

(1893) 10 MAD CK 0002
In the Madras High Court

Seshamma

APPELLANT

Vs

Subbarayadu

RESPONDENT

Date of Decision : 26-10-1893

Acts Referred:

Citation : (1895) ILR (Mad) 403

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. The contention in this appeal is that the Judge is in error in disallowing arrears of maintenance claimed for six years prior to the suit. It is true that

the right to maintenance is inherent in her status as brother's widow and is a legal right. So it was observed in Venkopadhyaya v. Kavari Hengusu

2 M.H.C.R. 36 that it is a legal right and that the only bar to the enforcement of a purely legal right is the lapse of the time required by the statute of

limitations to bar the remedy. It was held also by the Bombay High Court in Jivi v. Ramji ILR 3 Bom. 207 that this legal right exists irrespective of

demand and refusal, and that demand and refusal do not create the right, though they may limit it. As observed by Mr. Mayne in his treatise on

Hindu Law, 4th edition, Section 417, the award for arrears of maintenance is in the discretion of the Court; and it may be refused where a widow

has chosen to live apart from her husband's family without sufficient cause, and has sued not only for a declaration of her right to future

maintenance, but also for a lump sum as arrears for the period during which she resided with her family.

2. Though demand and refusal are not necessary to create the right to maintenance, yet they may show that the right was only insisted on from the

date of such demand and refusal and thereby limit the period for which a claim to arrears is entitled to recognition. In a Hindu family each member is ordinarily maintained in the family house, and a widow may quit that house for her own convenience to live with her parents for a time and then resume her residence in her husband's family. It may also happen that when her father is well to do no need for maintenance from her husband's family is felt by her, and there is, therefore, no intention to claim such maintenance unless it becomes necessary for her to do so. To justify an award of arrears the circumstances of the case should be such as to raise a presumption that there was an infraction of her right to maintenance or a wrongful withholding of maintenance for the period for which arrears are awarded. On this view the decision of the Judge is correct, and we dismiss this appeal with costs.