In the High Court of Judicature, Bombay.

Wednesday, the 28th day of June 1865.

SPECIAL APPEAL No. 1041 OF 1864

Gangabaee Kom Balvantrao Abaji Kohaz Kar of the Konkun District — (Original Plaintiff) } Appellant

versus

Sadashiv Abaji alias Babaji Kohaz Kar of the Konkun District (Original Defendant) } Respondent

Rs. 120 — " — "

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

In Appeal No. 335 of 1864 the Judge of the District of the Konkun at Ratnagiri reversed the Decree of the Subordinate Judge who had awarded the sum claimed 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 appellant 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. 23/63 and that (3) According to the Hindoo Shastras the appellant's 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 ~~raise~~ arise 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 husbands 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 14 of 1859 sec. I para. 13 does not, the Court holds, apply to all suits for the recovery of maintenance brought by a Hindoo 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~~ 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 merits apportioning costs.

Akinlock Forbes

A W Warden

MEMORANDUM OF COSTS incurred in Special Appeal No. 1041 *of* 1864 *against the decision of the* District Judge *of the District of* the Kondun *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	"	"			
Stamp 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

Seal

Registrar

28th day of June 1865.

Issued a certificate on the Collector of Tanna for the refund of Rs: 8-"-"- (Eight) being the value of the Stamp used for Special Appeal in this case.

Dated the 28th June 1865

H West
Registrar

Ed
AB.