

Ramanarasu Vs. Buchamma

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Court : Chennai

Decided On : Nov-28-1899

Reported in : (1900)10MLJ62

Appellant : Ramanarasu

Respondent : Buchamma

Judgement :

1. The question in this second appeal is whether a woman who has been kept by a man as his concubine for ' nine years continuously and then discarded, is entitled under the Hindu Law to claim maintenance from her paramour. The District Munsif decided in the negative, but the District Judge on appeal reversed the finding and decreed for plaintiff. Against this decree the defendant appeals.

2. The question has been argued before us very fully on both sides and our attention has been drawn to all the authorities which have, or may be supposed to have, any bearing on the question. We do not propose to consider these authorities in detail, as almost without exception they refer to the right of a concubine to claim maintenance out of the estate of her deceased paramour. On the authority of certain texts of Hindu Law, the Courts have no doubt allowed this claim in the case of concubines continuously kept by the deceased to the time of his death. Whether the foundation of this rule was the notion that the man was under a moral obligation to take care that his concubine should not be left destitute after his death and therefore saddled the succession to his property with the

liability to maintain her, or whether it was with reference' to his probable wishes and intention with regard to her it is not necessary to determine. It is, however, we think certain, that it was not because the law regarded the man as under any legal obligation to provide for his concubine during his life-time. If it were otherwise we should without doubt, find some traces of the obligation in the texts or commentaries, but we are not aware that any exist.

3. We do not regard the texts in Manu VIII, 389, and XI, '189 as opposed to this view. In the former, the term Stri has been uniformly understood by the commentators to refer to a wife, and the context which enumerates the near relations who are not to be abandoned, renders it unlikely that concubines were intended to be included with the lawful wife. All that the second passage seems to imply is that a female member of the family entitled to maintenance is not to be deprived of it altogether on the ground that she has been put out of caste.

4. Moreover, it is clear that the case of a wife and of a concubine are not placed on the same footing in regard to maintenance during the life-time of the man, for there are distinct texts recognizing the right of the wife, such as that quoted in Section 209 of Strange's Manual of Hindu Law, as follows: 'Where there may ' be no property but what has been self-acquired, the only persons ' whose maintenance out of such property is imperative are aged ' parents, wife and minor children.' If any such right as that 'now claimed really existed, or could have been plausibly supported by the authority of the Hindu Texts, it is impossible to suppose that it would not up to this time have been claimed in the Courts. The only reported case, so far as we are aware, in which the claim was made was decided against the concubine and in no way supports the plaintiff's case (*Sikki v. Vencatasamy Gounden* (1875) 8 m.H.C.R. 144. In this state of the authorities it is impossible for us to hold that the alleged right exists and the more so when we bear in mind that the Hindu Law has made provisions for the maintenance of concubines in the case already 'referred to after the paramour's death.

5. We, therefore, reverse the decree of the District Judge and restore that of the District Munsif. Appellant must have his costs in this and in the Lower Appellate Court. Respondent must pay the Court-fees due to Government in the Lower

Appellate Court.

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