

**Muniammal Vs. Raja**

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**Court :** Chennai

**Decided On :** Mar-04-1977

**Reported in :** AIR1978Mad103

**Judge :** Ramaprasada Rao and ;Ratnavel Pandian, JJ.

**Acts :** [Indian Contract Act, 1872](#) - Sections 23; [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 25

**Appeal No. :** Appeal No. 165 of 1973

**Appellant :** Muniammal

**Respondent :** Raja

**Advocate for Def. :** V. Shanmugham, Adv. for ;G. Annamalai, Adv.

**Advocate for Pet/Ap. :** R.S. Venkatachari, Adv.

**Disposition :** Appeal allowed

**Judgement :**

1. The plaintiff in O. S. No. 11 of 1968 on the file of the Court of the Subordinate Judge of Tirupattur, North Arcot, who failed before the trial Court, is the appellant herein. She filed the said suit against her husband, the defendant, for maintenance at the rate of Rs. 250/- per mensem and for the recovery of Rupees 24,000/- as arrears of past maintenance and for a charge over the plaint schedule properties.

According to the plaint allegations, she was married to the defendant in 1931 and begot a child in 1940 which, of course, died. Thereafter, differences arose between them, which led to the plaintiff filing O. S. 15 of 1943 in the trial Court for maintenance, in which she also obtained a decree dated 4-3-1944 for maintenance at the rate of Rs. 10/- per mensem, Rs. 2/- for residence and Rs. 20/- per annum for clothing, along with arrears of maintenance coming to Rs. 457-3-0. On a fresh trial after remand, a charge over the defendant's 1/12 share of the joint family properties (coming to 44 1/2 cents) was also granted in her favour. The plaintiff filed E. P. 6 of 1952 for recovery of Rs. 1,936-11-0 and in the said execution proceedings, the charged properties were sold for Rs. 401/-. With a view to prevent the plaintiff from realising the balance of the decree amount, the defendant's father executed a registered will on 27-6-1953 under the original of Exhibit A-2, conveying all the properties nominally in the name of his son-in-law, one R. K. Gopalakrishna Gounder, thereby putting the plaintiff in a destitute position. Because Of the deadlock created by the defendant, his brothers, his brother-in-law and his father and due to her helpless position, she was on 6-8-1954 made to compound her claim with them and receive Rs. 500/- in full quit of the entire decree debt of Rs. 2,000/- and also reconvey the 1/12 share purchased in Court auction in favour of the defendant's father. Thereafter, the defendant's father, on 20-3-1955 under the original of Ex. A-3 has cancelled the will under the original of Ex. A-2. On his death, the defendant and his brothers and their mother divided all the family properties on 2-7-1958 under the original of Ex. A-4 and this conduct of theirs really proves the real character of the properties as joint family properties. On 5-11-1964 the defendant has sold an extent of 49 cents out of 1 acre 28 cents comprised in S. No. 206/2 in favour of one Meda Krishna Chettiar. In the above circumstances, the plaintiff is entitled to maintenance under Section 18 of Act 78 of 1956, as he had abandoned her without reasonable cause and neglected her. He is also afflicted with leprosy. Hence the suit for maintenance at the rates mentioned above. The plaintiff claimed that her suit is not barred because of the proceedings in the previous suit which ended in 1954. The arrears of maintenance have been claimed from 21-12-1956 when Act 78 of 1956 came into force.

