APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

NARHAR SINGH AND ANOTHER (DEFENDANTS) v. DIRGNATH KUAR (PLAINTIFF).*

Hindu Widow—Maintenance.

Held, in a suit by a Hindu widow for maintenance, that the circumstance that she was not a childless widow but had had a son who had died a minor subsequently to his father, was not a ground for reducing the allowance she would have been reasonably entitled to had she been a childless widow.

THIS was a suit in which the plaintiff, a Hindu widow, claimed a declaration of her right to an allowance of Rs. 150 per mensem for her maintenance. A five annas four pies share in each of certain villages formed the joint and undivided estate of three brothers, Darshan Singh, Narhar Singh, and Harihar Singh; Darshan Singh died leaving a widow Dirgnath Kuar, the plaintiff in the present suit, and a minor son, Rudr Mani Singh, who died in December, 1876. While Rudr Mani Singh was alive, the defendants had maintained his mother, but they ceased to do so after his death. Dirgnath Kuar accordingly instituted the present suit for maintenance, alleging that as the widow of Darshan Singh and mother of Rudr Mani Singh, she was entitled to maintenance, that the defendants were in possession of the family estate, that they refused to maintain her, and that regard being had to the position of the family she was entitled to an allowance of Rs. 150 per mensem. The defendants contended, *inter alia*, that the share of the annual profits of the family estate received by her husband amounted to Rs. 2,558-4-0 only, and that Rs. 10 per mensem was a sufficient allowance for the plaintiff as she was a childless widow. The plaintiff alleged that that share amounted to Rs. 2,747-14-4. The rent-rolls relating to the estate showed that that share amounted to Rs. 3,141-1-10. The Court of first instance observing that one-third of the profits received by a husband had often been fixed by the Courts as a proper maintenance for his widow, that in some cases no regard had been had to the amount of profits received by him, that the rents entered in the rent-rolls of an estate were for different reasons never realised, and that an estate incurred other expenses than the usual expenses,

* First Appeal, No. 178 of 1878, from a decree of Rai Makhan Lal, Subordinate Judge of Allahabad, dated the 24th August, 1878.

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considered that, regard being had to the position of the family, and the food, dress, and servants, &c., required by a widow in the family, Rs. 60 and not less was a proper monthly allowance for the plaintiff, and it gave the plaintiff a decree accordingly.

The defendants appealed to the High Court, contending that the sum allowed to the plaintiff as maintenance was in excess of what she was entitled to with reference to the principle on which maintenance to Hindu widows is allowed.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) and Lala *Ram Prasad*, for the appellants.

The *Senior Government Pleader* (Lala *Juala Prasad*) and Munshi *Hanuman Prasad*, for the respondent.

The judgment of the Court was delivered by

STRAIGHT, J.—This case resolves itself into a mere question of what is a reasonable amount to fix as the allowance for maintenance to the respondent. It must be taken that, with the exception of the first, all the other grounds of appeal are abandoned, in fact while admitting the liability of his clients to the payment of maintenance to the respondent, the whole of the argument and observations of the pleader for the appellants were adduced to the question of amount and to the extravagance of the sum fixed by the Subordinate Judge. It being conceded, therefore, that the respondent is entitled to maintenance at the hands of the appellants, the duty cast upon this Court is to determine, as a matter of equity, whether, having regard to all the circumstances of the case, the amount decreed in the Court below is unreasonable. It was urged on the part of the appellants, that the position of a "Hindu mother" of a child deceased since her husband's death is, so far as concerns the principle upon which allowance of maintenance has to be computed, a very inferior one to that a "Hindu widow" without a child or children. As a childless widow, it is said, many ceremonial duties devolve upon her, entailing expenses which ought to be taken into account, whereas if she bear a son, most if not all of those pass over to him or to his representatives. In plain terms it amounts to this, that a "childless widow" is entitled to allowance on a higher scale than a "widowed mother." There was nothing either in the argument addressed to us nor in

the circumstances of this case itself to induce us to draw such a distinction here, and it is impossible to avoid remarking that if matters of feeling can be admitted, and we are not sure they should not in arriving at the amount of what is a reasonable allowance, the case of a "widowed mother" deprived of her only son and the contingent advantages that might have accrued to her had he survived seems the more deserving of sympathy and consideration. It is a fact not to be lost sight of in this case that, down to the death of the respondent's son, Rudr Mani Singh, on the 2nd December, 1876, the appellants made due provision for her and her child according to their position and the family custom, but immediately after the latter's decease they stop the allowance not only for the one but as to both. Such a proceeding appears indefensible and altogether inconsistent with the position they now take up. They are actually in enjoyment of the profits of the share of the villages to which, had the respondent's husband lived, he would have been entitled, and it is relatively to the amount of these profits that the sum to be allowed here should be calculated. No precedents were quoted to us fixing any principle of computation to apply to a case like the present, and it may well be that there are none, for the question that now arises involves equitable considerations that must of necessity be affected by the peculiar circumstances of each individual case. In our opinion this appeal should be dismissed and the order of the Subordinate Judge be affirmed with costs.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Straight.

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LACHMI NARAIN LAL AND ANOTHER (DEFENDANTS) v. SHEOAMBAR LAL AND OTHERS (PLAINTIFFS).*

Pre-emption—Limitation—Act XV of 1877 (*Limitation Act*), *sch. ii, art.* 10.

Held in a suit for pre-emption, where the property had been purchased by the mortgagee in possession, that the purchaser obtained physical possession of the property under the sale, not from the date of the sale-deed, but when the contract of sale became completed.

Held, therefore, that, the contract of sale having become completed on the payment of the purchase-money, the suit being brought within one year from the date of such payment, was within time.

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* Second Appeal, No. 1371 of 1878, from a decree of Rai Bhagwan Prasad Subordinate Judge of Azamgarh, dated the 17th September, 1878, modifying a decree of Munshi Mata Din, Munsif of Nagra, dated the 15th May, 1878.