
(1965) 11 AP CK 0008
In the Andhra Pradesh High Court
Case No : Appeal No. 124 of 1962

Munagala Munemma

APPELLANT

Vs

Munagala Chengiah Chetty and Another

RESPONDENT

Date of Decision : 04-11-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35
Hindu Adoptions and Maintenance Act, 1956 — Section 23

Citation : AIR 1967 AP 40

Hon'ble Judges : Gopalakrishnan Nair, J

Bench : Single Bench

Advocate : T.S. Narasinga Rao, for K. Ramamurthy, for the Appellant; K. Raghava Rao, for the Respondent

Judgement

Gopalakrishnan Nair, J.

(1) This is a plaintiff's appeal from the judgment and decree of the Subordinate Judge of Chittoor in O. S. No. 66 of 1959. The plaintiff is the widow of M Govinda Chetty, who was the elder brother of the respondents defendants Govinda Chetty died in 1920 as a member of the joint family of which the present defendants and their father were members along with him. The joint family of the defendants was in affluent circumstances. The family of the plaintiff's father was also in very affluent circumstances. After the death of her husband, the plaintiff lived with her father. While so, the father of the defendants died in 1933. The father of the plaintiff also is dead.

(2) The plaintiff filed O. S. No. 4 of 1938 in the Subordinate Judge's Court, Chittoor for maintenance against the respondents. She then asked for a monthly maintenance of Rs. 50. That suit was compromised ultimately and a compromise decree directing the present respondents to pay a sum of Rs. 30 a month to the plaintiff for her maintenance was passed. O. S. No. 66 of 1959 out of which the present appeal arises, was instituted by the plaintiff for enhancement of the rate of maintenance on the ground that the cost of living and the prices of

commodities had considerably risen and that the sum of Rs. 30 was all too inadequate to maintain herself. The plaintiff, in view of the altered circumstances, claimed maintenance at the rate of Rs. 200 per month. She also claimed Rs. 200 a year for her clothing and a sum of Rs. 20 a month for residential accommodation. She gave a schedule of the properties owned by the defendants to justify her claim for maintenance etc., and asked for a charge on those properties.

(3) The defendants contested the suit stating that the properties shown in the schedule to the plaint gave an exaggerated account of the assets of the defendants and that the plaintiff cannot be given any increased maintenance.

(4) The learned Subordinate Judge, after going into the matter, passed a decree enhancing the plaintiff's maintenance from Rs. 30 a month to Rs. 50 a month. The plaintiff not being satisfied with the rate of maintenance, has filed the present appeal to this Court. The defendants have filed a memorandum of cross objections stating that the rate of Rs. 50 a month is excessive and has to be reduced.

(5) The learned Subordinate Judge was right in observing in his judgment that the cost of living had considerably increased in recent years and that the rate of maintenance recent years and that the rate of maintenance fixed in 1938 or 1939 could not hold good in 1959. The learned Judge was also right in holding that the plaintiff, who was 57 years old at the time, required the assistance of a cook. The plaintiff had asked for a cook and a servant, but the learned Subordinate Judge said that a cook alone was sufficient. After saying, all this, the learned Subordinate Judge fixed the maintenance of the plaintiff at Rs. 50 a month. The learned counsel for the appellant has strenuously urged that this rate of maintenance is really too low and inadequate for any human being to pull on. I am inclined to agree with this. For the maintenance of the plaintiff including the cost of her clothes and expenses for her residential accommodation. I think an amount much more than Rs. 50 a month is required. Otherwise, the plaintiff will have to semi-starve and go ill-clad and be practically without any residential accommodation. But it is urged for the respondents defendants that their means and resources do not justify any enhancement of the rate of maintenance indeed they say that in no event can the rate be increased from Rs. 50 a month. I do not think this is the inference that can or should be drawn from the evidence.

