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It remains now to consider the question of sentence. The accused has been sentenced to six months' rigorous imprisonment, the learned Deputy Magistrate being of opinion that the offence is of a very grave nature; and so, no doubt, it would have been, if it could have been affirmatively found that the intention was, as he evidently thinks it was, to commit adultery; but, as we have said above, though the intention was a guilty one, it is not easy to determine which of the several guilty intentions that constitute the offence of criminal trespass, the accused had when he entered the room in question. That being so, he is entitled to the benefit of that finding to this extent that the punishment to be awarded to him should only be that which is sufficient for the offence of lurking house trespass by night with the least possible culpable intention.

Having regard to this fact, and to the condition in life of the accused, we think that a sentence of simple imprisonment for one month will fully meet the ends of justice. Accordingly we affirm the conviction and reduce the sentence to one of simple imprisonment for one month.

H. T. H. *Conviction upheld.*

APPELLATE CIVIL.

Before Mr Justice Macpherson and Mr Justice Banerjee.

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January 23.

DEVI PERSAD AND OTHERS (DEFENDANTS) *v.* GUNWANTI KOER (PLAINTIFF).*

Hindu Law—Joint family—Mitakshara—Right of a widow to receive maintenance from her husband's brothers and nephew—Death of the plaintiff's husband prior to his father's death.

In a joint Hindu family governed by the Mitakshara law, the property of *S*, the father, consisted, at any rate partly, of ancestral property. He died leaving three sons and one grandson (son of a predeceased son). *A*, another son of *S*, died childless before his father, leaving his widow, the plaintiff. In a suit by her against the brothers and the nephew of her husband for maintenance in which she claimed Rs. 100 a month:

Held, that as the plaintiff's husband had a vested interest in the ancestral property, and could have, even during his father's lifetime, enforced partition

*Appeal from Original Decree No. 385 of 1893, against the decree of Babu Saroda Persad Chatterjee, Subordinate Judge of Sarun, dated 20th September 1893.

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of that property, and as the Hindu law provides that the surviving coparceners should maintain the widow of a deceased coparcener, the plaintiff was entitled to maintenance.

Held, also, that in determining the amount of maintenance the Court should take into consideration not only the reasonable wants of a person in her position of life, but also the means of the family of her husband.

Khetramani Dasi v. *Kashinath Das* (1), *Laljeet Singh* v. *Raj Coomar Singh* (2), *Suraj Bansi Koer* v. *Sheo Persad Singh* (3), *Janki* v. *Nand Ram* (4), *Kamini Dassee* v. *Chandra Podo Mondle* (5), *Adhibai* v. *Cursandas Nathu* (6), *Nittokissoree Dassee* v. *Jogendro Nauth Mullick* (7), and *Baisni* v. *Rup Singh* (8) referred to.

THIS appeal arose out of an action for maintenance brought by a Hindu widow against the brothers and nephew of her deceased husband. One Sant Lal died, leaving him surviving three sons, Devi Persad, Kosilanund, Golap Chand, and a grandson by a predeceased son, Ram Lal. The plaintiff was the widow of the youngest son of Sant Lal, who died childless on the 22nd February 1870 in the lifetime of his father. The parties were admittedly members of a joint Hindu family governed by the Mitakshara law. The plaintiff's case was that after the death of her husband, she continued to live as a member of the joint family with the other members till December 1889, when the defendants separated from her and ceased giving her any maintenance, and she was obliged to go and stay with her father. She claimed maintenance, as a charge upon the family estate, at the rate of Rs. 100 per month.

The defendants resisted her claim, mainly on two grounds, *viz.*, (1) that the husband of the plaintiff having died during the lifetime of his father she was not entitled to any maintenance, and (2) that the amount claimed was excessive. The Subordinate Judge overruled the objections of the defendants, and decreed the plaintiff's suit with costs. From this decision the defendants appealed to the High Court.

(1) 2 B. L. R., A. C., 15 : 10 W. R., F. B., 89.
(2) 12 B. L. R., 373 : 20 W. R., 337.
(3) I. L. R., 5 Calc., 148.
(4) I. L. R., 11 All., 194.
(5) I. L. R., 17 Calc., 373.
(6) I. L. R., 11 Bom., 199.
(7) L. R., 5 I. A., 55.
(8) I. L. R., 12 All., 558.

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The Advocate General (Sir *Charles Paul*), Moulvi *Mahomed Yusoof*, and Babu *Saligram Singh*, for the appellants.

