

Before Mr. Justice Oldfield and Mr. Justice Straight.

JHUNNA (PLAINTIFF) v. RAMSARUP AND OTHERS (DEFENDANTS).*

1880
March 15

Hindu Law—Widow—Maintenance.

In a case where a Hindu widow is entitled to maintenance, it is better to award a fixed annual sum and not a share of the income of the estate.

The plaintiff in this suit was the widow of one Zalim Singh, deceased, who was a member of a joint Hindu family consisting of six brothers. She sued her deceased husband's brothers claiming to be paid an annual allowance, by way of maintenance, of Rs. 48, at the rate of Rs. 4 per mensem, out of his one-sixth share in the family estate, which was in the possession of the defendants. This estate consisted of zamindari shares, gardens, and certain land in a mauza called Rijlaman. The Court of first instance gave her a decree directing that the defendants, and their representatives and assigns, should pay her annually Rs. 48 out of the income of her husband's one-sixth share of the family estate. On appeal by the defendants the lower appellate Court modified this decree, directing that the plaintiff should receive as an allowance one-sixth of the income of the family estate,

The plaintiff appealed to the High Court, contending that her allowance should be fixed.

Babu *Baroda Prasad Ghose*, for the appellant.

Mr. *Chatterji* and Babu *Ratan Chand*, for the respondents.

The Court (OLDFIELD, J. and STRAIGHT, J.) remanded the case to the lower appellate Court, the order of remand being as follows :

STRAIGHT, J. — The plaintiff-appellant is the widow of one Zalim Singh a brother of the defendants. This suit was brought to have the sum of Rs. 48 fixed as the amount of yearly maintenance the plaintiff was entitled to receive from her husband's family. The first Court passed a decree in her favour for the sum prayed. The lower appellate Court has modified the Munsif's order, allotting the maintenance at one-sixth of the hereditary

* Second Appeal, No. 742 of 1879, from a decree of R. F. Saunders, Esq., Judge of Ferozkhabad, dated the 4th April, 1879, modifying a decree of Maulvi Wajid Ali, Munsif of Kaluganj, dated the 18th February, 1879.

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property in suit, that fraction representing the share to which Zalim would have been entitled had he been alive. The right of the plaintiff to maintenance is clear; indeed, that is positively found by both the lower Courts. We do not, however, agree with the observations of the Judge, that "the income being variable according to the seasons, it is better not to affix a given sum for maintenance, but to let that be determined as the occasion may arise." For reasons of convenience and in order to prevent the recurrence of litigation between the parties, we think it far better that a reasonable fixed sum, having regard to all the circumstances of the case, should be ascertained and decreed to the plaintiff. (The Court then proceeded to make an order remanding for trial the issue whether Rs. 48 was a reasonable amount of yearly maintenance to be allowed to the plaintiff, and if not, what fixed sum would be.)

Appeal allowed.

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March 22.

Before Mr. Justice Pearson and Mr. Justice Straight.

GOBIND SINGH (DEPENDANT) v. KALLU AND OTHERS (PLAINTIFFS).*

Suit for redemption of Usufructuary Mortgage—Valuation of suit—Jurisdiction—Act VI of 1871 (Bengal Civil Courts Act), s. 22.

The plaintiffs sued for the possession of certain immoveable property, alleging that they had mortgaged such property to the defendants, and that the mortgage debt had been satisfied out of the profits of the property. The defendants set up a defence to the suit which raised the question of the proprietary right of the plaintiffs to the property. The value of the mortgagees' interests in the property was below Rs. 5,000; the value of the mortgaged property exceeded that amount. On appeal to the High Court from the original decree of the Subordinate Judge in the suit it was contended that the appeal from that decree lay to the District Court and not to the High Court. *Held* that the "subject-matter in dispute," within the meaning of s. 22 of Act VI of 1871, was the mortgage and the mortgagees' rights under it, and that, the value of this being only Rs. 2,000, the appeal should have been preferred to the District Court. Second Appeal No. 1039 of 1877 (1) dissented from.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

*First Appeal, No. 93 of 1879, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 30th June, 1879.

(1) Unreported, decided the 18th January, 1878.