## APPELLATE CIVIL.

*Before Mr. Justice Batchelor and Mr. Justice Chaubal.*

1908. *July* 31.

DATTATRAYA WAMAN TILLU (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* RUKHMABAI KOM PANDURANG DAMODUR TILLU (ORIGINAL PLAINTIFF), RESPONDENT.*

*Hindu widow—Maintenance—Widow having her husband's property in her hands—The property sufficient to maintain her for some years—Suit for declaration and for arrears of maintenance—Premature suit.*

The plaintiff, a Hindu widow, filed a suit to recover arrears of maintenance and to obtain a declaration of her right to maintenance. At the time the suit was brought, she was found to be in possession of a fund belonging to her husband's family estate, which sum was sufficient to provide for her maintenance for five years at the rate allowed by the lower Court.

*Held*, that no cause of action had accrued to the plaintiff. At the date when the suit was brought, the Court was not in a position to forecast events or to anticipate the position of affairs five years later.

SECOND appeal from the decision of Gulabdas Laldas, First Class Subordinate Judge, A. P., at Thana, reversing the decree passed by M. H. Wagle, Subordinate Judge at Alibag.

Suit for a declaration to recover maintenance and for arrears of maintenance.

The plaintiff's husband Pandurang and his brother Waman (father of defendants) formed a joint family. Pandurang died in March 1897; and Waman died on the 25th November 1900.

Soon after Pandurang's death, his widow Rukhmabai drew Rs. 937-3-7, which were deposited in her husband's name in the Postal Savings Bank.

The present suit was brought on the 9th February 1904 to obtain a declaration that the plaintiff was entitled to get from the family estate, in the hands of the defendant, maintenance at the rate of Rs. 120 a year, and for Rs. 360 being the amount of the arrears of three years' maintenance.

The defendants contended *inter alia* that the income of the money she had withdrawn from the Savings Bank was enough to support her, and that she was entitled to Rs. 6 a month for maintenance.

* Second Appeal No. 368 of 1907.

The Subordinate Judge held that Rs. 6 per month were sufficient for plaintiff's maintenance, but that her suit was premature. His reasons were as follows :—

"The plaintiff admits that she withdrew the amount of Rs. 937-3-7 from her husband's account in the Post Office Savings Bank. . . . Assuming that it was the plaintiff's husband's property she cannot sue for maintenance, so long as she has that money in her hand (*Bai Kanku* v. *Bai Parvati*, P. J. 1890, 182). In her deposition taken on commission the plaintiff has stated that she paid to her brother Rs. 300 as the footing charges for five years. The deposition was taken in February 1905, and the suit was filed on the 9th February 1904. If the plaintiff had money to pay the boarding charges for five years, what was the necessity of claiming arrears of maintenance? If no arrears could be claimed, and if she had money that would last her for some time more, she had no cause of action. She does not say that she got the money after the institution of the suit. She has given an account of how she spent the balance of the money. She says that she spent some money for the expenses of this suit, yet she has claimed the costs of the suit. If she had money to spend on the suit, why did she not apply the same for maintenance? The other alleged expenditure is unjustifiable. She cannot spend her husband's money in any way she pleases and then ask for maintenance from the family property; or rather she cannot claim maintenance while she has her husband's money in her hands. The suit is therefore brought without any cause, and hence it must be held to be premature."

On appeal, the lower appellate Court held that the plaintiff should be awarded maintenance at Rs. 100 a year, and that though she had withdrawn Rs. 937-3-7 from the Savings Bank, and that though the present suit was not therefore premature or unsustainable, yet the amount together with its interest should be taken into consideration and first applied towards the maintenance expenses of the plaintiffs, and that the balance, if any, should be returned to defendant No. 1. The decree passed was that the plaintiff was declared entitled to a maintenance allowance of Rs. 8-5-4 a month, that her claim for arrears be dismissed, and that she should pay Rs. 184 to defendant No. 1 and in default should not be allowed to recover her monthly allowance till the 9th January 1909.

The defendant No. 1 appealed to the High Court.

*N. V. Gokhale*, for the appellant.

*P. P. Khare*, for the respondent.

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BATCHELOR, J. :—This was a suit for maintenance brought by a Hindu widow. The Judge of first instance dismissed the suit on this among other grounds that it was premature. The learned Judge in the Court of Appeal differing from that view allowed the suit and gave the plaintiff a decree for maintenance at the rate of Rs. 100 a year.

The only question raised in this appeal is whether the cause of action had accrued to the plaintiff when this suit was filed in February 1904. At that time the findings of the Court show that the plaintiff was in possession of a fund belonging to her husband's family estate, which fund was sufficient to provide for her maintenance for five years at the rate allowed by the lower Court. And in this state of the facts, we are of opinion that no cause of action had accrued to the plaintiff. In 1904 the Court was not in a position to forecast events or to anticipate the position of affairs five years later. In other words it was not in a position to make a decree for maintenance; and no liability to provide maintenance could in the then existing circumstances attach to the appellant.

It is urged that the Court might have made a mere declaratory decree affirming the plaintiff's abstract right to maintenance. But assuming that such an abstract prayer was competent, it was not a prayer put forward by the plaintiff; her prayer was for maintenance at the rate of Rs. 120 a year. We think, therefore, that the Subordinate Judge of first instance was right in the view which he took upon this point and we must reverse the decree under appeal and dismiss the suit with costs throughout.

We may add that Mr. Khare has attempted to enlist our sympathy in favour of his client. But upon that point we need only say that whatever the sympathies of the Court may be worth, they do not range themselves on the side of the plaintiff.

*Decree reversed.*

R. R.