
(1924) 10 MAD CK 0119
In the Madras High Court

Mallipeddi Lakshamma

APPELLANT

Vs

Mallipeddi Venkatasubbiah and Others

RESPONDENT

Date of Decision : 24-10-1924

Acts Referred:

Citation : AIR 1925 Mad 795 : 87 Ind. Cas. 210 : (1925) 48 MLJ 266

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—This Second Appeal arises out of a suit for maintenance and for arrears. The plaintiff is the appellant before me in Second Appeal. In the plaint she claimed at the rate of Rs. 15 a month and arrears for six years. Her husband died 26 years before suit. The defendants pleaded that there was an arrangement by which her claim for maintenance was satisfied and also contended that the plaintiff was not entitled to ask for arrears. This arrangement was supposed to be 12 years before suit. Both the Lower Courts found against the arrangement pleaded by the defendants. The District Munsif ought to have framed an issue as to whether the plaintiff was entitled to arrears of past maintenance and how much, if any. It is true that if the defendants want to plead that the plaintiff is disentitled to recover any arrears of maintenance they must plead and prove the circumstances amounting to an abandonment. *Raja Yarlagadda Mallikarjuna Prasada Nayadu v. Raja Yarlagadda Durga Prasada Nayadu* ILR (1900) M 147 (PC). But it does not follow that because they have not pleaded such facts the plaintiff is entitled to all the arrears she claims especially in a case where her husband died twenty-six years before suit and when it does not appear, according to the findings of the Lower Appellate Court, that any demand was made prior to three years before suit. Mr. Somayya contends that the evidence of the 1st defendant as the 1st witness contains an admission that there was a demand 12 years before suit and it was followed by an arrangement. But I do not think much can be made of this admission as the arrangement was disbelieved by the Courts below; and I am inclined to think that the whole of the evidence of the 1st defendant must be found to be false. The result is we have

got in this case a widow whose husband died 27 years ago and a demand is made only three years prior to suit. In these circumstances I think a discretion remains with the Courts, while not disallowing totally the arrears claimed by the plaintiff, to cut down the period for which arrears may be granted. Vide Judgment in A.S. No. 75 of 1922. In such a case, if the plaintiff is anxious to get the whole of the amount, I think it is for her to adduce evidence that she was in need of those arrears. See Karbasappa v. Kallava ILR (1918) B 66. I do not think that the plaintiff has been prejudiced in this particular case owing to the absence of an issue as to the arrears of maintenance. Having regard to all the facts of this case I am not inclined to vary the order of the Courts below wherein arrears have been allowed only for three years.

2. The next question argued by Mr. Somayya is the rate of maintenance. I think this is entirely in the discretion of the Courts below and this Court in Second Appeal should not interfere unless it appears that the discretion has been very perversely exercised which does not seem to be the case here. There is no reason to interfere with the rate of Rs. 12 per mensem.

3. The third point argued by Mr. Somayya is that his client ought not to be made to pay the proportionate costs of the defendants in the Courts below. This point is conceded by the vakil for the respondents and has to be allowed.

4. The result is the Second Appeal will be allowed by declaring that the plaintiff will not be liable to pay the proportionate costs of the defendants in the Courts below. She will be entitled to recover only the proportionate costs incurred by her.

5. In Second Appeal the parties will give and take proportionate costs, but the plaintiff will not get the printing charges for printing the documents.