

1871.  
GOPA'L  
GOVIND  
v.  
GANESHDA'S  
TEJMAL.

time-barred; but that application has been enforced by a competent court, and cannot now be held to have been barred."

The special appeal was heard before MELVILL and KEMBALL, JJ.

*Ghanashám Nilkant* for the special appellant.

No one appeared for the opposite party.

PER CURIAM :—It appears that execution of the decree was barred in 1867, and the right to execute it cannot be revived by reason of the illegal proceedings which were taken in 1867, either in consequence of the inadvertence of the court, or the absence of opposition on the part of the judgment-debtor. The Court concurs in the view expressed by the Full Bench of the Calcutta Court in *Bisseshur Mullick v. Maharaja Mahatab Chunder Bahadoor (a)*.

*Judge's order reversed.*

(a) 10 Calc. W. Rep., F. B. R. 8.

*Special Appeal No. 182 of 1871.*

July 19.

RA'ZA'BA'I kom RANGOJI ..... *Appellant.*  
SADU bin BHAVA'NI *et al.* ..... *Respondents.*

*Maintenance—Hindú Widow.*

Where the nearest relative of a Hindú widow sued for recovery of property in her possession, and the lower appellate court awarded the claim without fixing the amount of maintenance to be given to the widow :

The High Court remanded the suit in order that the amount of maintenance might be fixed, notwithstanding that the widow claimed maintenance in that court for the first time.

THIS was a special appeal from the decision of M. B. Baker, Acting Senior Assistant Judge of Solápur, in Appeal No. 141 of 1870, reversing the decree of the Subordinate Judge of Pandharpur.

The plaintiffs, as the heirs of the defendant's husband, sued to recover property in her possession, and to obtain damages for loss of crops.

The court of first instance rejected the claim upon the evidence.

The appellate court reversed that decree and awarded the claim, holding the plaintiffs to be entitled under a will (exhibit No. 3).

The special appeal was heard by MELVILL and KEMBALL, JJ.

*Bahiravnáth Mangesh*, for the special appellant:—Exhibit No. 3 is a deed of gift, and not a will. At all events the claim should not have been awarded before fixing the amount of the widow's maintenance: *Rádhábái, widow of Rango, v. Shankráji*, Special Appeal No. 216 of 1868, decided by WARDEN and GIBBS, JJ., on the 3rd of July 1868.

*Ganpatráv Bháshkar, contrá.*

PER CURIAM:—The Court thinks that the Senior Assistant Judge was not in error in construing exhibit No. 3 as a will; and on this ground the Court upholds his judgment so far as it awards possession to the plaintiffs. But it has been shown to the court that this court has, in numerous cases, with a view to avoid multiplicity of suits, directed that an award of maintenance to a female defendant in possession should be included in the decree awarding possession to a plaintiff who, as nearest relative, is liable for such maintenance. Following the precedents referred to, the Court remands the case, in order that the court below may determine the amount of maintenance to which the defendant is entitled, and may make a decree accordingly. The defendant must bear the costs up to the present date.

*Decree accordingly.*

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RA'ZA'BA'I  
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SADU BHA-  
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