Dr. *Rash Behary Ghosh*, and Dr. *Ashutosh Mookerjee*, for the respondent.

The *Advocate General* contended that, if the plaintiff was entitled at all to maintenance, which was denied, the amount allowed was excessive. The amount should be fixed with reference to the reasonable wants of the plaintiff, and not with reference to the value of the estate. *Beerpertab Sahee* v. *Rajender Pertab Sahee* (1). If the value of the estate be taken into consideration, it should be the value at the time when the plaintiff's right to maintenance accrued, *i.e.*, when her husband died, and not, as the Subordinate Judge has held, when the maintenance was actually claimed.

Moulvi *Mahomed Yusoof* on the same side.—The plaintiff is not entitled to any maintenance, as her husband died during the lifetime of his father; he had only an inchoate interest in the property, and his widow had no legal claim for maintenance against her father-in-law, nor has she any such claim against her brothers-in-law. The Mitakshara nowhere lays down that a widow in the position of the plaintiff is entitled to maintenance, see Mitakshara, Chapter II, sections 5, 10, 11, 14. *Kasheenath Doss* v. *Khetturmonee Dossee* (2), *Devi Parshad* v *Thakur Dial* (3), and *Bhimul Doss* v. *Choonee Lall* (4) were referred to.

Dr. *Rash Behary Ghose* for the respondent.—That a Hindu widow in the position of the plaintiff is entitled to separate maintenance is a well settled proposition of law; see *Adhibai* v. *Cursandas Nathu* (5), *Janki* v. *Nand Ram* (6), *Kamini Dassee* v. *Chandra Pode Mondle* (7), *Savitri Bai* v. *Luxmi Bai* (8), *Prithi Sing* v. *Raj Kooer* (9). The cases relied upon by the other side have no application.

As to the amount of maintenance to be allowed this Court

(1) 12 Moo. I. A., 7.
(2) 9 W. R., 413.
(3) I. L. R., 1 All., 105.
(4) I. L. R., 2 Calc., 379.
(5) I. L. R., 11 Bom., 199.
(6) I. L. R., 11 All., 194.
(7) I. L. R., 17 Calc., 373.
(8) I. L. R., 2 Bom., 573.
(9) 12 B. L. R., 238.

ought not to interfere with the order of the Court below unless very strong grounds are made out: *Collector of Madura* v. *Mutu Ramalinga Sathupatty* (1). In fixing the amount of maintenance the Court has to consider what would be the fair wants of a person in the position and rank in life of the claimant, and the wealth of the family is a proper element in determining this question. The amount ought not to be determined with reference to the consideration that the life of a Hindu widow should be of a peculiarly ascetic character: *Baisni* v. *Rup Sing* (2); Mayne's Hindu Law, 5th edition, section 417. The question raised by the other side, *viz.*, what is the point of time at which the value of the estate ought to be taken into consideration does not really arise, as the amount of maintenance allowed is very moderate, regard being had to the wealth and circumstances of the family, even at the time when the plaintiff's husband died.

The *Advocate-General* replied.

The judgment of the Court (MACPHERSON and BANERJEE, JJ.) was delivered by

BANERJEE, J.—This appeal arises out of a suit brought by the plaintiff, respondent, to establish her right to maintenance out of the family estate of the defendants, and to recover arrears of maintenance for the last fifteen months at the rate of Rs. 100 a month, on the allegation that the defendants Nos. 1 to 3, the father of the defendant No. 4 and the late Babu Ajudhya Persad, husband of the plaintiff, were the five sons of one Babu Sant Lal, forming a joint family governed by the Mitakshara law; that after the death of her husband, the plaintiff continued to live as a member of the family in joint mess with the other members down to December 1889, when the defendants refused to maintain her, and she was obliged to go to her father's house; and that having regard to the position and means of the family, the plaintiff is entitled to Rs. 100 a month for her maintenance.

The defence was that the plaintiff was not entitled to maintenance, her husband having predeceased his father; that the defendants never refused to maintain her, and that the amount of

(1) 1 B. L. R., P. C., 1; 12 Moo. I. A., 397.

(2) I. L. R., 12 All., 585.

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maintenance claimed was excessive. At a later stage of the case, a further defence was urged on behalf of defendant No. 4, namely, that the plaintiff was not entitled to any maintenance as she had received Rs. 10,000 for her maintenance from her father-in-law, and had ornaments to the value of Rs. 5,000.

Upon these pleadings the following issues were framed by the Court below :—

1st.—Is the plaintiff entitled to receive maintenance from the defendants, notwithstanding that her husband predeceased his father ? Did the plaintiff receive any *stridhan* from her father-in-law in lieu of her maintenance ?

