# Kr. Kirpal Singh vs Mt. Chandrawati Devi on 15 November, 1950

## Equivalent citations: AIR1951ALL507, AIR 1951 ALLAHABAD 507

JUDGMENT

Sapru, J.

1. These are two appeals which arise out of a suit which was brought by the plaintiff, Sm. Chandrawati Devi, for a maintenance allowance, for certain arrears of allowance since 1937 and for her residence in a portion of the house occupied by the defendant. In F. A. No. 119 of 1946 the plaintiff is the appellant. Her grievance with the judgment of the learned Additional Civil Judge is that instead of allowing her maintenance at the rate of Rs. 225 a month, a sum of Rs. 150 per month has been fixed by the learned Judge as future maintenance; that for eleven months prior to the institution of the suit that she has been held to be living separate from the defendant, the arrears of maintenance allowed is only at Rs. 40 per month and not at the rate allowed to her for her future maintenance and that the learned Judge's view of the period for which arrears of maintenance should be allowed is incorrect as she claims to have established by evidence on the record that she has been living separate from her brother-in-law, the defendant, for the whole period for which the past arrears of maintenance were claimed. First Appl. No. 200 of 1945 has been filed by the defendant and is directed against the decree of the learned Civil Judge fixing the maintenance of the lady at Rs. 150 per month, it being the case of the defendant that the rate of maintenance is much too high. As both these appeals arise out of the same suit and are directed against the same judgment and were connected by this Court, they have been heard together. We shall dispose of them by the same judgment.

2. Before dealing with the points which have arisen in the case, it will be convenient to give a few salient facts relating to the case of the respective parties to the appeals. The plaintiff's husband, Mahtab Singh, was the brother of the defendant, Kripal Singh. He died six months after his marriage with the plaintiff in October 1929. According to the case set up by the plaintiff, the husband was joint with his brother and at the time of her husband's death in 1929 her brother-in-law was a minor. Her brother-in-law attained majority about 7 years back and has been managing the property since then. The plaintiff had been living with him till 1937, when she left her husband's house and started living with her parents. Repeated requests by her for a maintenance allowance and a separate residence in the family house having met with no response, she instituted the suit on 2-1-1943 for a fixed maintenance allowance at the rate of Rs. 225 per month and for a sum of Rs. 8000 for the years that she had been living separate from her brother-in-law. According to the version for which she has made herself responsible, the zemindari income of the property was Rs. 7500.

3. The suit was resisted by the defendant on the ground that he had not placed any obstacles in the way of the plaintiff's living in the family house, that he was not responsible for her leaving the family

residence, that the income of the family has been grossly exaggerated, that the maintenance allowance claimed was far too excessive, that it was only since February 1942 that she had left the family residence and gone to her father's place, that she was not entitled to any maintenance allowance prior to that date as she was being supported by the family till that time, that the defendant would be glad to welcome her in the family residence and that it was not necessary, in the circumstances, to allot her a separate house for her residence.

4. The learned Civil Judge came to the conclusion that actually the plaintiff left the defendant's house for good only in February 1942, and not earlier, that the income of the property was in the neighbourhood of Rs. 12,000 a year, that from the zamindari property alone the defendant had an income of Rs. 7,500 a year, that regard being had to the income of the property, the status of the family and the needs of the plaintiff a sum of Rs. 150 per month as future maintenance should be sufficient, that for past arrears maintenance allowance at the rate of Rs. 40 per month should suffice, this amount being payable to her from the time she left her brother-in-law's place in February 1942 without any intention of returning to her husband's place and that she was entitled on that basis to a sum of Rs. 440 for past arrears.

5. On the question of the plaintiff's right to have a separate residence on the ground that for various reasons it is not possible for her to live a happy life in the house of her brother-in-law, there can be no doubt. The three important questions that we have to consider relate to (a) the rate fixed by the learned Civil Judge being fair and reasonable, (b) the correctness or otherwise of the view of the learned Civil Judge that she should be paid at a much lower rate for past arrears of maintenance and (c) the time when she left her brother-in-law's house for good.

