

(1889) 08 CAL CK 0008
In the Calcutta High Court

Kamini Dassee

APPELLANT

Vs

Chandra Pode Mondle and Others

RESPONDENT

Date of Decision : 20-08-1889

Acts Referred:

Citation : (1890) ILR (Cal) 374

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Judgement

Banerjee, J.—This was a suit by a Hindu widow against her husband's brothers for maintenance and for setting aside a compromise on the ground of fraud. The plaintiff alleged in her plaint that, in accordance with the directions of her father-in-law, her husband's brothers defendants Nos. 1 and 2, agreed to give her maintenance at the rate of Rs. 3 a month; that three months' maintenance having fallen in arrears the plaintiff brought a suit to recover the same, and defendant No. 3 was her agent to look after, and defendant No. 4 her pleader appointed to conduct, that case; that defendants Nos. 1 and 2, in collusion with defendant No. 3, caused a petition of compromise to be filed in that case on behalf of the plaintiff without her knowledge and consent; and that the plaintiff accordingly brought the present suit to recover maintenance for nine months and to set aside the compromise. The defence of defendants Nos. 1 and 2 (which is the only defence necessary to consider now) was to the effect that the compromise in question was not fraudulent, but had been duly entered into with the knowledge and consent of the plaintiff, and that she thereby consented to take Rs. 30 in full satisfaction of her claim for maintenance; and that the plaintiff compromised the former suit as she was not entitled to claim maintenance from defendants, her husband having died in his father's life-time.

2. Upon these pleadings the parties went to trial substantially upon two issues: (1) whether the compromise was fraudulent and liable to be set aside; and (2) whether the plaintiff can recover any maintenance, and, if so, at what rate.

3. The first Court found both the issues in favour of the plaintiff and gave her a

decree. On appeal the lower Appellate Court, while affirming the finding of the first Court that the compromise was fraudulent, dismissed the suit on the ground that the plaintiff was not entitled to recover maintenance from defendants Nos. 1 and 2, as they had not inherited any Immovable property from their father.

4. In second appeal it is contended for the plaintiff that the defendants Nos. 1 and 2, having inherited their father's property, were legally bound to maintain the plaintiff whom their father was morally bound to maintain, and that the lower Appellate Court was wrong in holding that the obligation to maintain the plaintiff could arise only if the defendants inherited some Immovable property from their father. And certain dicta of Sir Barnes Peacock, C.J., and Norman, -I., in the case of *Khettramani Dasi v. Kasi Nath Das* 2 B.L.R. A.C 15 : 9 W.R. 413 : 10 W.R. F.B. 89 and the decision of a Full Bench of the Allahabad High Court in the case of *Janki v. Nandram* ILR All. 194 are relied upon in support of that contention.

5. In *Khettramani's* case 2 B.L.R. A.C. 15 : 9 W.R. 413 : 10 W.R.F.B. 89 Sir Barnes Peacock observes: "The obligation of an heir to provide, out of the estate which descends to him, maintenance for certain persons whom the ancestor was legally or morally bound to maintain, is a legal as well as a moral obligation, for the estate is inherited subject to the obligation of providing such maintenance." And the reason why what was only a moral obligation in "the ancestor, becomes transformed into a legal obligation in the heir, is pointed out in the following passage in the same judgment: "The maintenance of a widow being a moral obligation on the late proprietor, the son who inherits takes the estate, not for his own benefit, but for the spiritual benefit of the late proprietor, and he ought to perform the obligation of maintaining the widow." Norman, J., in the same case, observes: "There is a large class of cases where, according to Hindu law, an heir succeeding to property takes it subject to the duty of maintaining those whom the late proprietor was bound to support." And the case of *Janki v. Nandram* ILR All. 191 is clearly in point.

6. The authorities referred to above clearly support the appellant's contention. But Dr. Trollock Nath Mitter, for the respondents, argues in the first place that the proposition enunciated by the learned Judges in *Khettramani's* case 2 B.L.R. A.C. 15 : 9 W.R. 413 : 10 W.R. F.B. 89 is merely an obiter dictum and is laid down in terms too broad and vague to admit of convenient practical application, and that the case of *Janki v. Nandram* ILR All. 194 has reference to a different School of Hindu law; in the second place that, even if the appellant's view of the law be correct, there is a finding in the judgment of the lower Appellate Court which is sufficient for the disposal of the case; and, in the third place, that the evidence as to the value of the property inherited by defendants Nos. 1 and 2 is so meagre that no definite rate of maintenance can be fixed upon that evidence, and that any remand in this case to ascertain the amount of maintenance would, therefore, be practically useless. These objections no doubt require consideration, and I shall examine them separately.