2. The defendant filed a written statement contending as follows: He admits that the plaintiff was married to him and that there were misunderstandings. But, he denies that he or anybody in his family wanted to get rid of the plaintiff or that they ill-treated her or drove her out of the house. As the defendant was afflicted with leprosy, the plaintiff did not want to live with him and she resorted to questionable ways of living, which the defendant's family resented. Due to a mediation effected at the instance of the relations, the plaintiff entered into full satisfaction of the decree in O. S. No. 15 of 1943 under the original of Ex. B-2 dated 6-8-1954 after receiving a sum of Rs. 500/- having regard to the circumstances, and she agreed not to claim any future maintenance from the defendant and thus she is estopped from making the present suit claim. Now, in order to grab the property which fell to the defendant's share in the partition after his father's death, the plaintiff has filed this suit at the instance of the defendant's enemies. The suit properties are worth Rs. 10,000/- the net annual income there from being not more than Rs. 500/- or Rs. 600/- out of which he has to spend for his treatment. Because of the lump sum payment in full quit of her past and future claim of maintenance, her right has become extinguished. In view of the said full satisfaction of the decree in O. S. No. 15 of 1943, Ss. 18 and 25 of the [Hindu Adoptions and Maintenance Act, 1956](#) are not applicable. The suit without seeking to set aside the full satisfaction memo is not maintainable. The suit is also barred by limitation. There is no cause of action for the suit and it should be dismissed. In any event, the maintenance claimed is excessive.

3. On the above pleadings the following issues were framed by the trial Court:

1. Whether the plaintiff was defrauded and compelled by fraud and misrepresentation, to enter satisfaction of the decree in O. S. No. 15 of 1943 ?
2. Whether the plaintiff is estopped from claiming future maintenance?
3. Whether the plaintiff's claim, even if true, is barred by limitation ?
4. In any event, whether the amount claimed is far too excessive ?
5. What is the value and income from the suit properties ?

6. Whether the plaintiff is entitled to any, if so, what maintenance?

7. Whether the plaintiff is entitled to any charge and if so on what properties ?

8. To what relief, if any, is the plaintiff entitled?

The plaintiff marked Exs. A-1 to A-6 and examined herself as P. W. 1, her brother as P. W. 2, and two other witnesses. The defendant marked Exs. B-1 to B-5 and examined himself as D. W. 1 and six other witnesses. The learned Subordinate Judge found that the plaintiff had failed to prove that the full satisfaction memo in O. S. 15 of 1943 under Ex. B-2 was vitiated by fraud, misrepresentation or coercion, that the plaintiff did not have any subsisting right to claim future maintenance, that she was estopped from making such claim and that the said claim is barred by limitation under Art. 59 of the Limitation Act. The Court also held that even if the plaintiff be entitled to any past maintenance, her claim for any period beyond three years prior to suit was barred by limitation. On Issues 4 and 5, it was found that the defendant gets Rs. 3,000/- from his lands in Peddur village and Bheemkulam Village and that therefore the amount claimed by the plaintiff is excessive. Thus, the plaintiff was held not entitled to any maintenance and even if she is so entitled, she was entitled only at Rs. 100/- per mensem. On Issue 7, it was held that if at all the plaintiff was entitled to any charge, she was entitled to such a charge over the plaint schedule properties less 1-95 acres sold to strangers. The suit was therefore dismissed with costs. Aggrieved by this dismissal, the plaintiff has filed the present appeal.

4. Mr. R. S. Venkatachari, learned Counsel appearing for the appellant, would contend that the appellant's claim for maintenance against the respondent is a statutory right of maintenance arising under the [Hindu Adoptions and Maintenance Act, 1956](#) (Central Act No. 78 of 1956), that the appellant is not estopped from making her claim on the basis of the said Act, that the trial Court has failed to see the overriding effect of Section 4 of the said Act and that the maintenance right under Section 18 read with Ss. 26 and 27 of the Act cannot be defeated by reason of Ex. B-2 or Ex. B-3 dated 6-8-1954, which documents were prior to the commencement of this Act. He would attack the finding of the lower Court that the appellant has no subsisting right to claim maintenance by reason of Exs. B-2 and

B-3, on the ground the said finding is erroneous by virtue of the Hindu Adoptions and Maintenance Act. According to the appellant, Exs. B-2 and B-3 have been executed by her, being a victim of circumstances, coercion and fraud and compelling events, and the said documents have not been executed by her of her own free will and volition. At any rate, according to the learned Counsel for the appellant, the appellant cannot be precluded from claiming maintenance for subsequent periods, due to change of circumstances, under the said Act. He would attack Ex. B-2, urging that the said document is opposed to public policy, offending the provisions of Section 23 of the Indian Contract Act.

