

Where herself not to
claim a higher rate



**ASSIGN
BUSTER**

Where the maintenance has been adjudicated upon, and the court has fixed the quantum or rate of maintenance, or if the maintenance has been fixed by an agreement of parties, it may be altered or changed by the court. In a case decided by the Madras High Court the amount of maintenance fixed by the husband in his will, was found to be inadequate by the court.

Therefore after the death of the testator, the court held that it has got the right to fix the appropriate amount of maintenance. The provision of this section would apply whether any decree or agreement was arrived at before or after the commencement of this Act. Thus where family settlement was entered into between the son and the mother stipulating fixed amount of maintenance but the mother applied for enhanced maintenance due to change of circumstances, it was rightly held by the court that Section 25 is applicable to such a settlement and the suit of the mother for enhanced maintenance would be maintainable. In this way on account of the enormous rise in the price of necessities of life, the old rate may require enhancement or the persons or the estate against whom or on which the claim is available may face a financial crisis or collapse and it would be equitable that the rate of maintenance originally fixed is revised to a lesser scale. The maintenance under this section can altogether be stopped if circumstances justified the thing. A wife who agreed to receive maintenance at a particular rate, binding herself not to claim a higher rate even if circumstances were to change, can still maintain a claim for increased maintenance if she can justify the same under Section 22. In *Shashi Ammal v.*

Theirnu Ammal, the Madras High Court held that the right conferred under Section 25 supersedes any contract to the contrary. Where the rate of

maintenance was fixed by compromise decree it is subject to alteration. Section 25 confers ample powers on the court to vary, modify or even discharge any of the fixed amount of maintenance made by decree of the court even though it only states that the amount of maintenance may be altered. Subsequently if there is a material change in the circumstances justifying such action, the amount of maintenance may be altered.

Section 27 of the Act contains similar law as it stood prior to the passing of this Act. A dependent's claim for the maintenance shall not ipso facto be a charge on the estate of the deceased or any portion thereof. But the rule has been made subject to this exception that a maintenance allowance due to a dependant, becomes a charge on specific property where— 1) It has been so created by the will of the deceased; 2) It has been so declared by the decree of court, 3) It has been so made by an agreement between the dependant and the owner of the property or any portion thereof; 4) It has been created or declared by some similar methods as already enumerated. Where a charge has been created by will, the person in whose favour the will is executed will take the property subject to the charge.

He got the right either to reject the legacy or take it with burden. A charge created by an agreement between the dependant and the owner of the property is enforceable against the legal representative of the deceased. A bona fide purchaser of the property also cannot plead ignorance of a charge created by a court on the property.