

**(1932) 02 MAD CK 0005**  
**In the Madras High Court**

Javvaji Venkataratnamma

APPELLANT

Vs

Javvaji Seetaratnam

RESPONDENT

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**Date of Decision :** 15-02-1932

**Acts Referred:**

**Citation :** AIR 1932 Mad 408 : (1932) 35 LW 611

**Hon'ble Judges :** Curgenven, J

**Bench :** Division Bench

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## **Judgement**

Curgenven, J.—This appeal arises out of a suit for maintenance. Plaintiff is the widow of one Ramamohana Rao, who died in December

1923 aged about 15. His father was one Gantayya, now also deceased, and the defendant is the widow of Gantayya. The points taken in appeal

are that the award of Rs. 60 per mensem for current maintenance, of arrears at the same rate and of costs upon the whole amount claimed by the

plaintiff are excessive.

2. As regards the first point we find some slight difference between the estimated income which the lower Court has arrived at and the conclusion

we would draw from the facts. (Here his Lordship discussed the evidence and proceeded.) We think, that irrespective of the proceeds of the

promissory note for Rs. 10,000 which the plaintiff received in respect of the katnam the figure awarded by the lower Court is reasonable and need

not be modified.

3. The second point has reference to the rate of arrears. The award has been made at the same rate as for the current maintenance for a period of

about five years and amounts to a lump sum of Rs. 4,500. This obviously will impose a very heavy strain upon the estate and it can hardly be

expected that the defendant will be able to meet it without realizing some of the capital assets. That however is not necessarily a consideration

which should detain us but it has been pressed upon us that during the period for which the plaintiff claims this amount she was a child of from 12

to 17 years of age and it is obvious that her needs must have been extremely moderate and that occasion for a good many of the expenses which

she may now have to incur would not then have arisen.

4. It has been suggested to us that the Court, once having found that maintenance is due at a certain rate, is not competent to lower the rate in

respect of the arrears of maintenance and that the plaintiff has a legal right to receive them at the same rate. But we are unable to find in the Privy

Council decision in *Ekradeshawari Bahwasin v. Homeshwar Singh* AIR 1929 P.C. 128 which has been referred to as an authority, any justification

for adopting this view. The discussion in that case really turned upon the date from which a widow who leaves her husband's house ought to be

granted maintenance and so far as we understand the observations of their Lordships the point with regard to the rate was adopted without

argument, there being only an observation in conclusion that the amount according to the scale fixed by the Court below should run from the date

found appropriate. We cannot take this as an authority for the existence of an inflexible rule binding upon the Court in a matter of this kind, nor

does the decision of this Court in *Panchakdhara v. Pattammal* A. I. R. 1927 Mad. 865, affirm such a proposition. The discussion there related not

to the rate at which arrears of maintenance should be granted but as to the circumstances in which the right to arrears arose, it being held that the

absence of notice or other circumstances would not amount to an abandonment of the legal claim unless something amounting to waiver was

established. The learned Judges in fact say that they do not in that case reduce the rate, an observation which we think shows that they regarded

themselves as having some discretion in the matter. Accordingly we think that it is fully open to us to award arrears of maintenance at some rate

less than that fixed for the current maintenance and having regard to the estimated needs of the plaintiff during the years under reference and to the

additional circumstance that she was in receipt of an independent income of Rs. 750 per annum from the promissory note for Rs. 10,000 we think

that a fair decision will be to give her maintenance at two-thirds of the rate of the current maintenance, or Rs. 40 per mensem. This will involve substituting Rs. 3,000 for Rupees 4,500 under this item.

5. There only remains the question of costs. The learned District Judge has required the defendant to pay costs estimated upon the plaintiff's claim,

which was for maintenance at Rs. 150 per mensem. We agree with Mr. Varadachari on this point that the fair order as regards costs in the lower

Court should be to pay proportionate costs upon the value of the relief now allowed to the plaintiff. With this modification the appeal is dismissed.

The memorandum of objections filed by the plaintiff, which asks for enhancement of the rate, is also dismissed. In the appeal the parties will give

and take proportionate costs. The memorandum of objections is dismissed without costs.