5. There cannot be any dispute, and indeed there is none, that the plaintiff is the legally wedded wife of the defendant and their relationship as husband and wife still subsists, their marriage having taken place in or about 1931. It is the case of the plaintiff that there arose some misunderstanding in the year 1948 and on account of that, her husband, the defendant, her father-in-law and other members of their family obviously imputed Infidelity and ultimately abandoned her. Whilst it is the case of the defendant that it was the plaintiff who left the house of her own accord due to the fact that the defendant is afflicted with leprosy, and that she resorted to questionable ways of living, which was resented to by the defendant's family. The fact that the defendant is suffering from leprosy is mentioned by the plaintiff also in her plaint. The plaintiff admittedly instituted the suit in O. S. 15 of 1943 on the file of the Court of the District Munsif, Tirupattur, for maintenance, which was decreed on 4-3-1944, awarding a sum of Rs. 10/- per mensem for maintenance, Rs. 2/- per mensem for residence and Rs. 20/- per annum for clothing, and a sum of Rs. 437-3-6 towards arrears of maintenance. The plaintiff-claimed a charge over the family properties; but that claim was resisted by the defendant, his father and brothers. The father of the defendant set up a plea that the properties were his self-acquisitions. The charge claimed by the plaintiff was refused. On appeal, in A. S. 44/1946 (Ex. A-11), the matter was remanded and at the re-hearing, a charge was granted over a 1/12 share of the first defendant, her husband, in S. No. 409/1 extending to 2 acres 3 cents in S. No. 408 extending 1 acre 83 cents and S. No. 407 extending to 1 acre 48 cents, subject to a prior mortgage in favour of a Co-operative Society. This was under Ex. A-13 dated 29-11-1945 and is evidenced by Ex. A-12 also. That decree was put in execution in E

P. 6 of 1952 for realising a total sum of Rupees 1,936-11-10, and a 1/12 share of the property coming to 44 1/2 cents was sold in execution for Rs. 401/- to P. W. 2, the brother of the plaintiff. Part satisfaction to this extent was recorded, leaving a balance of Rs. 1,500/- still due under the decree. Ex. A-1 is the copy of the sale certificate issued by the Court on 20-10-1952 for the sale of the charged property. On 27-6-1953, the defendant's father, who was the second defendant in O. S. 15/53, bequeathed his properties under the foot of a will in favour of one of his sons-in-law, viz., R. K. Gopala-krishna Gounder, examined in this case as D. W. 5. So, according to the plaintiff, the surrounding circumstances became so precarious that she, being a helpless lady, felt that she could not recover the past maintenance of Rs. 1,500/- and the future maintenance from the defendant as the 1/12 share belonging to her husband was already sold to her brother. In these circumstances, according to her, she was compelled by force of circumstances, to enter into a compromise with the other side. The pleading in para. 5 of the plaint, on this aspect, reads thus:

"The plaintiff, being helpless to get over this deadlock, and irrevocably subdued and defeated, was compelled by force of circumstances on the context to compound her claim with the other side-So, she was made to receive a mere Rs. 500/- in full quit of the entire decree debt of Rs. 2,000/- and also as part of the same bargain, reconvey back the 1/12th purchased as stated above, in court auction to Ramaswami, the father of the defendant. This was on 6-8-1954. The defendant and his collaborators had thus successfully defrauded plaintiff and liquidated plaintiff's rights for nothing and the plaintiff was compelled by fraud and misrepresentation to enter up satisfaction of the decree in O. S. No. 15 of 1943."

5-A. The defendant would state in his written statement that at the intervention of some panchayatdars a decision was arrived at and as per the said decision and after getting the advice of the close kith and kins, the plaintiff entered into full satisfaction of the decree, agreeing not to claim future maintenance against the defendant and that the said memo of satisfaction, was filed by the plaintiff in the above said suit and therefore the plaintiff is now estopped and prevented from putting forward the present claim for further maintenance in the suit. Further, the defendant would submit that the plaintiff having received a lump sum payment in

full quit of her claim towards past and future maintenance and given an undertaking that she would not demand any further maintenance, her right to such maintenance has become extinguished and the said right is no longer alive for the purpose of sustaining the suit.

