

who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care."

(21) In the case before me, the vehicle concerned was *not* under the 'management' of the appellant-State or its servant, the driver. It was registered in the name of the Superintendent of Police, Gurdaspur, and was under his control. That is to say, it was under the management of the claimant himself, and the accident would *not* have happened if the claimant, who had the management and control, used proper care either to get the tyres replaced in time or to avoid using this dangerously unsafe vehicle on that rainy day. The accident occurred for want of care on the part of the claimant himself. The rule of *res ipsa loquitur* (which for the sake of convenience may be called the rule of presumptive negligence on part of the defendant), has, therefore, no application to the facts of the present case.

(22) It is not necessary for me to overburden this judgment by discussing all the cases cited by Mr. Thapar. It would suffice to say that their facts were entirely different.

(23) For all the reasons aforesaid, I have no hesitation in holding that the claimant was not entitled to any compensation. In the result, I would allow this appeal, and dismiss the claimant's application, leaving the parties to bear their own costs throughout.

R.N.M.

APPELLATE CIVIL.

Before S. B. Kapoor and H. R. Sodhi, JJ.

WALI RAM,—Appellant

versus

MUKHTIAR KAUR,—Respondent.

R.S.A. 732 of 1967

August 28, 1968.

Hindu Adoptions and Maintenance Act (LXXVIII of 1956)—S. 20—Scope of—Obligation of Hindu parents to maintain unmarried daughter—Whether absolute irrespective of daughter's age—Evidence Act (I of 1872)—Ss. 101 to 104—Burden to prove daughter's ability to maintain herself—Health or age of daughter—Whether raises presumption of such ability.

Wali Ram v. Mukhtiar Kaur (Sodhi, J.)

Held, that section 20 of the Hindu Adoptions and Maintenance Act, gives a statutory recognition to the well established normal obligation of a Hindu male or female to maintain his or her unmarried daughter and aged or infirm parents so long as they are not able to maintain themselves. The language used in section 20(3) is wide enough laying down no limitations as to the age up to which an unmarried girl has to be maintained by a Hindu father or mother, as the case may be. The obligation to maintain an unmarried daughter is absolute and extends so long as she is not able to maintain herself out of her own earnings or property.

Held, that the burden is on the father or mother to show that he or she stands discharged from his or her liability to pay maintenance to the unmarried daughter as the latter is able to maintain herself out of her own earnings or property. The expression 'is unable to maintain himself or herself out of his or her own earnings or other property' is more in the nature of a proviso to the first part of sub-section (3) which imposes in most unequivocal terms an obligation on the father or the mother regarding their unmarried daughter or infirm or aged parents. It is, therefore, for the father or the mother to establish that his or her case falls under the proviso. It does not seem to be the intention of the Act that a presumption of ability to earn and maintain herself should, in the case of a Hindu girl, be raised from her bodily health or age alone. (Para 5)

Second Appeal from the decree of the Court of Shri Pritam Singh, District Judge, Sangrur, dated the 24th June, 1967, reversing that of Mrs. Harmohinder Kaur, Sub-Judge, 1st Class, Dhuri, dated the 24th May, 1965, and granting the plaintiff a decree for maintenance at Rs. 20 per mensem from the date of the suit till her marriage.

ACHHRA SINGH, ADVOCATE, for the Appellant.

B. S. SHANT, ADVOCATE, for the Respondent.

JUDGMENT

SODHI, J.—This is a defendant's appeal against the judgment and decree passed by the District Judge, Sangrur, on the 24th of June, 1967, whereby he reversed the judgment and decree of the trial Court and decreed the suit of the plaintiff-respondent Mukhtiar Kaur for maintenance at the rate of Rs. 20 per mensem against her father Wali Ram defendant-appellant.

