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Mudligirigowda Vs. Chikkamma

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SooperKanoon Citation : sooperkanoon.com/372224

Court : Karnataka

Decided On : Sep-17-1956

Reported in : AIR1957Kant62; AIR1957Mys62; ILR1956KAR307

Judge : Sreenivasa Rao, J.

Acts : Mysore Hindu Women's Rights Act, 1933; Limitation Act, 1908 - Schedule - Articles 120 and 129

Appeal No. : Second Appeal No. 234 of 1956

Appellant : Mudligirigowda

Respondent : Chikkamma

Advocate for Pet/Ap. : E.S. Venkataramaiya, Adv.

Judgement :

1. The main point urged is that the suit is barred by limitation since the Article applicable to a suit like the one on hand is Article 120 of Schedule I to the Limitation Act and not Article 129. Even assuming that it is Article 120, the question that arises for consideration is from when the time has to be reckoned.

2. It is urged for the Appellant that the date of the second marriage when, according to the provisions of the Hindu Women's Rights Act the first wife gets the right to live away from her husband, is the starting point. I do not think that this

contention is correct.

The first wife no doubt gets the right to live away from her husband if he marries a second wife. But, it does not make It obligatory for her to live separately, nor does it even provide that she has straightaway to make up her mind whether she will live separately or not. It is quite open to her to live with her husband. There is no reason to apply any principle to the case of a wife who claims a right of maintenance under the Mysore Hindu Women's Bights Act other than that under the general Hindu Law under which Article 129 is applicable.

The cause of action can be said to arise when there is a demand for separate maintenance and refusal by the husband. It is hardly necessary to say that the existence of a right does not always mean that the cause of action also accrues with such right coming into existence, for example, in the case of a member of a Joint Hindu family he has a right to separate himself and seek partition.

It is left to him as to when he will set that right in motion. The right of a Hindu wife for separate maintenance under the provisions of the Mysore Act can also exist without its being put into effect except at her choice.

3. No other point arises in this Second Appeal and it is dismissed.

4. Appeal dismissed.

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