

Appellate Jurisdiction(a)

*Special Appeal No. 4 of 1873.*SUBBRAMA NIA MUDALIAR and another...*Special Appellants.*KALIANI AMMA L.....*Special Respondent.*

In a suit by the widow of one undivided brother against the survivor, for maintenance—On the question of past maintenance, *Held*, that the husband's estate in the hands of the survivor was that to which the charge attached, and that the husband's death was the period from which the Act of limitations began to run against the claim.

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THIS was a Special Appeal against the decision of F. C. Carr, the Civil Judge of Tinnevely, in Regular Appeal No. 303 of 1871, modifying the Decree of the Court of the Principal Sadr Amín of Tinnevely, in Original Suit No. 160 of 1870.

Plaintiff, the widow of the undivided brother of the defendants, claimed from them maintenance at the rate of Rupees 360 per annum, together with past maintenance for 10½ years.

1st defendant, admitting plaintiff's right to maintenance, pleaded that she was not entitled to claim for her maintenance, more than Rupees 46 per annum. It was also argued on behalf of the defendants that the recovery by the plaintiff of past maintenance for any period exceeding three years prior to the date of suit, was barred.

The 1st issue settled was :—

Whether plaintiff's claim for past maintenance for any period exceeding three years is barred.

The Court of First Instance decreed "that defendants do pay maintenance to plaintiff at the rate of Rupees 168 per annum during the term of her life, together with past maintenance at the said rate for three years preceding the date of this suit, amounting to Rupees 504," and disallowed the rest of plaintiff's claim.

plaintiff appealed against this decree, and the following judgment was delivered by the Appellate Court :—

(a) Present : Holloway and Kildersley, JJ.

“The 1st question in this case is whether 10½ years arrears of maintenance can be awarded, or whether, as was ruled by the Additional Principal Sadr Amín, “arrears of maintenance for only three years can be awarded, as the past maintenance is nothing but a debt.”

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The plaintiff's pleader relied upon Clause 13, Section 1, of Act XIV of 1859, and upon the dictum in the case reported at 2, M. H. C., 36, “If, therefore, the plaintiff had appealed, we should have varied the items by awarding arrears of maintenance for 12 years.” This acquires additional force from the fact that, apparently, the plaintiff in that suit had only asked for five years' arrears.

I am unable to agree in the finding of the Principal Sadr Amín that only three years can be awarded: for the 13th clause is most clear on the point, where the right to receive such maintenance is a charge on the inheritance; and even on the supposition that it is not so much a charge on the property as an inherent right in the woman to share in the property, it would fall within clause 12 and similarly have a limitation of 12 years. In the case quoted from 4, M. H. C. R., 137, arrears of maintenance had been awarded for 7 years, and no objection was taken to that part of the award.

Again, in the Indian Limitation Act of 1871, the same period of 12 years is allowed for a “Suit by a Hindu for maintenance.”

It is perfectly true past maintenance is a debt, as stated by the Lower Court, but there are various kinds of debt, and various periods of limitation laid down for the different kinds of debt, and in this instance it is clearly 12 years.

The second point for the decision of this Court is the amount of maintenance: on that I see no reason to differ from the finding of the Lower Court.

The decree must be modified accordingly, and will adjudge that defendants do pay maintenance to the plaintiff at the rate of Rupees 68 per annum for the term of her life; commencing from November 23rd, 1871, which is one year from the date of the plaint, together with past maintenance at the said rate for 10½ years, viz., Rupees 1,764.

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The defendants appealed on the ground that the plaintiff's suit in part was barred by Act XIV of 1859.

Shephard, for the special appellants, the defendants.

Scharlieb, for the special respondent, the plaintiff.

The Court delivered the following

JUDGMENT:—Mr. Shephard argues that this claim is barred because the property has not descended and because the estate upon which the maintenance is to be charged is not that of the person who has died.

The claim is by a widow of one undivided brother against the survivor. During the life of the husband, the estate was that of the two brothers. At the death, according to the modern doctrines of Hindu law, the whole estate came to the brother, leaving the widow merely with a claim for maintenance. That claim was a charge on the estate. The inaccuracy of the language used has been before pointed out. By the death the surviving brother's estate was enlarged, and the measure of the enlargement came to him by inheritance in the only sense in which this English term is applicable in Hindu law. During the marriage and the life of the husband the claim to maintenance against his estate was a mere possibility. If he had wrongfully put her away, ill-treated her, so as to entitle her to go away, or refused to support her, the possibility would in his life time have become a present interest. It is manifest, therefore, that the right is a charge on the husband's estate in some circumstances while he still lives,—in all cases when he lives no longer. That husband's estate in the hands of the survivor is, therefore, that to which the charge attaches, and the husband's death is the period at which the Statute begins to run against the claim.
