

Mst. Manohari Vs. Ramchandra

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Court : Rajasthan

Decided On : Apr-15-1952

Reported in : AIR1953Raj113

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : Hindu Law

Appeal No. : Civil (Ijlas-i-Khas) Appeal No. 2 of 1951

Appellant : Mst. Manohari

Respondent : Ramchandra

Advocate for Def. : Bheru Narain, Adv. Guardian 'ad litem'

Advocate for Pet/Ap. : Party-in-person

Disposition : Appeal dismissed

Judgement :

Wanchoo, C.J.

1. This was an appeal by Mst. Manohari to the Ijlas-i-khas of the former State of Bikaner and has come to us in view of the provisions of Ordinances 40 of 1949 and 12 of 1950.

2. The facts may be narrated briefly. Mst. Manohari was married to Ramchandra. She brought a suit for maintenance in June 1942 alleging that she had been turned out by her husband who had married again. She, therefore, prayed for maintenance from her husband. She had also impleaded her husband's brother Birbal and wanted maintenance from him as well. There was also an allegation that certain ornaments of her had been entrusted to Birbal and that she should be given a decree for those ornaments. So far, however, as Birbal is concerned, the District Judge of Charu, who tried the suit, as well as the High Court of the former State of Bikaner came to the conclusion that no ornaments had been entrusted to Birbal and that Birbal was not in any case responsible for giving any maintenance to Mst. Manohari. So the suit against Birbal was dismissed. Mst; Manohari has not filed any appeal against that part of the decree and we need not consider it any further.

3. The case of Ramchandra was that his wife had become unchaste and left him about five years before this suit was filed. He admitted that he had married a second time shortly before the suit was filed but that was because his wife had refused to come back to him. His case, therefore, was that Mst. Manohari was not entitled to any maintenance on the ground of her unchastity.

4. The main question, therefore, that arose for decision in this case was whether Mst. Manohari was entitled to maintenance or not in view of the allegations of unchastity by her husband. The trial Court came to the conclusion that unchastity had not been proved and, therefore, granted her a decree for Rs. 10/-per month as maintenance against Ramchandra. There was an appeal by Ramchandra against that decision and the High Court of the former State of Bikaner came to the conclusion that unchastity had been proved and, therefore, dismissed the suit in toto. Thereupon there was an application for special leave to appeal to the Judicial Committee of the former State of Bikaner and special permission was granted on the ground that there was a substantial question of law involved in this case.

5. The first question of fact that we have to see is whether unchastity has been proved or not. On that point we feel that there is no reason to differ from the conclusion arrived at by the High Court of the former State of Bikaner. (After

reviewing the evidence the judgment proceeded). It is also established that she continued to be unchaste even after the suit had been filed. Under these circumstances the High Court was right in not allowing her any maintenance.

6. The substantial question of law which arises in this case is that even if a wife is unchaste, she is entitled to what is called 'starving' maintenance if she has reformed. We may in this connection refer to para. 556 of Principles of Hindu Law by Mulla where the law as to maintenance to a wife who is unchaste has been summarised in these words: 'A wife who leaves her home for purposes of adultery, and persists in following a vicious course of life, forfeits her right to maintenance even though it is secured by a decree. But it would seem that if she completely renounces her immoral course of conduct, her husband is liable to furnish her with a 'bare' (or what is also called 'starving') maintenance, that is, food and raiment just sufficient to support her life.'

There is authority for the view that a wife who was unchaste but who later became reformed would be entitled to maintenance from her husband as bare subsistence level. But if a wife wants to claim maintenance of this kind, it is for her to make out a case for it in her plaint. We may in this connection refer to the case of -- 'Jeeva Ammal v. Ranganatha Mudaliar', AIR 1939 Mad 788. In that case, a woman filed a suit for maintenance on the basis of her own chastity and her husband's misconduct, which is of course the normal form of a suit for maintenance. The defence was that she was unchaste and it was proved that she had been unchaste. It was held that in such a case the woman could not fall back upon a plea of unchastity and subsequent reformation which had never been advanced and was not supported by the necessary evidence.

This case was followed in -- 'Kuppammal v. Thangamuthu Pandaram', AIR 1944 Mad 426. That was also a case in which a wife had sued for maintenance on the ground that she was a chaste woman and that she had left her husband owing to his misconduct. It was, however, found that she had lived an immoral life and that her husband was not at fault. It was held that the wife could not under such circumstances turn round and claim maintenance on the ground that the husband must also prove that she was living an immoral life when she filed the suit and had

not reformed.

7. The last case to which we may refer is -- 'Mst Zuli v. Gopalia Tukaram', AIR 1946 Nag 375. That was also a suit by a wife for maintenance in the usual manner, namely, that she was not at fault and it was her husband who was at fault. The husband took the plea that she had been unchaste. It was held that when the wife was unchaste, the burden shifts on the wife to show that she had reformed her life of immorality and returned to chastity. It was further held that in all such cases the wife should apply for permission to amend her plaint by adding an alternative plea to the effect that, assuming though not admitting her unchastity, she had reformed, if she wanted to get a decree on that basis.

8. It is therefore quite clear that if the wife wants a decree on the basis of her reformation, she has to plead and prove it. In the present case, however, this has neither been pleaded nor proved, nor was it in our opinion possible for the appellant to plead and prove reformation, for the evidence shows that she, remained unchaste even during the pendency of the suit. Under these circumstances, she is not entitled even to the bare maintenance which Hindu Law allows to wives who have sinned but have reformed.

9. There is no force in this appeal and it is hereby dismissed. Considering that the appellant is a pauper and she has already paid the fee for the guardian for the respondent, we order parties to bear their own costs.