

ANDHRA PRADESH HIGH COURT

S. Kameshwaramma

Vs.

S. Subramanyam

Appeal No. 394 of 1952

(K. Subba Rao, C.J. and Mohd. Ahmed Ansari, J.)

19.07.1957

JUDGMENT

K. SUBBA RAO, C.J.

1. This is a plaintiff's appeal against the decree and judgment of the Court of the Subordinate Judge, Kakinada, dismissing O.S. No. 137 of 1950 filed by the appellant in forma pauperis for recovery of maintenance at an enhanced rate.

2. The plaintiff's husband late Achanna and defendants 1 to 3 are members of a joint Hindu family. Plaintiff's husband died in the year 1916 without issue. After his death, the plaintiff filed O.S. No. 41 of 1923 for recovering maintenance from the members of the family. That suit was compromised and, under the compromise decree made on dated 2nd August, 1924, she was awarded maintenance at the rate of Rs. 240/- per year. It was also agreed between the parties that "the plaintiff should not raise any dispute claiming enhanced rate of maintenance and" the defendants should not raise any dispute for reducing that rate. Pursuant to the compromise, the plaintiff had been receiving maintenance at the agreed rate till she filed the present suit. In the suit, she claimed that the family had become very rich and that, in the changed circumstances, she would be entitled to maintenance at the rate of Rs. 2,400/- per year and also to cash of Rs. 3,000/- for performing vrathams, nomulus etc.

3. The defendants stated that the present value of the property owned by them was exaggerated and that, in any event, she was bound by the compromise decree and could not claim any amount higher than that fixed thereunder.

4. The learned Subordinate Judge held that the compromise decree precluded her from claiming an enhanced rate of maintenance. He expressed the view that, if it was open to him to fix maintenance, he would fix it at a sum of Rs. 2,400/- having regard to the changed circumstances.

In the result, he dismissed the suit. The plaintiff has preferred the above appeal.

5. Learned Counsel for the appellant contends that the compromise decree of the year 1924 does not preclude his client from claiming an enhanced rate of maintenance having regard to the changed circumstances. The terms of the compromise, which were embodied in the decree, are given in Ex. A-2. Under that decree, the defendants agreed to pay the plaintiff a sum of Rs. 240/- per year towards her maintenance and charge the same on specified items of the family property. The crucial terms of the agreement, which is the subject matter of the dispute between the parties reads thus :

"Both the parties shall not raise disputes between themselves, the plaintiff pleading for enhancement of the rate from the said Rs. 240/- and the defendants for the reduction of the rate."

6. The question is when the parties agreed not to claim either enhancement of maintenance or reduction, as the case may be, and on that basis a certain amount was fixed as maintenance, is it open to either of them to go behind the decree ? This question is directly covered by the decisions of two Division Benches of the Madras High Court.

7. The validity of a contract by a Hindu widow with her husband's coparceners to receive a fixed maintenance per annum and not to claim any increase in future even in the case of changed circumstances was considered by Phillips and Venkata Subba Rao, JJ. in *Mohieswara Rao v. Durgamba*¹, After noticing the cases cited at the Bar, the learned Judge observed at p. 310 (of ILR Mad) :

"They undoubtedly recognize the fact that an agreement to receive maintenance at a particular rate is not binding for all time; but none of them is authority for holding that, when the agreement goes further and binds the widow not to claim a higher rate even in changed circumstances, it is not binding on her."

8. This view was accepted by another Division Bench of the Madras High Court in *Kameshwaramma v. Thammanna*² There, the award, which decided the widow's right to maintenance and was acted upon by her, provided that she should not be entitled to an increase in the rate of maintenance even if the circumstances changed. The learned Judges held that the award embodied an agreement between her and her husband's coparceners under which she was to be paid a specified sum for life without any right in either party to claim variation, whatever change there might be in the circumstances, and that it was binding upon the widow. We are bound by the aforesaid two decisions. Here, as there, the parties entered into a solemn agreement not to claim enhancement or reduction in the rate of maintenance, as the case may be and the said agreement is binding on the plaintiff. She could not therefore, claim any enhancement in the rate of maintenance owing to changed circumstances.

9. Even so, learned Counsel for the appellant contends that a fresh right to claim higher rate of maintenance has accrued to her under the Hindu Adoption and Maintenance Act, 1956 (Act LXXVIII of 1956). The Act became law on 21-12-1956 when it received the assent of the President. Section 25 of the Act says :

"The amount of maintenance whether fixed by a decree of Court or by

¹ ILR 47 Mad 308

² 1939-2 Mad LJ 460

agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration."

