

Privy Council Appeal No. 91 of 1931.

Bengal Appeal No. 4 of 1931.

Rajani Kanta Pal - - - - - *Appellant*

v.

Sreemati Sajani Sundari Dassya - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 16TH NOVEMBER, 1933.

Present at the Hearing :

LORD MACMILLAN.

SIR JOHN WALLIS.

SIR GEORGE LOWNDES.

[*Delivered by* LORD MACMILLAN.]

This is a suit in which one Sreemati Sajani Sundari Dassya, widow of the late Jadu Nath, sues for maintenance and the recovery of certain ornaments, the defendants to the suit being her brother-in-law, Rajani Kanta Pal, and others who are called as representatives of her late father-in-law, Madan Mohan.

In the first Court the plaintiff was held disentitled to any maintenance, though she recovered, their Lordships understand, the value of the ornaments which she claimed, but the learned Judge indicated that if there was any legal liability for maintenance, the appropriate allowance would be at the rate of 20 rupees per month.

On the case being taken to the High Court the judgment of the Subordinate Judge was in part recalled and liability was held to be established against the defendants for the maintenance of

this lady, and the rate of maintenance was fixed at 80 rupees per month.

In the present appeal, Counsel on behalf of the defendant, Rajani Kanta Pal, now the appellant, endeavoured to persuade their Lordships that there was no legal ground of liability for maintenance. That contention their Lordships regarded as hopeless. The liability of Madan Mohan towards the widow of his son was, no doubt, on the authorities, a moral liability, but that liability, when transmitted to his sons on his death, became, in their persons, a legal liability, the measure of which, however, was restricted to the amount of the estate to which they succeeded from their father. These principles of law have been established by authoritative judgments and are applicable to a family governed, as was this family, by the Dayabhaga law. The matter is not one which can be reopened before their Lordships.

This view having been indicated to Counsel, the only question which remained was whether the extent of the maintenance which had been fixed for this lady by the High Court was or was not excessive. Their Lordships have before them what fell from Lord Shaw in delivering the judgment of the Board in the case of *Ekradeshwari Bahuasini v. Homeshwar Singh* (56 I.A., 182, at p. 187), where, as here, a maintenance award of the High Court was in question :—

“ The Courts below fixed the maintenance of the appellant at 4,200 rupees per annum. The learned Subordinate Judge in doing so says this : ‘ This sum, I think, would enable the lady to live as far as may be consistently 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.’ That is as near to principle as can be got in such cases, and, with the addition to be presently noted, their Lordships entirely approve of that view. The addition is this : that there may be circumstances in which the past mode of life of the widow has been demonstrably on a penurious and miserly scale, or, on the other hand, on a quite extravagant scale, having regard to the total income of the husband. But if, as may be readily assumed, in such a case as the present, the scale was suited to his own position in life, that is a sound point from which to start the estimate.”

Now, in the present case, so far as the circumstances of the parties are concerned, there does not appear to be anything to indicate that the sum of 80 rupees per month was fixed on any wrong principle. No doubt if it could be shown that the High Court had erred in law by applying an inapplicable principle in measuring the amount to be awarded to the plaintiff, there might be justification for review by their Lordships, but in this case Counsel has failed to draw their Lordships’ attention to any such error in law. The learned Judges of the High Court in their judgment say this :—

“ It has been attempted to be shewn on behalf of the defendants by reference to certain income tax papers that Madan Mohan’s income from his business was assessed with a tax less than 200 rupees per year. The papers are perfectly worthless as indicating the value of Madan Mohan’s

estate. As regards Ext. 4, the Subordinate Judge perhaps made a mistake, but that Madan Mohan's estate is valued at several lacs there is no question. The principles of assessment have been explained by their Lordships of the Judicial Committee in the case [just alluded to]. Bearing those principles in mind, we would fix the maintenance at 80 rupees per month. This amount, we think, will enable the plaintiff to live with the same degree of comfort and with the same reasonable luxury and neither on too penurious or miserly nor on too extravagant a scale."

It is perfectly clear that the learned Judges of the High Court applied their minds exactly to the question which it was proper for them to consider, and they have arrived at a conclusion in conformity with the principles laid down by this Board. Counsel has entirely failed to show their Lordships that the learned Judges of the High Court proceeded upon any evidence which was inadmissible or committed any error as regards the principles applicable to the case.

In these circumstances their Lordships have no hesitation in arriving at the conclusion that they must humbly advise His Majesty that the appeal be dismissed.

The respondent in this case is appearing *in forma pauperis*, and accordingly she will have such costs as are appropriate in the case of a respondent *in forma pauperis* who has been successful.

In the Privy Council.

RAJANI KANTA PAL

2.

SREEMATI SAJANI SUNDARI DASSYA

DELIVERED BY LORD MACMILLAN.

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