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that the prohibition applies both to the giver and receiver. So that Nilkanth's reasoning, when correctly regarded, is exactly the opposite of what Sir Michael Westropp thought it was.

It is unnecessary to quote Sir Michael Westropp's reliance on the Dattaka Mimansa and the Dattaka Chandrika, as these authorities were dealt with by the Privy Council.

As to Steele and Borradaile quoted by Mr. Rao for appellants, it is clear that the usage referred to by these authorities cannot outweigh the texts of the Smriti writers. From the answers given by 200 castes as collected by Mr. Borradaile, it appears that 147 said that they had no custom of adoption (it is notorious that in Gujarát adoption has not in the past been so prevalent as in other parts of India), 28 said there was no custom, but if an adopted son was taken, it must be according to the Shástras, while 25 said that they adopted according to law.

Lastly, Mr. Rao referred to the points of Hindu law in regard to which this Presidency differs from other parts of India—*e.g.*, the daughter's and sister's estate of inheritance, the position of the widows of gotraja sapindas, and such like. These analogies would be good if it could be shown that, apart from judicial decisions, the Hindu texts have invariably been received in this Presidency as absolutely forbidding the adoption of an only son. In the absence of such overwhelming evidence we are bound to follow the ruling of the Privy Council ; and I would, therefore, answer the question put to us by the referring Bench in the affirmative.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1900.
January 9.

GOPIKABAI (ORIGINAL DEFENDANT), APPELLANT, *v.* DATTATRAYA AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hindu law—Widow—Maintenance—Decree for maintenance—Suit for altering the rate of maintenance fixed by a decree—Practice—Procedure.

A suit will lie to obtain a reduction in the amount of maintenance decreed to a Hindu widow on a change of circumstances, such as a permanent deterioration in the value of the family property.

* Second Appeal, No. 227 of 1899.

But where such deterioration is due to the plaintiff's own default in not keeping the property in a proper state of repair, he has no right to ask for a reduction.

Per PARSONS, J.:—Courts should insert words which would enable them on application to set aside or modify their orders as circumstances might require, and in such cases the remedy would be the more appropriate one by application under the leave reserved.

SECOND appeal from the decision of Ráo Bahádur Thakurdas Mathuradas, Assistant Judge of Ratnágiri.

On the 11th March, 1889, Gopikabai, a Hindu widow, obtained a decree awarding her maintenance at the rate of Rs. 20 a month out of the ancestral property in the hands of plaintiffs' father, who was the surviving co-parcener of her husband's family.

Plaintiffs' father paid the maintenance as ordered till his death in 1894.

In 1897, plaintiffs filed the present suit to have the rate of maintenance reduced to Rs. 5 a month. The material allegations in the plaint were the following:—

(1) At our father's death the salary of Rs. 300 a year which he drew from the Sávantvádi State ceased.

(2) At the time of the decree the income that fell to our father's share was not properly estimated, but a decision was come to on a rough estimate of the value of the property.

(3) Since the death of our father the income has become much diminished, and the immoveable property has fallen into disrepair.

The defendant pleaded (*inter alia*) that the suit would not lie, as there was no provision in the decree for reducing the rate of maintenance, and that even if the suit were maintainable, there were not sufficient grounds for reducing the amount of maintenance.

The Court of first instance dismissed the suit, holding that the value of the family property was not in any way diminished.

On appeal, the Assistant Judge held that the house had deteriorated in value since the last litigation, but the value of the house site was increasing every year. He reduced the rate of maintenance from Rs. 20 to Rs. 17 a month.

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Against this decision Gopikabai, the defendant, preferred a second appeal to the High Court.

M. R. Bodas, for appellant.

B. N. Bhajekar, for respondents.

PARSONS, J.:—In Suit No. 412 of 1884 (which arose out of proceedings in the execution of the partition decree in Suit No. 69 of 1881 obtained by the plaintiffs' father), the Subordinate Judge awarded the present defendant maintenance at the rate of Rs. 30 a month, taking the value of the estate to be Rs. 48,000, as given by the plaintiff himself, and the share of the defendant's late husband to have been a fourth, or Rs. 12,000. This amount was reduced by the District Judge, on appeal, to Rs. 20 a month. He found that the plaintiff had realized Rs. 6,000 or Rs. 7,000; that the ancestral house was worth Rs. 8,000 or Rs. 9,000; that the whole value, therefore, was Rs. 14,000 or Rs. 16,000; and that the share of the defendant's husband was one-fourth of this, say Rs. 4,000, which at 6 per cent. interest would produce Rs. 240 a year. This decree was confirmed by the High Court on the 11th March, 1889.

