

equity of redemption, but he has not been made a party to the suit, and we do not know what view he takes of the mortgage. The Judge of the lower Court rightly says that he is a necessary party to the suit (see section 85 of the Transfer of Property Act, 1882) and would have joined him and have proceeded with the suit had he not held the mortgage void.

As we hold that the mortgage is not void, we must reverse the decree of the lower appellate Court and remand the case for a decision on the merits after Vithal has been joined as a defendant. Costs to be costs in the cause, to be apportioned by the Court passing the final decree.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

BAI MANGAL (ORIGINAL DEFENDANT), APPELLANT, v. BAI RUKHMINI
(ORIGINAL PLAINTIFF), RESPONDENT.*

1898.

April 20.

Hindu law—Daughters—Maintenance—Widowed daughters—Their right of maintenance out of their father's estate.

According to Hindu law, it is only the unmarried daughters who have a legal claim for maintenance out of their father's estate. The married daughters must seek their maintenance from the husband's family. If this provision fails, and the widowed daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father's estate in the hands of his heirs.

SECOND appeal from the decision of Ráo Bahádur V. V. Paranjpe, Additional First Class Subordinate Judge, A. P., at Broach.

One Sanmukhram died, leaving a widow Bai Rukhmini, and a daughter Bai Mangal by another wife.

Bai Mangal was a widow in indigent circumstances, without any provision from her husband's family. She was, therefore, supported by her father during his life-time.

After Sanmukhram's death, Bai Rukhmini filed a suit to recover possession of the deceased's property from Bai Mangal.

* Second Appeal, No. 926 of 1897.

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The Court of first instance held that though the plaintiff was her husband's heir, the defendant, as a widowed daughter in indigent circumstances, was entitled to receive maintenance out of her father's property. The Court, therefore, awarded to her for life a portion of her father's property in lieu of maintenance.

This decision was upheld, on appeal, by the First Class Subordinate Judge, A. P., at Broach.

Against this decision a second appeal was preferred to the High Court.

K. M. Javheri (with *M. K. Mehta*) for appellant.

G. K. Parekh for respondent.

RANADE, J. :—In this case the dispute lies between the respondent-plaintiff Bai Rukhmini, who is the widow of the deceased Sanmukhram, and the appellant Bai Mangal, who is the daughter by another wife of the same Sanmukhram. Bai Rukhmini brought the original suit to recover possession of Sanmukhram's property as his sole heir, and this claim was resisted by Bai Mangal on various grounds. Among other defences she urged that, at the time of Rukhmini's marriage, there was an agreement that Rukhmini should claim no interest in the property in case she had no male issue. Bai Mangal also pleaded a caste custom excluding widows from succession, and she further claimed that Sanmukhram had made a will appointing her as his heir and successor.

All the three contentions were disallowed by both the lower Courts, but while recognizing Rukhmini's claim to succeed as heir, they held that Bai Mangal, as widowed daughter in indigent circumstances, who had no provision from her husband's family, had a right to be maintained, and they accordingly awarded to her for her life a part of her father's estate. The appellant Bai Mangal raised before us the same contentions which she had unsuccessfully urged in the Courts below, and these were disposed of by us in the course of the hearing of the appeal. Bai Rukhmini put in cross-objections, which made it necessary that the points of Bai Mangal's indigence, and the inability of her husband's relations to provide for her, should be expressly inquired into, and an issue was sent down to the lower Court, which has recorded a finding in favour of Bai Mangal.

The decision of the respondent's main contention thus turns upon the question of law—whether, and how far, a widowed daughter, who has no provision to fall back upon made for her by her husband's family, can claim maintenance out of her father's estate to which his heir succeeds as owner?

In support of their view that the widowed daughter has such a right to claim maintenance, both the Courts below have chiefly relied upon Mayne's Hindu Law. Mayne (section 408) lays down that a daughter "is entitled to maintenance until marriage, and to have her marriage expenses defrayed. After marriage, the maintenance is a charge on the husband's family, but if they are unable to support her, she must be provided for by the family of the father." The only authorities cited by Mr. Mayne for this last proposition are Macnaghten, Vol. II, page 118, and West and Bühler, pages 245, 437. On page 118 of his second volume, Mr. Macnaghten gives the details of a precedent in which the widow and daughters and nephew of a deceased person were allowed to share in certain proportions the estate of their deceased husband, father, and uncle respectively. It is clear that no such simultaneous rule of succession obtains in Hindu law, and at any rate the daughters in this case were not allowed maintenance. The facts of the case have obvious reference to a partition made by brothers after their father's death, when a share equal to a son's share is set apart for the mother, and a quarter share is set apart for the sister by way of provision for the latter's marriage and maintenance till then. This case, therefore, can hardly be relied upon as an authority in the present dispute. As regards the references to West and Bühler, there is a statement on page 68 where it is mentioned that the widow and her daughters are entitled to maintenance from the united co-parceners or successors to the separate estate. This reference obviously applies to unmarried daughters, for whom provision has to be made till they are married. The authorities cited—*Mankoonwur v. Bhugoo*⁽¹⁾; *Ramajee v. Thukoo Bae*⁽²⁾—support this view. On page 233, it is further observed that, next after the husband's family, the responsibility of supporting the daughters rests on their father's family. On page 248, specific reference is


