

(1948) 09 MAD CK 0022
In the Madras High Court

Mikkilineni Raghavayya

APPELLANT

Vs

Mikkilineni Rangamma and Another

RESPONDENT

Date of Decision : 15-09-1948

Acts Referred:

Citation : (1948) 61 LW 833 : (1948) 2 MLJ 579

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The appellant and the first respondent are husband and wife. She brought a suit against him for some property which he had

conveyed to her by gift, and in the alternative for a half share in some larger property. That suit was compromised; and according to the terms of it,

the wife was to get the property that she had claimed in the suit (the B schedule property) if she came back and continued to live with her husband.

If she was unable to live with him, she was to forfeit her right to the property itself; but she was to be given for her maintenance 7 salakas of paddy

a year. According to the husband's evidence, she came back to him three times; but she would not admit returning more than once. The argument

on behalf of the husband, which was accepted by the learned District Munsiff, was that since she had returned a second time, she had forfeited her

right under the compromise decree. In appeal, the learned Subordinate Judge distinguished the cases relied on by the husband and held that she

had not lost her right. He accordingly allowed the appeal and remanded the execution proceedings to the executing Court for taking further steps.

2. In both the Courts below the cases cited by the counsel on both sides related to maintenance suits where cruelty by the husband was alleged. It

has been held in many cases that where a maintenance decree has been passed and the wife resumes cohabitation with the husband, her right to

execute the decree has been lost, and that her only remedy in case of any fresh cruelty which necessitates her living apart from her husband is by

way of a fresh suit. The learned Counsel for the wife relied on some other cases in which the above cases were distinguished. It seems to me that

these cases are not at all relevant to the matter under consideration. We are not here concerned with the wife's right to maintenance under the

Hindu Law. She brought a suit for a specific item of property to which she claimed title; and in the compromise resulting out of the suit she was

given that property in one contingency and maintenance in another. So such right of maintenance as she has under the decree arose out of the

contract embodied in the decree, which she cannot lose unless there is some provision in the contract for a forfeiture of that right.

3. It has been argued that the plaintiff could return only once, and that if she left him after that, she would not be entitled to any maintenance. I am

unable to find such a provision, for the relevant clause is:

that in case after the plaintiff joins the first defendant...the plaintiff has to live separately, the first defendant should pay maintenance to the plaintiff.

Finally, it has been argued that the plaintiff has not made out that she had to live apart from her husband, because she was unable to get on with

him. Although the original Telugu does suggest that they should live separately only if they were unable to live together; yet there can be little doubt

in the circumstances of this case, where the parties had always great difficulty in getting on together, that the reason why the wife left the husband

was that she was unable to live with him. She obviously tried to live with him and returned to him three times, presumably on the pressure, or at the

suggestion, of relatives and well-wishers of both parties; and if she finally left him and did not return, it must have been because she felt that she

could no longer live with him. I therefore see no reason why the plaintiff should not receive the maintenance. It is no doubt true that she cannot

continually return to the husband, live with him for a time, and then depart again. She was however presumably welcomed by her husband when

she returned, or she would not have remained as long as she did. If the husband does not want her to come back and make further experiments in

leading a conjugal life, he can easily stop her from returning. It is moreover unlikely after this litigation that she will make" any further attempts to return to him.

4. The appeal is dismissed with the costs of the first respondent.