

Privy Council Appeal No. 39 of 1926.

Sri Raja Bommadevara Naganna Nayudu Bahadur and another - *Appellants*

v.

Sri Raja Bommadevara Rajya Lakshmi Devi Amma Garu - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 4TH MAY, 1928.

Present at the Hearing :

LORD CARSON.

LORD SALVESEN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD CARSON.]

This is an appeal from a judgment and decree dated the 18th August, 1924, of the High Court of Judicature in Madras, reversing a judgment and decree dated the 22nd day of December, 1920, of the Court of the Additional Subordinate Judge of Ellore.

The suit was brought by the respondent (plaintiff) against her husband the zamindar of Vallur, hereinafter referred to as defendant No. 1, to recover twelve years' arrears of maintenance. Shortly after the commencement of the suit the defendant No. 1 died, and the appellants, who are his two sons by another wife, were added as his legal representatives and were made and are defendants Nos. 2 and 3 in the suit.

The respondent was married to the defendant No. 1 about the year 1878. She had two sons and one daughter by him. The sons died young—a few years later her husband married Chaya Devi, a younger sister of the respondent, with her consent, and of that marriage there were two sons (the appellants) and three daughters. Another sister of the respondent's was subsequently married to Bhashyakarlu Nayudu, an undivided brother of the defendant No. 1.

It was not in dispute that the respondent left her husband's house in November, 1894, in the absence of her husband, taking with her his children, and accompanied by her sister the said Chaya and the said Nayudu her husband's brother, and had not lived with her husband or in his house as his wife for a period of 23 years before his death. The main question in the action was whether she was justified under the circumstances proved in so leaving her husband's house, and in continuing to remain away for all the intervening years that elapsed until the present suit was brought.

Other questions were raised in the course of the trial as whether the respondent had waived her right to maintenance and whether she was estopped from claiming it, but as these issues were found in favour of the respondent by both courts below they have become immaterial and have not been discussed before this Board.

The Additional Subordinate Judge of Ellore, who heard the case at considerable length on the 22nd December, 1920, dismissed the respondent's claim, holding that she had no justification for living separate from her husband during the period for which she claimed maintenance.

On appeal to the High Court of Judicature at Madras the judgment of the Additional Subordinate Judge was reversed by a judgment and order dated the 18th August, 1924, awarding the plaintiff Rs. 43,200 as arrears of maintenance at the rate of Rs. 300 per month for twelve years. From that decree the defendants Nos. 2 and 3 have appealed to His Majesty in Council.

The question to be decided is, therefore, solely one of fact and arises in the fourth issue framed for the trial of the action, viz. "whether the circumstances mentioned in the plaint are true and whether they justify plaintiff in bringing this action?"

Having regard to the length of time which had elapsed before the present proceedings were instituted and the case attempted to be proved at the trial, it is important to examine not merely the case made by the plaint but certain other proceedings which are on record and in which the plaintiff was involved. The case as put forward in the plaint is as follows: "About the year 1889, disputes arose between the defendant No. 1 and his younger brother, who demanded partition of the estate. The defendant, with intent to defraud his brother in case of a division of the estate, attempted to suppress valuable properties by converting them into currency notes and by transferring them to Hyderabad. For this purpose he engaged a number of subordinates who were ready to assist him in his evil design. Boddu Narasimha Rao was chief among them. As a means of securing their thorough co-operation in his design he offered to give his daughters in marriage to some of them. The plaintiff and her sister protested against such a course, as the daughters were not willing to accept the matches. About this time the defendant was entirely under the influence of a dancing woman named Mahalakshmi, at whose instance he was already

defaming, abusing, beating and otherwise ill-treating his wives, the plaintiff and her sister. Boddu Narasimha Rao made common cause with the defendant and his dancing girl, and all the three conspired against the plaintiff and her sister and the defendant's brother. They made the place so hot for plaintiff and others that they had to flee for their lives from Pangidigudem to Cocanada about November, 1894, after having applied for police protection."

The defendant No. 1 in 1895 took proceedings against the respondent and his second wife, her sister, complaining that, during his absence at Secunderabad, his said wives unlawfully took away his minor children out of his keeping in Pangidigudem without his consent and against his will. In those proceedings the respondent attempted to justify her action on the grounds of the first defendant's gross neglect, ill-treatment and immorality. Although various delays were granted to enable these charges to be proved, the respondent did not produce a single witness, and on the 30th August, 1895, judgment was given by the Subordinate Judge at Ellore ordering the children to be given up to the respondent's husband, defendant No. 1.

One more important matter of record ought to be considered before approaching the evidence produced at the trial.