6. In considering the question of a proper maintenance for the lady, the learned Civil Judge has discussed at some length the evidence that was led on both sides as regards the total income of the family. His general conclusion on this part of the case is that, apart from the zamindari income which comes to Rs. 7,500 per annum, there are other sources of income also and that if they are totalled up, the net average income will far exceed this figure. His conclusion is that had her husband been living, he would have been entitled to an annual income of Rs. 3,000 or Rs. 4,000 per year. The approach of the learned Civil Judge is that in fixing the rate of future maintenance the income of the property, the status of the family, the standard of living of the class to which the parties belong and the value of money at the time that the maintenance is fixed should be taken into consideration. We think that that approach was a correct one. Undoubtedly in ascertaining the quantum of maintenance the reasonable wants of a person in the position and rank of life of the plaintiff would be a most material consideration. Reference was made by learned counsel for the appellant, Mr. Gaur, to the case law on the point and we propose to refer to it briefly.

7. The principle laid down in regard to a maintenance allowance in an early case of this Court, namely, Baisni v. Rup Singh, 12 ALL. 558 : (1890 A. W. N. 112), was that in estimating the amount which should be allowed to a Hindu widow out of her husband's estate, regard should be had to the value of the estate as gauged by the annual income derivable therefrom, to the position and status of the deceased and to the position and status of the widow and the expenses which she has to incur in connection with religious and other ceremonial duties. Attention may be drawn to the observations

of Mahmood J., that, "a Court of justice should bear this in mind in fixing the amount of maintenance which should be sufficient to make her life as far as possible one of comfort, and not such as might drive her to circumstances throwing blame upon her of immorality."

8. In the case of Devi Persad v. Gunwanti Koer, 22 Cal. 410 at p. 418, dealing with the question as to the considerations to be borne in mind in determining the amount of maintenance, Banerjee J., observed :

> "The Hindu shastras no doubt enjoin on the widow a life of piety and self-denial, but still in fixing the amount of her maintenance the Court must consider what would be the reasonable wants of a person in her position in life; and this must lead to a consideration of the means of the family of her husband. Then, again, the amount of her maintenance must be sufficient not only for her food and raiment but also for the performance of necessary religious ceremonies, as the second of the two passages cited above from the Viramitrodaya will show; and these religious ceremonies must be performed by her on a scale suited to her rank and position in life, so that here again the means of the family must have to be taken into consideration."

9. In the case of Dalel Kunwar v. Ambika Pratap Singh, 25 ALL. 266 : (1903 A. W. N. 34), the contest was between the widow and an adopted son who had ousted her by proving his adoption. The amount of maintenance fixed in 1903 by this Court in a case in which the annual rental of the property was Rs. 6,000 was Rs. 150. Stanley C. J. and Blair J. laid down that "In estimating the maintenance of a Hindu widow the Court is bound to look at the value of the estate, the position and status of her deceased husband and to her position, and award such reasonable sum as it may consider proper, having regard to these matters."

They thought that the sum of Rs. 100 which had been fixed by the trial Court was too low.

10. In the case of Ekradeshwari Bahuasin Saheba v. Homeshwar Singh, A. I. R. (16) 1929 P. C. 128 : (8 Pat. 840), Lord Shaw in delivering the judgment of the Board observed that maintenance depends upon a gathering together of a number of factors but that the general principle that must be remembered is that the sum awarded must enable the lady to live as far as may be consistent with the position of a widow in something like the same degree of comfort and with the same reasonable luxury of life as she had in her husband's lifetime. It is true that the maintenance awarded in that case in a property which was yielding an income of Rs. 33,000 was Rs. 3500 but that, as a reading of the case will show, was due to the peculiar circumstances of that case. The lady had claimed Rs. 18,000 a year but there were charges which imposed a severe burden upon the estate and it was for that reason that their Lordships were not prepared to accept the figure of Rs. 15,000 or Rs. 18,000 as reasonable either in fact or in law.