6. The document, Ex. B-2, on the construction of which the main issue centres round, is the "full satisfaction memo" filed on the side of the plaintiff in O. S. No. 15 of 1943. We have to examine whether the agreement fixing maintenance for the whole of her life with the specific understanding not to ask for increased maintenance will be a bar for the plaintiff from claiming increased maintenance in view of changed circumstances. On this aspect, there are judicial pronouncements making a fine distinction between the agreement fixing the amount of maintenance and an agreement relinquishing the right of maintenance itself.

7. Ex. B-2 reads that as per the decision of the panchayatdars, the plaintiff in O. S. No. 15 of 1943 (Plaintiff herein) had received a sum of Rs. 500/- from the first defendant (defendant herein also) in full quit of past and future maintenance as per the decree and as the plaintiff agreed that she would not lay any more claim for maintenance and as such the entire decree amount has been satisfied, the Court was requested to record the full satisfaction memo. This memo contains the left thumb impression of Muniammal, the plaintiff and the signature of her pleader Mr. Srinivasa Rao. Thereupon, the Court recorded the said full satisfaction memo.

8. It may be recalled that at the time when this lump sum of Rs. 500/- was paid towards the past and future maintenance of the plaintiff, the plaintiff would have been aged about 30 years. It is not disputed that this full satisfaction memo was given in full quit of the entire decree debt of Rs. 2,000/- (when the decree was put in execution in R. E. P. No. 6 of 1952 the total arrears were Rs. 1,936-11-10) and also as part of the same she had to reconvey back the 1/12th share of the limited interest of the first defendant purchased by her in Court auction in favour of the father of the first defendant. The plaintiff would, therefore, contend that the first defendant and his collaborators had carefully defrauded her and liquidated her right for a mere pittance of Rs. 500/- and thus she was compelled by fraud and misrepresentation to enter into the full satisfaction of the decree in O. S. No. 15 of

1943 and that the circumstances under which this full satisfaction memo has been entered into would lend support to her present case.

9. Before going into the question whether she was compelled by fraud and misrepresentation to enter into this full satisfaction memo, Ex. B-2, we will examine the legal position as to whether this memo of satisfaction is a legal bar to the plaintiff for asking an increased or enhanced maintenance in view of the present change of circumstances. Section 18 of the [Hindu Adoptions and Maintenance Act, 1956](#) (hereinafter referred to as the Act) reads that "subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime". Sub-section (2) of Section 18 enumerates the circumstances under which a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance, one of such circumstances being that if the husband is suffering from a virulent form of leprosy. The object of this section is based on the obligation to maintain the wife which is personal in character and arises from the very existence of the relation between the parties. Section 23 gives discretion to the Court to determine the quantum of maintenance to be awarded having regard to the considerations set out in Sub-section (2) or Sub-section (3) of Section 23 as the case may be, so far as they are applicable. Section 25 of the Act, which is material for the consideration of this case, reads thus:

"The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration."

A plain reading of the section would leave no doubt that a decree or agreement fixing maintenance will not bar a wife from claiming increased maintenance if the circumstances justify such alteration. This section confers ample powers on the Court to alter either by varying or modifying any order fixing the amount of maintenance made by a decree of the court or by agreement subsequently if there is a material change in the circumstances justifying such alteration. It would seem that the circumstances justifying alteration would principally be changed in the pecuniary circumstances of the parties. By now it is well-settled that a decree or

agreement fixing maintenance in favour of a wife or widow or other claimant is no bar to a claim for increased maintenance under this section if the circumstances justify such alteration and it is immaterial whether the decree or agreement was before or after this Act, notwithstanding the fact that the claimant had agreed not to claim higher maintenance even in changed circumstances. In other words, the right conferred under this section supersedes any contract to the contrary. But there are also judicial pronouncements to the effect that where a maintenance holder under an agreement has completely relinquished her right of maintenance prior to the coming into force of the Act, she cannot claim any enhanced amount under Section 25 on the ground that there are material changes in the circumstances.

