do not mean that a woman on marriage enters into her husband's family or gotra in the sense that she enters it assuming the rights of a daughter. Were it so, she would inherit in the same way as a daughter, and if she cannot claim under these texts the full rights of a daughter by reason of entering the family or gotra of her husband, I do not see how any legal claim to maintenance can be supported on that ground; the ground, if good at all, should be good for entitling her to the full position of a daughter.

7. The above texts and others which inculcate in general terms on women dependence on their husbands' family and impose a duty of maintenance on the husbands' family do not necessarily impose any legal obligation. This distinction, which is one to be carefully observed in applying texts of the Hindu writers, was pointed out by Sir Barnes Peacock, Chief Justice of Bengal, in *Khetramani Dasi v. Kashinath Das* 2 C.L.R. A.C. 15 : S.C. 10 W.R. F.B. 89, and the rule appears to be that when the deceased member of a family has left property, they who take it to the exclusion of his widow will be legally bound to maintain her out of the property. There is the following passage in *Viramitrodaya* cited at the hearing of this reference: The brother and others taking the wealth of the husband of an *istri* widow other than a *putni* capable of receiving her husband's share should allow subsistence to her." "To give" means "must give." "Regarding this is also the text of *Narada*--that all virtuous widows should be allowed food and raiment by the husband's eldest brother or father-in-law, or by a person born in the same family. This text means all those taking the wealth of the husband, for subsistence is allowed because of taking wealth," and there are other texts to the same effect--*Colebrooke's Digest*, vol. ii, Bk. v, Schedule. i, Section 1, cccxii, *Smriti Chandrika*, Schedule. xi, Section 1, v. 84. This particular obligation, so expressly declared, is probably founded on the intimate connection which marriage is held to give rise to between husband and wife, as shown by the texts I have already cited, and which is said to extend to the property; for instance, we have the text in *Smriti Chandrika*, Schedule. ix, Section 2, v. 14--It must be understood that in a husband's property the wife by reason of marriage possesses always ownership, though not of an independent character"--and *Colebrooke's Digest*, vol. ii, Bk. v, Schedule. viii, Section 1, ccccv.

8. In a joint family where there is ancestral property such a legal obligation will lie on the father-in-law to maintain his son's widow--*Lalti Kuar v. Ganga Bishan* I.C.R. N.W.P. 1875 but in a case like the present, where the property is entirely the self-acquired property of the father, the son in his father's lifetime cannot be said to have had such an interest in the property as will impose at his death an obligation on his father to maintain the widow.

9. When the case came back to the Division Court (Turner and Pearson, JJ.) for disposal-

Munshi Hanuman Parshad, for the Appellant, the Appellant, contended that the respondent had made himself personally liable for the appellant's maintenance. He has sold for his own benefit property which, as he held it as ancestral property, was charged with the maintenance of his son's widow.

10. Pandit Bishambar Nath, for the Respondent, was not called upon to reply.

12. The Judgment of the Court, so far as it related to the contention on behalf of the Appellant, was as follows:

We accept the opinion of the Full Bench on the general rule that a father-in-law, who is not in possession of ancestral property, is not legally bound to maintain

his daughter-in-law. The appellant's pleader now contends that there are peculiar circumstances which take this case out of the purview of that general rule, namely, that one moiety of a house valued at Rs. 425 was held by the respondent as ancestral property and was sold by him. This is true, but it is shown that the sale was made to pay debts. It was then a sale which the son himself, if alive, could not have resisted, for it is not suggested the debts were contracted for immoral purposes. Consequently, in our judgment, the alienation by the father-in-law does not in this case impose on him personal liability of maintaining the appellant.