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RAMBAHADUR SINGH v. MAHARAJA BAHADUR KESHAVA PRASAD SINGH.

COURTNEY TERRELL, C. J.

In my opinion it is clear that the scheme of the Act is to provide a special machinery under the revenue authorities for effecting partitions and that machinery is quite separate and apart from that of the Civil Courts. It provides a system of tribunals from the Deputy Collector to the Board of Revenue with exclusive jurisdiction subject to the express provisions of the Act which alone permit the interference of the Civil Court. Therefore the Subordinate Judge had no jurisdiction to entertain this suit.

In my opinion the appeal succeeds, the decision of the Court below should be reversed and the contesting respondents should pay the appellant's costs throughout.

ROSS, J.—I agree.

Appeal decreed.

PRIVY COUNCIL.*

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March, 5.

EKRADESHWARI BAHUASIN

v.

HOMESHWAR SINGH AND OTHERS.

Hindu Law—Widow's Maintenance—Arrears of Maintenance—Widow residing in parental home.

A Hindu widow who has left the residence of her deceased husband, not for unchaste purposes, and resides with her father, is entitled to maintenance, also to arrears of maintenance from the date of her leaving her husband's residence, although she does not prove that she has incurred debts in maintaining herself and gives no reason for the change of residence.

The maintenance should be such an amount as will enable the widow to live, consistently with her position as a

*PRESENT: Lord Shaw, Lord Darling and Sir Lancelot Sanderson.

widow, with the same degree of comfort and reasonable luxury as she had in her husband's house, unless there are circumstances which affected, one way or the other, her mode of living there.

The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.

Pirthee Sigh v. *Raj Kower*(1), followed.

Decree of the High Court modified.

Appeal (no. 128 of 1927) from a decree of the High Court (May 13, 1926) affirming a decree of the Subordinate Judge of Darbhanga (March 10, 1924).

The appellant, a Hindu widow, whose husband died in 1917, brought the present suit on April 22, 1922, claiming maintenance with arrears. She had continued to reside in the ancestral house of her deceased husband until towards the end of 1921, and had since resided with her father.

The facts appear from the judgment.

The trial judge made a decree for Rs. 350 per month from the date of his decree. The plaintiff appealed, and the defendants filed cross-objections. The High Court (Das and Adami, JJ.) affirmed the decree.

DeGruyther K. C. and *Dube*, for the appellant. *8th Feb. 1929.*

Dunne K. C. and *Hyam*, for the respondents.

The judgment of their Lordships was delivered by Lord Shaw.

This is an appeal from a judgment and decree, dated the 13th May, 1926, of the High Court of Judicature at Patna, which affirmed a judgment and decree of the Subordinate Judge of Darbhanga, dated the 10th March, 1924

(1) L. R. (1873) I. A. (Supp.) 203.

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The appellant is the widow of Babu Ekradeshwar Singh, a descendant in the junior line of the Darbhanga family. Babu Ekradeshwar was twice married. He died on the 21st October, 1916, survived by the appellant, his second wife, and a daughter by her, and by the respondents 1, 2 and 3, his sons by his first wife, who had predeceased him. He was also survived by respondents 4 and 5, his grandsons, who were the sons of respondent no. 2.

The appellant, Ekradeshwari, who was sole widow, continued to live in the family house for four or five years after her husband's death. She complains in this action that the style of life to which she had to submit during that residence was penurious and inadequate. Upon leaving her husband's house she went to stay with her father with whom she still lives.

In the year 1917 a suit was instituted by the respondent no. 1 against the respondent no. 2 for partition of the estate left by their father and a compromise was arrived at. The position of the family had been brought before the Court of the Subordinate Judge at Bhagalpur with a view to having the maintenance of the appellant fixed. The narrative in the Judge's order of 23rd February, 1918, is as follows :—

> " The parties to the contest have put in a petition of compromise, which was filed on the 26th January 1918. This being a prayer on their behalf as to the maintenance for their stepmother being fixed by the Court, the petition could not be considered as a notice upon the lady had to be given. It appears that she does not appear, though requested to do so. This being so, I cannot judicially fix her maintenance in her absence. I therefore refuse the prayer of the parties in this respect. As for the suit [that is, the suit for partition] I decree it in the terms of the petition.

It may be doubtful whether the appellant was fully apprised of, or understood, these proceedings, and it is clear that no maintenance was either asked for by her or fixed for her in that suit, and that she continued her residence and maintenance as before. She, however, as already mentioned, did ultimately

leave the family house, and took up her abode with her father, who maintains this daughter in his household with the rest of his family.

