

**Javare Gowda Vs. Kempamma**

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**Court :** Karnataka

**Decided On :** Apr-15-1991

**Reported in :** I(1992)DMC300; 1992(1)KarLJ28

**Judge :** M.P. Chandrakantaraj Urs, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100; Hindu Adoption and Maintenance Act - Sections 23

**Appeal No. :** R.S.A. No. 184 of 1991

**Appellant :** Javare Gowda

**Respondent :** Kempamma

**Advocate for Def. :** Chandrashekharaiiah, Adv.

**Advocate for Pet/Ap. :** Laxminarayana and ;H. Kantharaja, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**M.P. Chandrakantaraj Urs, J.**

1. There is no merit in this second Appeal. It is a plaintiff's appeal on account of the modification made by the lower appellate Court.

2. The facts leading to the case may be stated as follows:

Plaintiff is the wife of one Javaregowda respondent herein. She claimed maintenance under Section 23 of the Hindu Adoption and Maintenance Act inter alia on the ground that her husband has taken a second wife and has deserted her and she has no means to support herself. She also claimed past maintenance. Defendant entered appearance through Counsel and filed written statement denying all the plaint allegations.

3. On such pleadings, several issues were framed. The trial Court came to the conclusion that the defendant had taken a second wife and deserted the plaintiff and it also came to the conclusion after examining the evidence on record, that plaintiff was entitled to Rs. 300/- as maintenance. The said sum of Rs. 300/- per month was split up into two items one for maintenance at Rs. 250/- per mensem and Rs. 50/- for separate residence. The defendant aggrieved by the judgment and decree of the trial-Court presented the appeal in the Court of the Civil Judge, Srirangapatna in R.A. 8 of 1986. The learned first appellate Judge has done no more than modify the decree, but concurring in other respects with the finding of facts of the trial-Court. Having regard to the evidence of plaintiff herself, and her witnesses who were at variance in regard to the annual income of plaintiff from the wet lands which measured about 4 1/4 acres, the appellate Court came to the conclusion that the monthly income, net, of the plaintiff would be around Rs. 850/-. Out of that he has taken away Rs. 100/- for incidental expenses of income and given the plaintiff one-third of the said sum of Rs. 750/- the net income as her maintenance. In doing so, he has taken into account the legislative guide-lines found in Section 23 of the Hindu Adoption and Maintenance Act. He has had regard to the other members of the family who were wholly maintained by the defendant. Plaintiff herself had proved that her husband had taken a second wife. It also came out in the evidence that plaintiff had his mother to support. She also proved that plaintiff had a son by the second wife. All of them were entitled to maintenance under the said Act. Regard being had to that fact, he has reduced the quantum of maintenance from Rs. 300/- to Rs. 250/-. He has also taken notice of the fact that the plaintiff was making a living earning as an agricultural labourer on daily wages.

4. In the result, the finding of facts are almost concurrent. The appellate Court has directed itself to the guide-lines provided in the Act in determining the quantum of maintenance. I therefore cannot find fault with the modification made by the appellate Court.

5. In other respects, she has raised any grounds. But in this Second Appeal, it has been argued that a subsequent suit filed by Sannamma and Narasamma for partition of the family property, the same has been decreed in O.S. 41/83 and properties of respondent-defendant Javaregowda have been reduced and the charge affected thereby leaving for her less than 25 guntas for her maintenance. If, by operation of law, area of land charged is reduced, this Court is helpless. She cannot get anything more than what her husband has got at the partition, i.e., one-third share of 4 1/4 acres of land which had been partitioned.

6. Therefore, there is no merit in this appeal and no substantial question of law arises for consideration. Appeal stands dismissed.

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