

Amireddi Rajagopala Rao and Others

Vs

Amireddi Sitharamamma and Others

Civil Appeal No. 434 of 1963

(K. Subha Rao, Raghuvar Dayal, J. R. Madholkar, R. S. Bachawat, V. Ramaswami – I JJ)

18.02.1965

JUDGMENT

BACHAWAT, J.-

The first respondent, Seetharamamma, is a Brahmin woman. She was married to one Ramakrishnayya. During the life-time of her husband she became the concubine of one Lingayya, a Sudra by caste. From 1938 until the death of Lingayya in February, 1948, she was the permanently kept concubine of Lingayya, and lived with him. During this period and thereafter, she preserved sexual fidelity to Lingayya. The second, third and fourth respondents are the sons of the first respondent by Lingayya. The husband of the first respondent is still alive. The appellants are the brothers and brothers' sons of Lingayya. Lingayya was separate in estate from his brothers and brothers' sons. The parties are residents of Choragudi, Bapatla, now in Andhra Pradesh and governed by the Mitakshara school of Hindu law. In the plaint, as originally filed, the respondents claimed that they were exclusively entitled to the estate left by Lingayya. The Subordinate Judge and the High Court found that as the first respondent was and continued to be a married woman while she lived with Lingayya and bore him children, she was not the lawfully wedded wife of Lingayya and the children born of the union were not his legitimate sons, nor were they Dasiputras and as such entitled to his properties. The suit was originally dismissed by the Subordinate Judge, but on appeal, the High Court gave the respondents leave to amend the plaint by making suitable averments for the award of maintenance, and remanded the suit for trial on the question of maintenance. At the subsequent trial on the amended plaint, the Subordinate Judge decreed the respondents' claim for maintenance and consequential reliefs and awarded to them maintenance during their lifetime out of the estate of Lingayya. The Subordinate Judge passed his decree on September 20, 1954. During the pendency of the appeal preferred by the appellants before the High Court, the Hindu Adoptions and Maintenance Act of 1956 (hereinafter referred to as the Act) came into force. The main controversies in the appeal before the High Court were (1) whether the provisions of the Act are retrospective; and (2) whether a married woman who left her husband and lived with another as his permanently kept mistress could be regarded as an Avaruddha Stree. In view of the importance of these questions, the appeal was referred to a Full Bench of the High Court. On the first question, the High Court held that the relevant provisions of the Act applied only to the estates of Hindus dying after the commencement of the Act, and that the right of the respondents to maintenance during their lifetime under the Hindu law in force at the time of the death of Lingayya was not affected by the Act. On the second question, the High Court held that the first respondent was an Avaruddha Stree of Lingayya, and was entitled to maintenance from his estate, though her husband was alive and the connection with Lingayya was adulterous. The High Court agreed with the Subordinate Judge with regard to the quantum of maintenance.

On behalf of the appellants, it is contended that the respondents are not entitled to claim any maintenance from the estate of Lingayya under the Hindu law as it stood prior to the commencement of the Act, because (a) the first respondent is not a Dasi and the second, third and fourth respondents are not Dasiputras of Lingayya, and this point is concluded by the previous judgment of the High Court, which has now become final between the parties; (b) the husband of the first husband was and is still alive, and the connection of the first respondent with Lingayya was adulterous during the period of her intimacy with Lingayya and while she bore him children; (c) the first respondent being a Brahmin adulteress and Lingayya being a Sudra, the connection was Pratiloma and illegal.

Now, under the Hindu law as it stood before the commencement of the Act, the claim of a Dasiputra or the son of a Dasi, that is, a Hindu concubine in the continuous and exclusive keeping of the father rested on the express texts of the Mitakshara, Ch. I, s. 12, V. 1, 2 and 3. In the case of Sudras, the Dasiputra was entitled to a share of the inheritance, and this share was given to him not merely in lieu of maintenance but in recognition of his status as a son, see Gur Narain Das and another v. Gur Tahal Das and others [[1952] S.C.R. 869, 875]. But the illegitimate son of a Sudra by his concubine was not entitled to a share of the inheritance if he were the offspring of an incestuous connection, see Datti Parisi Nayudu v. Datti Bangaru Nayudu [[1869] 4 Madras High Court Reports. 204], or if at the time of his conception, the connection was adulterous, see Rahi and others v. Govind Valad Teja [[1875] I.L.R. 1 Bom. 97], Narayan Bharthi v. Laving Bharthi and others [[1878] I.L.R. 2 Bom. 140], Tukaram v. Dinnkar [[1931] 33 B.L.R. 280]. Such an illegitimate son could not claim the status of a member of his father's family and could not get a share of the inheritance as a Dasiputra under the express text of the Mitakshara. For the reason, the previous judgment of the High Court rightly held that the second, third and fourth respondents were not Dasiputras of Lingayya, and could not claim the inheritance. But the point whether they are entitled to maintenance out of the estate of Lingayya is not concluded by the previous judgment. It is well recognised that independently of the express texts of the Mitakshara, Ch. I s. 12, V. 3, the illegitimate son of a Sudra was entitled to maintenance out of his father's estate, though his mother was not a Dasi in the strict sense and though he was the result of a casual or adulterous intercourse. It was not essential to his title to maintenance that he should have been born in the house of his father or of a concubine possessing the peculiar status therein. See : Muttusawmy Jagavera Yettappa Naicker v. Vencataswara Yettayya [[1868] 12 M.I.A. 293, 220]. The illegitimate son of a Sudra was entitled to maintenance out of his father's estate, though at the time of his conception his mother was a married woman, her husband was alive and her connection with the putative father was adulterous, see Rahi v. Govind [[1878] I.L.R. 2 Bom. 140], Viraramuthi Udayan v. Singaravelu [[1877] I.L.R. 1 Mad. 306], Subramania Mudaly v. Valu [[1911] I.L.R. 34 Mad. 68]. According to the Mitakshara school of law, the illegitimate son a Sudra was entitled to maintenance from his father's estate during his lifetime. Under the Hindu law, as it stood prior to the commencement of the Act, the first, second and third respondents were, therefore, entitled to maintenance during their lifetime, out of the estate of Lingayya.

