

(1949) 10 MAD CK 0054

In the Madras High Court

Case No : Second Appeal No. 744 of 1947

Lakshmi Ammal and Others

APPELLANT

Vs

Narayanaswami Naicker and Others

RESPONDENT

Date of Decision : 24-10-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 25, Order 7 Rule 7, 107, 107(2)
Hindu Married Womens Right to Separate Residence and Maintenance Act, 1946 — Section 2, 2(4)

Citation : AIR 1950 Mad 321 : (1942) 55 LW 21

Hon'ble Judges : Viswanatha Sastri, J

Bench : Single Bench

Advocate : K. Parasurama Iyer, for the Appellant; K.V. Ramachandra Iyer, for the Respondent

Judgement

Viswanatha Sastri, J.—This is a second appeal preferred by a wife against the decree of dismissal by the Courts below of her suit against

her husband for separate maintenance. The suit was filed by the wife and her two minor unmarried daughters against defendant 1 for maintenance

on the ground that he had brought another woman into the house and was ill-treating the plaintiffs. It was found by the courts below -- and this

finding is not challenged in second appeal--that the ""other woman"" referred to by the plaintiffs was the second wife of the defendant and the ill-

treatment alleged by the plaintiffs was not true. Though the Hindu Married Woman's Rights to Separate Residence and Maintenance Act, XIX

[19] of 1946 (hereinafter called the Act) came into force on 23rd April 1946 and the judgment of the appellate Court dismissing the plaintiff's suit

was pronounced on 22nd October 1946 yet no reliance was placed on the Act in

support of the claim of the plaintiffs. The Act was not in force when the trial Court gave its decision or when the appeal was filed in the lower appellate Court. In second appeal, however, the claim of the plaintiffs is based only on the Act. Three points now arise for decision, (1) Whether it was open to me for the first time in second appeal, to entertain the plea based on the Act. (2) Whether on a true construction of Section 2 (4) of the Act, the wife and/or her minor daughters are entitled to maintenance in a case where the husband had married a second wife before the Act came into force; (3) what is the proper rate of maintenance to be awarded if the above two points are answered in favour of the plaintiffs. 2. On the first point, I am of the opinion that the suit being one for maintenance, it is permissible for this Court in second appeal to consider the effect of legislation which came into force after the disposal of the suit by the trial Court and during the pendency of the appeal in the appellate Court. The ordinary rule is that a Court should give its decision on the facts and circumstances as they existed at the date of the institution of the suit or at the date of any subsequent amendment of the pleadings and should not take notice of events or decisions which have happened after such date. But the Court has power in a proper case, to take notice of events subsequent to the suit in order to shorten litigation, avoid unnecessary expense and do complete justice between the parties. If a cause of action not available on the date of the suit accrues during its pendency, the Court has a discretion to grant an amendment of the plaint so as to enable the plaintiff to include the fresh cause of action. The terms of Order 6 Rule 17, Civil P. C. are very wide and do not prohibit such a course, see Doraisami Pillai Vs. Chinnia Goundan and Others, , Subbaraya Chetti v. Nachiar Ammal, (1918) 7 M. L. W. 403 : A. I. R. 1918 Mad. 143. When, however, the facts are not in dispute and the accrual of a cause of action subsequent to the suit is under the terms of a statute of which the Courts must take notice, a formal amendment of the plaint is unnecessary, for the Court is bound to administer the law of the land at the date when it gives its decision on a dispute. Mr. K. V. Ramachandra Iyer, the learned advocate for the respondent maintains that the remedy of the plaintiffs, if any, is by way of a fresh suit and I cannot, sitting in second appeal, interfere with the decrees of the Courts below which were right on the

materials they had before them. I cannot accept this contention. As pointed out by Bhashyam Aiyangar J. in *Kristnamachariar v. Mangammal*, 26

Mad. 91, a case decided before the new CPC of 1908, an appeal is under the processual law of this country, in the nature of a rehearing of the

cause. This view has been affirmed and accorded legislative sanction by the enactment of Section 107(2) and Order 41 Rule 33, Civil P. C. of

1908. The Judicial Committee acted on this principle and dismissed an appeal on the strength of legislation which came into force during the

pendency of the appeal before the Board, AIR 1936 49 (Privy Council) . The Federal Court exercising appellate jurisdiction over the Patna. High

Court has, in view of the Bihar Money-Lenders" Act (VII [7] of 1939) which came into forceduring the pendency of the appeal before the Federal

Court, reversed the decrees of the High Court and granted on the basis of the new Legislation, AIR 1939 74 (Federal Court) , AIR 1941 5

(Federal Court) . For these reasons I hold that it is open to the appellants to claim relief for the first time in second appeal on the basis of Act XIX

[19] of 1916.

