

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

VALU, WIDOW OF ABA (ORIGINAL DEFENDANT), APPELLANT, v. GANGA,
WIDOW OF BABLINGAYA (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Hindu widow—Unchastity—Right to maintenance.

1882
November 27.

An unchaste widow is not entitled even to a bare maintenance, except perhaps from her son.

Honamma v. Timannabhat (1) dissented from.

THIS was a second appeal from the decision of R. F. Mactier, Judge of the District Court of Satara, affirming the decree of K. B. Bal, Second Class Subordinate Judge at Khatav.

This suit was instituted by the plaintiff Ganga for possession of certain immoveable property. She alleged that she was the widow of one Bablingaya, who died on the 22nd July, 1878; that five days before his death he had made a will by which he left the property to her; that the defendant, Valu, was the widow of a pre-deceased son of the said Bablingaya, but had been expelled by him from his house, as she was guilty of adultery.

The defendant denied the charge of adultery, and alleged (*inter alia*) that the will was a forgery and invalid, that the property was ancestral, and not sufficient for her own maintenance.

The Subordinate Judge held that the will was genuine; that the property was ancestral; that the defendant was guilty of adultery, and, therefore, not entitled to any maintenance at all. He, accordingly, awarded the property to the plaintiff. On the question of maintenance he made the following remarks:—

“The subject of the maintenance of the widows is mentioned incidentally in the Mitakshara, chap. II, sec. 1 (2), which treats of a widow's right to inherit her husband's property when he dies without male issue, and also in section 10 which treats of exclusion from inheritance. Placitum 7 of section 1 contains a text of Narada to the effect that among brothers, if any one die without issue, the rest of them should share her wealth, allowing maintenance to his women for life, provided they be chaste, but that if they behave otherwise, the brethren may

* Second Appeal, No. 698 of 1881.

(1) I. L. R., 1 Bom., 559. (2) Stokes' Hindu Law Books, Mad. ed. (1865).

resume the allowance. The word 'women' in this text means widows and concubines. Placitum 15 of section 10 lays down that the wives without male issue of persons disqualified to inherit being correct in their conduct or behaving virtuously, must be supported or maintained, but if unchaste they must be expelled; if they are perverse they may be expelled; but maintenance must still be given to them if they be not unchaste, because it cannot be refused simply on account of perverseness. This implies that it may be refused when the widow is unchaste, and the Mayukh expressly says that an unchaste woman must be turned out of doors and without a maintenance. Here, then, is a clear distinction made between a perverse and an unchaste woman. The former means a woman who is suspected of incontinency (May., chap. IV, sec. 8, pl. 9). An unchaste widow of a pre-deceased son can have, I think, no greater right to be maintained by her father-in-law or mother-in-law than an unchaste widow who stands in the position of heir of her husband or the widow of one excluded from inheritance. Valu, by her unchastity, has lost her right to be maintained. I do not think she has a right to be supplied even with the bare necessities of life.

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"In *Honamma v. Timannabhat* (1) the High Court of Bombay decided that a widow who had obtained a decree for bare maintenance did not forfeit her right under it by reason of her subsequent incontinence; and cited, among other authorities, Mayukh, chap. IV, sec. 8, pl. 9, and Mitakshara, chap. II, sec. 1. pl. 37 and 38, in support of the position that even an incontinent widow was entitled to a bare maintenance. With very great deference for the Court I find that the texts quoted are applicable to the case of a headstrong widow and not to that of a widow who is proved to be unchaste. I have already stated that there is a clear distinction between a perverse or headstrong widow and an unchaste widow.

* * * Sir T. Strange thought that the right of an unchaste widow to food and raiment was a doubtful one (1 Strange's H. L., p. 172, 4th ed., Mad.) The Madras High Court reiterated that doubt in their judgment in the case of *Visalatchee Ammal v. Anna Samy Sastri*" (2).

(1) I. L. R., 1 Bom., 559.

(2) 5 Mad. H. C. Rep., 150.

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The defendant appealed to the High Court.

G. R. Kirloskar for the appellant.—The lower Courts were wrong in awarding the whole property to the plaintiff without providing any maintenance whatever to the defendant. She is entitled, at any rate, to a bare or starving allowance, as ruled by this Court in *Honanma v. Timannabhat* (1).