The claim of an Avaruddha Stree or woman kept in concubinage for maintenance for her lifetime against the estate of her paramour rested on the express text of Mitakshara, Ch. 2, s. 1, Vs. 27 and 28 read with V. 7. In Bai Nagubai v. Bai Monghibai [[1926] I.L.R. 50 Bom. 604, 614, (P.C.)], where the man and the woman were Hindus and the paramour was governed by the law of the Mayuka, Lord Darling said :-

"providing the concubinage be permanent, until the death of the paramour, and sexual fidelity to him be preserved, the right to maintenance is established; although

the concubine be not kept in the family house of the deceased."

The law of the Mitakshara is in agreement with the law of the Mayuka on this point. In the instant case, the first respondent being continuously and exclusively in the keeping of Lingayya until his death for about 10 years, the concubinage has been found to be permanent. She observed sexual fidelity to Lingayya during his lifetime, and after his death has continued to preserve her qualified chastity. In *Akku Pralhad v. Ganesh Pralhad*, [I.L.R. [1945] Bom. 216] a Full Bench of the Bombay High Court held that a married woman who left her husband and lived with her paramour as his permanently kept mistress could claim the status of an Avaruddha Stree by remaining faithful to her paramour, though the connection was adulterous, and was entitled to maintenance from the estate of the paramour so long as she preserved her sexual fidelity to him. This Full Bench decision overruled the decision in *Anandilal Bhagchand v. Chandrabai* and followed the earlier decisions in *Khemkore v. Umiashankar*, and *Bingareddi v. Lakshmawa*. The decision in *Akku Pralhad v. Ganesh Pralhad* [I.L.R. [1945] Bom. 216] has been the subject of strong criticism in Mayne's Hindu law and Usage, 11th Edn., Art. 683, p. 816 edited by Sri N. Chandrasekhara Aiyar and in a learned article in (1946) 1 M.L.J., Notes of Indian cases, p. 1, but the Full Bench of the Andhra Pradesh High Court in the instant case found themselves in complete agreement with the Bombay decision. We are of the opinion that the Bombay decision lays down the correct law.

Avaruddha Stree, as understood by Vijnaneswara, includes a Swairini or adulteress kept in concubinage. While dealing with the assets of a deceased Hindu not liable to partition, Mitakshara, Ch. I, s. 4, V. 22, he says, "Swairini and others who are Avaruddha by the father, though even in number, should not be divided among the sons". Colebrooke's translation of the passage is as follows : "But women (adulteresses and others) kept in concubinage by the father must not be shared by the sons, though equal in number". In his commentary on Yajnavalkya's Verse 290 in Vyavahara Adhyaya, Ch. 24 on Stree Sangrahana, Vijnaneswara, citing Manu, explains Swairini as a woman who abandons her own husband and goes to another man of her own Varna out of love for him. Thus, a Swairini and other adulteress kept in concubinage could claim the status of an Avaruddha Stree. The connection was no doubt immoral, but concubinage itself is immoral; yet it was recognised by law for the purpose of founding a claim for maintenance by her and her illegitimate sons. The paramour may be punishable for the offence of adultery, but the concubine is not punishable as abettor of the offence.

A concubine was not disqualified from claiming maintenance by reason of the fact that she was a Brahmin. The claim of a concubine who was a respectable woman of the Brahmin caste and her illegitimate sons for maintenance was allowed in *Hargovind Kuari v. Dharam Singh* [[1884] I.L.R. 6 All. 329]. No doubt, a Pratiloma connection is denounced by the Smriti-writers and the Commentators, and before the Hindu Marriages Validity Act, 1949 (Act XXI of 1949) Pratiloma marriages between a Sudra male and a Brahmin female were declared invalid in *Bai Kashi v. Jamnadas* [[1912] 14 Bom. L.R. 547] and in *Ramchandra Doddappa v. Hanamnaik Dodnaik* [[1936] I.L.R. 6 O m. 75], but even those cases recognise that a Brahmin concubine in the exclusive and continuous keeping of a Sudra until his death was entitled to claim maintenance. We express no opinion on the question whether a Pratiloma marriage was valid under the old Hindu law, but we are satisfied that the claim of the respondents for maintenance cannot be defeated on the ground that the first respondent was a Brahmin and her paramour was a Sudra.