11. We are satisfied that in this particular case the value of the property was in the neighbourhood of Rs. 12,000. According to the accounts which were produced in this case for 1339 Fasli the total realisations from the estate amounted to Rs. 13,935-9-6. According to the accounts which were produced for 1342 Fasli, the total income of the property appears to have been Rs. 16,966-0-1.

According to the accounts for 1343 Fasli, the annual income of the property from all sources appears to have been Rs. 20037-5-7. It is unnecessary to review the evidence at any length. We are satisfied that the Judge's estimate that the annual income of the property was much more than Rs. 7,500, and that the husband's share, had he been living, would have come to Rs. 3,000 or Rs. 4,000 a year not was incorrect. It erred, if at all, on the low side.

12. A lot of unnecessary evidence was led in this case to prove that the standard of living so far as widows are concerned in the community to which the parties belong was low, that in some cases the maintenance allowance had been fixed compared with the annual income of the property at a very low figure, that members of the brotherhood looked upon Rs. 40 as a good figure for the maintenance of a widow, that the defendant as the male member of the family has a wife, mother and four children to support and that, in these circumstances, the figure fixed by the lower Court was an unreasonably high one. We are unable to accept the argument as valid at all. Had the plaintiff's husband been living he would have been entitled to anything between three to four thousand rupees a year from the yield of the family property. Had the husband of the lady died not in 1929 but after 1939, the lady could have claimed under the Hindu Women's Property Act, 1939, a partition of the property which would have enabled her to get a share for life which would have yielded her Rs. 3,000 or Rs. 4,000 a year. Reference may be made to the fact that the learned Judge has referred to the evidence of the plaintiff's maternal uncle, Kr. Bisheshwar Singh who is an M. L. A., that the minimum sum needed for the plaintiff's maintenance is Rs. 150 per month. It is in our opinion, permissible for Courts of law to take into account the changes in social outlook among Hindus in regard to such matters as fixing the rate of maintenance for a Hindu widow. It is well-known that the position of Hindu women and widows has improved considerably in recent years. Hindu law has never been static. It showed marvellous capacity for adjustment in the past and it represents a continuous growth. Though the Hindu Women's Property Act, 1939, has no application to the case as the plaintiff's husband died in 1929, yet we can take it into account as representing a change in the social outlook at the time the maintenance suit was instituted.

13. In the recent case of Best v. Samuel Fox & Co., Ltd., 1950-2 ALL E. R. 798 where the wife had brought a suit against her husband's employers for damages for an accident to her husband which disabled him from performing marital duties, it was observed by Croom-Johnson J. that "the law of England is a living law. It develops, and must develop, according to changes in the Social life and social outlook."

Similarly we would say that the Hindu law is a living law and it develops, and must develop in a matter such as maintenance according to changes in the social life and social outlook. A further circumstance which has to be taken into account in fixing the maintenance rate is, in our opinion, the high cost of living. It is ridiculous to suggest that for a woman of the plaintiff's status Rs. 40 or Rs. 50 a month in these days of high prices would be sufficient. We do not, therefore, think that the learned Civil Judge was erring on the side of generosity in fixing the amount of maintenance at Rs. 150 per month. It was pressed upon us by Mr. Banerji that we should increase the amount. We are satisfied on the broad facts of the case that the amount fixed by the lower Court is not an unreasonable one and we see no reason to dissent from the view of the learned Judge on this point.

14. We come to the question as to the rate at which the maintenance should be fixed for past arrears and the time from which this maintenance should be allowed to her.

15. The plaintiff's version is that she left her brother-in-law's place for good in 1937. The learned Judge came to the conclusion on the materials before him that she did not leave her brother-in-law's house with the intention of never coming back to it till February 1942. Reliance has been placed for this finding upon a letter written in the plaintiff's handwriting in November 1941 from Rupdhani congratulating the wife of Nawin Chand on the birth of a son. The letter was put in on behalf of Jas Kunwar who is Kripal Singh's elder widow sister and who lives in Rupdhani. Reliance was also placed on another letter, the envelope of which, it was asserted, was dated 21-2-1942. More important than these letters is the fact that, according to the learned Civil Judge, from the bahis produced by the defendant it is quite clear that off and on expenses were incurred on account of the plaintiff in Rupdhani and that they find a place in the bahis. It was for the plaintiff to establish that the defendant's case that she did not leave the latter's place till February 1942 for good was incorrect. In the absence of any evidence to the contrary, the presumption is that the learned Judge's finding that it was in February 1942 that she left her brother-in-law's place with the intention of never coming back to it is correct. It was for the plaintiff to get translated and printed, evidence, if any, to the contrary. This she has not done. We, therefore, agree with the learned Civil Judge that it was in February 1942 that she left her brother-in-law's house for good.

