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issue remitted—and in determining the appeal the Court is not deprived of the powers conferred on it by s. 334. The finding on the issue remitted falls within those powers as much as the findings on the issues originally tried. If this be so, it follows that the Court might at the hearing allow a party to urge an objection to the finding which had not been taken at the proper time, and in deciding the appeal is not confined to the grounds set forth in the original memorandum or in any statement of objections to the finding on the issue remitted taken within due time; but the Court ought not as a matter of course to allow an objection to be urged which has not been taken at the proper time; it should satisfy itself that there are grounds which warrant the indulgence.

OLDFIELD, J.—It appears to me that a party who has failed to file a memorandum of objections within the time fixed by the appellate Court under s. 354, Act VIII of 1859, cannot afterwards claim as of right to be allowed to urge objections; but I do not consider that it was intended to leave no discretion to the Court whether it should admit objections, either orally or in writing, after the time fixed had expired. I apprehend that the appellate Court can always extend the time within which the written memorandum of objections can be filed.

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May 8.

BEFORE A FULL BENCH.

(*Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

GANGA BAI (PLAINTIFF) *v.* SITA RAM (DEFENDANT).

Hindu Law—Hindu Widow—Maintenance.

Held by the Full Bench that a Hindu widow is not entitled, under the Mitakshara, to be maintained by her husband's relatives merely because of the relationship between them and her husband. Her right depends upon the existence in their hands of ancestral property.

Held, on the case being returned to the Division Bench, that the fact that the defendant in this case was in possession of ancestral immoveable property at the death of his son and had subsequently sold such property to pay his own debts, did not give the son's widow any claim to be maintained by him.

The plaintiff was the daughter-in-law of the defendant Sita Ram. Her husband died in May, 1858. For about fifteen years

after his death she lived with and was maintained by Sita Ram. She then left his protection and went to live with her brother. A moiety of the house in which she had lived with Sita Ram was the ancestral property of her husband's family. The other moiety was acquired by Sita Ram by purchase. In January, 1874, he sold the house to the defendant Kailash Nath in order to satisfy certain debts contracted by him. This sale the plaintiff sued to set aside, claiming a declaration of her right to live in a certain portion of the moiety of the house which was ancestral property and possession of the same. She also claimed maintenance from her father-in-law at the rate of Rs. 5 per mensem out of a certain charitable allowance made him by Government. She also claimed to recover certain jewels which she alleged he had appropriated. He pleaded that the sale of the property was valid, being made to satisfy his debts, that the plaintiff was not entitled to be maintained out of the charitable allowance, as it was not ancestral property, and that, as no ancestral property remained in his hands, he could not be legally compelled to maintain the plaintiff; and denied having appropriated the jewels. The defendant Kailash Nath pleaded that the sale was valid.

The first Court gave the plaintiff a decree declaring that she was entitled to reside in the house on the ground that such right was not extinguished by the sale. It dismissed her claim to be maintained out of the charitable allowance on the ground that it was not of the nature of ancestral property, and held that, as no ancestral property remained in the defendant Sita Ram's possession, she was not entitled to be maintained by him. It also dismissed her claim in respect of the jewels on the ground that she had failed to prove that the defendant had appropriated them. On appeal by the plaintiff the lower appellate Court affirmed the decision of the first Court. The defendant Kailash Nath was not a party to the appeal.

On special appeal by the plaintiff to the High Court it was contended on her behalf that the right of a daughter-in-law to be maintained by her father-in-law did not depend upon the existence in his hands of ancestral property; that the pension could not be considered as the exclusive and acquired property of the defendant, and that

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the lower appellate Court had not given the claim in respect of the jewels sufficient consideration.

The Court (Pearson and Turner, JJ.) made the following reference to a Full Bench:—

The plaintiff in this suit claimed an allowance of Rs. 5 per mensem by way of maintenance from her father-in-law, the (defendant) respondent, and to be allowed to occupy two rooms in a house in which her deceased husband had an equal right with him, and to recover certain trinkets. The lower Courts have dismissed the first and last portions of the claim, and decreed the second; and in regard to that portion of the claim which has been decreed objection to the decree has not been made by the defendant who, as purchaser of the house, is interested in the matter.

The plaintiff is the appellant whose pleas we have to consider, and we at once disallow the second and third of the pleas set forth in the memorandum of appeal; concurring as we do in the lower Court's finding that the allowance drawn by Sita Ram is not of the nature of ancestral property, and being of opinion that the Judge has sufficiently disposed of the issue relating to the trinkets in suit.

There remains the question as to the plaintiff's right to receive a money allowance by way of maintenance from her father-in-law under the circumstances found by the lower Courts. Those circumstances are as follows:—Her husband died about 15 years ago, and after his death, until lately, she resided with her father-in-law, and was maintained by him, and she has not forfeited by misconduct any right which she may possess to be maintained by him. He has recently sold a moiety of a house, which descended to him from his grandfather, to Kailash Nath Sukul, the other defendant in the suit, who is not a party to the appeal nor an appellant here; the value of the moiety is reckoned at Rs. 850. But the plaintiff's claim to occupy two rooms in the house has been decreed. There is no ancestral property left in Sita Ram's possession, and it is for this reason that her claim to a maintenance payable by him has been dismissed.

