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concurrently. For the reasons set forth above I am of opinion that the conviction under section 471 should not stand. I assume that the punishment for each offence was 2½ years' imprisonment. I set aside the conviction under section 471. I sustain the conviction under section 466, and reduce the term of imprisonment to two and half years.

1900
November 15.

APPELLATE CIVIL.

Before Mr. Justice Knox and Mr. Justice Aikman.

BECHA (PLAINTIFF) v. MOTHINA AND OTHERS (DEFENDANTS).*

Hindu law—Hindu widow—Maintenance—Ancestral property not alienable in defeasance of widow's right of maintenance.

The holder of ancestral property cannot, where there exists a widow having a right to be maintained out of that property, alienate such property so as to defeat the widow's right to maintenance.

Musammat Lalti Kuar v. *Ganga Bishan* (1), *Jamna* v *Machul Sahu* (2), and *Devi Persad* v. *Gunwanti Koer* (3), followed.

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

Pandit *Madan Mohan Malaviya* (for whom Munshi *Gokal Prasad*), for the appellant.

Munshi *Gobind Prasad* and Munshi *Jang Bahadur Lal*, for the respondents.

KNOX and AIKMAN, JJ.—In this second appeal the appellant, Musammat Becha, is the widow of one Sheonandan. Sheonandan was the son of Debi Dat, and died in his father's lifetime. Debi Dat died some five years before the present suit out of which this appeal arises was brought. The respondents are Musammat Mothina, widow of Debi Dat, Baldeo Sahai and Dinbandhu, minor sons of Jagannath. Debi Dat made a will, under which he bequeathed all his property, including some *birt jajmani*, to the sons of his daughters. The plaintiff instituted the present suit, asking for maintenance at the rate of Rs. 6 per

* Second Appeal No. 363 of 1898 from a decree of Kunwar Mohan Lal, Subordinate Judge of Allahabad, dated the 30th March 1898, reversing a decree of Babu Ram Chandar Chaudhri, Munsif of Allahabad, dated the 1st December 1897.

(1) N.-W. P., H. C. Rep., 1875, p 261. (2) (1879) I. L. R., 2 All., 315.
(3) (1895) I. L. R., 22 Calc., 410.

mensem during her life-time, and she prayed that this maintenance might be charged upon both the house property left by Debi Dat and the *birt jajmani*. She also asked that she might be put into possession of one of the three houses left by Debi Dat for her residence during her life-time. The Court of first instance decreed in her favour a monthly allowance of Rs. 5, and directed that this allowance be a charge on all the property left by Debi Dat. It also declared that Musammat Becha was entitled to reside in the smallest of the three houses. On appeal the claim brought by Musammat Becha was dismissed *in toto*. The pleas taken in appeal before us are—(1) that the appellant is entitled to maintenance out of the ancestral property; and (2) that the fact that the property came into the hands of the respondents by will, and not by inheritance, made no difference so far as the appellant's right of maintenance and residence was concerned. We found ourselves compelled to remit an issue to the Court below in order that it might be ascertained whether the property left by Debi Dat, or how much of it, was ancestral. The return made is that all the three houses are ancestral property. No exception was taken to this finding, and we now have to consider whether, this being the case, the appellant is entitled to both maintenance and to residence.

As far back as the year 1875 a Full Bench of this Court, in the case of *Musammat Lalti Kuar* v. *Ganga Bishan* (1), held, under circumstances similar to the present case, that a Hindu widow was entitled to be supported out of the joint and ancestral estate of the family, of which her husband was a member. After this decision, by which we are bound, there comes only the question whether Debi Dat, by the disposition he made, could free the ancestral property in his hands from the charge for maintenance to which the appellant was entitled. To this question also the answer will be found in the case of *Jamna* v. *Machul Sahu* (2). The learned Judges who decided that case held that a wife is, under the Hindu law, in a subordinate sense, co-owner with her husband; the husband cannot alienate his property, or dispose of it by will in such a wholesale manner as to deprive her of maintenance. The donee of the entire estate must be deemed

(1) N.-W. P., H. C. Rep., 1875, p. 261. (2) (1879) I. L. R., 2 All., 315.

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to have taken, and to hold it, subject to her maintenance. We find that the Calcutta High Court in *Devi Persad* v. *Gunwanti Koer* (1), in a case similar to this, held that where the plaintiff's husband had a vested interest in the ancestral property, and could have, even during his father's life-time, enforced partition of that property, the plaintiff was entitled to maintenance, as the Hindu law provides that a surviving co-parcener should maintain the widow of a deceased co-parcener. The learned vakil for the appellant abandoned any claim for maintenance to be charged upon the *birt jajmani* as one that could not be sustained. We decree the appeal so far as to set aside the decree of the lower appellate Court, and give the appellant a decree ordering the respondents to pay her Rs 5 per mensem during her life-time, and directing that this monthly allowance be a charge against the ancestral property, the house property set forth in the plaint of Debi Dat omitting the *birt jajmani*. The decree will further direct that the appellant be put in possession for purposes of residence of house No. 259 in mohalla Bahadur Ganj.

The respondents will pay the appellant's costs in proportion to appellant's success in all Courts. The Registrar will calculate the amount of Court fees which would have been paid by the appellant if she had not been permitted to sue as a pauper, and such amount will be the first charge upon the subject-matter of the suit.

Decree modified.

1900.
November 15.

Before Sir Arthur Strachey, Knight, Chief Justice and Mr. Justice Banerji.

SHEONARAIN (APPELLANT) *v.* CHUNNI LAL AND OTHERS (RESPONDENTS).*

Act No. IV of 1882 *(Transfer of Property Act), sections* 92, 93—*Mortgage —Redemption—Application for enlargement of time—Application to be made to the Court of first instance, not to the appellate Court.*

Where a decree for redemption under section 92 of the Transfer of Property Act, 1882, has been made by an appellate Court, an application under the last paragraph of section 93 must be made, not to that Court, but to the Court of first instance. *Venkata Krishna Ayyar* v. *Thiagaraya Chetti*, (2) followed *Oudh Behari Lal* v. *Nageshar Lal*, (3) referred to.

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* Application in First Appeal No. 160 of 1896.

(1) (1895) I. L. R., 22 Calc., 410. (2) (1899) I. L. R., 23 Mad., 521.
(3) (1890) I. L. R., 13 All., 278.