

SUPREME COURT OF INDIA

Mothey Anja Ratna Raja Kumar

Vs.

Koney Narayana Rao

C.A.No.26-27 of 1951

(Saiyid Fazl Ali, Mehr Chand Mahajan and Vivian Bose,JJ.,)

23.11.1951

JUDGEMENT

Saiyid Fazl Ali, J.,

1. These two appeals arise out of a suit filed by Koney Narayan Rao and 3 others (who are the respondents in Appeal No. 26 and the appellants in Appeal No. 27 and will hereinafter be referred to as "the plaintiffs") against one Ganga Raju (since deceased) and his adopted son, Mothey Anja Ratna Raja Kumar (who is the appellant in Appeal No. 26 and the respondent in Appeal No. 27)

2. The plaintiffs are the illegitimate sons of Ganga Raju, and their suit was for maintenance at the rate of Rs. 400 per mensem for each of them with a charge on the joint family property of Ganga Raju. Both the District Judge of West Godavari who tried the suit and the Madras High Court have held that the plaintiffs are the illegitimate sons of Ganga Raju and that they are entitled to maintenance. The trial court decreed maintenance at the rate of Rs. 100 per mensem for each of the plaintiffs, but the High Court has enhanced the amount of maintenance to Rs. 200 per mensem. Both the parties have now filed appeals in this Court against the decree of the High Court.

3. The main dispute in these appeals is as to the quantum of maintenance. It was contended in the course of the arguments that among the regenerate classes, an illegitimate son cannot claim maintenance as a matter of right and all that he can get is a compassionate allowance. This contention was based on certain observations made by the Madras High Court in the case of -'Gopaldasami Chetti v. Arunachellam Chetti', 27 Mad 32 (A), but it may be pointed out that the expression "compassionate allowance" was never used by the learned Judges in that case and all that they have said is that an illegitimate son can be allowed only a "compassionate rate of maintenance." In our opinion, even that expression is hardly appropriate, and the true legal position has been laid down in -- 'Ananthaya v. Vishnu', 17 Mad 160 (B), where it has been held that under the Mitakshara law, an illegitimate son is

entitled to maintenance as long as he lives, in recognition of his status as a member of his father's family and by reason of his exclusion from inheritance among the regenerate classes.

4. Turning now to the question of the rate of maintenance, it is common ground that Ganga Raju had amassed a large amount of property consisting of agricultural lands houses ,estate villages, etc. and also had invested money on a large scale. It further appears from the evidence that during his lifetime he had spent considerable sums of money on the plaintiffs in trying to set them up in life, but the investments he had made on their account in different kinds of business did not bear fruit. This however is a matter of past history, and both the courts below were right in proceeding to determine the exact amount of the income from the properties of Ganga Raju, since that is the principal factor to be considered in fixing the rate of maintenance to be paid to the plaintiffs. The trial Court estimated the annual income from the properties to be Rs. 40,000. but the High Court has estimated it to be about Rs. 45,000. Further, according to the High Court, the outstandings, i.e., moneys due from debtors and other sources, amount to over 5 lakhs of rupees. We have verified these figures with reference to the evidence on record, and they appear to be substantially correct. '

5. One of the points which seems to have weighed with the High Court in increasing the amount of maintenance fixed by the trial Court was that since the judgment of the trial Court was delivered Ganga Raju had died, with the result that the entire income of the properties was now to be enjoyed by the adopted son instead of its being enjoyed by him and Ganga Raju. In our opinion, that is hardly a relevant consideration. There are two other matters which the High Court appears to have overlooked, these being firstly, that Ganga Raju had suffered some losses in his business transactions, and secondly that the plaintiffs are able-bodied adults having their own earning capacity.

6. Having given the matter our full consideration, we have come to the conclusion that the proper amount of maintenance for each of the plaintiffs should be fixed at Rs. 125 per mensem, and we order accordingly.

7. Appeal No. 26 is therefore partly allowed, and the decree of the High Court should be varied to the extent indicated. Appeal No. 27 is dismissed. In the circumstances of the case we make no order as to costs of the parties in this Court. The plaintiffs should however get costs in proportion to their success in the Courts below.

8. Order accordingly.