Satara

In the High Court of Judicature, Bombay.

Tuesday, the 12 day of [illegible] 1862.

SPECIAL APPEAL No. 148 OF 1864.

Sukvurbai Kom Shivaji Raje Zoonjarrao Deshmookh of the Satara District (Original Plaintiff) — Appellant

versus

Bhavanji Raje Ghatge Zoonjarrao Deshmookh of the Satara District (Original Defendant) — Respondent

Rs. 8094-0-0

The claim in the Original Suit was to ~~[illegible]~~ obtain a maintenance.

In Appeal No. 222 of 1863 the [illegible] of the District of Satara — at Satara confirmed the Decree of the Principal Ad. of Satara who had awarded an allowance of Rs. 30 p. a. to the Plaintiff for the payment of her debts.

A Special Appeal was preferred in the High Court on the grounds that the decision of the District Judge is contrary to law in that:—

a The District Judge in determining the amount

amount of the allowance to be paid to the Appellant, considered that she could not claim more than what would keep her; which he ought not to have done.

b. Although it was proved to the satisfaction of the Principal Suder Amin that the Appellant could not live with the Respondent, she was directed to live in a house under his control.

c. The Courts below ordered the allowance to be paid from the date of the decree and not from the day of the filing of the suit.

d. The Courts below did not order the payment of the debts incurred by the Appellant since the death of her husband.

The Judge has omitted to determine material issues in this case namely

1st Is the Plaintiff entitled to arrears of maintenance from the date of her late husband's decease? If so, what was the date of his decease?

2nd Are the circumstances of the case such as require that separate residence or an equivalent in money should be awarded to her, or should she be required to reside with the Defendant?

The J. has further erred in law in holding that the Plaintiff

"can only have what will keep her
"from more" of that she receives this in
"charity". A widow has by Hindoo
law a legal right to maintenance,
if the amount should be determined
on a consideration not merely of her
absolute necessities, but also of the
circumstances of the family. In the
words of Sir Thomas Strange she
should be provided for "from
"assignment of lands or an allowance
"of money, in either case proportioned
"to her support, if that of those de-
"pendent on her, including the per-
"formance of charities, if the discharge
"of religious obligations, if this always
"with a reference to the amount of the
"property, so as ~~to~~ ~~to~~ ~~to~~ at the allowance
"(as has been said) not to exceed a less
"or other portion share". And Sir
Justice Strange states that the
maintenance "must be proportionate
"to the condition of the party who is to
"receive it, if the circumstances of those
"who are to provide it".

The Court therefore reverse the
Decree of the D.J. if remand the
case for a new Decree with reference

to these points.

Maintenance in arrears should be awarded at the same rate from the death of the Plaintiff's late husband as may be awarded prospectively, unless the Defendt shows that it has been already received by her from him, or that any portion has been so received. The Plaintiff will also under the same conditions be entitled to maintenance between the date of filing the suit & the date of the final decree.

costs to follow the final decree.

F. Newton.

Lincoln's Inn

MEMORANDUM OF COSTS incurred in Special Appeal No. 148 *of* 186 4 *against the decision of the* Judge *of the District of* Satara *and disposed of on the* 12th July 1864 *by* remanding the same for retrial.

IN THIS COURT.

BY THE APPELLANT—						
Stamps for copies of Decree and Judgment	"	"	"			
Stamp for Vukeelutnama	2	"	"			
Batta for Process and Postage	5	"	"			
Sectioner's Fee	2	8	11			
Vukeel's Fee one-fourth	45	7	6			
				55	"	5
Rupees				55	"	5
BY THE RESPONDENT—						
Stamp for Vukeelutnama	"	"	"			
Vukeel's Fee one-fourth	"	"	"			
				"	"	"
Rupees				"	"	"

C Gyme
Acting Registrar

C Gyme
Sealer
12th day of July 1864.

Issued a certificate on Her Treasury Bank of Bombay for the refund of Rupees two (2) being the value of the stamp used for Special Appeal in this case.

12th July 1864.

Acting Registrar