16. We are unable to agree with the view of the learned Judge that there should be a differentiation between the rate of maintenance for past arrears before the institution of the suit and future maintenance after its institution. Reliance was placed on behalf of the defendant on the following cases for the proposition that the question of arrears of maintenance does not stand on the same footing at all as the question of the rate at which future maintenance is allowed: Gurushiddappa Mallappa v. Parwatewwa Shivappa, A. I. R. (24) 1937 Bom. 135 : (I.L.R. (1937) Bom. 113); Ramarayudu v. Sitalakshamma, A.I.R. (24) 1937 Mad. 915 : (177 I. C. 33); Shridhar Bhagwanji Teli v. Sitabai, A.I.R. (25) 1938 Nag. 198 : (I. L. R. (1938) Nag. 289) and Venkataratnamma v. Seetaratnam, A. I. R. (19) 1932 Mad. 408 : (138 I. C. 237). We do not look upon these cases as laying down a general principle of law that the arrears of maintenance must be at a lower rate than the maintenance itself.

17. In the case of Ekradeshwari v. Homeshwar Singh, 1929 A. L. J. 695 : (A. I. R. (16) 1929 P. C. 128), after laying down the general principle on which maintenance allowance should be based, the view that the Judicial Committee of the Privy Council took was that the maintenance on the scale fixed by the Court below should run neither from the date of the decree, as found by the Court of Appeal, nor from the date of the suit in April 1922, but from 1-1-1922, which was the date when the plaintiff left her husband's home on a visit to her father to attend the sradh ceremonies of her deceased mother with the intention of never coming back to her husband's people. It will be noticed that the rate allowed to her for past arrears was the same as that for future maintenance.

18. Again, in the case of Jamuna Kunwar v. Arjun Singh, A. I. R. (28) 1941 ALL. 43 at p. 48 : (I. L. R. (1940) ALL. 739) the rate allowed for the arrears of maintenance was the same as the rate for future maintenance. No doubt the maintenance fixed in that case for the widow was Rs. 100 per month in

an estate the Government revenue of which was Rs. 26,000 a year. This low rate was due to the special circumstances of that case, the most important of which was the fact that her husband had, in a will left by him, indicated Rs. 100 a reasonable allowance for her. The circumstances in this case are quite different and, apart from anything else, a further circumstance which, in our opinion, should be taken into account is the high cost of living. We think that there is no sufficient justification, at all events, in this particular ease for making any distinction between the rate allowable for past arrears of maintenance and future maintenance. We would, therefore, modify the decree of the trial Court by awarding her a maintenance allowance of Rs. 150 from the date on which she left her husband's home, i. e., February 1942, right up to the institution of the suit. This covers a period of 11 months and instead of Rs. 440, as decreed by the lower Court, she shall be entitled to a sum of Rs. 1,650.

19. We now come to the question of separate residence for the lady. The learned Civil Judge has rightly taken the view that she is entitled to a separate residence and has allotted her, having regard to the needs of the entire family, the two easternmost court-yards. We think that the allotment is a fair and reasonable one and we see no reason to disturb it.

20. The result is that we allow the appeal in part, modify the decree of the Court below to the extent that the plaintiff shall be entitled to past maintenance from February 1942 till the institution of the suit at the rate of Rs. 150 per month and not at the rate of Rs. 40, as decreed by the Court below, and maintain the decree of the Court below in regard to her future maintenance and her separate residence. We dismiss the cross-objection. Costs throughout will be borne by the parties in proportion to their success and failure.