[APPELLATE CIVIL.]

Before Mr. Justice Melvill and Mr. Justice Pinhey.

1877. August 21.

RA'MCHANDRA SAKHA'RA'M VA'GH (ORIGINAL PLAINTIFF), APPELLANT *v.* SAKHA'RA'M GOPA'L VA'GH (ORIGINAL DEFENDANT), RESPONDENT.*

Saranjám—Resumption—Pension, its impartibility—Hindu law—Adult son's right to demand maintenance from his father.

A *saranjám* is ordinarily impartible, and *semble* that a political pension granted in substitution of a resumed *saranjám* is so likewise. The Pensions Act (XXIII. of 1871) prevents a civil Court from declaring such a pension to be partible, unless the Collector should authorize it to do so; and the fact that the Collector authorizes a suit for maintenance out of such a pension, affords no ground for presuming that he authorizes a suit for the partition of the pension.

If a Hindu father possesses practically no partible property, his legitimate son, though adult, and suffering from no disability to inherit, is entitled to maintenance from him.

Himmatsing v. *Ganpatsing* (12 Bom. H. C. Rep. 94) followed; but the correctness of the decision doubted by PINHEY, J.

THIS was a special appeal from the decision of W. H. Newnham, Judge of the district of Puna, confirming the decree of G. A. Mánkar, Joint Subordinate Judge of Puna.

In the year 1801 the Peishwá granted the village of Kohiáli, in the Junnar Taluká of the Puna District, as *saranjám* to one Gopál Ballál Vágh, who enjoyed it till his death in 1818, when the British Government resumed it, and granted instead a political pension of Rs. 1,200 *per annum* to his son Sakhárám during his life, and a moiety to the second generation.

The plaintiff Rámchandra, the son of Sakhárám by his first wife, alleged that his father married a second wife, and at her instigation turned him out of the house without giving him any education, or qualifying him for any calling or profession, and claimed Rs. 63 as arrears of maintenance for six months.

The defendant Sakhárám contended that his son, being adult, was not entitled to separate maintenance, according to Hindu law, and under Act XXIII. of 1871 could claim no part of his pension.

The Subordinate Judge, in rejecting the claim, said: "If the allowance out of which a separate maintenance is claimed, is im-

* Special Appeal No. 185 of 1877.

partible, then such a suit as the present one will lie (*Himmatsing* v. *Ganpatsing* (1)); but if the allowance is partible, then the plaintiff is entitled to sue for a share, and, consequently, his suit for maintenance would be unsustainable. According to Hindu law only those male members of a Hindu family are entitled to maintenance who are labouring under any of the disabilities to inherit, such as illegitimacy, dumbness, blindness, madness, idiocy, leprosy, and other incurable diseases or infirmities (Sir T. Strange's Hindu Law, ch. IX). The plaintiff being subject to none of the disabilities to inherit, is entitled to sue for partition, if the pension is partible. I think the pension is partible."

Mr. Newnham upheld this decision. He said: "No authority has been shown me for the claim of maintenance by an adult Hindu son, and in *Premchand Pepárá* v. *Hooláschand Pepárá* (2) it was held that there was no authority for such in the Hindu law. The allowance is one in which the son can claim a *share*, which he should have done."

Shámráv Vithal for the appellant:—Both the Courts are in error in holding that a pension granted in resumption of a *saranjám* was partible. In the case of *Moreshwar Dikshit* v. *Parshrám Dikshit* (3) Mr. Simson upheld the decree of the Agent for the Sirdárs in the Dekhan, which had declared *saranjáms* impartible. The fact that *saranjáms* were granted for the performance of military service, or of other State service, and can be resumed at the pleasure of the sovereign, shows that they cannot be partitioned: *Krishnaráv* v. *Rangráv*. (4) *Saranjáms* being impartible, and there being no other property from which the plaintiff can demand a share, his claim for maintenance should be allowed, as was done in the case of *Himmatsing* v. *Ganpatsing*. (5)

Bahiravnáth Mangesh for the respondent:—All property must be held to be partible, unless it be distinctly proved to be otherwise. No well-considered decision has been cited to show that *saranjáms* must not be taken to be partible like any other pro-

(1) 12 Bom. H. C. Rep. 94. (2) 12 Calc. W. R. 494 Civ. Rul.
(3) Appeal No. 2222 decided 16th June 1847.
(4) 4 Bom. H. C. Rep. 1 A. C. J. (5) 12 Bom. H. C. Rep. 94.

