

[APPELLATE CIVIL.]

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

MA'DHAVRA'V KESHAV TILAK AND OTHERS (ORIGINAL DEFENDANTS)
APPELLANTS, *v.* GANGA'BA'I (ORIGINAL PLAINTIFF), RESPONDENT.*

1878.
July 1.

Maintenance, amount of, granted to Hindu widow.

A Hindu widow is not entitled to a larger portion of the annual produce of the family property as maintenance than the annual proceeds of the share to which her husband would have been entitled on partition, if he were living.

THIS was a special appeal from the decision of A. D. Pollen, Acting Assistant Judge at Ratnágiri, affirming the decree of Mukundráv Bhaskar, Subordinate Judge at Dápoli.

The plaintiff Gangábái sued the defendants for maintenance, and obtained decrees against them in both the lower Courts. The defendants thereupon preferred the present special appeal.

The *Honourable Ráv Sáheb V. N. Mandlik* for the appellants :— The decree of the lower Court is improper, so far as it awards maintenance to the plaintiff beyond the amount produced by the share of her husband in the ancestral estate.

M. C. Apte for the respondent.

WESTROPP, C. J. :—Parashráv, the husband of the plaintiff Gangábái, is stated by her to have died about twenty-five years previously to the filing of her plaint in this suit, to which she has made her husband's brother Madhavráv, his nephew Govind, his great nephew Keshav *alias* Báláji, and his nephew Bálkrishna parties as defendants. It is not denied that, at the death of her husband, he was undivided in estate from the defendants. It has been contended, on her behalf, that the annual proceeds of her husband's share (which has been found to be one-fourth) would not be sufficient for her maintenance, and that she is entitled to such additional allowance from the defendants (his co-partners) as together with those annual proceeds will give her a sufficient maintenance. It seems, however, to this Court to be a corollary to the recent Full Bench decision in the case of

* Special Appeal No. 296 of 1876.

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Sávitribái v. Laximibái and Sadáshiv,⁽¹⁾ that the widow is not, at the utmost, entitled to a larger portion of the annual produce of the family property than the annual proceeds of the one-fourth share to which her husband would have been entitled on partition were he now living. We vary the decree of the Assistant Judge by declaring the plaintiff to be entitled, as against the defendants, henceforward to a maintenance not exceeding the annual proceeds of one-fourth of the family property; and that as it is admitted that such annual proceeds will not be more than sufficient for her maintenance, the whole of the annual proceeds of such one-fourth share shall be paid to her as such maintenance, and that six years' arrears of such annual proceeds previously to the filing of the plaint, and all such arrears thereof as may have accrued due to her since that day (the 30th August 1873), shall be paid to her by the defendants. And we are of opinion that the said decree must be further amended by directing the Subordinate Judge to ascertain what sum fairly represents the annual proceeds of one-fourth of the said family property, and to take such evidence as may be necessary for that purpose; and we direct that the said maintenance henceforward to be paid to the plaintiff, and the said arrears due as aforesaid, previously and subsequently to the filing of the plaint, shall be computed in conformity with the sum which the Subordinate Judge shall so ascertain to be such annual proceeds of one-fourth part of the said family estate. The plaintiff is, we think, entitled to her costs of the suit, and we direct the parties, respectively, to bear their own costs of both appeals.

Decree amended.

(1) *Supra*, p. 573.