

Ramabái,⁽¹⁾ in which latter case the incurable diseases, which incapacitate for inheritance, are mentioned. But, inasmuch as he has found as facts, that Padmanji and Bhavu were separate in estate, and that the house in dispute was purchased for Bhavu as his absolute property with funds supplied for the purpose by Kashi, his maternal grand-mother, the Court affirms the District Judge's decree with costs.

1877.

UMABA'I
v.
BHAVU
PADMANJI

[APPELLATE CIVIL JURISDICTION].

HONAMMA (DEFENDANT AND APPELLANT) v. TIMANNABHAT AND ANOTHER
(PLAINTIFFS AND RESPONDENTS).*

February 1.

Act XXI. of 1850—Hindu widow—Loss of caste—Incontinence—Forfeiture of rights or property—Starving maintenance.

Since Act XXI. of 1850 came into force, mere loss of caste does not occasion a forfeiture of rights or property.

A Hindu widow entitled to a bare or starving maintenance, under a decree made in a suit, brought by her for maintenance against the representatives of her deceased husband, is not to be deprived of the benefit of that decree by the fact that she has since its date been leading an incontinent life.

Rajah Pirthee Singh v. Ranee Raj Kower (20 Calc. W. R. 21 Civ. Rul.) distinguished.

THIS was a special appeal from the decision of G. M. Macpherson, District Judge at Kanara, reversing the decree of the Subordinate Judge of Honáwar.

The plaintiffs Timannabhat and Theshbhat brought this suit against Honamma, and alleged in the plaint that the defendant had obtained a decree against them for maintenance, but that she had forfeited her right thereto, as she had been leading an incontinent life since the date of that decree, and had in consequence been excommunicated by the caste. The defendant denied the charge of incontinence, and pleaded that she was entitled to the maintenance. The Subordinate Judge found on the evidence that the defendant had been guilty of incontinence, but held that she did not lose her right to maintenance on that account. In appeal, the District Judge reversed that decree, and decided that she forfeited her right to maintenance by reason of her incontinent life.

The special appeal was heard by WESTROPP, C.J., and NA'NA'BHA'I HARIDA'S, J.

(1) *Supra* p. 554.

* Special Appeal No. 277 of 1876.

1877.

HONAMMA
v.
TIMANNA-
BHAT.

Pandurang Balibadhra for the appellant:—Adultery and loss of caste do not deprive a widow of her right to maintenance: *Parvati v. Bhiku*,⁽¹⁾ Act XXI. of 1850. What the appellant gets is a bare or starving maintenance, and even an adulterous widow is entitled to such maintenance under Hindu law: 1 Strange 157, 2 Strange 32, 344, (Edn. of 1825), Norton's Leading Cases 37.

No one appeared for the respondent.

WESTROPP, C. J.:—We adhere to the opinion expressed in *Parvati v. Bhiku*,⁽²⁾ that since Act XXI. of 1850 came into force, mere loss of caste does not occasion a forfeiture of rights or property. We, therefore, proceed to consider this case independently of the fact that the defendant has been put out of caste. On the findings of the learned District Judge we must regard the defendant as guilty of incontinence since the date of the decree in appeal No. 102 of 1867, made by Mr. West, when Judge of Kanara, and affirmed here in special appeal. The Judge in the present suit says that it is asserted that she is still living in that condition; but he does not positively find that allegation to be true—and he does state that she resides with her mother-in-law.

The Hindu law books of especial force in this Presidency—*Mayukha*, Ch. IV., Section 8, pl. 9; *Mitakshāra*, Ch. II., Section 1, pl. 37, 38—support the position that even an incontinent widow is entitled to a bare maintenance. Steele, p. 42, pl. 25, 1st Edn., and p. 36, 2nd Edn. and 1 *Str.* H. L. 157; the notes of Mr. Ellis at pp. 32 and 344 of 2 *Str.* H. L.; and Norton's L. C., p. 37, are to the same effect. The maintenance allotted to the present defendant in appeal 102 of 1867 was nothing more than what is called a bare maintenance, and so it was described by Mr. West in his judgment. We cannot, in this suit, take into consideration the question whether or not the respondent, by reason of his not having family property, was liable to supply even a bare maintenance to the defendant. The only question before us is whether since she obtained an award of maintenance in appeal 102 of 1867, her incontinence has disentitled her to a continuance of the bare maintenance then allotted to her. The authorities to which we have referred, lead us to the conclusion that she is not so disentitled. The case of *Rajah Pirthee Singh v. Ranee Raj Kower*,⁽³⁾ relied upon by

(1) 4 Bom. H. C. Rep. 25, A. C. J.

(2) 4 Bom. H. C. Rep. 25, A. C. J.

(3) 20 Calc. W. R. 21, Civ. Rul.

the District Judge, turned upon the question of the consequences of a widow leaving the family house, and not upon the effect of incontinence upon her maintenance. The observations, in that case, of her Majesty's Privy Council as to loss of maintenance in consequence of unchastity, we think, referred to maintenance as a *dives*, not to a starving maintenance, as a bare maintenance has been sometimes denominated. We reverse the decree of the District Judge and restore that of the Subordinate Judge, but direct the parties respectively to bear their own costs of the suit and both appeals.

Note.—For the law as administered in the Bengal school on the subject of forfeiture of rights by an unchaste widow, see the Full Bench case of *Kery Kolutany v. Monceram Koluta* (13 Beng. L. R. 1).

1877.

HONAMMA
v.
TIMANNA-
BHAT.

[APPELLATE CIVIL JURISDICTION.]

LAKSHMAN DADA NAIK (DEFENDANT AND APPELLANT) v. RAM-
CHANDRA DADA NAIK (PLAINTIFF AND RESPONDENT).*

1876.
August 2.

RAMCHANDRA DADA NAIK (PLAINTIFF AND APPELLANT) v. LAK-
SHMAN DADA NAIK (DEFENDANT AND RESPONDENT).*

aff^o in S.C. 77. aff. 181.

Hindu Law—Power of a Hindu to make a will—Unequal distribution of ancestral moveable property—Partition—Evidence of value—Outstandings—Interest.

A Hindu governed by the Mitakshara law, who has two sons undivided from him, cannot, whether his act be regarded as a gift or a partition, bequeath the whole, or almost the whole, of the ancestral moveable property to one son to the exclusion of the other.

Ramchandra Dada Naik v. Dada Mahadev Naik, (1 Bom. H. C. Rep., Appx. lxxvi.,) distinguished and explained.

A plaintiff entitled on partition to half the property in the hands of his brother is bound to bring into hotchpot any ancestral property, or property acquired from ancestral funds which may be in his own hands, but is not liable to account for money received by him from his father while living in commensality with him and his brother, the circumstances of such receipt not being of a kind to impute fraud.

* Cross Regular Appeals Nos. 39 and 45 of 1875.