

In the High Court of Judicature, Bombay.

Wednesday, the 28th day of June 1865.

SPECIAL APPEAL No. 1041 OF 1864

Gangabai Koon Balwantrao
Abaji Kothari of the Kothari
District (Original Plaintiff) } Appellant

versus

Sadashiv Abaji alias Babaji
Kothari of the Kothari
District (Original Defendant) } Respondent

Rs. 120-0-0

The claim in the Original Suit was to recover the ~~sum~~ above sum as 2 years' maintenance from the brother of a deceased husband; and obtain other necessary expenses.

In Appeal No. 335 of 1864 the Judge of the District of the Decree of the ~~Judge~~ ^{the Kothari} at ~~the District~~ ^{at the District} ~~who~~ ^{reversed} ~~had awarded the sum~~ ^{of Rs. 120-0-0} ~~as maintenance~~

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the District Judge is against law that there has been a substantial error in law in the investigation of the case which has produced error

error in the decision thereof upon its merits
in that the following material issue was
not raised by the appellate Court. Does not
the appellant receive maintenance from her
father's family because of her father's recent death?
that (2) Even if it be admitted that the ap-
pellant received maintenance from her father's
family for thirty years still her right of receiving
maintenance from her deceased husband's
family continues always good. The decision
of the appellate Court that the claim is
barred for the above reason and therefore
not maintainable is contrary to the ruling
in Register No. 33/63 and that (3) According
to the Hindoo Shastras the appellants husband
must be presumed to have agreed to provide
maintenance to the appellant since the day
of her marriage and the cause of action
must be taken to ^{arise} ~~raise~~ from the year in
which the appellant asked for it and was
refused. The claim therefore not being barred
it was an error to have thrown it out.

The Court is of opinion that the Judge was in
error in laying it down as an invariable rule
that, in calculating the period from which the
cause of action accrues in a suit brought by a
Hindoo widow against her deceased husband's
family.

family for maintenance the cause of action must be held to date either from the date of the decease of the widow's husband, or, if she has continued to live with or receive maintenance from her husband's relations after his death, then from the date on which she ceased to live with her husband's relations, or ceased to receive maintenance from them.

The Court considers that in a suit for maintenance the cause of action would ordinarily arise at the time when maintenance having become necessary, was refused by the party from whom it was claimed. Act 12 of 1859 sec. 1 para. 13 does not, the Court holds, apply to all suits for the recovery of maintenance brought by a Hindu widow against her deceased husband's family, but only to suits in which the Plaintiff seeks to have her maintenance made a charge on an estate.

In the present case Plaintiff does not seek to have her maintenance made a charge upon any estate, and Defendant denies that he has received any portion of the ancestral estate of his family, and contends that, this being so, Plaintiff cannot claim maintenance from him.

The Court holds that the suit is not barred by lapse of time, and reversing the District Judge's decree remands the case in order that the Judge may decide whether Defendant has received ancestral estate or not, and whether, if Defendant has not received ancestral estate, Plaintiff can nevertheless claim maintenance from

from him; and may pass a new decision on
the merit, according to cost.

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Abraham Forbes

A. Warden

[Faint, illegible handwriting]

1877

MEMORANDUM OF COSTS incurred in Special Appeal No. 1041

of 1864 against the decision of the District Judge of the District of the Konkan and disposed of on the 28th June 1865 by remanding the same for retrial

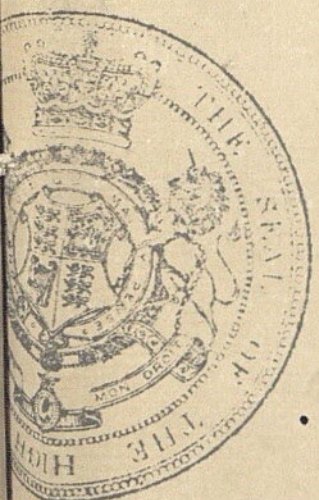
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	..	✓
Stamps for ^{two} Vukeelutnamas	4	..	✓
Batta for Process and Postage	1	7	✓
Sectioner's Fee	3	7	✓
Vukeel's Fee one-fourth	"	14 5	✓
			12 12 5 ✓
	Rupees ...		12 12 5 ✓

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	..	✓
Vukeel's Fee one-fourth	"	14 5	✓
			2 14 5 ✓
	Rupees....		2 14 5 ✓



W. B. Sealon
Sealton

R. West
Registrar

28th day of June 1865

