

(1948) 10 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Civil Ref. No. 4 of 1947

Jai Kissen and Another

APPELLANT

Vs

Mt. Ram Rakhi

RESPONDENT

Date of Decision : 13-10-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 2

Citation : AIR 1950 HP 12

Hon'ble Judges : Bannerji, C.J

Bench : Single Bench

Advocate : Baran Dat, No. 2 and D.N. Agarwalla, for the Appellant; Party in person and L. Amar Chand, for the Respondent

Judgement

Bannerji, J.—This is a reference made by the Baghal Darbar under the provisions of Baghal State Courts Act, 1942, against a judgment and decree dated 22nd October 1945 of the Chief Judicial Officer, Arki, which reversed a judgment and decree dated 19th September 1944 of the District Judge, Baghal State and thereby decreed the suit.

2. The facts in brief are as follows; One Mt. Bam Rakhi brought a suit in forma pauperis against her father-in-law, Jai Kissen, defendant 1 and her deceased husband's brother, Baran Dat, defendant 2, in the Court of the District Judge, Baghal State, for maintenance for a period of 10 years preceding the suit, at the rate of RS. 20 per month.

3. She alleged that her husband Vidya Dhar had died 10 years ago and she had a daughter about 13 years old by him. She had an illegitimate son aged 9 years born to her by defendant 2, Baran Dat, brother of her late husband. She was turned out of the house by her father-in-law a few months before the birth of this son. She claimed maintenance for herself and on behalf of her minor son and daughter.

4. The defendants resisted the suit on the ground that she was an unchaste

woman and as such was not entitled to any maintenance. The defendants were willing to take back the daughter born of lawful wedlock but denied liability to maintain the illegitimate son.

5. In his judgment, the learned District Judge observed as follows :

"In the second para of the plaint, she (plaintiff) writes that one son begotten by defendant 2 by her is also alive. One daughter by her real deceased husband is also alive. Both the children are minor. In para 3 of the plaint she demands maintenance for herself as well as for her children ; (underline mine ; here italicized) In the last para, she prays that a decree for maintenance till her life be passed in her favour.

It also shows that in view of the inconsistent position in the plaint the case of the plaintiff alone can be considered and decided. The suit on behalf minor children could not be framed in the present form."

6. The learned trial Judge found from the evidence that she had committed only a casual act of intercourse and that was the only "one single moral lapse on her part", and that this act of single immorality was "confessed" by the plaintiff herself. He further found that there was no evidence that the plaintiff had led an immoral life. But he held that the plaintiff was not entitled to maintenance under the Hindu law and dismissed her suit.

7. The plaintiff next appealed to the Chief Judicial Officer at Arki in forma pauperis but it was found that her application for leave as a pauper was time-barred. She therefore filed a regular appeal claiming one year's maintenance, Rs. 240 at Rs. 20 per month.

8. The learned Chief Judicial Officer disagreed with the view taken by the trial Court that pleadings were defective and that upon her plaint she could claim maintenance for herself only and not for her son and daughter. He held that though in the prayer clause she claimed for her own maintenance, yet in the body of the plaint she claimed maintenance for herself and also for her children. According to the learned Chief Judicial Officer

"this slight discrepancy is immaterial, considering the fact that legal advice is not freely available at Arki to the litigant public and the plaintiff is an unlettered woman. The reading of the whole of the plaint leaves no doubt that her plaint has been laid to claim maintenance for herself and her two children and the parties have led evidence bearing in mind that this was the position of the plaintiff during the course of the litigation."

He accordingly allowed the appeal granting maintenance at the rate of Rs. 15 per month or Rs. 180 for one year and further maintenance at the rate of Rs. 15 per month,

9. Upon this the Darbar, Baghal State, entrusted the case to the Judicial Committee as a reference on the ground that "the parties belong to high caste

"Sasni Brahmin family" and as such were governed by special rule of custom prevalent in the State from time immemorial and it would be in the interest of the Sasni Brahmin community in the State to have the judgment of the Judicial Committee on the point."

10. I may state at the outset that no such custom was claimed by the defendants in their written statements, nor any evidence led by them to prove such custom. The question of such custom, therefore does not arise in the present reference, as the pleadings did not disclose it nor any issues were framed on it nor any evidence led in respect of it.

11. The learned advocate who appeared for the defendants very strenuously argued that she could not sue on behalf of her children. He further argued that she being an unchaste woman, was not entitled to any maintenance under the Hindu law.

12. This contention can be very shortly disposed of. Even if the suit were framed as the Learned counsel wishes this Court to believe, then upon the concurrent findings of facts that she had only a casual intercourse and one single moral lapse, she will be entitled, under the Hindu law, to maintenance. It is true that the right of a widow to maintenance is conditional upon her leading a life of chastity and if she becomes unchaste this right is forfeited; yet if she returns to a moral life, as the evidence discloses and as held by both the Courts below, she is entitled to "bare" or what is also called "starving" maintenance, that is, to food and raiment just sufficient to support her life: *Honamma v. Timannabhat* 1 Bom. 559; *Satyabhama v. Kesavacharya* 39 Mad. 658 : A. I. R. 1916 Mad. 464 *Bhikubai Yeshwantrao Meher Vs. Hariba Sawalaram Meher*, and *Mulla's Hindu Law* (8th Edn.) Section 561.

