

(1931) 12 MAD CK 0022
In the Madras High Court

Jayanti Bhagvanula Narasimham

APPELLANT

Vs

Jayanti Venkatasubamma (dead) and Others

RESPONDENT

Date of Decision : 03-12-1931

Acts Referred:

Citation : AIR 1932 Mad 351 : 137 Ind. Cas. 749

Hon'ble Judges : Waller, J; Jackson, J

Bench : Division Bench

Judgement

1. The plaintiff who is respondent No. 1 in this second appeal, is the widow of one Narasimham. He died about 30 years before the suit and she adopted respondent No. 2, one of the sons of her husband's brother Kakulayya. In 1919 a suit for partition was brought and the family property was divided. Respondent No. 2 and his sons got a three-eighths share, the other three branches, now represented by the appellant and by various respondents, being allotted the remaining five-eighths. In 1924 respondent No. 1 filed a suit for maintenance, impleading all the former co-parceners as defendants. The suit was defended only by respondent No. 2 and his sons (defendants Nos. 1, 2 and 3). Defendants Nos 5, 7, 9, and 11 appeared by a Pleader, but filed no written statements and the rest of the defendants did not appear at all. In the result respondent No. 1, was given a decree for certain sums of money, three-eighths of which were to be paid by respondent No. 2, and his sons and the other five-eighths by the other three branches, the District Munsif observing that the Pleaders on both sides had agreed "to the division of the liability in accordance with the shares of the different sets of the defendants." The plaintiff lodged an appeal, claiming a higher rate of maintenance and defendants Nos. 8 to 11 a memorandum of objections, pleading that they should not have been made liable at all. Defendants Nos. 4 to 7 appeared by a Pleader but filed no memorandum of objections. The Subordinate Judge enhanced the rate of maintenance and at the same time dismissed the memorandum of objections, holding that the plaintiff's right to maintenance out of the entire family property was not affected by the partition. Defendant No. 8 has now filed a second appeal, putting forward the

same plea, that the plaintiff's Claim for maintenance was sustainable only against the share allotted to the first three defendants as representing her husband. We have been referred to no decision that bears directly on the question at issue. The Subordinate Judge relied on two cases of this Court. One was Subbarayulu Chetty v. Kamalavalli Thayaramma 10 Ind. Cas. 347 : 35 M. 147 : 21 M.L.J. 493 10 M.L.T. 1 : (1911) 2 M.W.N. 128, where it was held that a widow's right to maintenance was enforceable against the whole family and not merely against her late husband's branch of it and that her right would not be affected by a suit for partition filed after her suit for maintenance, in other words her claim was to be treated as that of a widow of a member of an undivided family. To that rule Mr. V. Rama does for the appellant takes no exception his argument being that it does not apply to a case like this, where the suit for maintenance was brought after the partition. The other decision, which is referred to in Subbarayulu Chetty v. Kamalavalli Thayaramma 10 Ind. Cas. 347 : 35 M. 147 : 21 M.L.J. 493 10 M.L.T. 1 : (1911) 2 M.W.N. 128 is Jayanti Subbiah v. Alamelu Man gamma 27 M. 45. It laid down that the widow of an undivided co-parcener had a right of maintenance against the surviving co-parcener or co-parceners, but only to the extent of her husband's share or interest in the joint family property and that, wherever it becomes necessary to enforce her right, it should be made a specific charge on a reasonable portion of that property not exceeding in value her husband's share. In Subbarayulu Chetty v. Kamalavalli Thayaramma 10 Ind. Cas. 347 : 35 M. 147 : 21 M.L.J. 493 10 M.L.T. 1 : (1911) 2 M.W.N. 128, this view of the law was accepted, the Judge observing:

It may be that a decree would not be enforceable against a member of a joint family which gave some thing more than the interest of the deceased husband which passed by survivorship to the surviving members.

2. If this be the correct rule and we must accept it as correct it, seems to us to follow that, when the widow of a co-parcener sues for maintenance after there has been a partition, she cannot enforce her right against any of the surviving co-parceners except those who have taken her husband's share. If her right to relief against the family property is limited to the value of her husband's share and that share has already been defined and separated, it would be idle to give her relief against any of the co-parceners other than those who have succeeded to that share; no other share is liable. If the value of her claim is less than that share, there is no reason why any other share should be resorted to. If it exceeds it, no other share is chargeable for the excess. Several other cases were cited for the respondents. Two of them Sivananjan Perumal v. Meenakshi Ammal 5 M.H.C.R. 377 and Srinivasa Iyengar v. Thiruvengadathaiyavgar 23 Ind. Cas. 504 : AIR 1914 Mad. 226 : 38 M. 556 : (1914) M.W.N. 282, do not, really touch the point. In the first the only coparceners were the widow's sons and stepson, the latter of whom contended that his stepbrothers' divided share alone was liable and it was that contention that was overruled. The second was a similar case in which a similar contention was put forward and rejected. In another case, Karuppa Koundan and Another Vs. Chinna Nallammal and Others,

a Bench of this Court followed the ruling in Jayanti Subbiah v. Alamelu Managamma 27 M. 45, holding that if a widow's right to maintenance was limited to the value of her husband's interest in the joint property, her maintenance might reasonably be charged against that interest alone. No doubt, in the result the Judges gave a charge over the whole property, but that was because another maintenance holder had a prior charge over the whole, which might have been utilized to defeat a subsequent charge over a part of it. Another case cited Bala Tirupura Sundaramma v. Suryanarayana 28 Ind. Cas. 349 resembles and follows Sivananjan Perumal v. Meenakshi Ammal 5 M.H.C.R. 377.

3. We are of opinion that the appeal must be allowed. A memorandum of objections has been filed by respondent Nos. 5 and 7, supporting the appellant. It must, we think, be allowed under, Order XLI, Rule 33 in view of the course taken by the case in the courts below, they and the appellant will pay their own costs. The first three defendants will pay the whole decree amount and respondent No 1's costs throughout and she will pay the fee due to the Government.