The plaintiffs on the 30th July, 1897, brought this suit to have the rate of maintenance reduced to Rs. 5 a month. In their plaint they set out the former proceedings and the decree against their father, and made the following allegations, namely:—"These Rs. 20 were paid till the death of their father; at his death the salary of Rs. 300 a year that he drew from the Sávantvádi State ceased. At the time of the decree the income of the property that fell to their father's share was not properly estimated, but a decision was come to on a rough estimation of the value of the property. Since the death of their father, the income has become much diminished, and the immoveable property has fallen into disrepair; therefore the amount ordered in the decree cannot be paid. An estimate should be made of the income of the property and its condition, and the amount of maintenance fixed accordingly." The Subordinate Judge dismissed the suit. He says: "On carefully appreciating the evidence adduced on behalf of both the parties, I am not prepared to hold that the value of the family property is in any way diminished. The

decree in Suit No. 412 of 1884 seems to show that the amount of defendant's maintenance was fixed by estimating the value of the family property and with due regard to all the circumstances of the case."

The Assistant Judge altered the amount of maintenance to Rs. 17 a month. He says: "On a consideration of the whole of the evidence, I would assess the value of the property of the plaintiffs as below:—

Rs.	7,000	Being the value of the property realized by the plaintiffs' father (Exhibit 54).
,,	5,000	Value of the house and its compound.
,,	1,300	Value of the share of Lotlikars in the Outram's bungalow which share has since been sold (Exhibits 50 and 51).
Rs.	13,300	

The annual value of the property at the rate of 6 per cent. would be Rs. 798 + Rs. 4, being the annual rent of the Adiware property, total Rs. 802. The share of the defendant's husband therein would be ¼, *viz.*, Rs. 200½ per year or roughly Rs. 17 a month. I find that the house has deteriorated in value since the last litigation, but the value of the house site is increasing every year. Bearing these circumstances in mind, as also the rent of the house and the landed property above referred to, and taking into account the expenses of repairs and the item of house-tax, I would reduce the rate of the maintenance awarded to the defendant from Rs. 20 to 17."

It will thus be seen that the sole reason for his altering the decree is that the house has deteriorated in value since the last litigation from Rs. 8,000 to Rs. 5,000. There is no evidence adduced to show that this has been brought about by natural causes; no evidence, that is, that house property in the town of Ratnágiri has decreased in value generally, or that less rent is obtainable now than in 1884. The only cause assigned in the plaint for the reduction of value is that the property has fallen into disrepair. This, however, is a matter for which the plaintiffs

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themselves are directly responsible, and it is clear that they would have no right to ask a Court to alter its decree on the ground of diminished value of the family property where that diminishment has been caused by their own default—see *Vijaya* v. *Sripathi*[1]. It was their duty to have kept the property in a proper state of repair.

I think, therefore, that the Subordinate Judge was right in dismissing the suit, and that the Assistant Judge should not have interfered with the decree.

I may add that we have accepted the principle that such a suit as this will lie, following such precedents as those of *Sreeram Buttacharji* v. *Puddomookhee Debia*[2], *Ruka Bai* v. *Ganda Bai*[3], *Vijaya* v. *Sripathi*[4]; but we think that, in decrees where maintenance is awarded, Courts should insert words which would enable them on application to set aside or modify their orders as circumstances might require, and in such cases the remedy would be the more appropriate one by application under the leave reserved.

We have also allowed the plaint and memo. of appeal to stand as presented on a Court fee of Rs. 10, following the practice of the Allahabad High Court observed in the case of *Ruka Bai* v. *Ganda Bai* as kindly reported to us by the Registrar.

The decree of the lower appellate Court is reversed and the decree of the Court of first instance restored with costs in this and the lower appellate Court on the plaintiffs.

RANADE, J.:—The respondent-plaintiffs' father obtained a partition decree in Suit No. 69 of 1881; and certain property was assigned to his share. When he sought to obtain possession of this property, the appellant-defendant obstructed the delivery of such possession, and the application for the removal of obstruction was registered as Suit No. 412 of 1884. This litigation went up to the High Court, and the final decree directed the respondents' father to pay 20 Rs. a month as maintenance to the appellant-defendant, and her obstruction to the delivery of possession was

(1) (1884) 8 Mad., 94.
(2) (1868) 9 Cal. W. R., 152.
(3) (1878) 1 All., 594.
(4) (1884) 8 Mad., 94.
(5) (1878) 1 All., 594.

removed. The respondents' father paid the maintenance as ordered till his death in 1894, and the present suit was brought in 1897 by the respondent-plaintiffs for a declaration that they were only liable to pay 5 Rs. as maintenance to the appellant-defendant. The reasons assigned for reducing the amount of maintenance was that the plaintiffs' income was greatly reduced by their father's death, as he used to receive 300 Rs. as pay in Sávantvádi service, and the income was not properly and correctly estimated in the previous suit, being based on a rough calculation that the income was about 6 per cent. on the total valuation, and the actual income realized was much reduced chiefly by the want of repairs and the deterioration of the property. The maintenance of 20 Rs. a month was fixed on an estimate of the total property being 16,000 Rs. out of which the appellant-defendant's husband's share would be 4,000 Rs., whereas the present value of that share would be about 2,000 Rs. only, and the amount of maintenance should, therefore, be reduced to 5 Rs.

