

Yashvantrav Vs. Kashibai

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Court : Mumbai

Decided On : Apr-28-1887

Reported in : (1888)ILR12Bom26

Judge : Charles Sargent, C.J. and ;Nanabhai Haridas, J.

Appellant : Yashvantrav

Respondent : Kashibai

Judgement :

Nanabhai Haridas, J.

1. We have already in the course of the argument, intimated our opinion that Mr. Druitt is right in holding that 'no specific sources of income are charged with the payment of this allowance by the decree.' Mr. Naylor, no doubt, directed that the allowance now in dispute among others was to be paid from certain sources of income specified by him in his report of the 13th April, 1870; but that decision was subsequently reversed by the High Court, and, on the matter being reconsidered by his successor, Mr. Baker, he came to the conclusion that 'the other items,' (among which the allowance in dispute is included) 'should be paid from Bhujangrav's and Anna Saheb's joint shares.' See his report dated 5th August, 1872. This decision was, on the 20th August, 1873, confirmed by the High Court, and ordered to be carried out. See Miscellaneous Cross Appeals, 8 and 9, of 1870.

2. The only question, therefore, which remains for us to determine now is whether, according to Hindu law, Kashibai has by subsequent adultery forfeited her right to the maintenance awarded to her by the decree sought to be executed. She was a concubine of Davlatrav, who with his sons Bhujangrav and Anna, Saheb formed a joint Hindu family up to the time of his death. The Assistant Judge held that 'incontinence subsequent to the order awarding the allowance would not cause it to be forfeited. 'But in the case of a coparcener's widow, unchastity subsequent to a decree declaring her right to maintenance has been held to deprive her of such right--Vishnu Shanbhog v. Manjamma I.L.R. 9 Bom., 108; Moniram Kolita v. Kerry Kolutany L.R., 7 IndAp, 151. We have, therefore, to see whether the right of a concubine in this respect differs from that of a widow. Mr. Shivram contends that it does. He urges that in the case of a concubine there is no express text rendering her right to maintenance conditional upon her continued chastity, as there is in the case of the widow of a co-parcener. It must be observed, however, that there is no such text providing any maintenance for a concubine specially. There are texts providing generally for 'women' of deceased co-parceners Texts of Katyayana and Narada cited in Vyav. May., Ch. IV, Section VIII, placita 5, 6 and 7, and in Mit. Ch. II, Section 1, placita 7, 27 and 28. It is under those texts that the widows of such co-parceners are held entitled to be maintained by the survivors 2 Macnaghten 112, 113; 1 Str. 171; 2 Str. 293, 295, 297, West & Buhler, H.L., 244; and they lay down the condition of continued chastity. Whether those text-writers really intended to include in the expression 'women' concubines or 'kept women' it is now unnecessary to speculate. It suffices for us that commentators and judicial authorities have distinctly declared that they are so included. But if they are so included, the restriction of continued chastity imposed by the texts must equally apply to them, as otherwise they would be in a more advantageous position than the widows. The wives and widows of disqualified co-parceners are entitled to maintenance, but only on condition of their continuing chaste 1 Str. 175; 2 Coleb. Dig., 438. Hence, in the absence of any authority to that effect, we are not prepared to hold that a concubine of a deceased co-parcener is entitled to be maintained by the survivors, whether she continues chaste or not.

3. The position of a deceased co-parcener's permanent concubine in his family is in some respects analogous, though necessarily inferior, to that of his widow not

inheriting. They are both dependent members of the family, and, as such, entitled to maintenance as above stated 1 Str. 171, 174j 1 Norton, 48, 51. During the coparcener's life-time, if not even after his death, his concubine is by the Hindu criminal law regarded as his wife, for it ordains punishment as for adultery for any, sexual intercourse with her by another as if she were his wife Vyav. May., Ch. XIX, pl. 11; Yajn. Vyav. 290 translated in Mandlik's H.L., p. 242; Vijnaneshvara's comments on that text. Manu, Ch. VIII, 363; comments of Kulluka and Raghavananda on the text (Mandlik's ed.) untranslating They say the punishment is ordained 'on the ground of (her) being another's wife' (dara); and Viramitrodaya (Cal. ed.) 509, 510, untranslating, on the ground of her being equal to another's wife.', and the ceremonial law also regards her in that light, for it declares the same length of impurity for her when he dies as for the death of a real husband Nirnaya Sindhu Ashauoh, 11.

4. These considerations certainly lend some support to the view the commentators have taken that the term 'women' in the texts above referred to does include concubines. When competent public opinion, as reflected in the writings of the commentators, allots to the concubine a position similar to that of a wife and when it assigns to her maintenance as to a wife, it is only fair to the family, bound to provide for her, and whose reputation is necessarily affected by the conduct of every member of it, that her right to such maintenance should be subject to the same restriction as the right of the wife. And, accordingly, we find it declared by the Shastri, in a case so far back as '1847, that the mother of an illegitimate son, if well behaved, is entitled to maintenance 1 West & Buhler, 582. It would be strange, however, if this condition of good behaviour attached to a concubine only when she had children.

5. For these reasons, we must hold that continued continence is a condition precedent to a deceased coparcener's concubine claiming maintenance. It was urged by the appellant that Kashibai had, since the decree in her favour, left the family house and was living as a prostitute. This allegation was not inquired into by the lower Court under the erroneous view it took of the law on the subject. 'We must, therefore, reverse its decision, and remand the case for decision on the merits. Parties to be at liberty to give additional evidence on the above point. The

costs of this appeal to abide the result.

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