

1878

BIJAI RAM  
v.  
KALLU.

On second appeal by the defendant to the High Court it was contended that, with reference to the principle laid down in the case cited above, the suit was barred by limitation.

Munshi *Hanuman Prasad*, for the appellant.

Mr. *K. M. Chatarji*, for the respondent.

The judgment of the Court was delivered by

TURNER, J.—The principle laid down in the Full Bench judgment of the Court (1) governs this case. The appellant was not bound to discharge the debts in respect of which the property was attached immediately he had obtained his decree confirming the sale. He took such possession as he then could obtain. The appellant, having established his title, carried his decree to the revenue office and got his name entered in substitution for that of the former owner, and having obtained such possession as the nature of the property admitted, he then set himself to discharge the incumbrances for which it was under attachment. Limitation in such a case runs from the date when he obtained possession of the status of the owner sufficient to enable him to procure mutation and to exercise the rights of an owner. The appeal is decreed, the decrees of the Courts below reversed, and the suit dismissed with costs.

*Appeal allowed.*

## APPELLATE CIVIL.

1878  
February 13.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.*

RUKA BAI (PLAINTIFF) v. GANDA BAI (DEFENDANT).\*

*Hindu Law—Decree for Maintenance—Suit for Reduction of Maintenance.*

A Hindu lady obtained a decree awarding her maintenance at a certain fixed rate and charging the assets of a certain firm with the payment of such maintenance. There was no provision in this decree that such rate was subject to any modification which future circumstances might render necessary. The assets of such firm having diminished, the proprietor of the same brought a suit

\* Second Appeal, No. 1290 of 1877, from a decree of C. A. Daniell, Esq., Commissioner of Jhansi, dated the 22nd August, 1877, reversing a decree of J. V. Sturt, Esq., Assistant Commissioner, dated the 12th May, 1877.

for the reduction of such rate of maintenance. *Held* that such suit was maintainable (1).

THIS was a suit in which the plaintiff claimed the reduction of an allowance payable by her to the defendant out of the assets of a firm of which she was the proprietor. One Gulab Rai, the head of a joint and undivided Hindu family, carried on business under the style of Gulab Rai Chura Mal. The defendant in this suit, who was the daughter of Gulab Rai, obtained a decree in 1876 which awarded her as maintenance an allowance of Rs. 30 per mensem so long as the firm of Gulab Rai Chura Mal should exist. The present suit was brought by the widow of Munna Lal, son of Gulab Rai, as the proprietor of the firm, for the reduction of this allowance on the ground that the business of the firm of Gulab Rai Chura Mal was gradually failing. The Court of first instance gave the plaintiff a decree directing that the defendant's allowance should be reduced to Rs. 20 per mensem, intimating that if the business of the firm of Gulab Rai Chura Mal improved, the defendant would be entitled to claim an increase in her allowance. The lower appellate Court, on appeal by the defendant, dismissed the suit as unmaintainable, on the ground that the plaintiff had no cause of action.

The plaintiff preferred an appeal to the High Court.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), with him *Pandit Ajudhia Nath*, for the appellant, contended that the suit was maintainable. At the time the defendant's allowance was fixed at Rs. 30 per mensem, and made a charge on the assets of the firm, those assets were capable of meeting such a charge without detriment to the firm. The plaintiff has shown that the assets are not now capable of meeting the charge without detriment to the firm, and is therefore entitled in equity to a reduction of the allowance. The *Mofussil Courts* being *Courts of equity* can entertain the suit. There is no law prohibiting such a suit. In an administration suit there is always a direction in the decree that

(1) In *Ram Kullee Koer v The Court of Wards*, 18 W. R., 474; and *Nubo Gopal Roy v Sreemuttee Amrit Moyee Dossee*, 24 W. R., 428, the principle is recognised that the rate of maintenance fixed by a decree is subject to any

modification which future circumstances may render necessary. In the first mentioned case, however, it was held that such modification should be made by review of judgment.

1878

---

 RUKA BAI  
 v.  
 GANDA BAI.

1878  
 RUKA BAI  
 v.  
 GANDA BAI.

the parties to the suit may apply to the Court from time to time as they may be advised touching the estate of which administration is sought.

Munshis *Hanuman Prasad* and *Sukh Ram*, for the respondent.

The judgment of the Court was delivered by

PEARSON, J.—The appeal must prevail. The diminution of the income of the estate on which the defendant's income is chargeable, since her allowance was fixed, is obviously a sufficient cause for the present action of which the object is the reduction of the allowance formerly fixed. It would be unreasonable to hold that, even if the income of the estate should come to an end altogether, that allowance should still continue; and therefore it must be liable to be reduced in proportion to the existing income. We set aside the lower appellate Court's decree and remand the case to it for fresh disposal on the merits, with a direction that the costs of this appeal shall follow the result.

*Appeal allowed.*

1878  
 February 15.

## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Spankie.*

GULZARI LAL AND OTHERS (DEFENDANTS) v. THE COLLECTOR OF BAREILLY (PLAINTIFF).\*

*Act VIII of 1859 (Civil Procedure Code), ss. 270, 309—Pauper Suit—Attachment in Execution of Decree—Court Fees—Prerogative of the Crown.*

*N* was allowed to bring a suit as a pauper. His suit was dismissed, the decree directing that he should pay the costs of the defendant. On the defendant's application certain immoveable property belonging to *N* was attached in execution of this decree, and was sold. *Held* that the Crown was entitled to be paid first out of the proceeds of such sale the amount of the Court fees *N* would have had to pay if he had not been allowed to sue as a pauper. The principle of the ruling in *Ganpat Putaya v. The Collector of Kanara* (1) followed.

THIS was a suit for Rs. 84-2-0. One Nait Lal had sued Gulzari Lal and certain other persons, defendants in this suit, in *formâ*

\* Second Appeal, No. 1142 of 1877, from a decree of W. Tyrrell, Esq., Judge of Bareilly, dated the 10th July, 1877, reversing a decree of Muhammad Mubarik Baz Khan, Officiating Munsif of Bareilly, dated the 9th January, 1877.

(1) I. L. R., 1 Bom. 7.