No doubt, the right of maintenance is a personal right and it is an incident of the status of matrimony and a Hindu is under a legal obligation to maintain his wife. The obligation to maintain the wife is personal in character and arises from the very foundation of the existence of the relationship between the parties. The party who stands benefited by this Act can keep that right and enforce the same or throw it away. If the right is given up or relinquished completely in consideration of a lump sum or consolidated payment, the maintenance holder cannot agitate her claim over again unless the contract of relinquishment is attacked as vitiated by undue influence or fraud. But if the right to maintenance is given up in receipt of a consolidated amount under an agreement with a stipulation not to ask for more, but without relinquishing her subsisting right, the position will be different and, therefore, in such contingencies we have to see whether after this Act coming into force the wife or the widow can claim enhanced or increased maintenance in view of the changed circumstances justifying her claim.

10. Now coming to the contention of the learned counsel that Ex. B-2 is opposed to public policy offending the provisions of Section 23 of the Indian Contract Act, it may be noted that in *Muhammad Muin-ud-din v. Jamal Fatima*, (ILR 43 All 650) : (AIR 1921 All 152) it has been pointed out that an ante-nuptial agreement entered into between the prospective wife on the one side and the prospective husband and his father on the other (the parties being Muhammadans) with the object of securing the wife against ill-treatment and of ensuring her a suitable amount of

maintenance in Case such treatment was meted out to her, was not void as being against public policy. This agreement in question, namely, Ex. B-2 is only an undertaking given by the plaintiff not to ask for any maintenance in future in consideration of a lump sum of Rs. 500/- paid to her towards her past and future maintenance. After going through the recitals of the document, we are of the view that it cannot attract Section 23 of the Indian Contract Act since it cannot be said to be against public policy. Therefore, we reject the contention of the learned counsel that this agreement is opposed to public policy.

11. Then we come to the question whether the plaintiff can now lay a claim for enhanced maintenance after she having relinquished her right by Exhibit B-2 dated 6-8-1954, and whether the said document would be a bar to her present claim. There is, indeed, a plethora of authorities upon this aspect of which we think it would be sufficient to refer the following leading pronouncements. A Division Bench of this Court in a decision reported in *Subramaniam Patter v. Vembammal*, ((1904) 14 Mad LJ 339) examined the question whether an agreement with reference to the payment of maintenance operates as a release of the right of the party entitled to maintenance to have the amount raised and held that where maintenance is awarded under a particular instrument and there were no words of release of the right to claim increased maintenance under a change of circumstances, there was no release of such a right at all, and that the mere fact that the maintenance is expressed to be paid for life does not show such a release. Subba Rao, C. J. (as he then was) speaking for the Bench of Andhra Pradesh in a case *S. Kameshwaramma v. Subramanyam* has observed thus:

"The Act both amended and codified the law relating to maintenance among Hindus. The word "agreement" is admittedly comprehensive enough to take in an agreement of either description. The Legislature does not expressly or by necessary implication exclude any category of agreements fixing maintenance, from the operation of the section. If there was a valid reason for binding the parties to the terms agreed upon between them, there would also be equal justification for protecting the widow from being bound by an unjust agreement precluding her from claiming enhanced maintenance in changed circumstances. (Underlining by us). We do not, therefore, see any justification not to give the widest meaning to

the word "agreement" which it can bear. We hold that, notwithstanding the agreement by the widow not to claim higher rate of maintenance in the changed circumstances, she would be entitled to enhanced maintenance under the provisions of the Act, if there was a material change in the circumstances."

In another case reported in *C. Ambayamma v. C. Ganapathi*, *Jaganmohan Reddy*, C. J. (as he then was) speaking

for the Bench has referred to other various cases on this aspect including *S. Kameshwaramma v. Subramanyam* and held

that a decree or agreement fixing maintenance will not bar a widow from claiming increased maintenance if the circumstances justify such alteration in view of the plain provisions of Section 25 of the Act and it is immaterial whether the decree or agreement was before or after the Act. Then having regard to the facts of the case, the Division Bench held in that case that even where the widow had agreed under the terms of a compromise decree passed in 1927, not to ask for increased maintenance she was held entitled to ask for the increase under Section 25 of the Act.