3. On the second point I am of the opinion that the wife is entitled to a provision for separate residence and maintenance. Section 2 (4) of the Act

gives her such a right if her husband ""marries again"". The plaintiff 1 is the first wife and her husband had also taken a second wife before the Act

came into force. It is argued by Mr. K. V. Ramachandra Aiyar for the husband that the Act should not be construed to operate retrospectively so

as to impose fresh liabilities on husbands who had married second wives before the Act, in conformity with the Hindu law which permitted a

multiplicity of wives without an obligation arising from the fact of a second marriage to provide separate maintenance for the first wife. It is further

contended that the legislature would have used the words ""has married"" in Section 2 (4), if the provision was intended to operate retrospectively so

as to take away the existing rights and privileges of husbands. It is a familiar rule of interpretation of statutes that in the absence of express words

or a clear and necessary implication deducible from the enacted words, a statute should not be construed to have retrospective operation and

thereby impair vested rights, i. e., rights acquired before its enactment. Appeal has been made to this rule for interpretation by Mr. Ramachandra

Aiyar who, in his anxiety to non-suit the plaintiffs, contended that it would be blasphemous to attribute to the legislature a lack of precise and accurate knowledge of the rules of English grammar. He insisted that the words used were deliberately chosen and were so precise as to admit only of one meaning. I may say that I yield to none in my respect for the capacity of the Legislature, but I am not disposed to make a fetish of it, least of all, in a case like the present where the legislation was piecemeal and was intended as remedial measure to redress existing social wrongs and injustice. The draftsman of Section 2 (4), has been somewhat laconic and has assumed a knowledge of Hindu law and its recent developments on the part of those who have to interpret the Act. In construing an enactment such as this, I have to find out what the legislature must be taken to have really meant by the expressions which it has used, without necessarily attributing to it a precise appreciation of the shades of difference between the present tense and present perfect tense found on text books on English grammar.

4. The Act has to be interpreted and understood in the background of Hindu law as expounded by judicial decisions. Under the Hindu law, unaffected by the Act, the husband is under a personal obligation to maintain his wife and minor children, the obligation arising from the very existence of the relationship irrespective of the possession of any property, ancestral or acquired. The obligation of the husband to maintain the wife arises from and attaches on marriage. At the same time, the (wife, at any rate, after she attained puberty, was bound to reside with her husband and fulfil her duties in her husband's home. So far, the law is traceable to institutional writers and commentators, whose authority has been accepted by our Courts. The further developments of the law of domestic relations are the result of judicial decisions which have been on the whole progressive in outlook, but not sufficiently elastic or advanced, to satisfy the views of modern educated Hindus. After all, judicial legislation has only a very limited scope. The judge-made law may be summed up as follows: If the wife leaves her husband's home of her own accord or for reasons which are not considered proper or justifiable by law, she is not entitled to separate maintenance from her husband. If, however, her husband is guilty of such cruelty as endangers her personal safety or he keeps a concubine in his house or is suffering from a loathsome and

contagious disease such as leprosy, the wife is entitled to live apart and claim separate maintenance from him. The mere fact of a husband taking a second wife without any justifying cause and against the wishes of the first wife, does not by itself entitle the wife to separate maintenance if the husband is willing to keep her in his house. The object of Act XIX [19] of 1946 was to mitigate in some measure the hardships arising from an one-sided and prejudiced view of the rights of women and a state of law which, while allowing a man to marry as many wives as he wished denied the right of divorce to a married woman and yet subjected her to perpetual and implicit obedience to her husband. Modern minds imbued with modern ideas considered this as a blot on our jurisprudence and Act XIX [19] of 1946 was intended to alleviate the hardships caused by the then existing state of the law.

