

(1879) 06 AHC CK 0003

Allahabad High Court

Case No: None

Dirgnath Kuar

APPELLANT

Vs

Narhar Singh and Another

RESPONDENT

Date of Decision: June 16, 1879

Citation: (1880) ILR (All) 409

Hon'ble Judges: Robert Stuart, C.J; Straight, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Straight, J.

This case resolves itself into a mere question of what is a reasonable amount to fix as the allowance for maintenance to the respondent. It must be taken that, with the exception of the first, all the other grounds of appeal are abandoned, in fact while admitting the liability of his clients to the payment of maintenance to the respondent, the whole of the argument and observations of the pleader for the appellants were adduced to the question of amount and to the extravagance of the sum fixed by the Subordinate judge. It being conceded, therefore, that the respondent is entitled to maintenance at the hands of the appellants, the duty cast upon this Court is to determine, as a matter of equity, whether, having regard to all the circumstances of the case, the amount decreed in the Court below is unreasonable. It was urged on the part of the appellants, that the position of a "Hindu mother" of a child deceased since her husband's death is, so far as concerns the principle upon which allowance of maintenance has to be computed, a very inferior one to that of a "Hindu widow" without a child or children. As a childless widow, it is said, many ceremonial duties devolve upon her, entailing expenses which ought to be taken into account, whereas if she bear a son, most if not all of those pass over to him or to his representatives. In plain terms it amounts to this, that a "childless widow" is entitled to allowance on a higher scale than a "widowed mother."

2. There was nothing either in the argument addressed to us nor in the circumstances of this case itself to induce us to draw such a distinction here, and it is impossible to avoid remarking that if matters of feeling can be admitted, and we are not sure they should not in arriving at the amount of what is a reasonable allowance, the case of a "widowed mother" deprived of her only son and the contingent advantages that might have accrued to her had he survived seems the more deserving of sympathy and consideration. It is a fact not to be lost sight of in this case that, down to the death of the respondent's son, Ruda Mani Singh, on the 2nd December 1876, the appellants made due provision for her and her child according to their position and the family custom, but immediately after the latter's decease they stop the allowance not only for the one but as to both. Such a proceeding appears indefensible and altogether inconsistent with the position they now take up. They are actually in enjoyment of the profits of the share of the villages to which, had the respondent's husband lived, he would have been entitled, and it is relatively to the amount of these profits that the sum to be allowed here should be calculated. No precedents were quoted to us fixing any principle of computation to apply to a case like the present, and it may well be that there are none, for the question that now arises involves equitable considerations that must of necessity be affected by the peculiar circumstances of each individual case. In our opinion this appeal should be dismissed and the order of the Subordinate Judge be affirmed with costs.