(2) The plaintiff filed a suit in *forma pauperis* claiming maintenance at the rate of Rs. 50 per mensem from her father Wali Ram defendant on the ground that she was an unmarried girl studying in first year class in a college at Sangrur with no income of her own and that even her mother was not helping her. It may be mentioned

that the defendant appellant had re-married during the life time of Mst. Kartar Kaur, mother of the plaintiff and it is alleged that he has strained relations with both the mother and the daughter. They had filed an application for maintenance under section 488 of Criminal Procedure Code earlier as well which was allowed but as the plaintiff had grown major, she could not get benefit of the order of the Criminal Court. It has been pleaded by her that her father is a big landlord owning 300 bighas of land in village Harchandpura, 60 Bighas of land in village Batuha, district Sangrur, and could easily pay Rs. 50 per mensem as maintenance allowance to the plaintiff. The claim of the plaintiff was resisted by the defendant who pleaded that the plaintiff had passed her matriculation examination and was in a position to earn a living for herself. It was further pleaded that Mst. Kartar Kaur, mother of the plaintiff, owned 60/65 bighas of land and she could also help in maintaining the plaintiff. The defendant also claimed that there were 11 members of his family whom he had to support and his income was not enough. On the pleadings of the parties, the following two issues were framed—

- (1) Whether the plaintiff is entitled to any maintenance; if so, what should be the quantum of maintenance?
- (2) Relief.

(3) The trial Court on an appreciation of the oral and documentary evidence produced before it, has come to the conclusion that the mother of the plaintiff owns about 80 bighas of land and is in a position to support the plaintiff who also is a grown-up girl above 20 years of age. The defendant, according to the trial Court, has to maintain his other children who are not getting any education and also to pay maintenance in a sum of Rs. 25 per mensem to Mst. Kartar Kaur under the orders of the criminal Court. In these circumstances the suit of the plaintiff was dismissed. She preferred an appeal and the District Judge has held that section 20(3) of the Hindu Adoptions and Maintenance Act (Act 78 of 1956), hereinafter called the Act, casts an obligation on a Hindu to maintain his unmarried daughter so long as she remains unmarried and is unable to maintain herself out of her own income or other property. An application was made by the defendant during the pendency of the appeal before the District Judge by way of an additional evidence to show that the respondent was employed in a school getting some salary but these allegations were controverted by the plaintiff and held not

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to be proved. It was, of course, found that there was no dispute regarding the properties held respectively by the defendant and Mst. Kartar Kaur, the mother of the plaintiff who owned about 80 bighas of land out of which 5—16 bighas of land was under mortgage and the rest in her possession. This land was given to her by her father when she was deserted by the defendant and she had to maintain her son, from the loins of the previous husband Narain Singh, who was the brother of the defendant, out of this very property. The District Judge granted a decree for maintenance of Rs. 20 per mensem from the date of the suit till her marriage against Wali Ram, defendant-appellant with costs of both the Courts and further observed that actually the plaintiff would require Rs. 40 per mensem towards her maintenance but Mst. Kartar Kaur, mother of the plaintiff should also be sharing the liability to the extent of one half. Wali Ram defendant has now come up in second appeal.

(4) After hearing the learned counsel for the parties, we are of the view that there is no merit in this appeal. Section 20(3) of the Act leaves no manner of doubt regarding the obligation of a Hindu to maintain his unmarried daughter when she is unable to maintain herself out of her earnings or other property. The relevant extract of section 20 is in the following terms—

“20. (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents. * * * * *

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.”

(5) The girl is undoubtedly above 20 years of age and there is nothing to show that she is not in a good condition of health. Mr. Achhra Singh, learned counsel for the appellant, contends that a girl above 20 years of age, who is educated and healthy, must be presumed to be capable of maintaining herself unless the contrary is proved and that the plaintiff has not been able to establish that she cannot earn her livelihood. The submission is that the burden of proof that she is incapable of maintaining herself, in these circumstances, lies on the plaintiff. He has invited our attention in this

