

The result is that I would hold in agreement with the trial Court that the defendants on whom the *onus* rested have failed to prove that among *Kambohs* of Nakodar tahsil, Jullundur district, daughters succeed to the self-acquired property of their father in preference to collaterals of the third degree.

I would, therefore, dismiss the appeal with costs.

ABDUL QADIR J.—I agree.

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*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Jai Lal J.*

MUSSAMMAT SHAM DEVI (PLAINTIFF) Appellant

*versus*

MOHAN LAL AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 1326 of 1932.

*Hindu Law—Widow's right to maintenance and residence in family house—Recurring right—Limitation—Residence with husband at time of his death—how far necessary—Previous decree against husband—whether a bar to suit after his death against his heirs.*

*Held.* that a Hindu widow, as such, has a right of residence in the family house and of maintenance out of the family funds and it is a recurring right. The cause of action of the widow in such cases on the death of the husband is distinct from the cause of action she had against her husband during his lifetime, and a previous decree against her husband for maintenance and residence does not operate as a bar to her exercising her right as a widow against his heirs and no question of limitation arises in the case.

*Narainrao Ramchandra Pant v. Rama Bai* (1), followed.

*Held also,* that it is not the law that in order to entitle a widow to claim a right of residence in the family house, she should have been actually residing with her husband at

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the time of his death. If she is living in a house provided by her husband, or with the consent, expressed or implied, of her husband she is living elsewhere, she must for the purpose of exercising her right of residence after the death of her husband, be deemed to have been residing with him.

Mulla's Hindu Law, para. 562, referred to.

*Second appeal from the decree of Mr. H. B. Anderson, District Judge, Amritsar, dated 18th May, 1932, reversing that of Chaudhri M. A. Rahman, Subordinate Judge, 4th Class, Ajnala, dated 8th May, 1931, and dismissing the plaintiff's suit.*

MEHR CHAND MAHAJAN and HAR GOPAL, for Appellant.

JAI GOPAL SETHI, for Respondents.

JAI LAL J.

JAI LAL J.—The appellant *Mussammat* Sham Devi is one of the two widows of one Bhagat Ram who died some time in the year 1909. It appears that Bhagat Ram married another wife *Mussammat* Gouri from whom he had a son Mohan Lal. Both these are respondents before me. Owing to Bhagat Ram's marriage with *Mussammat* Gouri, the appellant got annoyed with him and began to live with her relations. In the year 1909 there was a dispute about her right of residence in the family house and of maintenance which was referred to arbitration. The arbitrators decided that *Mussammat* Sham Devi should have Rs. 10 a month as her maintenance and a house in Amritsar for her residence so long as she was alive. This award was duly filed in Court and a decree granted on its basis. I am informed, and this is conceded by the respondents, that the maintenance of Rs. 10 per mensem is being paid to *Mst.* Sham Devi up to this time. It was paid by Bhagat Ram during his lifetime

and by the defendants thereafter. *Mussammat* Sham Devi, however, did not go to reside in the house at Amritsar, because it is alleged on her behalf that the mother of Bhagat Ram was living therein. She, however, is now dead. She died in 1930 and after her death *Mussammat* Sham Devi instituted the suit out of which this appeal has arisen, claiming residence in the house at Amritsar by virtue of the award and the decree and failing that by virtue of her right as a widow of Bhagat Ram. It may be mentioned that her alternative claim was for a right of residence in the house at Benares.

It appears that Bhagat Ram carried on business at Benares and had built a fairly big house there. The house at Amritsar is the ancestral family house. It is also noteworthy that the maintenance of Rs. 10 per mensem was charged on the house at Benares. The trial Judge granted the plaintiff a decree on the ground that she was entitled to a right of residence in the family house as a widow of Bhagat Ram. He did not consider it proper to give her a right of residence in the house at Benares which was found to be too big for her needs. The District Judge on appeal by the defendants has dismissed the suit on the ground that it was barred by time and also that the widow was not entitled to a right of residence, because she was not residing with her husband at the time of his death.