The property thus partitioned was heavily encumbered with debts. There is no question however that it remained liable to the widow's claim for maintenance. Shortly after taking up residence with her father the appellant raised this suit.

In view of the ascertained facts of the case the demands made in the suit were of an unusually serious character. A maintenance allowance was asked at the rate of Rs. 18,000 per annum. Arrears of maintenance were asked from the date of her husband's death, amounting to Rs. 99,000. A further sum of Rs. 15,000 was demanded for the cost of building a house for her separate use and occupation. Finally, a demand was made for Rs. 13,170, the price of jewellery and ornaments contained in a list which was appended to the plaint. These were alleged to have belonged to the plaintiff and to be wrongfully detained by the defendants.

In the course of the proceedings the case as to the last item entirely failed. Both Courts agreed that it had not been made out in fact. They further agreed that the separate item for the cost of building a separate house for herself failed.

There remain, however, the important claims as to maintenance, and these are the questions which alone were submitted to the Board upon appeal, the points being, first, as to the amount of maintenance allowance, and, secondly, as to arrears, that is to say, the date from which the allowance should run. As to the amount of the allowance there are certain concurrent findings of the Courts below. The Subordinate Judge found that the gross income of the estate was Rs. 1,50,000 per annum, and that the net income was Rs. 33,000 per annum. Both of these findings were

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concurred in in fact by the High Court. One of the debit items was Rs. 66,000 due under mortgage to the Maharaja of Darbhanga. It appears clear that this mortgage originated in debts contracted very largely in the time of the appellant's husband. The subject of that item is, however, a matter of litigation between the respondents and the Maharaja of Darbhanga. Should that litigation end successfully, that is to say, in favour of the estate now in question, arrangements are made in the decree of the High Court for reconsideration of the amount of maintenance allowance in respect of the estate being thus incremented.

Their Lordships approve of the matter being thus dealt with by the High Court. As expressed in their judgment the matter stands thus:—

"I may point out that a suit has been instituted by the Maharaja of Darbhanga to enforce the mortgage bond for Rs. 5½ lacs and that the defendants are contesting that suit. If the defendants should succeed in defeating the claim of the Maharaja then the plaintiff will have liberty to apply for increase of her maintenance. The defendants have also a large claim as against a Marwari gentlemen. If they should succeed in realising their claim the plaintiff will have similar liberty to apply for increase of her maintenance. We direct by the consent of the parties that she would be entitled to secure an increase of her maintenance by an application to the Subordinate Judge of Darbhanga and that it will not be necessary for her to file a fresh suit."

In the view of the Board this treatment of the position is sound in principle and advantageous in procedure.

Their Lordships accordingly see no reason in the case for interfering with the statement of the net income arrived at below. It is Rs. 33,000. The demand of the appellant for a maintenance allowance of no less than Rs. 18,000 seems thus entirely unreasonable. An attempt to excuse it was made by a reference to an allowance made a good many years ago (in the lifetime of Rajeshwari Bahuasin) to the wife of Janeshwar Singh. It may or may not be

possible to interfere with that allowance, but it itself constitutes a severe burden upon the estate in its now impoverished condition, and it forms no precedent either in fact or in law for the present claim of the appellant.

The second argument was that upon an investigation of the figures in the previous litigation just referred to the sum of Rs. 15,000 appeared to bear the relation of one-fourth to the then net income, and this was suggested as a principle of law to be now applied. Their Lordships must definitely negative such a suggestion. It is no part of the maintenance law of India. In some cases, if applied, it would enlarge the allowance made far beyond any reasonable conception of maintenance as such. In other cases it might depress the allowance beyond what was a reasonable maintenance item.

The ground, however, for attack upon the concurrent findings of the Courts below, is said to be some error of legal principle, and (somewhat inconsistently with this) it was complained that it was difficult to find any legal principle upon which the maintenance allowance had been fixed. Upon this last their Lordships observe that it may be so, for the simple reason that maintenance depends upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families, a survey of the condition and necessities and rights of the members, on a reasonable view of change of circumstances possibly required in the future, regard being, of course, had to the scale and mode of living, and to the age, habits, wants, and class of life of the parties. In short, it is out of a great category of circumstances, small in themselves, that a safe and reasonable induction is to be made by a Court of Law in arriving at a fixed sum. The discretion exercised in making this induction when agreed to by two Indian Courts or even by one, should not be lightly interfered with. As observed

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by Sir Montague Smith in the case of *Sreemutty Nittokissoree Dossee* v. *Jogandro Nauth Mullick*(1) :— "Their Lordships would be extremely reluctant to interfere with the decision of the Court below upon a question of maintenance, and they would hesitate very much to do so unless there were some special circumstances in the case which indicated that there had been a miscarriage in the way in which the maintenance had been arrived at."