It is now contended on her behalf that, notwithstanding the non-existence of any ancestral fund or property in the hands of her

father-in-law applicable to the maintenance, she is, under the provisions of the Hindu law, entitled to be maintained by him, and our attention has been drawn to a recent ruling of the Bombay High Court in a case decided by West and Nanabhai Haridas, JJ. (1), to the effect that a Hindu father-in-law is legally bound to maintain his deceased son's widow, notwithstanding that no property belonging to his son may have come into his hands. The Court appears to have also held in other cases that a Hindu father is liable for the maintenance of his son's widow, notwithstanding a separation in estate of father and son. These rulings do not absolutely support the present contention, because they do not negative the hypothesis of ancestral property being in the father's possession. A Full Bench of this Court has recently recognised the right of the widow of a son who predeceased his father to be maintained out of ancestral funds or properties in the latter's possession (2). Whether such a widow has a right to be maintained by her husband's relations, irrespectively and independently of the existence in their hands of such funds or properties, under the law obtaining in this part of India, is a novel question, which, with regard to its importance, we think it proper to refer to a Full Bench for determination.

Munshi *Hanuman Parshad*, for the appellant.—A daughter-in-law can, in default of better heirs, succeed to the estate of her father-in-law, and can present funeral oblations—West and Bühler's Digest of Hindu Law Cases, Bk. i, pp. 169, 170. When her husband is dead his kin become her guardians and she looks to them for support—West and Bühler's Digest, Bk. i, p. 355. She in fact becomes a member of her husband's family. It is nowhere said that her right to maintenance depends upon the existence of property. Moreover in this case there originally was property. By selling it the father-in-law has rendered himself personally liable.

Pandit *Bishambar Nath* (with him the *Senior Government Pleader*, Lala *Juala Parshad*), for the respondent.—There is no text which lays down that a father-in-law, or other relative of the husband, is bound to maintain the daughter-in-law, in the absence

(1) *Udarám Sitarám* v. *Sonkdbái*, 10 Bom. H. C. Rep., 483.

(2) H. C. R., N.-W. P., 1875, p. 261.

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in his hands of ancestral property. Whenever the subject of maintenance is considered the existence of property is assumed—Mitakshara, ch. ii, s. 1, v. 35 ; Smriti Chandrika, ch. xi, s. 1, v. 34 ; and Vyavahára Mayúkha, ch. iv., s. 8, v. 7. In *Udarám Sitarám* v. *Sonkabái* (1) the question is not fully considered. No texts are cited and only European authors referred to.

STUART, C. J., TURNER and SPANKIE, JJ., concurred in the following opinion :—

As we understand the question put to us we must assume for the purpose of this reference that the father-in-law is in possession neither of ancestral nor immoveable property, that he has no fund with the disposal of which his son, if alive, could interfere, that he has inherited nothing from his son nor have his rights in any property become enlarged by his son's death. Under these circumstances the plaintiff's pleader has failed to satisfy us that her father-in-law is under any legal obligation to provide her with maintenance. No text has been cited from any work of authority in these Provinces which supports the claim, nor has any decision been produced in which it has been ruled by any Court in these Provinces or in this Presidency, or in those parts of the Presidency of Madras which are governed by the Mitakshara, that such a claim has been allowed. The right, then, of the daughter-in-law appears to be one of moral and not of legal obligation.

Hindu law no doubt imposes on the daughter-in-law the duty of living in the house of her father-in-law, yielding him obedience and ministering to his needs, but the Privy Council, in *Raja Pirthee Singh* v. *Rani Rajkooer* (2) has ruled that this is merely a moral obligation, and that she does not even forfeit her right to maintenance if she incapacitates herself from performing her duty to her father-in-law by electing to reside elsewhere than in his house. Except in so far as the possession of property liable to a charge of maintenance alters the nature of the obligation of the father-in-law to the daughter-in-law, there is no more ground for holding that he is legally bound to support her than there is for asserting that

(1) 10 Bom. H. C. Rep., 433. (2) 12 B. L. R., 238.

she is legally bound to live in his house and minister to his wants. Of both duties the neglect is discreditable in this world, and may, according to the Hindu religion, subject the offender to punishment hereafter.