7. As to the first objection: no doubt the remark of the learned Judges in

Khettramani's case 2 B.L.R. A.C. 15 : 9 W.R. 413 : 10 W.R. F.B. 89 is an obiter dictum; but the proposition laid down has ample basis in the Hindu law, especially of the Bengal School which governs this case.-See Dayabhaga, Chap. XI, Section VI, para. 13. It is quite true that in the practical application of the principle embodied in the dictum to any particular case it will have to be determined whether the party claiming maintenance from the heir is one whom the late proprietor was morally bound to maintain; and that it is difficult to lay down any general rule for the determination of this last-mentioned point. But that alone would be no reason for not accepting the principle in any case. In *Janki v. Naudram* ILR All. 194 the Allahabad High Court held the principle applicable to the case of a widow claiming maintenance from her husband's brother who had inherited her father-in-law's property. That decision is based not upon any doctrine peculiar to the Mitakshara law but upon the doctrine of spiritual benefit which is fully recognised in Bengal. Having regard to that principle of the Hindu law and to the usages of the Hindu people, I see no reason to dissent from the decision of the Allahabad High Court. Each particular case, no doubt, has to be determined upon its own merits: in each case it will have to be determined whether, having regard to the relationship, the means and various other circumstances of the party claiming maintenance, the late proprietor was, according to the principles of Hindu law and to the usages and practice of the Hindu people, morally bound to maintain that party." It is not necessary for me to lay down any general rule on the point in this case. All that I am called upon to decide is whether the plaintiff in this case is a person whom, having regard to the circumstances of this case, her late father-in-law was morally bound to maintain.

8. Now that point does not appear to have been seriously contested in this case. It is true that the issue raised upon the point, namely, the second issue in this case, "whether the plaintiff is entitled to any maintenance, and, if so, at what rate," is very general in its terms; but the objection that was really raised before the lower Appellate Court was that the plaintiff was not entitled to maintenance, being only a deceased brother's widow, and there being no ancestral Immovable property in the hands of the surviving brothers; and the lower Appellate Court has allowed that objection holding that defendants were not shown to have inherited any Immovable property. Now that view of the law is clearly wrong. It does not matter whether the property inherited is moveable or immoveable.

9. As however the case will have to go back to the lower Appellate Court to ascertain the amount of maintenance, I shall leave it open to that Court to determine if there was anything peculiar in the circumstances of this case to show that the plaintiff was not a dependent member of her father-in-law's family within the meaning of the rule of Hindu law enjoining a moral obligation on a person to maintain such members of his family. In deciding this point the lower Appellate Court will, of course, attach due weight to the allegation of the plaintiff that it was her father-in-law's dying request to the defendants that they should support her, if that allegation is found to be true.

10. In support of the second objection the learned Vakeel for the respondents refers to a passage of the learned Judge's judgment, where he says: "It is sufficient that they (defendants) have paid the amount of Rs. 9, &c." Now, if the learned Judge had found that, having regard to the value of the property inherited by the defendants, the payment of Rs. 9 by them to the plaintiff was a sufficient discharge of their obligation to maintain her, that would, no doubt, have disposed of the case. But that clearly cannot be the meaning of the learned Judge. For he finds in the first place that, owing to their not having inherited any Immovable property, the defendants were under no legal obligation to maintain the plaintiff; and when, therefore, he says that it was sufficient that the defendants have paid Rs. 9, all that he means is that it was sufficient as a matter of generosity.

11. Then as regards the third objection: all that is said is, that the evidence as to the value of the property inherited is meagre. Of course if there had been no evidence adduced as to the value or nature of the property inherited by the defendants, though the question as to the amount of maintenance was raised in the second issue, perhaps a remand would have been unnecessary, and the suit would have been liable to be dismissed. But, as it is, there is some evidence on the record as to the extent of the property inherited, and it will be for the Lower Appellate Court to say what maintenance the plaintiff would be entitled to, having regard to the value of that property and to all the circumstances of the family. In dealing with this question the Court of Appeal below will have to take into consideration the allegation of the plaintiff (if it finds that allegation to be true), that maintenance, at the rate of Rs. 3 a month, was given to her by the defendants amicably for some months.

12. The case will, therefore, go back to the Lower Appellate Court to be disposed of in accordance with the directions contained in this judgment. Costs to abide the result.