When the respondent left her husband's house she was, as already stated, accompanied by her husband's younger brother, with whom, as stated in the plaint, her husband had differences and with whom the respondent apparently took sides. In the year 1898, proceedings were taken by the said brother against the respondent for alleged loans due by her to him, and it is important to observe that, in giving judgment dismissing the suit on the 2nd December, 1898, the Subordinate Judge at Cocanada, in the course of his judgment, said:—

"Plaintiff admitted that he was warned by his brother" (defendant No. 1) "not to talk to defendants" (of whom one was the respondent), "but to quit his house at once, and in spite of this warning he brought them away to Cocanada, planning for their exit from Pangidigudem in a very cunning way, as will be seen from his letters . . . giving them some hopes of his adopting a son of the defendant and making over to him the property to be received under the partition suit he had laid against their husband."

Bearing these matters in mind, it is necessary now to consider the case made by the respondent at the trial of this action, which took place in 1920. No case was attempted to be proved of the alleged conspiracy to defraud the husband's brother, but in her evidence the respondent for the first time, after making various other complaints, deposed as follows:—

"One day when myself and Chaya Devi Amma were taking our meals some pills were found in the fish curry. They were thrown to a dog and the dog ate the same and died. We gave up taking our food. Then we got afraid lest we should lose our lives by remaining here and sent word to Cocanada in order to save our lives. We sent word to Cocanada to our mother—our mother caused a petition to be presented to the Collector, praying we should be set free."

The learned Trial Judge, who has examined this allegation and the evidence in support of it with great care, having regard to the seriousness of the charge and the time at which it was first made, came to the conclusion that it was proved to be a complete myth. In the 24th paragraph of his judgment he states his reasons for coming to that conclusion, and amongst other matters states as follows :—

“ The first defendant's brother was at Pangidigudem, when this incident is said to have occurred, and he was a confidant of the plaintiff and of her sister. Yet the plaintiff admitted in her evidence she did not report this incident to the first defendant's brother. She did not make any report to the police about this. Nor did she address any letter to the Raja ” (*i.e.* her husband) “ informing him of the incident. The second defendant and other people who were in Pangidigudem and who ought to have known about the incident if it had really occurred, say that they have never heard of such an incident. This incident was not mentioned in previous litigation, civil and criminal, between the first defendant and his wives. I am clearly of opinion that the poison incident has been invented for the purpose of this suit in order to find some justification for plaintiff's continued absence at Cocanada for 23 years. If this incident is rejected as false there could be no other justification for the plaintiff to live away from her husband.”

With that conclusion of the learned Subordinate Judge their Lordships agree with the result that it is impossible to rely upon any evidence given by the plaintiff. It is unnecessary to repeat in detail the careful analysis made by the Subordinate Judge of all the evidence and contentions put forward on one side and the other and the various suggestions of demands for maintenance and restoration which took place during the long series of years. It is sufficient to observe that their Lordships are of opinion that there was no real attempt to enforce a claim for maintenance or to procure a return to her husband's house during the long series of years which had elapsed prior to the bringing of this action, and their Lordships agree with the Subordinate Judge when he says in paragraph 29 :—

“ I have shown in the above paragraphs sufficient facts which must lead to the conclusion that the plaintiff voluntarily lived at Cocanada apart from her husband for a period of 23 years without justification.”

It is true that the learned Judges in the High Court of Judicature at Madras took a different view of the facts from that formed by the Subordinate Judge. The learned Chief Justice believed the poisoning story, and states that it “ was the immediate occasion for their leaving the protection of his house.”

The other learned Judge does not mention the poisoning incident, but finds an excuse from the nature of the evidence given by stating that :—

“ When the women of a particular family observe a kind of quasi-gosha, as they do in most zamindar families, it is not possible to obtain such direct evidence of ill-treatment or cruelty as may be possible in other cases. Further, the ill-treatment is not likely to be open or brutal, but insidious, and much more galling.”

Their Lordships cannot agree with the conclusions of fact come to by the High Court and are satisfied, for the reasons already stated, that the judgment of the learned Subordinate Judge is to be preferred, and they will accordingly humbly advise His Majesty that this appeal should be allowed, that the decree in the High Court of Judicature in Madras of the 18th August, 1924, should be set aside, that the judgment and decree passed by the Court of the Additional Subordinate Judge at Ellore dated the 22nd December, 1920, should be restored, and that the respondent should pay to the appellants the costs of this appeal and of the appeal to the High Court of Judicature at Madras.

In the Privy Council.

SRI RAJA BOMMADEVARA NAGANNA NAVUDU
BAHADUR AND ANOTHER

vs.

SRI RAJA BOMMADEVARA RAJYA LAKSHMI
DEVI AMMA GARU.

DELIVERED BY LORD CARSON.

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