5. The rules of construction are applicable to a remedial enactment like Act XIX [19] of 1946 is stated in these terms in vol. 81, para. 653 of

Halsbury's Laws of England (Hailsham Edition) :

Judicial interpretation should be directed to avoid consequences which are inconvenient and unjust, if this can be done without violence to the

spirit or the language of a statute. If the language is ambiguous and admits of two views, that view must not be adopted which leads to manifest

public mischief or inconvenience or to injustice. If, however, the words are plain, the Court has no right to put an unnatural interpretation on them

simply to avoid mischief or injustice. In such a case, no further effect should be given to the enactment than is required for the purpose of the

legislature to be achieved. In advancement of a remedial statute, everything is to be done that can be done consistently with a proper construction

of it, even though it may be necessary to extend enacting words beyond their natural import and effect.

The object of the Act is to crystalise and give statutory recognition to certain parts of the judge-made law and at the same time to liberalise it in

other respects in favour of Hindu married women. Section 2 of the Act runs thus :

Notwithstanding any custom or law to the contrary a Hindu married woman shall be entitled to separate residence and maintenance from her

husband on one or more of the following grounds, namely--

(1) If he is suffering from any loathsome disease not contracted from her;

- (2) if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him;
- (3) if he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish ;
- (4) if he marries again;
- (5) if he ceases to be a Hindu by conversion to another religion;
- (6) if he is keeping a concubine in the house or habitually resides with a concubine;
- (7) for any other justifiable cause;

It is unreasonable to construe Section 2 (1) of the Act as meaning that the loathsome disease therein described should have been contracted by the

husband after the Act and if the disease had originated before the Act, the wife is not entitled to separate maintenance. "Cruelty" and "desertion

referred to in Section 2 (2) and (3) obviously do not exclude cruelty and desertion which started anterior to the passing of the Act. Similarly, the

reference to apostacy in Section 2 (5) and to the keeping of a concubine in the house in Section 2 (6) must contemplate events which had their

inception before the Act came into force. With reference to Section 2 (4), however, it is argued that the words ""marries again"" refer to a future

marriage, i. e., after the Act. I appreciate the verbal point of this interpretation but I am unable to accept it. In my opinion, the words are merely

descriptive of the position of the husband as a twice married man at the date when the wife's claim for separate maintenance is made under the Act

and do not exclude a husband who had taken a second wife before the Act from its operation. Reading Section 2 as a whole and the several

clauses of the section together, I see no reason to hold that while all the other clauses which use the present tense refer to a state of affairs in

existence at the date of a suit for separate maintenance by the wife, though it had its origin before the Act came into force, Clause (4) of Section 2

also must have reference only to an event which occurs after the Act comes into force. In AIR 1946 173 (Privy Council) the Judicial Committee

interpreted the words ""dying intestate"" in ""the Hindu law of Inheritance Amendment Act XX [20] of 1920,"" not as connoting the future tense but as

a mere description of the status of a deceased person, not having reference to the time of his death. Section 2 (4) of the Act ought, in my opinion,

to receive a similar interpretation. The Act was designed to remedy the mischief created by a state of the law which permitted a man to marry as often as he liked but denied to the superseded wife separate maintenance. A multiplicity of wives is not conducive to domestic peace or the happiness of the spouses and in recognition of this fact, the law has now provided separate maintenance for the superseded wife who remains chaste. There is no reason why the legislature should have made an invidious distinction between wives superseded by a second marriage of the husband before the Act and those who are so superseded by a second marriage after the Act. For these reasons I hold that the wife in the present case is entitled to separate maintenance u/s 2 (4) of the Act.

6. The last question is as regards the rate of maintenance that has to, be awarded. The Subordinate Judge considered that a sum of Rs. 15 per month for plaintiff 1 and her minor daughters would be a reasonable rate of maintenance. u/s 2 of the Act, it is only the wife that has a right to a provision for separate residence and maintenance from her husband. I therefore award plaintiff 1, the wife, a sum of Rs. 10 per mensem for her residence and maintenance recoverable from defendant 1 personally and by way of a charge on his share of the properties described in the plaint schedule from 1st May 1946, the maintenance for each month being payable by defendant 1 on the first day of the succeeding month.

7. To the extent indicated above, the second appeal is allowed. There will be no order as to costs in view of the failure of the plaintiff to substantiate the allegations with which they came to Court.

8. I was at first inclined to give leave to appeal, but after the hearing of this second appeal I am informed that two other learned Judges of this Court have taken the same view of the effect of the Act as I have done, in unreported decisions. Having regard to this circumstance, the very small amount involved and the poor means of the wife, I do not consider it necessary to grant leave and thereby add another chapter to this distressing story of domestic discord.