

## APPELLATE CIVIL.

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

1896.  
March 16.

GODAVARIBAI (ORIGINAL PLAINTIFF), APPELLANT, v. SAGUNABAI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Hindu law—Widow—Maintenance—Separate maintenance and residence—Family property too small to admit of allotment of separate maintenance.*

Where the family income was too small to admit of an allotment to a widow of a separate maintenance, and there was no family house, but a small portion of land which was the site of a house,

*Held*, that the widow was not entitled to a separate maintenance, but might be allowed, if she so desired, to occupy during her life-time a portion of the land, not exceeding one-third.

SECOND appeal from the decision of L. G. Fernandez, First Class Subordinate Judge of Thána, with appellate powers.

The plaintiff sued to recover from the defendants, who were the widows of her husband's brother, Rs. 72 for three years' maintenance and a third share in a piece of vacant ground for residence, alleging that defendant No. 1 was in possession of the family property which had belonged formerly to the father of her (plaintiff's) husband and of the defendants' husband and that she refused to maintain the plaintiff.

Defendant No. 1 answered (*inter alia*) that the claim was time-barred and that the net profits of the family property amounted to fifteen maunds of paddy only, which were insufficient to maintain her and two unmarried young daughters.

Defendant No. 2 did not appear.

The Subordinate Judge found that the defendant was not personally liable, but that her liability depended upon the possession of sufficient ancestral property, that the claim was not barred by the law of limitation, that the net annual income of the family property was not more than Rs. 40-4-0, and that no surplus remained for plaintiff's maintenance, and that the plaintiff was not entitled to recover one-third share of the land. He, therefore, rejected the claim.

\* Second Appeal, No. 619 of 1894.

On appeal by the plaintiff the Judge confirmed the decree. The plaintiff preferred a second appeal.

*Narayan V. Gokhale* appeared for appellant (plaintiff):—The plaintiff is the widow of a co-parcener. The income of the family property may be small, still provision must be made for the maintenance of a widow in the family—Strange's Hindu Law, pp. 67 and 68. Some arrangement should be made for the plaintiff's residence.

*Sadashiv R. Bakhle* appeared for the respondents (defendants):—As to maintenance we rely on *Savitribai v. Luximibai* <sup>(1)</sup>, *Kasturbai v. Shivajiram* <sup>(2)</sup>, *Ramchandra v. Sagunabai* <sup>(3)</sup>, and West and Bühler, p. 757. Both the lower Courts have concurred in holding that the family property is insufficient to allot separate maintenance to plaintiff. This is a finding of fact.

As to residence, there is only a vacant space and no house. Defendant No. 1 herself is living with her father.

FARRAN, C. J.:—The present falls, we think, within the principle enunciated in the cases "that a widow cannot claim separate maintenance where the family property is so small as not reasonably to admit of an allotment to her of a separate maintenance"—*Savitribai v. Luximibai* <sup>(1)</sup>, *Kasturbai v. Shivajiram* <sup>(2)</sup> and *Ramchandra v. Sagunabai* <sup>(3)</sup>. The income of defendant No. 1, who is the widow of the last holder, derived from the family property is only Rs. 40 per annum or little more than Rs. 3 per month, and out of that she has to support herself and her daughters. There is no house in which we can assign a residence to the plaintiff, but there is the site of a house. She may be allowed, if she so desires, to occupy during her life-time a portion of that site not exceeding one-third of it. Such portion can be determined in execution if necessary. Decree varied accordingly.

*Decree varied.*

(1) I. L. R., 2 Bom., 573.

(2) I. L. R., 3 Bom., 372.

(3) I. L. R., 4 Bom., 261 at p. 263.