PEARSON, J.—My answer to the question put to us must be in the negative. In the case of *Lalti Kuar* v. *Ganga Bishan* (1), to which allusion is made in the referring order, I assented, not without doubt and hesitation, to the doctrine that a Hindu widow was entitled to be maintained out of the joint ancestral estate of the family of which her husband was a member, although he had predeceased his father. That doctrine, although not expressly laid down in the Hindu law, was supported by many considerations of reason and equity and had been recognised by several decisions. But I am not prepared to go further and to allow that a widow is legally entitled to be maintained by her husband's relations after his death *merely* in consequence of such relationship. The text which countenance such a view appear to be of the nature of moral or religious precepts. In the oral pleading before us it has indeed been mainly urged that the respondent is liable to the claim of the plaintiff, appellant, *because* he sold an ancestral house; but this argument was not the plea set forth in the first ground of the appeal, and we can only address ourselves to the question referred to us.

OLDFIELD, J.—The legal right of a widow to maintenance from her husband's family can, I apprehend, scarcely be supported with reference solely to those texts of Hindu law which indicate the position a woman obtains by marriage in her husband's family, and those which generally inculcate the duty of maintenance of the female members of a family.

It is said that by marriage a woman leaves her own family or gotra and enters that of her husband, and her connection with her own family is at an end. There is the passage of Vijnanesvara translated in West and Bühler's Digest of Hindu Law Cases, Bk. i, p. 141, declaring the wife and husband to be Sapinda relations to each other because they together beget one body (the son), the Sapinda-relationship arising by connection with

(1) H. C. R., N.-W. P., 1875, p. 261.

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one body, either immediately or by descent; and there are other texts on the connection formed by marriage, such as—"Women by marriage are born again into the family of the husband."—"By marriage a husband and wife become one person."

These texts admittedly do not mean that a woman on marriage enters into her husband's family or gotra in the sense that she enters it assuming the rights of a daughter. Were it so, she would inherit in the same way as a daughter, and if she cannot claim under these texts the full rights of a daughter by reason of entering the family or gotra of her husband, I do not see how any legal claim to maintenance can be supported on that ground; the ground, if good at all, should be good for entitling her to the full position of a daughter.

The above texts and others which inculcate in general terms on women dependence on their husbands' family and impose a duty of maintenance on the husbands' family do not necessarily impose any legal obligation. This distinction, which is one to be carefully observed in applying texts of the Hindu writers, was pointed out by Sir Barnes Peacock, Chief Justice of Bengal, in *Khetramani Dasi* v. *Kashinath Das* (1), and the rule appears to be that when the deceased member of a family has left property, they who take it to the exclusion of his widow will be legally bound to maintain her out of the property. There is the following passage in Viramitrodaya cited at the hearing of this reference:—"The brother and others taking the wealth of the husband of an istri widow other than a putni capable of receiving her husband's share should allow subsistence to her." "To give" means "must give." "Regarding this is also the text of Nareda—that all virtuous widows should be allowed food and raiment by the husband's eldest brother or father-in-law, or by a person born in the same family. This text means all those taking the wealth of the husband, for subsistence is allowed because of taking wealth," and there are other texts to the same effect—Colebrooke's Digest, vol. ii, Bk. v, ch. i, s. 1, ccccxii, Smriti Chandrika, ch. xi, s. 1, v. 34. This particular obligation, so expressly declared, is probably founded on the intimate connection which marriage is held to give rise to between husband and wife, as shown by the texts I have already cited, and which is said

(1) 2 B. L. R., A. C., 15; S. C., 10 W. R., P. B., 89.

to extend to the property; for instance, we have the text in Smriti Chandrika, ch. ix, s. 2, v. 14—"It must be understood that in a husband's property the wife by reason of marriage possesses always ownership, though not of an independent character"—and Colebrooke's Digest, vol. ii, Bk. v, ch. viii, s. 1, cccev.

In a joint family where there is ancestral property such a legal obligation will lie on the father-in-law to maintain his son's widow, *Lalti Kuar* v. *Ganga Bishan* (1); but in a case like the present, where the property is entirely the self-acquired property of the father, the son in his father's lifetime cannot be said to have had such an interest in the property as will impose at his death an obligation on his father to maintain the widow.

When the case came back to the Division Court (Turner and Pearson, JJ.) for disposal,—

Munshi *Hanuman Parshad*, for the appellant, contended that the respondent had made himself personally liable for the appellant's maintenance. He has sold for his own benefit property which, as he held it as ancestral property, was charged with the maintenance of his son's widow.

Pandit Bishambar Nath, for the respondent, was not called upon to reply.

The judgment of the Court, so far as it related to the contention on behalf of the appellant, was as follows:—

We accept the opinion of the Full Bench on the general rule that a father-in-law, who is not in possession of ancestral property, is not legally bound to maintain his daughter-in-law. The appellant's pleader now contends that there are peculiar circumstances which take this case out of the purview of that general rule, namely, that one moiety of a house valued at Rs. 425 was held by the respondent as ancestral property and was sold by him. This is true, but it is shown that the sale was made to pay debts. It was then a sale which the son himself, if alive, could not have resisted, for it is not suggested the debts were contracted for immoral purposes. Consequently, in our judgment, the alienation by the father-in-law does not in this case impose on him personal liability of maintaining the appellant.

(1) H. C. R., N.-W. P., 1875, p. 261.