2nd.—Considering the position and means of the joint family, what amount of monthly allowance is the plaintiff entitled to on account of her maintenance ?

3rd.—To what relief is the plaintiff entitled in the suit ?

Upon these issues, the learned Subordinate Judge has held that the joint property of the family in the hands of Sant Lal consisted partly at least of ancestral property which had come down from his father ; that the allegation of the plaintiff having received *stridhan* in lieu of maintenance was not true, and that the plaintiff was entitled to maintenance at the rate claimed out of the family estate upon which it was a charge ; and he has accordingly given the plaintiff a decree in full.

Against that decree the defendants have preferred this appeal, and it is contended on their behalf :—

1st.—That the Court below is wrong in holding that the plaintiff is entitled to claim maintenance when her husband predeceased his father ;

2nd.—That the Court below was wrong in disallowing the prayer of the defendant No. 4 for process to enforce the attendance of his witnesses ;

3rd.—That the Court below is wrong in fixing the maintenance at Rs. 100 a month, which is an excessive amount.

Upon the first point, it is argued for the appellant that the plaintiff's husband having predeceased his father, Sant Lal, the plaintiff had no legal right to claim maintenance from her father-

in-law, and in support of this contention the case of *Khetramani Dasi* v. *Kashinath Das* (1) is cited ; nor can she have, it is urged, any better claim against the defendants, as they took the estate not by inheritance but by survivorship.

We do not consider this argument sound. It is unnecessary in this case to decide whether a daughter-in-law whose husband has predeceased his father and who leaves her father-in-law's house without any reason, is entitled to claim separate maintenance from him, as we find upon the evidence that the plaintiff in this case has left the family house of her late husband in consequence of ill-treatment. This being premised, we would observe that even if the plaintiff's claim for maintenance had been against the father-in-law himself, the case of *Khetramani Dasi* v. *Kashinath Das* (1) would be no answer to it. That was a case under the Bengal School of Hindu law, according to which the son has no right in his father's estate during his lifetime ; whereas this is a case governed by the Mitakshara law, under which the son has a vested interest in the property of his father, inherited from his grandfather ; and the property of Sant Lal was partly at least ancestral property of that description. Of such property, the plaintiff's husband could, even during his father's lifetime, have enforced partition. See Mitakshara, Chapter I, section V, 8, 10 ; *Laljeet Singh* v. *Raj Coomar Singh* (2), *Suraj Bansi Koer* v. *Sheo Persad Singh* (3). Such a case must therefore involve considerations very different from those upon which the decision in the Bengal case cited for the appellants was based. Here the father could not, when the son was alive, resist the daughter-in-law's claim to maintenance, for if he refused to maintain her, the result would be that her husband would enforce partition of his share. And it does not stand to reason that the death of the son, which, on the one hand, places the daughter-in-law in a more helpless condition, while, on the other, it enlarges to some extent the father's estate, should extinguish his liability to maintain her. It is true that the father in such

(1) 2 B. L. R., A. C., 15 ; 10 W. R., F. B., 89.

(2) 12 B. L. R., 373 ; 20 W. R., 337. (3) I. L. R., 5 Calc., 148.

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a case does not take anything from the son by inheritance in the strict sense of the term; but his estate and that of the other coparceners are enlarged by survivorship, by the death of the son, who was one of the coparceners. Accordingly Hindu law provides, *as reason and justice require, that the* surviving coparceners should maintain the widow of a deceased coparcener. This provision is to be found in some of those ancient texts which are adverse to the widow's claim to inherit (see Narada, XIII, 25, 26), and it is expressly laid down in the Viramitrodaya, one of the latest authoritative expositions of the law of the Mitakshara School. After noticing the conflicting texts relating to the widow's rights, the author of the Viramitrodaya says: "Hence the chaste wife of a sonless deceased person who was separated and not re-united is entitled to take the entire estate, but of a sonless person who was unseparated or reunited, even the chaste wife is entitled to mere subsistence by reason of texts of Narada and others, &c." See Golap Chunder Sarkar's translation, p. 153. And in another place in the same chapter, that is the one relating to the widow's succession, the author observes: "The succession, however, of the widow to the entire estate belonging to her sonless husband who was unseparated is opposed to what is declared by Katyayana, for he says, 'but when the husband dies unseparated the wife is entitled to food and raiment or (*tu*) he gets a portion of the estate till her death.' The particle *tu* bears the sense of 'or;' hence the meaning is this: Either she may directly receive food and raiment, or till her death, *i.e.*, during her life, she may get so much share of the property as is sufficient for her maintenance and for the performance of necessary religious ceremonies which a woman is competent to perform. * * * * To this very subject refers the following text of Narada: 'All chaste widows should be maintained with food and raiment by the eldest brother of the husband or by the father-in-law, or by any other gentile,' *i.e.*, whoever takes the husband's estate; maintenance is to be allowed by reason of succession to the estate." (Golap Chunder Sarkar's translation, pages 173, 174.)