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perty. In *Rámchandra* v. *Parshram* (1) the appellant contended that the lower Court was in error in holding the village in dispute there to be liable to division, it being a *saranjám* village; but the objection was overruled, and the decree of the lower Court was affirmed. The case of *Himmatsing* v. *Ganpatsing* (2) is inequitable, and not consonant with the Hindu law. An aged father should not be compelled to maintain a grown-up son who has quarrelled, and who refuses to live with him. There is neither a legal nor a moral obligation upon him to do so. The proper thing for the plaintiff, is to sue for partition. There is some evidence in the case that the defendant possesses other property, and the right to sue for maintenance is made to depend on some recognized disability to inherit; none such has been attempted to be shown in this case. The plaintiff's suit must, therefore, fail: *Premchand Pepárá* v. *Hoolaschand Pepárá*. (3)

MELVILL, J.:—It appears from exhibit No. 22 that a *saranjám* was granted by the Peishwá to the defendant's father in 1801. It was resumed by the British Government in 1818, and, in lieu of it, a pension of Rs. 1,200 was granted to the defendant, half of which was to be continued to the second generation.

The plaintiff is an adult legitimate son of the defendant, and it is found by the Courts below that he has been turned out of his father's house in consequence of family quarrels arising out of his father's second marriage. He now sues the defendant for Rs. 63, being the amount of necessary expenses incurred by him during the six months preceding the suit. He has received a certificate from the Collector, under section 6 of Act XXIII. of 1871, authorizing the civil Courts to entertain the suit. The parties are Brahmins, and the plaintiff alleges in his plaint, and the allegation is not contested in the defendant's written statement, that his father has not given him any education, or qualified him for any profession or calling.

(1) Sp. Ap. No. 157 of 1875 decided on 1st March 1877 by Westropp, C.J., and Melvill, J., not reported.

(2) 12 Bom. H. C. Rep. 94.

(3) 12 Cal. W. R. 494 Civ. Rul.

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The Courts below have disallowed the claim, on the ground that a Hindu son cannot sue his father for maintenance, if there is any property in which he is entitled to a share. Both Courts held that the defendant's pension is liable to partition, and they referred to the statement of one of the plaintiff's witnesses (No. 19), as indicating that there was other immoveable property belonging to the family. Under these circumstances they considered that the plaintiff's proper course was to sue for a partition.

There is nothing in the pleadings or issues as to the existence of any immoveable family property. Witness No. 19 makes a vague statement that the defendant receives the produce of some fields; but he does not say that the fields are ancestral property, and, as such, liable to partition. Exhibit 22 shows that, at the time when it was prepared, the defendant's income, from sources other than his pension, was only Rs. 40 per annum. Assuming this income to be still in existence, and to be derived from family property, the plaintiff's share in it would be Rs. 10 a year. Such an income would, of course, be quite insufficient for his maintenance, and if there is no other property liable to division, it would be a mere mockery to refer the plaintiff to a partition suit. For all practical purposes it must be considered that there is no family property, except the pension, to which the plaintiff can look for his maintenance.

I am unable to concur in the opinion of the Courts below, that the pension is partible. A *saranjám* is ordinarily impartible, and a pension granted in lieu of *saranjám* would, I think, be equally impartible. At all events, the provisions of the Pensions Act would prevent a civil Court from declaring such a pension to be partible, unless the Collector should authorize it to do so. And the fact that the Collector has permitted the plaintiff to sue for maintenance out of the pension, does not by any means indicate that he would permit the pensioner's sons to demand a partition of the allowance in equal shares.

What we have to determine, then, is whether, in a case in which there is practically no family property to be divided, an adult Hindu is entitled to maintenance from his father, who is in the

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enjoyment of a pension granted by Government in lieu of a resumed *saranjám*. I am of opinion that he is. As a general rule, perhaps, a Hindu is not bound to support a grown-up son: *Premchand Pepárá* v. *Hoolaschand Pepárá*. (1) But in *Himmatsing* v. *Ganpatsing* (2) it was held that when the family estate is impartible, and one to which the law of primogeniture applies, a son can sue his father for maintenance. It appears to me that that decision governs the present case. The orders of Government in regard to *saranjáms* are that the *saranjám* shall not be subdivided, but that the obligations of the holder to maintain the younger members of his family shall be strictly enforced. (See Nairne's Revenue Hand-book, page 346, paras. 13 and 14.) A pension, not forming a new grant, but given in substitution for a resumed *saranjám*, ought in equity to involve the same obligation on the holder, and the same benefits to the younger members of his family. I, therefore, think that the plaintiff is entitled to receive a moderate maintenance out of the pension: and as the amount claimed by him is undoubtedly moderate, I would reverse the decrees of the Courts below, and allow the claim, with costs on defendant throughout.

