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 RA'M JOSHI  
 v.  
 LAKSHMIBAI.

*Vishvanáth Náráyán Mandlik and Ganpatráv Bháskar* for the respondent.

ARNOULD, Acting C. J., delivered judgment :—In this case we must take it on the Judge's finding that the share of the plaintiff's husband in the joint family property was settled at one-third. The land was not divided, but the produce was, and of this the plaintiff's husband received one-third. Although no actual division of the land took place, the Court upholds the opinion of the District Judge, that "if a division has been determined, though not carried out, in a husband's lifetime, his widow can carry it out after his death. And if land has been so divided that, though held in common, the sharers take their several proportions of the produce, it is the same thing as if there had been a division." The decree of the District Judge is, therefore, confirmed, with costs.

The District Judge appears to have found that a separation took place, and this finding is conclusive.

*Decree affirmed.*

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*Special Appeal No. 616 of 1863.*

July 7.

SAKHA'RA'M TRIMBAK (original plaintiff) ... *Appellant.*  
 RA'NU valad VITHAL A'PA'JI (original defendant) ..... .. *Respondent.*

*Hindú Law—Maintenance—Illegitimate Son entitled to Maintenance.*

By Hindú law, an illegitimate son has a claim only to maintenance, and an agreement not appearing to be made on valuable consideration between a nephew who was the legitimate heir of his uncle, and that uncle, giving up the nephew's right to about seventy acres of land in favour of the illegitimate son, of the uncle, was declared void as against the nephew.

**T**HIS was a Special Appeal against the decree of A. Richardson, District Judge of Ahmednagar, in Appeal Suit No. 125 of 1863.

Sakháram instituted this suit on the 20th of February 1862, in the Court of the Munsif of Pimpalgám, against Ránu, to recover possession of certain lands in the *pargána* of Chandvadá. Sakháram alleged that the above land was the *mirás* property of his ancestor; that he used to live in Khándesh

from whence he returned about ten or eleven years ago, when his uncle, Vithal, was in the enjoyment of the lands; that Vithal died in the Christian year 1855 or 1856, and that on the plaintiff (who was his only heir) attempting to take possession of the lands he was prevented from so doing by Ránu, on the ground that he, Ránu, had had possession for ten or twelve years before.

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The defendant, Ránu, filed a statement denying Sakhárám's right, and asserting his own as the illegitimate son of the late proprietor, Vithal A'páji, whom he had served till his death, and whose obsequies he had performed according to the usages of his caste. He further alleged that the plaintiff had executed an agreement (exhibit No. 21) in favour of the late Vithal A'páji, under date corresponding with the 15th of July 1852, whereby the plaintiff had given up all his claim to the property in dispute.

The Joint Munsif of Pimpalgám had found that the land in dispute was entered in the name of Krishnáji A'páji; that the plaintiff was the nephew of Krishnáji A'páji and Vithal A'páji; that it had been enjoyed by both the plaintiff and the defendant until the year before the dispute; that the agreement (exhibit No. 21) had been made between the plaintiff, Sakhárám, and his late brother Konher, on the one side, and the late Vithal A'páji on the other, and not between the parties to the present suit; that the stamp had not been affixed until after the date of the statement; that the deceased Vithal had made no gift to nor appointed the defendant, Ránu, heir by a Will; that the agreement (exhibit No. 21) could not be of any avail to the defendant, Ránu, because it was not stamped till after the death of Vithal; that it was in evidence that the plaintiff performed the funeral ceremonies of the late Vithal; that the defendant, Ránu, was the son of Vithal by a Shúdra concubine, and according to Hindú law he was not entitled to have any share in immoveable property, and that Sakhárám, being the nephew and the legal heir of the late Krishnáji and Vithal, had a right to the disputed property. He, therefore, awarded the claim with costs.