The appellant-defendant contended that the suit would not lie under section 13, and that it was further time-barred; that it was not properly valued; that the maintenance was fixed by way of settlement of her claim to the property, and defendant did not admit that there was any reduction of the income, and urged that, even if the income were reduced, it was due to the default of the respondent-plaintiffs.

The Court of first instance disallowed the claim chiefly on the ground that the income had not been reduced as alleged. The District Court, in appeal, held that the value had been reduced from 16,000 Rs. to 13,300 Rs., and it accordingly reduced the maintenance from 20 to 17 Rs.

In her second appeal the appellant contended that the lower appellate Court was in error in going behind the decree passed in the suit of 1884, the decision in which operated as *res judicata*. It was further urged that there were no grounds for reducing the maintenance.

Two points of law chiefly have to be considered in this appeal:

(1) Whether such a suit for reducing maintenance once decreed can be maintained?

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(2) Whether the reasons assigned for reduction were sufficient to justify such reduction in the circumstances of the present case ?

The first point must be decided in the affirmative, and the second in the negative.

The decisions in *Vijaya* v. *Sripathi*[1] and *Ruka Bai* v. *Ganda Bai*[2] are express authorities on the question of the competency of Civil Courts to entertain suits for the reduction of maintenance for sufficient reasons such as the permanent reduction of the value of the property. Maintenance decrees are by their very nature subject to such modification according to change of circumstances —*Nubo Gopal Roy* v. *Sreemutty Amrit Moyee Dossee*[3].

It is not expressly necessary to insert words to that effect to make the decree liable to variation according to circumstances— *Motilal* v. *Bai Kashi*[4].

The claim of a Hindu widow for maintenance is not based on contract, but on the provisions of the Hindu law, which expressly govern the rights and duties of the different members of a joint family—*Sidlingapa* v. *Sidava*[5].

I have not been able to lay my hands on a still earlier case in the old Reports, where I had to decide a suit for raising the amount of maintenance settled by a decree, and my decision was upheld by the High Court on these and other grounds. The Courts below were, therefore, right in holding that the present suit was maintainable, and the only question to be considered is whether sufficient cause has been shown for reducing the amount of maintenance. The amount of maintenance to which a widow is entitled does not bear any fixed ratio to the means of the family, but this latter circumstance must govern the amount to a large degree, along with the consideration of the status and position of the widow in the family—*Sreemutty Nitto Kissoree Dossee* v. *Jogendro Nauth Mullick*[6]; *Devi Persad* v. *Gunwanti Koer*[7]; *Baisni* v. *Rup Singh*[8]; *Narhar Singh* v. *Dirgnath Kuar*[9]. The right of

(1) (1884) 8 Mad., 94.
(2) (1878) 1 All., 594.
(3) (1875) 24 Cal. W. R., 428.
(4) (1892) 17 Bom., 45.
(5) (1878) 2 Bom., 624.
(6) (1878) L. R., 5 I. A., 55.
(7) (1895) 22 Cal., 410.
(8) (1890) 12 All., 558.
(9) (1879) 2 All., 407.

maintenance is not dependent on near relationship, but on the existence in the hands of her husband's heirs of ancestral property, in which he might have claimed a share—*Ramabai* v. *Trimbak*[1]; *Savitribai* v. *Luximibai*[2]; *Apaji* v. *Gangabai*[3].

In the present case the allegation is that the value of the property has been reduced. The Court of first instance held that the income was not reduced, but the lower appellate Court has found as a fact that the value of the property estimated at 16,000 Rs. in 1884 was reduced to Rs. 13,300. The Assistant Judge, however, did not consider the question whether the reduction was due to causes over which the respondent-plaintiffs had no control, or whether it was the result of their own voluntary default or negligence. In the Madras case—*Vijaya* v. *Sripathi*[4] noted above, the reduction claimed was disallowed, because the plaintiff had given a certain portion of the property to certain persons mentioned in his father's will, and had entered upon certain litigation. In the present case, the reduction in value is not of a serious character, and it is admittedly due to the respondents' failure to keep the properties in repair. If these considerations were not borne in mind, there would be no finality in any maintenance decree. Property must deteriorate from year to year, and if that circumstance alone were held sufficient justification for altering the amount of the settlement, there would be no end of litigation, and a premium would be placed upon negligence and fraudulent failure to keep up repairs. The lower appellate Court has disposed of the case on mere arithmetical calculations, which make no practical difference in the position of the parties. I, accordingly, agree with Mr. Justice Parsons in reversing the decree of the lower appellate Court and restoring that of the Court of first instance, which rejected the claim.

Decree reversed.

(1) (1872) 9 B. H. C. R., 283.
(2) (1878) 2 Bom., 573.
(3) (1878) 2 Bom., 632.
(4) (1884) 8 Mad., 94.