12. In *Sesbi Ammal v. Thaiyu Ammal*, , there arose a

question for determination of the issue whether a Hindu wife who had agreed to receive maintenance at a particular rate, binding herself not to claim a higher rate even if the circumstances were to change, could maintain a suit for increase of maintenance under Section 25 of the Act. The facts in that case were that the respondent was the widow of one Rama Ayyar and she sued her husband for maintenance in O. S. No. 329 of 1924 on the file of the District Munsif, Tiruvarur on the ground that he took a second wife and later adopted a son. There was a compromise of that suit, by which the defendants therein agreed to pay her a sum of Rs. 85/- per year. It was also stipulated in the said agreement that the respondent had no right to ask for anything more. A decree was passed in terms of the compromise, which charged certain properties for the due performance of the maintenance. After the passing of the [Hindu Adoptions and Maintenance Act, 1956](#), the respondent came forward with a claim that the maintenance awarded in

that suit was insufficient to meet her needs, having regard to the changed circumstances and that she should be paid something more. On a contest being raised by the second wife and the adopted son of the respondent's deceased husband, the respondent lost her claim in the trial Court as well as in the first appellate Court. But on a further appeal to this Court, that decree dismissing the suit has been set aside by Ananthanarayanan, J. (as he then was) and the case was remanded for fixing proper maintenance. This appeal came as Letters Patent Appeal. A Division Bench consisting of S. Ramachandra Ayyar, C. J. and Venkataraman, J. held that "notwithstanding the existence of a compromise decree under which a Hindu wife agreed to receive a fixed maintenance without the right to ask for more, the terms of Section 25 of the Act are very clear and would supersede any contract disabling the wife from asking for more. If there was a material change in the circumstances, the Hindu wife has the right to ask for enhancement of the amount of maintenance". They also further held:

"The terms of the section are very clear; the right given there under would supersede any contract disabling the wife from asking for more. After all the true principle is that a person liable to maintain must do so and it will be indeed inequitable for that obligation to be whittled down by technical rules like res judicata and binding nature of a contract. The statute has therefore provided for the agreed maintenance to be enhanced if need be in conformity with the changed circumstances in the case."

In Rangamma v. V. Venkatarajulu Kailasam, J. (as he then was) referring to Seshi Ammal v. Thaiyu Ammal,

held that a suit for enhanced maintenance due to change of circumstances is maintainable in spite of a family settlement between the parties stipulating fixed amount for maintenance. Now it is made clear that the claimant would be entitled to increased maintenance if there is a material change in the circumstances notwithstanding the fact that the claimant had agreed not to claim higher maintenance even in changed circumstances, and the fact that a fixed amount of maintenance was stipulated by a compromise decree makes no difference.

13. Lastly, our attention was drawn to a judgment reported in *Kondamma v. Seethamma* (FB) wherein a Full Bench of Andhra

Pradesh High Court, after elaborately discussing the scope of Section 25 of the [Hindu Adoptions and Maintenance Act, 1956](#), has observed as follows:

"We do not think the introductory words of Section 25 can be so extended as to take within their fold even the cases where right to maintenance had come to an end and was not subsisting on the date of the Act. We have noticed that the distinction between an agreement fixing the amount of maintenance and an agreement extinguishing the right itself is plain and unmistakable. It is obvious that Section 25 will apply only to cases where right to maintenance is subsisting on the day of the Act. If the right had ceased or extinguished Section 25 has no application."

