

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.

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THIS was a Special Appeal against the decree of the District Judge of Sátará, in Appeal Suit No. 222 of 1863.

The facts of the case are as follows :—

● Shiváji, the husband of the plaintiff, died in the year Shaka 1780 (A.D. 1858-59), leaving behind him two widows, Reņukábái and Sakvábái, and a son by the former, named Bhavánji Ráje. The last (the defendant in this action), as legal heir of the deceased Shiváji, took possession of all the property, moveable as well as immoveable, including *inám* lands, subject to such charges as were created thereon by the late and present government of Sátará, amongst others a charge on account of maintenance to Reņukábái. Sakvábái, being unprovided for, was allowed to file a suit in *formá pauperis*, under date the 1st of July 1861, in the Court of the Principal Şadr Amín of Sátará, claiming from Bhavánji, her stepson, a suitable maintenance with arrears.

The defendant filed a statement to the effect that his deceased father, Shiváji, when in possession of the estate, misbehaved himself, which obliged the late Government to make over all his property to the defendant on condition of his paying him Rs. 50, provided he (the defendant's late father) did not contract any further debts; that notwithstanding this prohibition, the plaintiff's husband contracted debts, for the liquidation of which Rs. 25, out of the Rs. 50 above referred to, were applied, the remainder, after allowing discount, being expended for the maintenance of eight persons, the plaintiff included; that the defendant, therefore, declined to provide maintenance at the rate applied for; but that he was willing to maintain his stepmother (the plaintiff), provided she consented to live with propriety at his house at Málvádi. He further added that the marriage of the plaintiff with his father, when he was eighty or eighty-five years old and blind, was brought about by *kárkuns* who were on bad terms with the defendant; and that when his father, Shiváji, died, the defendant requested the plaintiff to stay with him, but she refused to do so, preferring to live at Sátará with all her ornaments, in a way not suited to her station.

The plaintiff filed a statement in reply, to the effect that the entire estate belonged to her deceased husband; that the defendant being a disorderly person, his own mother did not live with him; that the debt contracted by the plaintiff was owing to the refusal by the defendant to grant her suitable

maintenance; and that she be allowed the same amount as had been granted to other ladies of the defendant's family.

The Principal Şadr Amín of Sátará, Abáji Nánáji, laid down the following points for decision, namely :—

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1st—Should the plaintiff reside with the defendant, and receive maintenance, like other people; or should the plaintiff be allowed to remain separate in the house of the defendant; or should the plaintiff be permitted to reside wherever she chooses, and receive maintenance from the defendant.

2nd—What would be a suitable allowance for maintenance to the plaintiff.

3rd—Has the plaintiff incurred the expenditure detailed in the plaint, and can the same be allowed her.

And he found from the defendant's own answer (exhibit No. 37) that he was not well disposed towards the plaintiff, whose marriage with his deceased father was, he allèged, brought about by designing *kárkuns* when his father was very old; that the defendant, Bhavánji Ráje, had not even provided for his own mother, for whose maintenance the defendant having made no provision (as he had bound himself to do), the Collector of Sátará at last attached his property, and had the money paid to his mother, Reņukábai; that the plaintiff was the defendant's stepmother; and that, under these circumstances, it was not proper to decree that the plaintiff should stay with the defendant. He, therefore, ordered that the defendant should provide separate apartments for the plaintiff, either in his own house, or in another suitable house, at his village of Málvádi, as he was of opinion that it would be unwise to order maintenance to be provided to the plaintiff at whatever place she liked, she being young and of a high family. As, however, only Rs. 50 were allowed to the plaintiff's husband by the late Sátará government, while the plaintiff was living with him, he ordered that the defendant do pay to the plaintiff Rs. 30 a month for her maintenance, and threw out her claim for Rs. 1,349, holding—

1st—That she had not proved that debt to be on account of maintenance; and

2ndly—That the Şadr Diváni Adálat had decided against awarding maintenance in arrears, in Special Appeal No. 2929, on the 30th of October 1854.