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(1) (1822) 2 Borr., 157.

(2) (1823) 2 Borr., 435 at p. 497.

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made to two cases reported in 2 Strange, pages 83, 90, where the claim of a widowed sister, left destitute by her husband's relations, to be maintained by her brother's widows was allowed. There is a further reference on page 437 which is obviously meant for unmarried daughters, who must be maintained by their father or brothers till they are disposed of by marriage. The decisions reported in 2 Strange, pages 83, 90, are thus the only direct authorities which bear upon the present dispute.

The responsibility of the father's family, next after the husband's family, referred to on page 233 is obviously a moral responsibility, for on failure of the father's family, the same responsibility is thrown on the caste, and, finally, on the king. Against Mr. Strange's two precedents, for which it may be noted no authorities are cited, may be set a later decision of the Madras High Court—*Ilata Shavutri v. Ilata Narayanan*⁽¹⁾. Sir Thomas Strange in his first volume, page 172, no doubt mentions this charge of maintenance of unmarried damsels and indigent widowed daughters and sisters in the same category; but a careful consideration of the original texts leaves no room for doubt that, while the first charge is legally enforceable, the other one is more or less an imperfect obligation. This distinction was emphasized in the leading case on the law of maintenance on this side of India—*Lakshman v. Satyabhamabai*⁽²⁾. Every father of a family has a sort of moral duty to support his dependent male and female relations; but there are certain persons so related in respect of whom the obligation is legal, and in regard to others the texts should be interpreted as being intended for exhortation and recommendation. The support of the widow and of unmarried daughters stands on a very different footing from the support of widowed daughters. The destitute and unprovided for married daughter is allowed preference over her better provided sister. This is the only distinction the law recognizes in favour of the destitute widow.

The unmarried daughters are preferred to married, for the simple reason that they have no support to fall back upon till they are disposed of in marriage, either by their father, or by the brothers who succeed to his property by inheritance or partition. In

(1) (1863) 1 Mad. H. C. Re₂, 372.

(2) (1877) 2 Bom., 494.

Vyavahár Mayukha (Stokes' Edition, page 97), we have an express text, which directs that "the maintenance of the daughter of a widow excluded must be provided for by her brothers. If uninitiated, *i.e.*, unmarried, she will take a share. After that (marriage), her husband shall support her." In the case of the daughters of disqualified or excluded heirs, the same rule is laid down in Mitákshara. "Thus daughters must be maintained till they are provided with husbands" (Stokes' Mitákshara, page 457; see also Vyavahár Mayukha, Stokes' Translation, page 109; Dattaka Chandrika, page 662, Stokes' Translation). In Daya-bhaga, page 233, it is expressly mentioned that daughters do not take along with the sons by right of inheritance. The part given to the daughters at partition is meant to be a provision for marriage, and may be less than a quarter—Stokes' Translation, page 233. In fact, all the text-writers appear to be in agreement on this point—namely, that it is only the unmarried daughters who have a legal claim for maintenance. The married daughters must seek their maintenance from the husband's family. If this provision fails, and the widowed daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father's estate in the hands of his heirs.

This being the general bent of the law texts and the commentators, we must hold that the appellant has not established her title to receive maintenance from the property of her father. It may be noted that she herself did not seek maintenance, but claimed to be owner. It is also not clear that she is absolutely without any provision. The evidence goes to show that she owns a house and a *yajman vritti*; however on this point we have no finding recorded by the lower Court.

We vary the decree of the lower Court, and award the respondent-plaintiff's claim in full. The appellant should pay all the costs of the respondent, and bear her own. Court-fees throughout payable by plaintiff had she sued in the usual form to be calculated and paid by the plaintiff in the first instance.

Decree varied.

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