After going very carefully through this judgment, we find that the Full Bench had made a distinction by that ruling between an agreement fixing the amount of maintenance and an agreement relinquishing the right of maintenance itself. They have made reference to the decision reported in *Mutyalamma v. China Appanna* (1968-1 Andh WR 429) wherein a single Judge of the Andh Pradesh High Court held: "Where, however, a person entitled to be maintained compromises and accepts a definite sum in lieu of her right to be maintained from the joint family property and relinquishes her right, I have no doubt that section 25 will not apply to such a case." But in that case there were no allegations that the settlement entered into by the plaintiff was unfair or unjust and there was a concurrent finding that the plaintiff had relinquished her right of maintenance under the settlement in question. This view has been subsequently overruled by a Division Bench of the Andhra Pradesh High Court in a judgment D/-31-3-1970 in S. A. No. 432 of 1968 (Andh Pra), *Seetharamaiah v. Padmavathi* wherein it was held that the agreement contemplated in Section 25 includes also an agreement where the claim for maintenance was permanently settled by paying a lump sum amount. (See para 5 in *Kondamma v. Seethamma* (FB)). Because of this controversy the case in *Kondamma v. Seethamma* (FB) was referred to the Full Bench and the Full Bench after going into the question made the observations which we have already

extracted. The Full Bench, agreeing with the view taken by the single Judge in Muthvalamma v. Chinna Appanna's case ((1968) 1 Andh WR 429), pointed out that the observation of the single Judge in that case was made having regard to the facts of that case that there was an agreement relinquishing the right of maintenance itself whereas in other appeal which came up for consideration before a Division Bench, the Division Bench overruled that decision stating that there was really no question of relinquishment of right to maintenance and finally the Full Bench made a distinction between the agreement fixing the amount of maintenance and an agreement relinquishing the right of maintenance itself and held that where a maintenance holder under an agreement has relinquished her right of maintenance prior to the coming into force of the Act, she cannot claim any enhanced amount under Section 25 on the ground that the income from the family has increased and that Section 25 applies only to cases where right to maintenance is subsisting on the day of the Act. This crucial point whether Section 25 of the Act would apply to a case in which a consolidated payment has been made and the widow's claim settled, coupled with a relinquishment by her of all her claims for maintenance by reason of such a settlement, was considered by Ramamurti J. in C. M. A. No. 252 of 1970 (Mad) of this Court and the learned Judge made the following observations:

"My attention was drawn to the statement of law in Raghavachari's Hindu Law (VI Edition) at pages 248 and 1203 supporting the contention that if there has been a consolidated payment in full settlement of the claim for maintenance, the widow would not be entitled to claim enhancement of maintenance by reason of a material change in the circumstances. I examined the cases referred to by the learned author and I find that those decisions cannot be regarded as authorities for such a position that the final settlement of the claim for maintenance by payment of a consolidated sum would be a total bar to the claim of the widow." .....  
..... "It must also be borne in mind that so long as there is a recurring and continuous liability to pay in kind or in cash, the liability is a liability to pay maintenance and the fact that a fixed recurring payment has been fixed does not alter the character of the liability which is essentially a liability to pay maintenance."

The learned Judge in that case has also made the distinction between the two agreements, namely, an agreement fixing a consolidated payment and an agreement of the relinquishment of right to maintenance and receipt of such consolidated amount. Section 25 of the Act enacts a beneficial social legislation and, therefore, there cannot be any dispute that it must be given a liberal and benevolent construction. The object of introduction of this section is to protect helpless widows and others entitled to maintenance against the abuse of their position in the family, and the provisions of this section are aimed at preventing starvation and vagrancy.

