to the decisions such as *Harilal* v. *Pranvalavdas*[1], which restrict the widow's dominion over immoveable property inherited from a husband.

As the Assistant Judge has found as a fact that the houses never were the property of Tulsidas, there is no reason for requiring a finding on the issue as to the special custom of the Bhargava Brhâman caste alleged by the plaintiff whereby he says a sister's son is treated as a nearer heir than relatives connected by descent from a remote common ancestor such as the defendants Nos. 5 and 6. The Court confirms the decree with costs.

Decree confirmed.

(1) I. L. R., 16 Bom., 229.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

GAMBHIRMAL AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* HAMIRMAL (ORIGINAL DEFENDANT), RESPONDENT.*

1896. *Februar*

Partition—Maintenance—Mortgage—Assignment of the mortgaged property as maintenance of a widow—Subsequent redemption of the mortgage—Widow entitled to the redemption money.

A field held in mortgage by the family of the parties was assigned to a widow in the family for her maintenance when the family divided. The mortgage money was subsequently paid into Court in pursuance of a decree for redemption.

Held, that it was clear on the assignment that the widow was entitled to the money just as she was entitled to the field, *i. e.*, to the usufruct of it for her life.

SECOND appeal from the decision of A. Steward, District Judge of Ahmednagar, reversing the decree of Ráo Sáheb K. S. Risvadkar, Subordinate Judge of Párner.

Three undivided brothers, Hamirmal, Gambhirmal and Gulabchand, held certain land as mortgagees. One of them (Gulabchand) died, leaving a widow Rupabai, and on partition of the family property between the two surviving brothers, the mortgaged land was given to the widow Rupabai as her maintenance. In the year 1890 the mortgagor sued to redeem the mortgaged land, and obtained a decree for redemption on payment of

* Second Appeal, No. 525 of 1895.

1896.

GAMBHIRMAL v. HAMIRMAL.

Rs. 494-1-0. He accordingly paid this amount into Court. Hamirmal having endeavoured to obtain it for himself, Gambhirmal and Rupabai filed the present suit, claiming that Rupabái only was entitled to it.

The Subordinate Judge allowed the claim, holding that plaintiff Rupabai alone was entitled to the money.

On appeal by defendant the Judge reversed the decree.

The following is an extract from his judgment :—

"I am of opinion that the accident of the mortgage being redeemed, renders it necessary for plaintiff No. 2 on the one hand to give up all claim to the redemption money which should be handed over in equal shares to defendant and plaintiff No. 1 if these two brothers have really become separate and divided in interest; and it renders it necessary for the two brothers on the other hand to make fresh arrangements for her maintenance. The survey number having been redeemed, the arrangements made for the maintenance of plaintiff No. 2 have been determined."

The plaintiffs preferred a second appeal.

Govardhanram M. Tripathi, for the appellants (plaintiffs) :—The field was given to plaintiff No. 2 (Rupabai) for her maintenance and she enjoyed the income of it. Now the field has been redeemed. The redemption money represents the field, and she is entitled as maintenance to the interest on the redemption money.

Mahadeo B. Chavbal, for the respondent :—The question is whether the arrangement with respect to the maintenance of plaintiff No. 2 has fallen through owing to redemption by the mortgagor. The mortgaged property was, no doubt, charged with the plaintiff's maintenance, but now the question is whether she has a lien on the redemption money. We submit that she has not. The mortgage was effected when the family was united : therefore the redemption money belongs to the whole family.

PARSONS, J. :—A field that was held in mortgage by the family of the parties was assigned to the plaintiff No. 2 for her maintenance when the family divided. The mortgage money has now been paid into Court in pursuance of a decree for redemption, and the question is to whom the money is to be paid. The defendant, a male member of the family, claims one-half of it, it being, according to his contention, joint property divisible between himself and the plaintiff No. 1.

The plaintiff No. 2 claims it as being assigned to her for her maintenance. The plaintiff No. 1 sides with her. We think it is clear on the assignment that the plaintiff No. 2 is entitled to the money just as she was entitled to the field, *i. e.*, to the usufruct of it for her life.

We amend the decree and grant the plaintiff No. 2 a declaration that she is entitled to the usufruct of the money for her life. In the absence of any agreement between the parties the Subordinate Judge should see that the capital amount is secured, so that on plaintiff No. 2's death it may pass intact to those entitled thereto, plaintiff No. 2 being paid the interest only for the term of her natural life. We order the plaintiff No. 1 to bear his own costs and defendant to pay his own costs and to pay a moiety of plaintiff No. 2's costs throughout.

Decree amended.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

1896.
February 24.

DATTAJI SAKHARAM RAJADHIKSH (ORIGINAL PLAINTIFF), APPELLANT, *v.* KALBA YESE PARABHU AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Widow—Powers of management—Lease granted by the widow for long term of years—Lease voidable on the widow's death, but not ipso facto void—Suit by heir to recover properly from lessee six years after widow's death—Compensation for tenants' improvements—Lying by—Landlord and tenant.

A Hindu widow adopted a son, but reserved to herself for life the right of managing her husband's property. The adopted son sold his interest in the property to the plaintiff. In 1885 the widow granted a lease of the property to defendants for fifty-nine years at a rent of Rs. 50 a year. She died the following year (1886). The defendants continued in possession of the property under the lease and expended money in improvements. In 1892 the plaintiff as purchaser from the adopted son sued for possession.

Held, that he was entitled to recover and to have the lease set aside, but only on payment to the defendants of compensation for the sum properly expended by them in improving the land after the widow's death.

The lease granted by the widow Jankibai was not *ipso facto* void, but only voidable by the plaintiff on her death. It did not necessarily determine at her death. That being the legal position of the defendants, the plaintiff allowed the defendants to go on improving the property, and took no steps to warn the defendants until he brought

* Second Appeal, No. 308 of 1895.