G. N. Nadkarni for the respondent.—The case cited on the other side is not supported by the authorities on which it purports to have been based. An unchaste widow has no right even to a bare maintenance, according to the Hindu law. By special texts that law has allowed such maintenance only to an adulterous wife or an incontinent mother. The learned pleader cited *Mitak.*, chap. II, sec. 1, pl. 7, 37, 38 (Stokes' H. L. Bks., pp. 429 and 439) and sec. 10, pl. 14 and 15 (Stokes' H. L. Bks., pp. 458, 459); *Mayukh*, chap. IV, sec. 8, pl. 6, 8, 9 (Stokes' H. L. Bks., pp. 85, 86), and sec. 11, pl. 12 (Stokes' H. L. Bks., p. 110); *Smriti Chandrika*, chap. XI, sec. 1, pl. 34, 39, 43, 47, 48, 50, pp. 158, 159, 160, 161; *Viramitrodaya*, pp. 143, 153, 174 and 219 (Calc. ed.); *Daya Bhaga*, chap. XI, sec. 1, pl. 48 (Stokes' H. L. Bks., p. 317); *West and Bühler*, pp. 87, 283, 2nd ed. (1878); 1 *Strange H. L.*, p. 172, 4th ed., *Mad.* (1864); 2 *Strange H. L.*, p. 310 (1830); *Norton's Leading Cases*, p. 37; *Raja Pirihee Singh v. Rani Rajkooer* (2); *Kery Kolitany v. Moneeram Kolita* (3); *Savitribai v. Luximibai and Sadasiv Ganoba* (4); *Ilata Shavtri v. Ilata Narayanan Nambudiri* (5); *Mathamal v. Kamakshy Ammal* (6); *Sinthayee v. Thanakapudayen* (7); *Sikki v. Vencatasami Gounden* (8); *Kasturbai v. Shivajiram Devkurana* (9).

SARGENT, C. J.—In this case the plaintiff, Ganga, claiming to be the widow of one Bablingaya, seeks to recover possession from the defendant, Valu, the daughter-in-law of the said Bablingaya, (her husband having pre-deceased his father), of five fields and a house. The plaintiff's case is that all the property was given to her by Bablingaya by will. The defendant disputed the plaintiff's claim to be the widow of Bablingaya and also the validity

(1) I. L. R., 1 Bom., 559.

(5) 1 Mad. H. C. Rep., 372.

(2) 12 Beng. L. R., 238.

(6) 2 Mad. H. C. Rep., 337

(3) 13 Beng. L. R., 1, 72, 78.

(7) 4 Mad. H. C. Rep., 183, 185.

(4) I. L. R., 2 Bom., 573, 581, 582, 619.

(8) 8 Mad. H. C. Rep., 144.

(9) I. L. R., 3 Bom., 372, 375, 380.

of the will. Both of these issues were found by the Courts below in favour of the plaintiff. As to the house, it was also found that it had passed under Bablingaya's will to Bhagu, another of his wives who survived him, and that as Bhagu, who is now dead, left a daughter now living, the plaintiff could have no claim to it, at any rate at present. As to the lands, the District Judge found that they were ancestral, but refused to allow defendant's claim to maintenance out of them, on the ground that she was an unchaste widow.

It has been contended before us that in any case she is entitled to bare or, as it is sometimes termed, starving maintenance. This raises a question on which there is very little distinct judicial authority. In *Mathamal v. Kamakshy Ammal* (1) the Court was asked to assign bare subsistence to an unchaste widow on the ground that even an unchaste wife was entitled to support. The Court said: "Whatever may be the cases in which an adulterous wife may claim a bare subsistence, it is quite clear that the case of a woman divorced for adultery, who has continued in adultery during her husband's life and in unchastity after his death, is not one of them. It is unnecessary, therefore, to discuss, and we do not discuss, the real meaning of the rule." In *Honamma v. Timannabhat* (2) the defendant, who was a widow, had obtained a decree against the plaintiff for maintenance and had since been guilty of incontinence; and the Court, consisting of Westropp, C. J., and Nanabhai Haridas, J., held that as the maintenance originally decreed in her favour was, as a matter of fact, only a bare maintenance, she had not forfeited it by subsequent unchastity. It was, therefore, virtually a decision that an unchaste widow is entitled to bare maintenance. Sir M. Westropp, delivering the judgment of the Court, says: "The Hindu law books of special force in this Presidency—Mayukha, chap. IV, sec. 8, pl. 9; Mitakshara, chap. II, sec. 1, pl. 37, 38—support the position that even an incontinent widow is entitled to a bare maintenance. Steele, p. 42, pl. 25 1st ed., or p. 36, 2nd ed.; 1 Strange's Hindu law, 157; the notes of Mr. Ellis at pp. 32 and 344 of 2 Strange's Law; and Norton's Leading Cases, p. 37, are to the same effect."

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(1) 2 Mad. H. C. Rep., 337.

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Now, it is true that in the above cited placita of the Mitakshara and Mayukha a text of the Smriti writer Harita is quoted to the following effect: "If a woman becoming a widow in her youth be headstrong, a maintenance must in that case be given her for support of life"; but the placita themselves supply the meaning and intention of that text, at any rate as understood by the writers of the above commentaries who are the principal authorities in this Presidency. In chap. II, sec. 1, pl. 37 of the Mitakshara it is said: "This passage of Harita is intended for a denial of the right of a widow suspected of incontinency to the whole estate, and from this passage it appears that a widow not suspected of misconduct has a right to take the whole property"; and in chap. IV, sec. 8, pl. 9 of the Mayukha the author says: "Headstrong, according to the Mitakshara, means suspected of incontinency. This establishes our argument that a lawfully married wife restrained in her conduct takes the wealth." It is plain, therefore, that the authors of the Mitakshara and Mayukha regarded the above text of Harita as exclusively intended to qualify the right of the widow to inherit her husband's property by making it conditional on her not being a person of such conduct as to subject her to grave suspicion or to make it likely that she will dishonour his name. The contrast between actual unchastity and the conduct which is described in the translations as "headstrong" or "perverse" (the word used in the original being the same in all the texts) is also drawn with marked distinctness in Mitakshara, chap. II, sec. 10, pl. 14, and Mayukha, chap. IV, sec. 11, pl. 12, where the authors are discussing the rights of daughters and wives of disqualified persons. In the latter text it is said: "If she be unchaste, a woman must be turned out of doors and without a maintenance. A perverse woman should also be turned out of doors, but a maintenance must be provided for her according to Madana and others." It is also to be observed, as pointed out by Westropp, C.J., in *Savitribai v. Luxmibai* (1), that it is doubtful whether this text of Harita applies to maintenance. In any view of the text it cannot, we think, be regarded as throwing any light on the question as to the effect of actual incontinence on the widow's right to main-