respect to the cases reported as *Saraswati v. Madhavan* (1), *Muhammad Yar v. Ali Muhammad* (2) and *U Ba Thaung v. Ma Aye* (3). They are cases arising under section 488 of the Code of Criminal Procedure and the facts in those cases are clearly distinguishable. Reference may first be made to *Muhammad Yar's case*. A maintenance allowance was granted by a criminal Court under section 488 of Criminal Procedure Code and the father afterwards made an application for cancellation of the order of maintenance on the ground that the child had become major. The sole question to be determined in that case was as to whether the word 'child' as used in section 488 of Criminal Procedure Code could apply to a person who had attained the age of majority. The learned Judges deciding the case did not give any decision as to the definition of the word 'child' but found in the circumstances of that case that the person whose maintenance allowance was sought to be cancelled was about 20 years of age and capable of earning his livelihood and a presumption, therefore, was raised that he was capable of maintaining himself. In *Saraswati's case*, the word 'child' as used in section 488 of Criminal Procedure Code was held to refer only to a minor. It was a case where maintenance was claimed by a lady of 22 years of age, well-educated and healthy, and a presumption was raised, in such circumstances, that she was capable of maintaining herself. The facts in *U Ba Thaung's case* are that an application had been made by the father to have the order of maintenance set aside on the ground that the child had become major and was able to maintain herself. No final decision was given and the Magistrate, who had refused to entertain such an application, was directed that if he was satisfied that the daughter of the petitioner was of age and able to maintain herself the order for the payment of arrears could be cancelled. In the instant case there is a finding of fact by the District Judge that the plaintiff was unable to maintain herself and a small amount of Rs. 20 per mensem has been allowed as a maintenance. The language used in section 20(3) is wide enough laying down no limitations as to the age up to which an unmarried girl has to be maintained by a Hindu father or mother, as the case may be. The Act indeed gives a statutory recognition to the well established normal obligation of a Hindu male or female to maintain his or her unmarried daughter and aged or

(1) A.I.R. 1961 Kerala 297.

(2) A.I.R. 1941 Lahore 92.

(3) A.I.R. 1932 Rang. 94.

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infirm parents so long as they are not able to maintain themselves. The language of this sub-section is different from that of section 488 of the Code of Criminal Procedure and the presumption which some Courts raised when a child attained the age of 18 years or more in cases arising under that provision of law, cannot be held to arise in cases under the Act. The obligation to maintain an unmarried daughter is absolute and extends so long as she is not able to maintain herself out of her own earnings or property. The burden, in our opinion, is rather, on the father or mother to show that he or she stands discharged from his or her liability to pay maintenance to the unmarried daughter as the latter is able to maintain herself out of her own earnings or property. The expression 'is unable to maintain himself or herself out of his or her own earnings or other property' is more in the nature of a proviso to the first part of sub-section (3) which imposes in most unequivocal terms an obligation on the father or the mother regarding their unmarried daughter or infirm or aged parents. It is, therefore, for the father or the mother to establish that his or her case falls under the proviso. It does not seem to be the intention of the Act that a presumption of ability to earn and maintain herself should, in the case of a Hindu girl, be raised from her bodily health or age alone. In the instant case, however, the matter of the plaintiff being able to maintain herself or not was present to the minds of both the parties and any rule as to burden of proof could not affect the findings of the lower appellate Court. There is no merit in this appeal which stands dismissed with costs.

S. B. CAPOOR, J.—I agree.

R.N.M.

APPELLATE CIVIL

Before Mehar Singh, C.J., and Bal Raj Tuli, J.

NARANJAN SINGH AND OTHERS,—Appellants

versus

THE FINANCIAL COMMISSIONER, PUNJAB, AND OTHERS,—
Respondents.

Letters Patent Appeal No. 260 of 1968

September 3, 1968.

Punjab Security of Land Tenures Act (X of 1953 as amended by XXXII of 1959)—S. 19—Protection under—Whether available to evacuee property after it ceases to be so—S. 18—Tenant's application for purchase filed before amendment of the Act—Such application not disposed of—Whether becomes valid after the amendment.