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PRABHA'KAR CHINTA'MAN DIKSHIT v. PA'NDURANG VINA'YAK DIKSHIT.

interest from year to year amounts to Rs. 214-15-0 (*vide* Maráthi *yád* annexed, marked Z).

"Principal and interest together come to Rs. 418-15-0, which added to the principal and interest on the first ten years' expenditure, being the total expenditure (with interest) of the first twenty five years, to Rs. 900-2-2.

"No water has been supplied to the trees for the last ten years or so, and there has, therefore, been no expenditure of capital on them in that period. I have only, therefore, to deduct Rs. 900-2-2 from the gross profits to get the net profit. The result is Rs. 917-5-10, of which the plaintiff's fourth share would be Rs. 229-5-5.

"I, therefore, find on the point referred to me that the net profit was Rs. 229-5-5."

On the receipt of the above report, the case came on for final disposal before the same bench on the 24th March 1875, when the plaintiff was declared entitled to redeem and recover possession of his share in the property on payment by him to the defendant of Rs. 368-8-4 instead of the sum of Rs. 548-5-9, first awarded by the lower court.

Decree amended.

[APPELLATE CIVIL JURISDICTION.]

March 24.

Regular Appeal No. 54 *of* 1873.

HIMMATSING BECHARSING..... } *Appellant (Original Defendant).*

GANPATSING, styling himself the son of HIMMATSING..... } *Respondent (Original Plaintiff).*

Hindu Law—Maintenance.

A suit for maintenance out of ancestral estate by a Hindu son lies against his father where the property in the hands of the latter is impartible.

Quære:—Whether a like suit lies where the son might sue for partition.

THIS was an appeal from the decision of W. H. Newnham, Judge of the District of Ahmedabad.

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The appeal was heard by WESTROPP, C.J., and KEMBALL, J.

Starling (with him *Lang* and *Dhirajlál Mathurádás*, Government Pleader,) for the appellant.

Branson (with him *Shántárám Náráyan*) for the respondent.

The facts and arguments, in so far as they are material for the purposes of this report, appear from the following extract of the Court's judgment delivered by

WESTROPP, C.J.:—The plaintiff Ganpatsing sued Himmatsing, the Thákur of Sarod, to establish his right to receive maintenance, alleging that he was the son of the defendant by his wife Sáheb Ráni. He also claimed arrears of maintenance for six years. The estate of Himmatsing being placed under management in conformity with Act XV. of 1871, the manager was also made a defendant under Section 25 of the Act.

Himmatsing pleaded, *inter alia*, that the plaintiff was not his son, and even if he were, he could not by custom claim any maintenance.

The District Judge of Ahmedabad, Mr. Newnham, after a very careful consideration of the evidence produced before him, came to the conclusion that the plaintiff was the lawful son of the defendant Himmatsing by his wife Sáheb Ráni, and that he had a legal claim to be maintained by his father. He accordingly decreed to that effect, and directed that the manager, having regard to the magnitude of the estate and its incumbrances, should decide (subject to the control of the Government) what amount the plaintiff was to receive as arrears of maintenance and what he was annually to receive in future.

In the appeal before us, we have to consider two objections. It has been contended on behalf of Himmatsing, who alone appears in this Court, that a son could not sue his father for maintenance. In support of this contention, it is urged that a Hindu son has an equal share with his father in ancestral

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property (a proposition which in this particular case, it will be presently seen, is inconsistent with an admission of the defendant), and that the plaintiff should, therefore, be left to enforce his rights, if he can, by a partition suit. A custom has also been attempted to be set up to prove that the plaintiff should be maintained out of the allowance settled on his mother. It has, as we think, been very properly conceded, on behalf of the defendant Himmatsing, that the estate in question is impartible, being one to which the law of primogeniture applies; and no authority was cited, either in the Court below or in this Court, to show that, where a son could not enforce a partition with his father, he was prevented from suing the latter for maintenance. We are of opinion that the alleged custom is not proved, and that, on the defendant Himmatsing's own theory, that the property is impartible, the disowned son would have no remedy except a suit for maintenance. We say nothing as to the right of a son to sue for maintenance where he might sue for partition. (*a*)

Note.—His Lordship, on the 31st March following, reviewed the evidence, and came to the conclusion that the District Judge was right in holding that the plaintiff was the lawful son of Himmatsing by his wife Sáheb Ráni. The decree of the lower court was, therefore, affirmed in so far as it declared the status of the plaintiff and his right to be maintained by the defendant, but varied in so far as it awarded arrears of maintenance for six years. The High Court, in consideration of the incumbrances on Himmatsing's estate, gave the plaintiff arrears only from the date of the filing of the plaint at a rate to be fixed, under the control of the Governor of Bombay in Council, by the manager, who was also to fix the amount of future maintenance.

(*a*) See, on that point, Special Appeal No. 394 of 1872, decided by WESTROPP, C.J., and MELVILL, J., on 20th April 1874, the judgment recorded by WESTROPP, C.J., wherein it is laid down that amongst the male members of an ordinary Hindu undivided family, a suit by one co-parcener against the others for maintenance would be unsustainable. He would be entitled to sue for a share, but not for maintenance, unless indeed he were illegitimate, deformed, or idiotic, or suffering from some other disability to inherit, in which case he would not be a parcener entitled to an equal share with the other members of the family, but only a person entitled to a maintenance.