

1878.

SIDLINGA'PA'
v.
SIDA'VA'
KOM
SIDLINGA'PA'.

We think that (in the absence of any special bond or other contract for the payment of maintenance), the question referred to us, viz., 'whether a suit for maintenance is cognizable in a Court of Small Causes in the Mofussal,' must be answered in the negative.

[APPELLATE CIVIL.]

(FULL BENCH.)

Before Sir M. R. Westropp, Knt., Chief Justice, Mr. Justice Kemball, and
Mr. Justice West.

May 1,

APA'JI CHINTA'MAN DEVDHAR (ORIGINAL DEFENDANT), APPELLANT, v.
GANGA'BA'I KOM DA'JI CHINTA'MAN (ORIGINAL PLAINTIFF), RESPONDENT.

*Jurisdiction—Small Cause Court—Act XI. of 1865—Suit for maintenance—
Brother's widow.*

In a suit by a Hindu widow against her husband's brother for an allowance as maintenance and for the expenses of a pilgrimage,

Held (following *Sidlingápa v. Sidáva kom Sidlingápa*(¹)) that the suit, although for a sum under Rs. 500, was not cognizable by a Court of Small Causes under Act XI. of 1865, there being no allegation that the maintenance claimed was secured by bond or other special contract.

Held also (following the case of *Savitribái v. Luzimibái*(²)) that the defendant was not liable, inasmuch as he was not in possession of any ancestral property, and had not received any property from the plaintiff's husband.

THIS case was referred to a Full Bench by Kemball and Náná-bháí Haridás, JJ. The facts are sufficiently stated in the following judgments:—

WESTROPP, C.J.—This is a suit by a Hindu widow against the brother of her late husband for a pecuniary allowance as maintenance and the expenses of a pilgrimage to Benares. The defendant denied that he had any ancestral property, or that his deceased brother, the husband of the plaintiff, left any property. He further said that the plaintiff had, from the time of her husband's death, sixteen or seventeen years ago, resided with her mother, who allowed her 2 *bighas* of land, and that he (the defendant) was willing to allow her to live in his house, and that he gives her two '*lugdas*' per annum. He denied any responsibility in respect of her pilgrimage. The Subordinate Judge of Kalyán

(¹) *Supra*, p. 624.

(²) *Supra*, p. 573.

made a decree against her, which was reversed by the Assistant Judge of Tháná, who held her to be entitled to Rs. 4 *per mensem* as maintenance, but not to the expenses of the pilgrimage. The Assistant Judge, although finding, as a fact, that the defendant and his deceased brother had not any ancestral property, held, on the authority of *Timmáppá Bhat v. Parmeshríámmá*,⁽¹⁾ that the plaintiff was nevertheless entitled to a pecuniary allowance as maintenance from the defendant personally, and that she was not bound to reside with him.

The defendant filed a special appeal against that decree, and the Division Court (Kemball and Nánábhái Haridás, JJ.) have referred to a Full Bench a preliminary question raised before them, viz., whether the suit (being for a sum under Rs. 500) was cognizable by a Court of Small Causes under Act XI. of 1865; for, if it were, no special appeal would lie.

That question, for the reasons already given in the case of *Sidlingáppá v. Sidává*,⁽²⁾ must, we think, be answered in the negative, the maintenance claimed not being alleged to be secured by bond or other special contract.

The preliminary point with respect to jurisdiction having been decided, the case (on 24th June 1878) came before the Appeal Court, consisting of Westropp, C. J., and Kemball, J., for decision on the merits, when the following judgment was delivered:—

WESTROPP, C. J. :—The question whether a Court of Small Causes could have entertained this suit, referred to a Full Bench by the Division Court, having been by the Full Bench decided in the negative, it now remains for the present Division Court—Mr. Justice Nánábhái Haridás, who was one of the referring Judges, being no longer on the Bench—to dispose of the suit on the merits. It is one by a widow against the brother of her late husband for a pecuniary allowance as maintenance and the expenses of a pilgrimage to Benares. The defendant alleged that he had not any ancestral property, and that he did not derive any property from his deceased brother, the husband of the plaintiff, and the Courts below have found this allegation to be true. The Subordinate Judge decreed against the plaintiff, but his decision was reversed by the Assistant Judge, who relied upon *Timmáppá v.*

1878.

APA'JI
CHINTA'MAN
DEVDHAR
?
GANGA'BA'I
KOM DA'JI
CHINTA'MAN.

(1) 5 Bom. H. C. Rep. 130 A. C. J.

(2) *Supra*, p. 624.

1878.

APA'JI
CHINTA'MAN
DEVDHAR
v.
GANGA'PA'I
KOM DA'JI
CHINTA'MAN.

Parmeshriimmd.⁽¹⁾ However, in the case of *Savitribái v. Luxumi-bái*⁽²⁾ decided on the 1st May 1878, which was a suit by a widow against her husband's paternal uncle, a Full Bench of this Court held that the fact that the latter had no ancestral property, or property which had belonged to his deceased nephew, the husband of the plaintiff, constituted a full and sufficient defence to the suit. The reasoning by which the Full Bench arrived at its conclusion in that case is applicable to the present case, and it is unnecessary to repeat it here. The case relied upon by the Assistant Judge has been fully discussed in that case. We reverse the decree of the Assistant Judge, and restore that of the Subordinate Judge, except that we direct the parties respectively to bear their own costs of the suit and both appeals.

(1) 5 Bom. H. C. Rep. 130, A. C. J.

(2) *Supra*, p. 573.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Kembal.

May 1.

SIDLINGA'PA', SON OF BASA'PA' (ORIGINAL DEFENDANT), APPELLANT,
v. SIDA'VA' KOM SIDLINGA'PA' (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Separate maintenance, wife's right to.

Although by Hindu law a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him, unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence, or other justifying cause, she is compelled to live apart from him.

AFTER the decision of the Full Bench reported above, at page 573, this case came before a Division Bench for its final disposal on the merits.

Shamráv Vithal for the appellant.

Respondent was not represented.

WESTROPP, C.J. :—Although by Hindu law a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him, unless she establishes in proof that, by reason of his misconduct or by his refusal to maintain her in his own place of residence, or other justifying cause, she is compelled to live

* Special Appeal No. 10 of 1874.