14. Now coming to the facts of the case in question we have already indicated that the total amount of Rs. 500/- given to the plaintiff in full quit of her past and future maintenance as per the decree of the Court was much less than the amount payable to the plaintiff as per the decree of the Court as on the date when Ex. B-2 memo was filed. A plain reading of Ex. B-2 makes it clear that the intention of the parties was to fix a consolidated payment without the right of the plaintiff to ask for more. But it is seen from the said document that she has not expressly relinquished her right to maintenance. In other words, the pith and substance of Ex. B-2 is that the plaintiff had given up only her privilege to claim maintenance in lieu of a receipt of a pittance of Rs. 500/- while she was actually entitled to a sum of Rs. 2,000/- as on the date towards her maintenance besides her right of claim for future maintenance on the basis of the decree given in O. S. No. 15 of 1943. A lump sum or a consolidated payment in the actuarial sense is a sum fixed by an agreement as the estimated amount required to maintain the Hindu wife or the maintenance holder for life. Such an estimate being the result of a discussion inter parties may err on a right side or on a wrong side. The primary intention of such an agreement is to bar the maintenance holder from asking any more maintenance in future. Therefore, Section 25 of the Act has been enacted only to help the maintenance holders so that they may not be deprived of their right to ask for increased maintenance when there is a material change in the circumstances on the ground that the amount of maintenance has already been fixed either by a decree of Court or by an agreement. This Section is only a complement to Section 18 of the Act which gives a statutory right to a Hindu wife to claim maintenance. As we have indicated more than once, the words, in Ex. B-2 cannot be understood as

an emphatic release or relinquishment of the plaintiff's claim to maintenance but it is only an agreement evidencing temporary satisfaction of her right of maintenance or temporary discharge of the obligation of her husband to pay any more maintenance to her. The surrounding circumstances appearing in this case, namely, the past history of the helpless and pitiable plaintiff and the hardship that she has suffered by going to the Court for her maintenance and the persistent conduct of her husband in not complying with the decree awarding maintenance to her, would certainly justify the case of the plaintiff that she had not relinquished her right to maintenance but has been forced to enter into the satisfaction memo agreeing not to ask for maintenance in future and her subsisting right to claim enhanced maintenance has not ceased.

15. For the reasons mentioned above, we are of the view that the observation made by the Full Bench in *Kondamma v. Seethamma* (FB) that a maintenance holder cannot claim any

enhanced amount under Section 25 of the Act when she has relinquished her right of maintenance, is not applicable to the facts of this case since we have come to the conclusion that there is no relinquishment in this case. In fact, the Full Bench in the discussion of its judgment has made a distinction between the agreement fixing the amount of maintenance and an agreement relinquishing the right of maintenance. The decisions referred to above, which are to the effect that a Hindu wife can ask for enhanced maintenance despite the fact that there was an agreement for a fixed maintenance without the right to ask for more, would also fortify our conclusion in this case. Leave apart we feel that equity in the present case goes only in favour of the plaintiff and we have no hesitation in extending the arms of sympathy of this Court to help the plaintiff having regard to the pathetic condition of the plaintiff who has suffered untold agony for all those years in finding difficulty to maintain herself in the present hard days.

16. The lower Court on issue No. 2 has found that the woman is estopped from claiming future maintenance since issue No. 1 was answered against her. But in view of our finding that her right is still subsisting, we set aside the finding of the lower Court on issue No. 2. Coming to issue No. 3. the lower Court has concluded

that, in any event, the plaintiff cannot lay a claim for maintenance for more than three years prior to the date of suit. This finding in our view is well-founded and hence we confirm this finding and hold that the plaintiff will be entitled to the past maintenance only for a period of three years. As regards the quantum of maintenance, the lower Court on issue No. 6 has found that the plaintiff would be at best entitled to maintenance at the rate of Rs. 100/- per month. Of course there is no cross-appeal as against this finding. But after hearing both parties and having regard to, the status of the parties and the probable income that the defendant is expected to derive from the landed properties, we feel that it would be just and proper to fix the quantum of maintenance at Rs. 75/- per month instead of Rs. 100/- per month. Hence we modify the finding of the lower Court on issue No. 6 to the extent that the quantum of maintenance shall be fixed at Rs. 75/-per mensem. As regards the plaintiff's claim to have a charge over the suit properties, the finding of the lower Court on issue No. 7 is confirmed.

17. In the result, we hold that the right of the plaintiff to ask for enhanced maintenance is still subsisting and she is entitled to get maintenance at the rate of Rs. 75/- per month and also a right to claim past maintenance for a period of three years prior to the filing of the suit. Further, she will be entitled to a charge over the suit properties less the land of 1.95 acres sold to strangers, prior to the suit. Accordingly, we allow this appeal with costs. The respondent will pay the court-fee due to the Government.

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