

Magistrate, who concurred in the finding that the dismissed trustees remained *de facto* in possession. He pointed out that no steps had been taken to eject the dismissed trustees, and that the Temple Committee had no power to dismiss them except for good and sufficient cause, and he declined to draw the presumption that the dismissal was legal and their retention of possession in consequence wrongful.

The newly-appointed trustees preferred this petition.

Mr. *H. G. Wedderburn* for petitioners.

Mr. *E. Norton* for respondents.

The Government Pleader and the Public Prosecutor (Mr. *E. B. Powell*) for the Crown.

JUDGMENT.—We are clearly of opinion that the Deputy Magistrate acted within his jurisdiction in passing the order complained of under section 144 of the Code of Criminal Procedure. Cf. *Ramanuja Jeeyarsvami v. Ramanuja Jeeyar*(1).

It was not necessary for him to decide the question as to possession before passing such order and his finding that counter-petitioners were in possession is merely incidental and in the absence of any necessity in his opinion for the passing of an order under section 145, we cannot say that the order passed by him was improper. Moreover, under section 435 of the Code we have no power to interfere with an order passed with jurisdiction under section 144.

This petition is dismissed.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SESHAMMA (PLAINTIFF), APPELLANT,

v.

SUBBARAYADU (DEFENDANT,) RESPONDENT.*

Hindu law—Widow's suit for maintenance—Previous demand—Right to arrears.

A Hindu widow brought a suit against her husband's brother to establish her

PALANIAPPA
CHETTI
v.
DORASAMI
AYYAR.

1893.
October
24, 26.

(1) I.L.R., 3 Mad., 354.

* Second Appeal No. 282 of 1893.

SESHAMMA right to maintenance, and to recover arrears for six years; she had made no
 v. demand before suit:
 SUBBARAYADU

Held, that she was not entitled to a decree for the arrears.

SECOND APPEAL against the decree of H. T. Ross, District Judge of Godavari, in appeal suit No. 102 of 1892, modifying the decree of P. Lakshminarasu, District Munsif of Amalapur, in original suit No. 571 of 1890.

The plaintiff, being the widow of the defendant's brother, sued for a declaration of her right to receive maintenance at the rate of Rs. 100 a year, and sought to have it made a charge on the family property in the hands of the defendant, and to recover a sum representing six year's arrears of maintenance. The defendant pleaded that the rate at which maintenance was claimed was excessive and that no arrears were payable, maintenance never having been demanded.

The District Munsif was of opinion that Rs. 50 was the right rate at which maintenance was payable to the plaintiff and granted the relief asked for upon that basis.

The District Judge modified the decree by omitting therefrom the provision for the payment of arrears.

The plaintiff preferred this second appeal.

Rama Rau for appellant.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—The contention in this appeal is that the Judge is in error in disallowing arrears of maintenance claimed for six years prior to the suit. It is true that the right to maintenance is inherent in her *status* as brother's widow and is a legal right. So it was observed in *Venkopadhyaya v. Kavari Hengusu*(1) that it is a legal right and that the only bar to the enforcement of a purely legal right is the lapse of the time required by the statute of limitations to bar the remedy. It was held also by the Bombay High Court in *Jivi v. Ramji*(2), that this legal right exists irrespective of demand and refusal, and that demand and refusal do not create the right, though they may limit it. As observed by Mr. Mayne in his treatise on Hindu Law, 4th edition, section 417, the award for arrears of maintenance is in the discretion of the Court; and it may be refused where a widow has chosen to live apart from her husband's family without sufficient cause, and has

(1) 2 M.H.C.R., 36.

(2) I.L.R., 3 Bom., 207.

sued not only for a declaration of her right to future maintenance, but also for a lump sum as arrears for the period during which she resided with her family. SESHAMMA
v.
SUBBARAYADU

Though demand and refusal are not necessary to create the right to maintenance, yet they may show that the right was only insisted on from the date of such demand and refusal and thereby limit the period for which a claim to arrears is entitled to recognition. In a Hindu family each member is ordinarily maintained in the family house, and a widow may quit that house for her own convenience to live with her parents for a time and then resume her residence in her husband's family. It may also happen that when her father is well-to-do no need for maintenance from her husband's family is felt by her, and there is, therefore, no intention to claim such maintenance unless it becomes necessary for her to do so. To justify an award of arrears the circumstances of the case should be such as to raise a presumption that there was an infraction of her right to maintenance or a wrongful withholding of maintenance for the period for which arrears are awarded. On this view the decision of the Judge is correct, and we dismiss this appeal with costs.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

KRISHNABHUPATI DEVU (PLAINTIFF), APPELLANT,

v.

RAMAMURTI PANTULU AND ANOTHER (DEFENDANTS),
RESPONDENTS.*

1894.
April 18.
May 1.

Specific Relief Act—Act I of 1877, s. 42—Possession—Civil Procedure Code—Act XIV of 1882, s. 319—Constructive possession.

In a suit for a declaration of the plaintiff's title to certain land, no prayer for possession was contained in the plaint. It appeared that the land in question had been given to the plaintiff by his father and had subsequently been attached and brought to sale in execution of a decree against the plaintiff's father and had been

* Appeal No. 136 of 1893.