If therefore the plaintiff had claimed maintenance against her father-in-law, she would clearly have been entitled to succeed.

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The fact of her suit being brought against her husband's brothers and nephew after the death of her father-in-law, and after the family estate had vested entirely in the defendants, only adds strength to her claim. For not only does her father-in-law's legal obligation to maintain her, arising from the fact of part of his estate being ancestral, now attach to the defendants owing to that portion of the estate having passed to them, but also what might have been merely a moral obligation on her father-in-law to maintain her has become converted into a legal obligation on the defendants by reason of his self-acquired property having passed to them. The view we take of the law relating to the daughter-in-law's right to maintenance agrees with that of almost every modern jurist who has examined the subject. (See Jagannath, Digest, Bk. V., Chapter VIII, Text 412, Commentary; Strange's Hindu Law, Vol. II., 233, 235, 412; West and Buhler's Digest, 3rd Edition, pages 251, 761). It is in accordance with the usages and practice of the Hindu people, and it is amply supported by the authority of decided cases. [See *Janki* v. *Nand Ram* (1), *Khetramani Dasi* v. *Kashinath Das* (2), *Kamini Dassee* v. *Chandra Pode Mondle* (3), *Adhibai* v. *Cursandas Nathu* (4).

[After deciding that the second contention of the appellants, which was not material to this report, also failed, his Lordship continued.]

It remains now to consider the third contention of the appellants, that is, the one relating to the amount of maintenance.

It is argued that the amount should have been fixed with reference, not to the value of the estate, but to the reasonable wants of a Hindu widow, which, according to the injunctions of her religion, are of an extremely limited nature and very inexpensive, and that if the value of the estate in the hands of the defendants is to be taken into account at all, it must be not its present value, but that at the time of the death of the plaintiff's husband.

The first branch of this argument is so far correct, that the

(1) I. L. R., 11 All., 195.
(2) 2 B. L. R., A. C., 15; 10 W. R., F. B., 89.
(3) I. L. R., 17 Calc., 373. (4) I. L. R., 11 Bom., 199.

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amount of maintenance in cases like the present bears no definite and fixed ratio to the value of the estate; but it cannot be said that the value of the estate is to be left out of consideration altogether, and that the amount is to be the same absolute sum in all cases, depending only on the bare cost of the necessary food and clothing of a single individual. The Hindu *shastras* no doubt enjoin on the widow a life of piety and self-denial, but still in fixing the amount of her maintenance the Court must consider what would be the reasonable wants of a person in her position in life; and this must lead to a consideration of the means of the family of her husband. Then, again, the amount of her maintenance must be sufficient not only for her food and raiment, but also for the performance of necessary religious ceremonies, as the second of the two passages cited above from the Viramitrodaya will shew; and these religious ceremonies must be performed by her on a scale suited to her rank and position in life, so that here again the means of the family must have to be taken into consideration. See *Nitto Kissoree Dossee* v. *Jogendro Nauth Mullick* (1), *Baisni* v. *Rup Singh* (2).

We do not think it necessary to consider at length the second branch of the above argument, as in our opinion the amount fixed by the Court would not be excessive, even if it had to be assessed with reference to the value of the estate of the family at the time of the plaintiff's husband's death. This we may add is the view taken by the Court below.

Upon the evidence we think it may be safely inferred that the estate at that date yielded an annual income of about Rs. 25,000 of which the share of the plaintiff's husband, if he had been now living, would have been one-fifth, or Rs. 5,000, and the only member of her husband's family to be supported out of it is the plaintiff herself. That being so, and having regard to all the circumstances of the case, the sum of Rs. 100 a month, the amount of maintenance fixed by the Court below, is not, in our opinion, excessive.

The grounds urged before us, therefore, all fail, and this appeal must consequently be dismissed with costs.

S. C. G. *Appeal dismissed.*

(1) L. R., 5 I. A., 55. (2) I. L. R., 12 All., 558.