13. But there is another point which requires consideration. Are the pleadings such that she could be pinned to her claim for relief only for her own maintenance ?

14. I have quoted the judgment of the Courts below in some detail in order to show that in her plaint she demanded maintenance for herself as well as for her children.

15. It has been uniformly held by the High Courts that pleadings in India cannot be regarded with the same meticulous care with which they are scrutinised in the English Courts. Too much insistence should not be laid on technicalities. When facts on both sides are stated with sufficient precision, legal effect of the facts should be determined by the Court. Rules about pleadings should be subordinate to the administration of justice.

16. I agree most respectfully with the view of their Lordships of the Privy Council reported in *Girdharee Singh v. Koolahul Singh* 2 M. I. A. 344 and (6 W. R. 1), that essential justice of the case should be looked into and not the observance of forms.

17. In my opinion it was also the clear duty of the Court of first instance to order the amendment of the plaint in order to avoid multiplicity of the suit.

18. Order 6, Rule 17, Civil P. C., consists of two parts : (a) The Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings and (b) all such amendments as may be necessary for the purpose of determining the real questions of controversy between the parties shall be made.

19. As observed by their Lordships of the Privy Council in *Shamu Pattel v. Abdul Kadir* 391. A. 218 : 35 Mad. 607 , the first portion, of the Rule 17 of Order 6 left the matter of amendment to the discretion of the Court, while the second portion made it imperative on the Court to make all such amendments as may be necessary for the purpose of determining the real matter in controversy between the parties.

20. It is a well-established principle that the object of Courts is to decide the rights of the parties and not to punish for mistakes they make in the conduct of their cases by deciding other wise than in accordance with their rights. Courts, do not exist for the sake of discipline but for the sake of deciding matters in controversy. It seems, to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy it is as much a matter of right on his part to have it corrected.

"All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is therefore essential that they should be made to serve and be subordinate to that purpose so that full powers of amendment must be enjoyed and should always be liberally exercised"--see *Ma Shewmya, v. Maung Po*. 48 I. A. 214 : 48 Cal. 832; (A. I. R. 1922 P. C. 249).

21. The learned District Judge should have directed amendment of the cause title of the plaint as well as of its relief. This amendment could not have caused any prejudice to the defendants nor substituted a totally new case in place of the original.

"The reacting of the whole of the plaint leaves no doubt that her plaint has been laid to claim maintenance for herself and her two children and the parties have led evidence bearing in mind that this was the position of the plaintiff during the course of the litigation."

I entirely agree with this view of the learned Chief Judicial Officer. In my opinion, she can, in this suit, claim maintenance for herself as well as for her son and daughter.

22. The next point is, are the illegitimate son and the daughter born of lawful wedlock entitled to maintenance?

23. The illegitimate son of a Hindu by a Hindu woman is entitled to maintenance even if he be the result of a casual or adulterous inter-course. See *Muttuswamy v. Venkateswara* 12 M. I. A. 203 ; (2 Beng. L. R. 15 P. C.) and *Subramania v.*

Velu, 34 Mad. 68: (5 I. C. 919). During his father's life-time he is entitled to maintenance against him. After father's death he is entitled to maintenance out of the separate property of the father. Where the father has left no such property he is entitled to maintenance out of the estate of the joint family property of which the father was a member; Chouturya v. Purhuladt 7 M. I. A. 18: (4 W. R. 132 and Mulla's Hindu Law, 8th Edition Section 551 (3).

24. The decisions of the Privy Council quoted above make it clear that the illegitimate son could claim maintenance from the father.

25. It is not now in dispute that the defendant 1, Jai Kissen is dead and Baran Dat, as his heir, has succeeded to the property. It is also not in dispute now that the daughter of Vidya Dhar has been given in marriage and the marriage expenses have been borne by the plaintiff.

26. After having gone through the entire evidence and concurrent findings of both the Courts below that she had committed only a casual intercourse and that she has returned to a moral life, I am of opinion that she is not only entitled to a bare or starving maintenance but her illegitimate son is also entitled to maintenance from defendant 2.

27. As regards the daughter born of wedlock, she could not claim maintenance from her grand-father Jaikissen nor from her uncle, Baran Dat.

28. I, therefore, agree with the learned Chief Judicial Officer who gave judgment in favour of the plaintiff.

29. Next comes the question of amount of maintenance. I think I ought to interfere with the decision of the learned Chief Judicial Officer. In my opinion, Rs. 15 per month will be sufficient for the education and maintenance of her son till he attains majority. In addition, the plaintiff will be entitled to bare maintenance of Rs. 6 per month for her life.

30. I, therefore, modify the judgment and decree of the Chief Judicial Officer and allow this Reference. The plaintiff will be entitled to claim maintenance at the rate of Rs. 15 per month from one year previous to the date of the suit till the date of the decree and at the same rate in future, for her son, till he attains majority and at Rs. 5 per month for herself for the same period and in future for her life with costs throughout. She must pay the court-fees according to law.

31. I should advise the Chief Commissioner accordingly.