Against this decree Ránu appealed to the District Judge, A. Richardson, whose judgment was as follows:—

“The question before this Court is, on evidence adduced, did the lower court, in rejecting the defendant's claim to

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occupation ejecting him from the land at issue, conform to law and practice?

"The Court has examined the exhibits filed from Nos. 1 to 39 inclusive. The plaintiff, Sakhárám Trimbak, has brought this action to recover possession of seven fields in the village of Netal, which are said to have been in the possession of Vithal A'páji, the younger brother of Keshav A'páji, the *mirásdár*. The land is said to consist of 69 acres 6 chains, and the annual value is stated to be Rs. 22-7-11.

"The defendant, Ránu, declares himself to be the son of a slave woman of Vithal A'páji, and in occupation of the land at issue, and that the plaintiff's claim is barred by a contract executed by him on the 11th of July 1852. The contract bond, No. 21, was stamped on the 9th of May 1862, and is proved by the evidence in Nos. 26, 27, 28, 29, 30, 31, 32, and in it are the words:—'To your sons Ránu and Bhiká the dwelling-house and the land which is your share, be for the means of subsistence, they shall cultivate; we and our heirs will not interfere.' Clearly, then, this deed was executed to the deceased Vithal, who died subsequent to the date of this bond. The contract is made that his bastards shall not be interfered with by the plaintiff, Sakhárám, and this bond is valid against the donor from the date of stamping, and by that contract the Court holds that the plaintiff, Sakhárám, has barred his own right to bring the present action, and the Court reverses the decree of the lower court, with all costs on the respondent, Sakhárám Trimbak."

Against this decree Sakhárám preferred a Special Appeal.

The Appeal was argued before ARNOULD, Acting C.J., and NEWTON, J.

*Shántáram Náráyan* for the appellant.

*Vishvanáth Náráyan Mandlik* with *Ganesh Hari Patvardhan* for the respondent.

For the appellant it was argued that the only consideration appearing on the face of the alleged contract or release being the settlement of some dispute, it was not sufficient to support the same. Besides, such a disposition by Sakhárám of his property would be waste as against his heirs, and on that account void; all that Ránu had a right to was maintenance.

*Vishvanáth, contra* :—The compromising of some disputes is a consideration. The defendant had a right to maintenance, which the appellant (plaintiff) purchased by entering into such an agreement as that mentioned in exhibit No. 21, with the defendant's deceased father. The adequacy or inadequacy of consideration is a question which the appellate court cannot go into in this case.

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**PER CURIAM** :—In this case Sakhárám, the appellant, comes to claim his inheritance, and is met by the contract which he had entered into with his late uncle, the father of the defendant, Ránu, who is the illegitimate son of that uncle. The contract is one by which the plaintiff and his brother agreed to give away their rights to nearly seventy acres of ancestral land to the defendant, Ránu, and his brother in perpetuity. The consideration of this agreement, on the face of it, is the settlement of some dispute : what the dispute was is not stated, nor is there any evidence to show what the consideration was, or that it was a valuable one. The defendant, Ránu, has, by Hindú law, only a right to maintenance, and, as there is no proof of any valuable consideration to sustain the contract set up by the defendant, we must reverse the District Judge's decree, and confirm that of the Munsif with costs.

*Decree reversed.*

*Special Appeal No. 148 of 1864.*

SAKVA'RBA'1, widow of Shiváji Ráje Ghatge  
Zanjárráv Deshmukh..... *Appellant.*

July 12.

BHAVA'NJI RA'JE GHATGE ZANJA'RRA'V DESH-  
MUKH..... *Respondent.*

*Hindú Widow—Maintenance—Amount of Maintenance how determined—  
Arrears of Maintenance.*

*Held*—That a widow has, by Hindú law, a right to maintenance, and that the amount is to be determined on a consideration, not merely of her absolute necessities, but also of the circumstances of the family.

*Held*, also, overruling a decision of the late Sadr Diváni Adálat, S. A. 2929 (1 Morris's Rep. 247), that she is entitled to arrears unpaid.