

names of particular individuals in such lists, the conditions prescribed by the section must of course be observed: for instance, no person's name is to be included unless he has had an opportunity of showing cause against such inclusion, and in all cases the person must be proved to the Court's satisfaction habitually to act as a tout, and must be so proved by evidence, whether of general repute or otherwise. But in considering whether this Court should interfere in the exercise of its powers of superintendence, one must bear in mind, first, that the test prescribed by section 36 is proof to the satisfaction of the Court framing the list and of no other tribunal; and, secondly, that it is settled that this Court is not competent, under section 15 of the High Courts' Act, to interfere with the order of a Subordinate Court, merely on the ground of error in law or error in fact. Its powers of superintendence are not applicable where the only question is whether the decision of the lower Court is against the weight of evidence. That is the only question raised by the present petition. It is admitted that there is evidence upon which the lower Court has acted—evidence on the one side and on the other. We must, therefore, decline to interfere and must dismiss the application.

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IN THE
MATTER OF
THE
PETITION OF
MADHO
RAM.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

RAGHUBANS KUNWAR AND ANOTHER (DEFENDANTS) *v.* BHAGWANT KUNWAR (PLAINTIFFS).*

Hindu law—Hindu widow—Maintenance—Suit for arrears of maintenance—Discretion of Court in allowing arrears.

Where a Hindu widow sues for maintenance from the family and estate of her deceased husband, with arrears of such maintenance, the allowance of arrears of maintenance is a question for the discretion of the Court, and the Court, if it allows arrears of maintenance at all, will not necessarily allow arrears at the same rate as it may allow future maintenance, especially where the plaintiff has made serious delay in bringing her suit for maintenance.

* First Appeal No. 206 of 1896, from a decree of Babu Prag Das, Officiating Subordinate Judge of Meerut, dated the 26th June 1896.

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THE facts of this case sufficiently appear from the judgment of the Court.

The Hon'ble Mr. Conlan and Munshi Ram Prasad, for the appellants.

Pandit Bishambar Nath, Pandit Moti Lal Nehru and Pandit Baldeo Ram Dave, for the respondent.

BANERJI and AIKMAN, JJ.—The plaintiff respondent, who claimed to be the widow of Rao Partab Singh, brought the suit, which has given rise to this appeal, for a declaration of her right to maintenance out of the estate of the deceased, and for recovery of Rs. 10,480 as arrears of maintenance, and Rs. 7,016-6-6 as interest on those arrears. She prayed that her maintenance should be declared to be a charge upon the estate of Rao Partab Singh, which at the time of the suit was in the possession of the defendants appellants, who are the daughters of his adopted son, Rao Maharaj Singh. The plaint alleged that the plaintiff obtained her maintenance from Rao Maharaj Singh, and after him from his widow, up to 8th July 1883; that subsequently to that date the payment of her maintenance was stopped by Raja Ghansham Singh, who was appointed guardian of the minor daughters of Maharaj Singh and manager of the estate, and that in 1893 her right of maintenance was denied.

The suit was defended upon various grounds, the principal of which was that the plaintiff was not the widow of Rao Partab Singh. The defendants denied the right of the plaintiff, not only to future maintenance, but also to the arrears claimed by her, and they further disputed the rate at which maintenance had been claimed. The Court below held it established that the plaintiff was the widow of Rao Partab Singh, and granted a decree in her favour for future maintenance at the rate of Rs. 80 a month, and for the arrears of maintenance claimed by her. It dismissed the claim for interest upon the arrears. It also granted the prayer that the maintenance should be a charge upon the estate.

The defendants have preferred this appeal, and the plaintiff has taken objection under section 561 of the Code of Civil Procedure in regard to the dismissal of the claim for interest. In the memorandum of appeal to this Court the pleas taken in the Court below were reiterated, but the learned counsel for the appellants has conceded that upon the evidence on the record he cannot substantiate the first two pleas, which are to the effect that the plaintiff was not the wife, but was the concubine, of Rao Partab Singh. The learned counsel has not also disputed the rate at which future maintenance has been decreed to the plaintiff.

The principal contention before us was, that the Court below should not have decreed arrears of maintenance to the plaintiff. The main ground upon which this contention was based was that the plaintiff had advanced no claim in regard to the arrears for nearly eleven years, and that she had been living apart from her husband's relations, and was being maintained by her own relations. The learned counsel further contended that, even if the plaintiff was entitled to arrears of maintenance, those arrears should not be awarded at the rate decreed by the Court below.

There can be no doubt that a Hindu widow is entitled to maintenance out of her husband's estate, and is also entitled to claim arrears of such maintenance, even if she lives apart from her husband's relations. The grant of arrears is, however, a matter within the discretion of the Court, and the Court may, for sufficient reasons, be justified in refusing to grant any arrear or arrears at the rate claimed. As authorities for this view we may refer to paragraph 417 of Mayne's Hindu Law, and page 466 of the Tagore Law Lectures for 1879, and the authorities therein cited. In this case we find from the evidence of the brother of the plaintiff that she was residing since 1883 with him, and occasionally with Rao Umrao Singh, who, according to the Subordinate Judge, has been promoting this litigation. From the evidence of the brother of the plaintiff it appears that the

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additional expense entailed on him by reason of his supporting the plaintiff was about Rs. 10 a month, so that the amount which has been decreed is far in excess of the sum which was necessary to meet the charges incurred for her support. Having regard to this fact, and to the fact that for nearly eleven years the plaintiff made no claim whatever for her maintenance, leaving probably the defendants under the impression that she had waived her claim for maintenance, we think that she is not entitled to be allowed arrears of maintenance at the rate at which maintenance has been fixed for her for the future. Having regard to the expense incurred by her brother in maintaining her, we think that if we allow arrears at the rate of Rs. 16 a month, that will be sufficient to meet the justice of the case. It has not been proved that the plaintiff incurred any debts for her maintenance, and we see no valid reason for awarding to her the large sum she claims. We entirely agree with the learned Subordinate Judge that the plaintiff is not entitled to any interest on the arrears. We accordingly vary the decree of the Court below by reducing the sum allowed for arrears from Rs. 10,480 to Rs. 2,096, and we declare the plaintiff entitled to maintenance at the rate of Rs. 80 a month, with effect from the 8th of June 1893, the said maintenance being a charge upon the estate. As for the costs of the suit, we are of opinion that as the defendants improperly denied the plaintiff's status as the widow of Rao Partab Singh, the defendants should bear their own costs and pay to the plaintiff her costs in the Court below in proportion to her success as now decreed. The defendants will bear their own costs of this appeal. We dismiss the objection under section 561 with costs.

Decree modified.