10. Learned counsel for the respondents contends that this section does not enlarge the preexisting right of the widow for maintenance but only gives a statutory recognition to it. In other words, he says that, if there was an agreement awarding maintenance at a particular rate, the widow would be entitled under the section to claim an enhanced rate if there was a material change in the circumstances justifying the alteration; but if she bound herself not to claim higher rate in changed circumstances, such an agreement could not be reopened under the section. In support of his argument, learned counsel asks us to read the word "agreement" in the section in a restricted sense so as to include only the former kind of agreement and not the latter. We do not see any justification, to restrict the scope of the word "agreement" in the manner suggested by the learned counsel. The Act both amended and codified the law relating to maintenance among Hindus. The word "agreement" is admittedly comprehensive enough to take in an agreement of either description. The Legislature does not expressly or by necessary implication exclude any category of agreements fixing maintenance, from the operation of the section. If there was a valid reason for binding the parties to the terms agreed upon between them, there would also be equal justification for protecting the widow from being bound by an unjust agreement precluding her from claiming enhanced maintenance in changed circumstances. We do not, therefore, see any justification not to give the widest meaning to the word "agreement" which it can bear. We hold that, notwithstanding the agreement by the widow not to claim higher rate of maintenance in the changed circumstances, she would be entitled to enhanced maintenance under the provisions of the Act, if, there was a material change in the circumstances.

11. Learned counsel for the respondents then argues that, even if Section 25 can be invoked, it would not help the appellant as her husband died before the Act came into force. To put it differently, the argument is that Section 25 applies only to a widow, whose husband died after the Act came into force. The provisions of Section 25 do not impose any such restriction, or limitation. The Act is an amending and codifying Act. Under Section 4, save as otherwise expressly provided in this Act, the pre-existing law ceased to apply with respect to the matter for which provision is made in the Act and in so far as it is inconsistent with any of the provisions contained therein. Therefore, where the Act makes any provision for a given situation, the provisions of the Act shall govern it and not the previous law. Section 21 gives a list of the

dependants entitled to maintenance under the Act. One of such dependants is the widow of the deceased so long as she does not re-marry. Section 22 imposes a liability upon the heir of a deceased Hindu to maintain the dependant. Section 22(1) reads :

"(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 provisions of this Act, to maintenance from those who take the estate."

12. Section 22(1) which imposes a liability on the heir to maintain the dependants of the deceased Hindu is in general terms and does not say or imply that the dependant widow's husband should have died after the Act came into force. A right to maintenance is a recurring right and the liability to maintain after the Act came into force is imposed by Section 22. Having regard to the object of the Act, namely to amend and codify the law, there is no reason to exclude widows of persons who died before the Act, from the operation of Section 22. Sub-Section 2, which is really in the nature of an exception to Section 22, excludes from the operation of Section 22(1) a dependant, who obtained a share in the estate of a Hindu dying after the commencement of the Act. Where the statute intends to limit the operation of a particular provision to a Hindu dying after the Act came into force, it specifically says so as in the Section, Sub-Section (2) becomes necessary as, after the Act, some dependants described in Section 21 acquired right to inherit the property of the deceased under the Hindu Succession Act and, therefore, it has been enacted with a view to avoid conferring a double benefit on them.

13. A combined reading of the provisions of Sub-Ss. (1) and (2) indicates that while Sub-Section (1) imposes a liability on a heir and confers a correlative right on the dependant to claim maintenance under provisions of the Act, Sub-Section (2) excludes the dependants acquiring a share in the property of a person, who died after the Act, from claiming maintenance. In view of the general terms of Section 21, we must hold that, under the Act, every dependant, subject to limitations laid down in Section 22, has a right to claim maintenance against the heir of a Hindu whether he died before or after the Act. We hold that the plaintiff is entitled to maintenance under the Act from 21-12-1956. The learned Judge, having regard to the changed circumstances, held that the plaintiff would be entitled to maintenance at Rs. 2,400/- per year. We accept the rate as reasonable in the circumstances of the case.

14. For convenience of payment, the defendants would pay the proportionate amount of the maintenance payable at that rate one week in December 1956 on or before 15-8-1957, and pay maintenance at the same rate every subsequent year on or before 15th of January of every succeeding year. The decree of the lower Court is accordingly modified. The parties will bear

their own costs.
Order accordingly.