PINHEY, J.:—I concur in the judgment just delivered by my brother Melvill; but I have arrived at this conclusion after entertaining very considerable doubt on the point of law on which the decision of the case depends. I have no doubt whatever that the political pension which was granted to the defendant Sakhárám Gopál Vágh as commutation, on the resumption of the *saranjám* held by his father, is impartible, and protected from the process of the civil Court by section 11 of the Pensions Act (XXIII. of 1871). I have, however, felt great doubts whether it is good (Hindu) law to say that an adult son in an undivided Hindu family, who is suffering from no disability recognized by that law, can claim a separate maintenance from his father. In *Premchand Pepárá* v. *Hooláschand Pepárá*, (3) Mitter, J., in delivering the judgment of the Court, said:—"We find no authority in the Hindu law to support the position that a father is obliged to support a grown-

(1) 12 Calc. W. R. 494 Civ. Rul. (2) 12 Bom. H. C. Rep. 94.
(3) 12 Calc. W. R. 494 Civ. Rul.

up son." I confess that I incline to the same opinion. By Hindu law the obligations of a father and of a son are not reciprocal: *e.g.*, a son under Hindu law is liable for his father's debts, but a father is not liable for his son's debts. Moreover, it seems to me a strange proposition to say that a father is liable to maintain his grown-up son, however worthless, notwithstanding that the son does not choose to take any trouble to maintain himself. Although, however, I have looked through many books on Hindu law and have referred to the reported decisions of the Indian High Courts, I have been unable to find any authority to support the opinion to which I incline, except the decision of the Calcutta High Court which I have already cited. The point was not argued before us in this case. The defendant's pleader argued before us that the defendant's pension was partible, and, therefore, plaintiff should sue for his share of the family property. The plaintiff's pleader, on the other hand, argued that the pension was impartible, that there was no other family property, and that, therefore, plaintiff was entitled to sue for maintenance. Holding (as both my brother Melvill and I do hold) that defendant's pension is impartible, the contention of the plaintiff's pleader is supported by the decision of this High Court in *Himmatsing* v. *Ganpatsing*, [1] and I feel bound to follow that decision—supported, as it is, by the *dicta* in Strange's Hindu Law, p. 353, para. 23 (ed. of 1864) and Steele's Law and Customs of Hindu Castes, p. 40, para. 30, last line (ed. of 1868). At the same time I think it not at all improbable, that in some future case, when the point is further considered and exhaustively argued, viz., whether in a united Hindu family an adult son, who is suffering from no disability, can sue his father for a separate maintenance, the authority of *Himmatsing* v. *Ganpatsing* will be shaken. And I should certainly be glad to see that case overruled, for the rule which it lays down appears to me subversive of Hindu society and very injurious. I can conceive nothing more fatal to the happiness Hindu family life than for this Court to affirm the principle th Hindu father is liable to have to provide for each of his s separate maintenance, while the son may choose to live idleness, and probably in consequence, in a licentiou

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Poona, a life of vice. I am quite unable to agree with the District Judge, who tried this case on appeal, in considering the plaintiff entitled to either pity or sympathy. The plaintiff is between thirty and forty years of age, and I think if he had any manliness of character or generosity of spirit he would rather have earned an honest livelihood by breaking stones on the road than have claimed a separate maintenance from his old father, who would appear from exhibit 22 to be at least seventy years of age, to have two other sons, and probably the other innumerable dependents who usually hang round the head of a once wealthy Marathi family.

Taking, however, the case of *Himmatsing* v. *Ganpatsing* as enunciating the law which should govern this case, I agree with my brother Melvill that the plaintiff is entitled to recover the amount which he claims. That amount is undoubtedly moderate, if plaintiff is under no obligation to try and make something by his own exertions. It is true that both the Courts below appeared to think that, besides the impartible pension, the defendant is possessed of some property of which plaintiff can claim partition: but the evidence in the case, from which the lower Courts can have arrived at this opinion, does not show that defendant has more than a very small income besides his political pension. Plaintiff's share of this residue would be quite insufficient to afford him a maintenance, and the decision in *Himmatsing* v. *Ganpatsing* would have no meaning if we were to hold that it did not apply in a case in which a son claiming maintenance could, by suing for his share of the partible property, obtain a rupee or ten rupees by the partition of such portion of the family estate.

I agree, therefore, to reverse the decrees of the Courts below and to award this claim. In doing so, however, I do not see that we give the plaintiff much more than a piece of paper with the Court's seal on it; for one of the grounds on which I base my ...dgment is that the family property of the parties, independent of ...olitical pension, is (if it exists at all at present) infinitesimally ...nd other members of the family have interests in it, whilst ...he pension the plaintiff will be prevented from execut... ...ee by the provisions of the Pensions Act of 1871.

Decrees reversed.