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Dissatisfied, the plaintiff, Sakvarbái, appealed to the District Judge of Sátará, R.F. Mactier, against this decision, saying that she should have more than the allowance fixed, and that she should not be made to stay at one place, Málváđi, where the Principal Şadr Amín decided she should live, and that, further, her debts should be paid. The District Judge held the award of the Principal Şadr Amín a fair one, and confirmed it, for the following reasons:—

“ I think the award a fair one. By the strict Hiudú law, a widow childless is only entitled to what will mess her, and to no more, and though a large allowance has been, and is often, made for persons of a high family, yet this is not the strict law, but merely the opinion of the authorities making the order: therefore, if the present plaintiff coming into court seeks the assistance of the law, she can only have what the law gives, and no more. In the present case the plaintiff quotes what others get as maintenance, or rather as allowance; this, I think, we have nothing now to do with. The awards made in regard to others were the will and pleasure probably of the giver. In the present case the defendant denies the claim, and as the plaintiff goes to law for her maintenance she can only have what will keep her, and no more. She claims to live where she pleases: this I do not think she can do, for, as she is living on enforced charity, she must not be held to have a choice in the matter: she wishes to have money, to keep a certain amount of state; but properly a Hindú widow has nothing to do with this: she ought to have relinquished all connection with the outer world, and ought to live strictly as a Hindú widow, in seclusion; and the law, as she appeals to it, can give her no more than is necessary for this. The allowance decreed by the lower court appears to be quite sufficient for this, and the plaintiff must remember that, as she is only an object of charity now, she cannot dictate terms, but ought to have what she gets, and be thankful for it, and, as I think the Principal Şadr Amín's award was fully enough, she must rest content with this.”

The Appeal was heard by NEWTON and JANA'RDHAN, JJ.

Pándurang Balibhadra for the special appellant.

Respondent absent.

Pándurang:—The District Judge, in determining the amount of the allowance to be paid to the appellant, was wrong

in considering that she could not claim more than what would "keep her," which he ought not to have done. Although it was proved to the satisfaction of the Principal Sadr Amín that the appellant could not live with the respondent, the District Judge directed her to live in a house under his control. The lower court erred in decreeing the payment of the maintenance to commence from the date of the decree, instead of from the date on which the suit was filed, and in not ordering the payment of the debts incurred by the appellant since the death of the husband.

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PER CURIAM :—The District 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, and, if so, what was the date of his decease?

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

The District Judge has further erred in law in holding that the plaintiff "can only have what will keep her, and no more," and that she receives this as "charity." A widow has by Hindú law a legal right to maintenance, and 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 "by an assignment of land or allowance of money, in either case proportioned to her support and that of those dependent on her, including the performance of charities and the discharge of religious obligations, and this always with a reference to the amount of the property, so as at the utmost (so has been said) not to exceed a son's or other parcener's share," and Mr. Justice Strange states that the maintenance "must be proportioned to the condition of the party who is to receive it, and the circumstances of those who are to provide it."

The Court, therefore, reverses the decree of the District Judge, and remands the case for a new decree with reference to these points.

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Arrears of maintenance should be awarded, at the same rate, from the death of the plaintiff's late husband as may be awarded prospectively, unless the defendant show 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 condition, be entitled to maintenance between the date of filing the suit and the date of the final decree: costs to follow the final decision.

Special Appeal No. 299 of 1864.

Aug. 31.

RA'MJI bin TUKA'RA'M..... *Appellant.*
CHINTO SAKHA'RA'M..... *Respondent.*

Mortgage—Security for Repayment of a Loan—Redemption—Improvements—Equitable Rule as to Repairs.

Where an instrument of mortgage, though in terms it transfers an estate on failure to repay the mortgage-money on a fixed day, yet appears clearly to have been entered into by parties for securing the repayment of a loan, the mortgagor, making the security subservient for the purpose for which it was created, may in equity and good conscience redeem the property by paying off the principal debt and the interest, though the stipulated time for payment has been allowed to pass by.

Claims made by a mortgagee in respect of money laid out in improvements after the expiry of the day fixed for repayment must for some time to come depend on an equitable consideration of all the circumstances of the case.

Ultimately the English rule should be adopted, under which the mortgagee is only allowed to claim for such outlay as has been required in order to keep the mortgaged premises in a good state of repair, and to protect title.

THIS was a Special Appeal against the decree of the District Judge of Puñá in Appeal Suit No. 1060 of 1862, confirming the decree of the Munsif of Puñá in Original Suit No. 413 of 1862.

The Appeal was heard by ARNOULD, Acting C. J., and NEWTON and JANA'RDHAN, JJ.

Shántárám Náráyan for the appellant.

Dhirajlál Mathurádás for the respondent.

The facts of this case sufficiently appear from the following judgment, delivered (on the 31st of August 1864) by ARNOULD, Acting C.J. :—

Rámji, the special appellant in this case (the plaintiff in the original suit), claimed to recover from Chinto, the special