Their Lordships, however, do not wish to leave this part of the case as having been decided on grounds which are barren of principle. The Courts below fixed the maintenance allowance of the appellant at Rs. 4,200 per annum, and the learned Subordinate Judge in doing so, says this :—

"This sum, I think, would enable the lady to live as far as may be consistently with the position of a widow in something like the same degree of comfort and with the same reasonable luxury of life as she had in her husband's lifetime."

That is as near to principle as can be got in such cases, and, with the addition to be presently noted, their Lordships entirely approve of that view. The addition is this: that there may be circumstances in which the past mode of life of the widow has been demonstrably on a penurious and miserly scale, or on the other hand, on a quite extravagant scale, having regard to the total income of the husband. But if, as may be readily assumed, in such a case as the present, the scale was suited to his own position in life, that is a sound point from which to start the estimate. In the view of the Board the estimate made as applicable to present circumstances in this family should not be interfered with.

Up to this point in the discussion the appeal fails.

There is, however, a further point in the case, namely, arrears, in other words, the date from which a maintenance allowance should start. There are four possible periods, namely, first from the death of

(1) (1878) L. R. 5 I. A. 55, 56.

the deceased husband (21st October, 1916), that is to say, even during the residence on the alleged limited style of life in his former establishment; second, from the date of the change of the appellant to her father's residence, a period which is variously stated as from the end of 1920 to the end of 1921. To this variation subsequent reference will be made. Third, from the date of suit, namely, 23rd April, 1922, and fourth, from the date of decree, namely, 10th March, 1924.

Their Lordships are clearly of opinion that to start the maintenance at the last-mentioned date as has been done in the Court below, would be an inadequate recognition of the widow's right to maintenance. It is indeed an inversion of the correct procedure in the case of a continuing right. In any view the right could not be post-dated from the institution of the suit onwards. This, besides being erroneous in law, would be a daily temptation to delay in litigation by postponing the date of liability to that of final decree.

Payment from the date of suit being thus granted the question is whether arrears prior to that date are exigible. In the Board's opinion such arrears if they truly exist, fall within the range of the widow's right to maintenance. When a widow's receipt of maintenance in residence in her husband's establishment ceases contemporaneously with her institution of a suit for maintenance the point almost settles itself. When, however, as is the case here, there is no such exact concurrence of dates, it is the duty of the Court to consider the whole circumstances of the situation in pronouncing a decree for arrears.

In the present case the Court is met by a demand by the appellant of a somewhat peculiar kind. It is to the effect that a decree should include arrears of maintenance not only from the date when she left her late husband's house to reside with her father, as she has since done, but should date from her husband's death and include the time that she resided in her husband's establishment. The result of conceding

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this would be a kind of cross account: on the one side maintenance quantified in money as from the husband's death; on the other side a credit being given for maintenance as actually received with its incidental costs. In the opinion of the Board there is no legal justification for such a treatment of the case and the argument of the appellant fails. While their Lordships do not exclude an extreme case, say, of a widow being kept under circumstances of extreme penury and oppression, such a case must be treated as most exceptional, and would require unimpeachable proof. It is sufficient to say that nothing like that has been established in the present case.

On the other hand, the argument presented for the respondents and, indeed, the decision of the Appellate Court, seem to be based upon the assertion that it is the law of India that a Hindu widow has in the ordinary case no right of maintenance if she chooses to change from her husband's residence and choose another for herself. With much respect to the learned Judges the Board is unable to accept this view.

On the authorities it is, of course, true that if that change of residence is made for unchaste purposes it is a sufficient answer to the demand to offer her the shelter of the old home. But this is in no respect any such case. It is a simple case of a Hindu widow from motives which cannot be impeached on the ground stated, leaving her old residence and preferring the shelter and protection of her father's home. In the opinion of the Board such action was within her legal rights. She was only 24 years of age, and one cannot peruse the authorities or have a knowledge of Indian life, without understanding that such a change might be made from a sense of propriety and from the best of motives. But even so the point is not one of motives but of right.