I do not think it is necessary for me to decide whether the plaintiff in this case can found a cause of action on the decree of 1909. In my opinion, apart from the decree, the widow as such has a right of residence in the family house and of being maintained out of the family funds and this right is a recurring

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right. There is ample authority in support of this proposition including that of their Lordships of the Privy Council (*Narainrao Ramchandra Pant v. Rama Bai* (1)). The real question is whether the previous decree is a bar to her claiming this right in this case. The decree, as I have already stated, was passed against her husband Bhagat Ram. In my opinion, the cause of action of the widow in such cases on the death of the husband is distinct from the cause of action she had against her husband during his lifetime. It is conceded by Mr. Sethi, counsel for the defendants, that on a change of circumstances it would be open to both parties to claim either the cessation of this right or the alteration of the conditions laid down by the decree against Bhagat Ram; but it is contended that no alteration of circumstances is alleged in this case. In my opinion, the alteration of circumstances is apparent and is in fact alleged in this case. One is the death of Bhagat Ram and the other is the death of his mother. I may mention here that the case of the plaintiff is that she did not go to reside in the house at Amritsar because it was verbally arranged between her and her husband at the time of the decree that as the mother was residing in the house, she would not exercise her right so long as she was alive. That being so, in my opinion no question of limitation arises in this case. The alternative prayer of the plaintiff is well within time being, as I have already said, based on a recurring right and the decree of 1909 does not operate as a bar to the exercise of her right as a widow against the heirs of Bhagat Ram, her deceased husband, which I have already held is a right distinct from her right against her husband.

(1) (1879) I. L. R. 3 Bom. 415 (P. C.).

It is then contended by Mr. Sethi relying upon paragraph 562 of Mulla's Hindu Law which is also the basis of the judgment of the learned District Judge that the right of residence by the widow in the family house can be exercised by her only if she was at the time of his death residing with her husband. The law nowhere lays down that she should be residing in the same house with her husband; if she is living in a house provided by her husband or if such a house is available to her but with the consent, express or implied, of her husband she is not actually residing in it, she must for the purpose of exercising her right of residence in the family house after the death of her husband be deemed to be residing with him. In this case it must be remembered that it was conceded by both parties that in spite of her not residing in the Amritsar house she was receiving the maintenance fixed by the decree. It must further be remembered that Bhagat Ram died shortly after the decree had been passed. In my opinion, therefore, the fact that she was not actually residing in the same house with her husband or in the house in Amritsar does not debar her in this case from claiming her right of residence, and I am unable, therefore, to endorse the view of the learned District Judge on this question.

It is then contended that in the plaint she claims a right of residence in the house at Benares in exercise of her alternative cause of action and therefore she could not be given the house at Amritsar for residence. This point has not really been decided by the District Judge but as it has been raised before me I may mention that her initial claim is for right of residence in the house at Amritsar and in the alternative at Benares. It is open to the Court to give her, on the

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plaint as framed, a right of residence either in the house at Benares or in the house at Amritsar according to her needs and the circumstances of the family. This is a matter which must be determined by the District Judge when the case goes back to him.

For all the reasons mentioned above, I accept this appeal and setting aside the decree of the District Judge remand the case to him with direction to hear the appeal on the other matters raised in the appeal before him, with due observations made above. The Court-fee paid on the memorandum of appeal shall be refunded to the appellant and the other costs will abide the result.

P. S.

*Appeal accepted.*  
*Case remanded.*

### APPELLATE CIVIL.

*Before Addison and Monroe JJ.*

BOMBAY, BARODA AND CENTRAL INDIA  
RAILWAY COMPANY (DEFENDANT) Appellant  
*versus*

LEGAL REPRESENTATIVES OF SANAULLAH,  
DECEASED, AND OTHERS (PLAINTIFFS) Respondents.

Civil Appeal No. 1403 of 1926.

*Indian Railways Act, IX of 1890, Section 72 (1), (2), 75—  
Goods lost in running train theft—consigned without paying  
percentage—Risk note—executed by consignor—whether bind-  
ing on plaintiff in suit for damages—Negligence—Waggon  
not locked, but sealed.*

The original plaintiff sued the Railway Company for damages for non-delivery of six cases of goods consigned to Delhi from Bombay, the goods being declared as silk goods under section 75 (1), read with the Second Schedule of the Indian Railways Act, by the agent of the plaintiff at Bombay. The consignors did not pay a percentage by way of compensation on the value of the goods but executed three risk notes in

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Jan. 16.