

the death of Hanmiá and Parshiá in 1860 or 1861. If this point had been raised when the case was last before the Court, a remand would have been unnecessary. It has now been taken, and we are of opinion that it is a valid objection to the decree of the District Judge, which is accordingly reversed, and the claim is allowed with costs on the defendants throughout.

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Decree reversed with costs.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 207 of 1872.

Sept. 3.

RAMA'BA'I, wife of BHIIKA'JI BHA'SKAR *Appellant.*

TRIMBAK GANESH DESA'I, and another ... *Respondents.*

Hindu Law—Maintenance of deserted wife—Jurisdiction—Small Cause Court—Extraordinary Jurisdiction of High Court.

Although the relations of the husband of a Hindu woman, deserted by him, may not be under a personal liability to support her, yet, if they have property of the husband in their hands, his wife is entitled to be maintained out of the husband's estate to the extent of the proceeds of one-third thereof.

Whether a suit to obtain such maintenance is cognizable by a Court of Small Causes. *Quere.*

Where there has been a manifest error of law, and to prevent manifest injustice, the High Court, in the exercise of its extraordinary jurisdiction, will remand a case to the Lower Court, though the value of the claim may be under Rs. 500, and the case may be one in which a special appeal is not allowed.

THIS was a special appeal from the decision of H. J. Parsons, Assistant Judge of Ratnágiri, reversing the decree of the Subordinate Judge of that place.

The plaintiff, Ramábái, brought the suit to recover maintenance and house-rent from the defendants, Trimbak and Krisnáji, respectively, her husband, Bhikáji's, cousin and cousin's son, alleging that they and her husband were members of an undivided family, and that her husband lived with them till six years before the time of suit filed, when

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he left the country and was not afterwards heard of; that her husband had a right to a share in the ancestral property in the hands of the defendants, and that she, as his wife, had a right to be maintained out of it, but that the defendants refused to maintain her and her minor son.

Trimbak appeared and answered that Ramábái could not maintain this suit in her husband's lifetime; that the family separated about 30 years ago, and that the defendants were not liable under Hindu law to maintain the plaintiff.

The Subordinate Judge found that the family was undivided; that Ramábái's husband had not been heard of since his departure, although search had been made for him; and that Ramábái was in poor circumstances, and had no means of support. He made a decree in the plaintiff's favor for Rs. 122. On appeal, the Assistant Judge reversed that decree, holding that the plaintiff could not be presumed to be a widow, and that a wife could not claim maintenance from her husband's relations. The Assistant Judge was of opinion that the conduct of the defendants in keeping the wife destitute was disgraceful.

The special appeal was heard by SARGENT, Acting C.J., and MELVILL, J., on the 29th of August 1872.

Rávsáheb Vishvanáth Náráyan Mandlik for the appellant.

Mánikbhái Jehángirshá for the respondents took the preliminary objection that, as the value of the claim was below Rs. 500, a special appeal did not lie to the High Court, and *Rámchandra Dikshít v. Sávitribái (a)* and *Judal v. Hirá Mulji (b)* were cited as authorities.

Rávsáheb Vishvanáth Náráyan Mandlik contended that a special appeal lay, but asked the Court, in case no special appeal lay, to exercise its extraordinary jurisdiction, as the conduct of the defendants had been found to be disgraceful, and the authorities were clear to show that the wife was entitled to maintenance: S. A. No. 13 of 1861; *Trimmappa Bhat*

(a) 4 Bom. II. C. Rep. A. C. J. 73.

(b) *Ibid* 75.

v. *Parmeshriamma* (c) ; 1 Norton's Leading Cases, pp. 31 and 37; 1 Strange's Hindu Law, p. 67, 2 Ibid 45-51; and Digest of Hindu Law, by *Shamchurn Sirkar*, p. 368 and 369; *Bai Lakshmi v. Lalmidas Gopaldas* (d).

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PER CURIAM:—A preliminary objection has been taken by the respondents that this is a suit of a nature cognizable by a Court of Small Causes, and that, therefore, a special appeal is not admissible. Two cases, reported at pp. 73 and 75 of Vol. 4 Bom. H. C. Reports, have been cited in support of this objection. The learned Judges, by whom those cases were decided, have recorded no reasons for holding that a suit for maintenance by a Hindu widow is cognizable by a Court of Small Causes. The claim in those cases was by a widow, while in the present case it is by a deserted wife; and it might be possible to draw a distinction between the nature of the two claims. But we think it unnecessary to do this, or to express any opinion as to the correctness, or otherwise, of the decisions above referred to. Assuming that the present claim would be cognizable by a Court of Small Causes, we still think that this is a case in which we should interfere by the exercise of our extraordinary jurisdiction. It has been the practice of this Court to use that power in cases in which there has appeared to be a manifest error of law, entailing manifest hardship on one of the parties to a suit. In the present case, the Assistant Judge speaks of the appellant's case as one of great hardship, and describes the conduct of the respondents as disgraceful; and we are clearly of opinion that, in rejecting the appellant's claim, the Assistant Judge has proceeded upon a misconception of the law.

No doubt, the authorities do not show that the relations of a deserted wife are under a personal liability to maintain her; but they do show that she is entitled to be maintained out of her husband's property to the extent of one-third of the proceeds of that property. The appellant's allegation is that her husband's property is in the hands of the respond-

(c) 5 Bom. H. C. Rep. A. C. J. 130.

(d) 1 Bom. H. C. Rep. 13.

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ents and available for her maintenance. If the plaintiff's husband and the respondents are separate, and the former has taken his share of the property, the appellant has no claim upon the respondents; but if they are undivided, and the husband's share is available in the hands of the respondents, and the proceeds thereof are not accounted for by them, then the appellant is entitled to receive maintenance from those proceeds to an extent not exceeding one-third of the amount.

Decree reversed and the case remanded.

[APPELLATE CIVIL JURISDICTION.]

Sept. 4.

Special Appeal No. 330 of 1871.

RA'YASANGJI SHIVSANGJI *Appellant.*
 GULA'M RASUL and others *Respondents.*

Jurisdiction—Appeal—Bombay Civil Courts Act (XIV. of 1869) Sec. 26.

Where a suit, wherein the subject matter exceeded Rs. 5,000, was instituted in the Court of a Principal Sadr Amin, but decided by a Subordinate Judge 1st Class appointed under the Bombay Civil Courts Act XIV. of 1869 :—

It was held that an appeal lay direct to the High Court under Sec. 26 of the Act.

THIS was a special appeal from the decision of F. D. MELVILL, Judge of the District of Ahmadabad, confirming the decree of the Subordinate Judge First Class of that city.

The facts, in so far as they are material, are as follows :—

A suit, the subject matter in which involved a sum exceeding Rs. 5,000 in value, was instituted, on the 10th of March 1868, in the Court of the Principal Sadr Amin of Ahmadabad. While the suit was pending, the Bombay Civil Courts Act (XIV of 1869) came into operation on the 19th of March 1869, and the Court of the Subordinate Judge First Class succeeded the Court of the Principal Sadr