I shall not rely upon the evidence of the plaintiff which perhaps tended to exaggerate the value of the properties, the income and the assets of the defendants. But even confining myself to the evidence of the defendants, I do not think a sum of Rs. 50 a month was a fair, proper or adequate rate of maintenance to fix. The defendants partitioned their properties and assets under the original of Exhibit A-2 dated 2-6-1954. The 1st defendant, in his evidence stated that the lands which fell to his share at the partition evidenced by Exhibit A-2 will fetch an annual income of Rs. 1500 to Rs. 2000. The evidence on the other side of the defendants further shows that each of them got outstandings

worth Rs, 18,000. Even if one brushes aside the claim of the plaintiff that each of the defendants is worth more than a lakh and a half rupees it cannot be gainsaid that their annual income is not less than Rs. 5,000. Each of them got Rs. 1,500 to Rs. 2,000 from his share of the lands. Each of them had also outstandings to the tune of Rs. 18,000 in 1953. So, the income from the lands and the interest on the outstandings will come to not less than Rs. 5,000. If anything it is likely to be more, because it is the evidence of the defendants that I rely upon for this purpose and their evidence can well be expected to have underestimated their annual income.

If the total annual income of the two defendants is considered to be Rs. 5,000 although this is rather on the low side. I do not think the defendants can legitimately demur to a payment of Rs. 80 a month as maintenance to the widow of their elder brother viz., the plaintiff. This amount will comprise not only the expenses for food etc. but also the expenses for clothing and the cost of residential accommodation. I do not see how a lower rate can properly be fixed in the circumstances of this case. The rate of Rs. 80 a month works out to less than one-fifth of the total income of the defendants, according to their own estimate, which, as I already stated, must be taken to be an underestimate favourable to them. But, as it is not possible, in the circumstance of this case, to weigh the matter in golden scales and arrive at a rate with scientific precision and accuracy, I think I have to content myself with a somewhat rough and ready estimate which will be fair to both sides and unfair to none. In doing so, I think, a sum of Rs. 80 a month will be a fair, proper and reasonable rate of maintenance to be awarded to the plaintiff. The evidence relating to the properties, assets and the annual income of the defendants do justify the award of this rate of monthly maintenance. I therefore, modify the decree of the Court below and increase the rate of maintenance payable to the plaintiff from Rs. 50 a month to Rs. 80 a month. Both the defendants will pay half of this amount to the plaintiff every month. As desired by the agreed to by the learned counsel for the appellant plaintiff, the maintenance at the rate of Rs. 80 a month will be paid only from January, 1963. Till January, 1963, the rate of maintenance payable to the Plaintiff will be only Rs. 50 a month.

(6) There is another point which arises for consideration and it relates to costs. The lower Court, in its decree, directed the plaintiff to pay the costs of the defendants. I think it was harsh and improper. It may be that the plaintiff claimed a high rate of maintenance. But in the written statements, the defendants pleaded for a ridiculously low and starvation rate of maintenance. It is not ordinarily possible for a plaintiff to claim any exact amount as rate of maintenance with a Court, can without any modification allow. Once it is found that the rate of maintenance previously awarded has to be substantially enhanced, there is no point in asking the plaintiff to pay costs to the defendants. The defendants really lost in the Court below as well as here because their case was that even the sum of Rs. 30 which was awarded under the decree in O.S. 4 of 1938 was on the high side. In the circumstances, I do not think that the Court

below was right in asking the plaintiff to pay any costs to the defendants. I therefore, hold that the proper order as to costs is to ask each side to bear its own costs in the Court below.

(7) The plaintiff will get as costs in this Court the amount of Court-fee payable on the memorandum of appeal and nothing more.

(8) The appeal is allowed to this extent indicated above and dismissed as to rest.

(9) From what I have stated above, it will be seen that the cross objections of the defendants-respondents have no merit. They are therefore dismissed. There will be no order as to costs in the cross objections.

(10) The Court-fee payable to the Government in the suit as well as in this appeal will be recovered from the plaintiff.

(11) For the maintenance, a charge will be given on the properties over which the decree of the lower Court has given a charge.

(12) Appeal partly allowed: cross-objections dismissed.