(1) I. L. R., 2 Bom., at p. 606.

tenance and support out of her husband's property in the hands of those who have taken it by inheritance or otherwise.

On the other hand, if we turn to the texts which do bear directly on that question, we find that they make the widow's right to maintenance distinctly conditional on her leading a chaste life. Nothing can be plainer than the language of the Smriti writer Narada as cited by the authors of the *Mitakshara*, *Mayukha* and *Smriti Chandrika* (1). Speaking of the right of brothers to succeed he says: "Let them allow a maintenance to his women for life, provided they preserve unsullied the bed of their lords; but if they behave otherwise, the brethren may resume the allowance"—Narada XIII, sec. 26; and, again, "Whichever wife becomes a widow and continues virtuous, she is entitled to be provided with food and raiment" (cited *Smriti Chandrika*, XI, 1, sec. 34). The *Viramitrodaya* (pp. 153, 174 of the Calcutta translation) is to the same effect.

We have already referred to the texts which relate to the wives of disqualified persons in which chastity is made a distinct condition to the right to maintenance. In none of these texts is any distinction drawn between "maintenance" and "bare maintenance", the gist of them all being that the virtuous widow is entitled to be supported, and not otherwise. The only analogous cases in which such a distinction is to be found, are those of an adulterous wife and mother for which special texts are provided (2). The close and tender relations which exist between husband and wife and mother and son may well account for the ancient lawgivers laying down, as a rule of conduct for a husband and son, that even the wife or mother who has been guilty of unchastity should not be left in a state of perfect destitution; but it has still to be determined how far these texts will be regarded as mandatory and not merely preceptive, and if the former, in what cases and to what extent the Court will enforce them (3). As to the notes of Mr. Ellis at pp. 32 and 344 of Vol. 2, Sir T. Strange's *Hindu Law*, as

(1) See *Mitak.* chap. II, sec. 1, pl. 7; *Mayukha*, chap. IV, sec. 8, pl. 6; *Sm. Chandrika*, chap. XI, sec. 34.

(2) See West and Bühler, p. 283, and the texts there cited.

(3) See the remarks of the High Court of Madras in *Mathamal v. Kamalshy Annal*, 2 Mad. H. C. Rep. 337, and the conflicting opinions of Mr. Colebrook and Mr. Ellis in the case referred to in Strange's *H. L.*, Vol. 2, p. 339 (3rd ed.).

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well as the reference in Norton's Leading Cases, they refer exclusively to the right of an unchaste wife to bare maintenance. Sir T. Strange's opinion is stated thus in his treatise on Hindu Law: "As chastity is a condition of a widow inheriting on failure of male issue, so it would seem that by want of it she forfeits her right to maintenance, leaving it a question, however, whether notwithstanding she be not entitled (as out-castes generally are) to food and raiment." Again he says; "The claim of another class of dependants remains to be noticed, viz., that numerous one, the subject of the preceding chapter, excluded some by their destiny, others by various disabilities, from inheritance; but all, by the humane provision of the law, entitled out of it to an abundant maintenance. All, unless the out-caste and his issue, subsequently born, are to be excepted. With regard to the out-caste and his issue, authorities differ, upon which, however, it is to be observed that he is not excepted by Manu, and that he is admitted by Yajnavalkya. It is true the measure is restricted to "food and raiment" to which, if the out-caste be admissible, it would seem difficult to exclude the adulterous widow. In coming to this conclusion from the analogy of the case of the out-caste, Sir T. Strange is doubtless regarding the question from the stand-point of humanity, and few people would probably care to justify the husband's relations, who had succeeded to his property, in leaving his widow in a state of complete destitution, (provided she was then leading a respectable life), however much she might in the past have failed in her duty of "maintaining inviolate the bed of her lord". But, in the absence of any text distinctly imposing this obligation or of any expression qualifying the right which is reserved by so many texts to those who take the husband's property, of withdrawing maintenance from an unchaste widow, it cannot (except perhaps in the case of a son) be regarded as a legal liability to be enforced in a Civil Court. We find ourselves, therefore, (with all due respect to the high authority of the late Chief Justice of this Court) unable to follow the decision in *Honamma v. Timannabhat* (1), and must confirm the decree of the Court below, with costs of appeal on Valu.

Decree confirmed.

(1) I. L. R., 1 Bom., 559.