It is now necessary to see what is the foundation of the judgment of the Court below. It is contained

in a single sentence in the judgment of the High Court as follows:—

"In regard to her claim for arrears of maintenance we think that there is no ground for allowing that claim. It is not suggested that she has incurred any debts in maintaining herself and we can find no excuse for her leaving her sons and going to reside with her father."

With much respect to the High Court their Lordships think that a judgment in these terms contravenes the long and well settled law of India. It makes this case one of widespread importance, and the Board thinks it accordingly right to note the outstanding case law on the subject.

This is not an instance in which there was any direction in the husband's will that she was to be maintained in the family home. In such circumstances, that is to say in the ordinary case, it is no part of the duty of a widow choosing her own residence to furnish excuses which will satisfy a Court of Law that she has made a judicious choice. The authorities on that subject are clear for at least three-quarters of a century, but only one or two need be cited.

In 1854 Peel C.J., of Bengal, delivered an important and leading judgment, reported in the *Vyavastha-Darpana*, page 362. That very learned Judge states that the Court has examined closely into the state of the authorities and the law on the subject. He quotes from the case of *Ujjal-mani Dasi* v. *Joygopal Pal Choudhuri and others* (1st June, 1848), as follows:—"It was not pretended that she had withdrawn herself for unchaste purposes. She was only 14 at the death of her husband; his brothers were young men, and she thought it more prudent and decorous to retire from their protection and live with her mother and her family after the husband's death, therefore, it appears quite clear from the answers given by the pandits that she did not forfeit the right of succession to the husband's estate on account of removing from the brothers of her late husband; that they had no right to insist on her not withdrawing

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herself from them in order to put herself under her mother's protection."

He thereafter states the proposition thus, in the language of the pandits adopted by the Privy Council:—"If a widow from any other cause but unchaste purposes ceased to reside in the husband's family and took up her abode in her parents' family her rights would not be forfeited."

In a later passage in the same judgment he says:—"We have examined the texts of the ancient law, and we think they bear out the opinions of the pandits in the case before the Privy Council. The texts say as to maintenance, forfeiture is incurred by unchaste life but they do not say that it is incurred otherwise. There are many duties enjoined to women in the text of a moral or religious nature, the violation of which would never have involved any forfeiture. Forfeitures are not to be extended by construction. The duty to reside with the family of the deceased husband is not enjoined for the sake of thrift."

The decision was highly approved by this Board in *Rajah Pirthee Singh* v. *Ranee Raj Kower* (1). In that case Sir Barnes Peacock again reviewed the authorities up to date, and concludes as follows:—"It therefore appears that a Hindu widow is not bound to reside with the relatives of her husband; that the relatives of her husband have no right to compel her to live with them; and that she does not forfeit her right to property or maintenance merely on account of her going and residing with her family, or leaving her husband's residence from any other cause than unchaste or improper purposes."

These principles have never been gone back upon or modified. They are still the law of India.

It remains accordingly only to fix the date from which the maintenance allowance should run. The appellant having remained in her late husband's home, and having, as she had, a right to do, during

(1) (1873) L. R. I. A. Supp. 203.

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that period accepted maintenance in fact and in kind, and she having thereafter, as was also within her legal right, changed her residence and gone to live with her father, what was the date of that change? The evidence upon that subject is far from clear. It appears to be established that she left by the family car on a visit to her father to attend the sradh ceremonies of her deceased mother. When there she made up her mind to stay on, and she has done so ever since. The Board is of opinion that this happened in the end of 1921, and that accordingly maintenance on the scale fixed by the Court below should run not from the date of decree, as found by the High Court, nor from the date of suit in April, 1922, but from 1st January, 1922.

Their Lordships will humbly advise His Majesty that the decree appealed from be affirmed subject to the modification that the maintenance allowance be granted from 1st January, 1922. There will be no costs in the appeal.

Solicitors for appellant: *Pugh and Company.*

Solicitors for respondents: *Barrow, Rogers and Nevill.*

APPELLATE CIVIL.

Before Das and Fazl Ali, JJ.

NARPAT SINGH

v.

MAHIDHAR JHA.*

1929.

Feb., 13.
March, 6.

Limitation—suit for rent—ex-parte decree and sale—landlord, holding purchased by—decree set aside on ground of fraud—subsequent suit for rent since date of sale—claim, whether barred by limitation.

*Appeal from Appellate Decree no. 116 of 1927, from a decision of Rai Bahadur Amrita Nath Mitra, Additional District Judge of Bhagalpur, dated the 3rd August, 1926, affirming a decision of Babu Krishna Sahay, Subordinate Judge of Bhagalpur, dated the 30th June 1925