We are satisfied that the respondents were entitled to maintenance during their lives out of the estate of Lingayya under the Hindu law as it stood in 1948, when Lingayya died, in December 1949, when the suit was instituted and also in 1954, when the suit was decreed by the Subordinate Judge. The

question is whether this right is taken away by the Hindu Adoptions and Maintenance Act, 1956, which came into force during the pendency of the appeal to the High Court. The Act is intended to amend and codify the law relating to adoptions and maintenance among Hindus. Section 4 of the Act is as follows :

"4. Save as otherwise expressly provided in this Act, -

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

Section 21 defines "dependants" as meaning certain relatives of the deceased, and under sub-cl (viii), includes "his or her minor illegitimate son, so long as he remains a minor". A concubine is not open of the persons within the definition of "dependants" given in s. 21, and an illegitimate son is not a dependant when he ceases to be a minor. Section 22 reads thus :

"22. (1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provision of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the mainten (2) or sub-section (3), no person who is himself or herself the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act."

Sub-section (1) of s. 22 imposes upon the heirs of a deceased Hindu the liability to maintain the dependants of the deceased defined in s. 21 out of the estate inherited by them from the deceased, but this liability is subject to the provisions of sub-s. (2), under which only a dependant who has not obtained by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of the Act is entitled, subject to the provisions of the Act, to maintenance. Specific provision is thus made in s. 22 with regard to maintenance of the dependants defined in s. 21 out of the estate of the deceased Hindu, and in view of s. 4, the Hindu law in force immediately before the commencement of the Act ceases to have effect after the commencement of the Act with respect to matters for which provision is so made. In terms, ss. 21 and 22 are prospective. Where the Act is intended to be retrospective, it expressly says so. Thus, s. 18 provides for maintenance of a Hindu wife, whether married before or after the commencement of the Act, by her husband, s. 19 provides for the maintenance of a Hindu wife, whether married before or after the commencement of the Act,

by her father-in-law, after the death of her husband, and s. 25 provides for alteration of the amount of maintenance whether fixed by a decree of Court or by agreement either before or after the commencement of the Act. Now, before the Act came into force, rights of maintenance out of the estate of a Hindu dying before the commencement of the Act were acquired, and the corresponding liability to pay the maintenance was incurred under the Hindu law in force at the time of his death. It is a well-recognised rule that a statute should be interpreted, if possible, so as to respect vested rights. See Craies on Statute Law, 6th Edn. (1963), p. 397. We think that ss. 21 and 22 read with s. 4 do not destroy or affect any right of maintenance out of the estate of a deceased Hindu vested on his death before the commencement of the Act under the Hindu law in force at the time of his death.

On the death of Lingayya, the first respondent as his concubine and the second, third and fourth respondents as her illegitimate sons had a vested right of maintenance during their lives out of the estate of Lingayya. This right and the corresponding liability of the appellants to pay maintenance are not affected by ss. 21 and 22 of the Act. The continuing claim of the respondents during their lifetime springs (out of the original right vested in them on the death of Lingayya and is not founded on any right arising after the commencement of the Act.

In *S. Kameswaramma v. Subramanyam* [A.I.R. 1959 Andhra Pradesh 269], the plaintiff's husband had died in the year 1916, and the plaintiff had entered into a compromise in 1924 fixing her maintenance at Rs. 240 per year and providing that the rate of maintenance shall not be increased or reduced. The question arose whether, in spite of this agreement, the plaintiff could claim increased maintenance in view of s. 25 of the Hindu Adoptions and Maintenance Act, 1956. It was held that, in spite of the aforesaid term of the compromise, she was entitled to claim increased maintenance under s. 25. This conclusion follows from the plain words of s. 25, under which the amount of maintenance, whether fixed by decree or agreement either before or after the commencement of the Act, may be altered subsequently. The decision was therefore, plainly right. No doubt, there are broad observations in that case to the effect that the right to maintenance is a recurring right and the liability to maintenance after the Act came into force is imposed by s. 22, and there is no reason to exclude widows of persons who died before the Act from the operation of s. 22. Those observations were not necessary for the purpose of that case, because the widow in that case was clearly entitled to maintenance from the estate of her deceased husband dying in 1916 under the Hindu law, as it stood then, independently of ss. 21 and 22 of the Act, and in spite of the compromise fixing the maintenance before the commencement of the Act, the widow could in view of s. 25 claim alteration of the amount of the maintenance. The decision cannot be regarded as an authority for the proposition that ss. 21 and 22 of the Act affect rights already vested before the commencement of the Act. We, therefore, hold that the claim of the respondents to maintenance for their lives is not affected by the Act.

We see no reason to interfere with the concurrent finding of the Courts below with regard to the quantum of maintenance.

In the result, the appeal is dismissed with costs.

Appeal dismissed.

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