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liquidator does not allege case of fraud in the letter of 3rd October 1878, and in the deed of assignment the imputation of fraud is studiously attributed to Goculdas, nor has the liquidator verified the plaint which alleges fraud. In other words, the company is, to all intents and purposes, merely a nominal plaintiff. The case is, therefore, the simple one of a stranger officiously interfering for reasons of his own, and in no way at the request or even suggestion of the company or liquidator, in a matter in which he has no connexion whatever, with the sole object of enabling himself to dispute transactions which occurred ten years ago, and in which, independently of the assignment of those claims, he has no interest whatever, so far at least as appears on the plaint.

A suit of such nature and instituted under such circumstances falls, in my opinion, within the class of cases which both English law and the principles enunciated by the Judicial Committee alike forbid. This suit must, therefore, be dismissed, and with costs.

Attorneys for first plaintiff.—Messrs. *Hearn, Cleveland and Little.*

Attorneys for the defendants.—Messrs. *Jefferson and Payne, Mr. R. Skipsey,* and Messrs. *Prescot and Winter.*

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## PRIVY COUNCIL.

( 78 )

NARAYANRAO RAMCHANDRA PANT (ORIGINAL DEFENDANT), APPELLANT, *v.* RAMABAI (ORIGINAL PLAINTIFF), RESPONDENT.

P. C.* 1879 *March* 15, 18.

On appeal from the High Court of Judicature at Bombay.

*Maintenance—Limitation—Act XIV of* 1859, *Sec.* I, *Cl.* 13—*Widow leavin ancestral house—Demand and refusal—Cause of action.*

By the Hindu common law the right of a widow to maintenance is one occruing from time to time according to her want and exigencies. A statute of limitation might do much harm if it should force widows to claim their strict rights and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable.

*Present:—Sir J. W Colvile, Sir Montague E. Smith and Sir R. P. Collier.

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A Hindu, disposing of his estate by will, expressed his hopes that his wives and sons would all live amicably together after his death, and would all look upon his eldest son as the head of the family; he then bequeathed the whole of his property to his eldest son, directing him to provide for his (the testator's) widows, and for the other members and dependants of the family, and he declared that he made these provisions with a view to prevent dissenssion in the family, and to enable them to live in peace and harmony after his decease.

In a suit brought more than sixteen years after the death of the testator by one of his widows against the eldest son to recover maintenance, it was pleaded for the defendant that the claim was barred by limitation under cl. 13, sec. I, Act XIV of 1859, which provides that suits for the recovery of maintenance, when the right to receive such maintenance is a charge on the inheritance of any estate, must be brought within twelve years from the death of the person on whose estate the maintenance is alleged to be a charge. It was also pleaded that, under the will of the deceased, it was a condition precedent to the plaintiff's right to maintenance, that she should live under the same roof and in joint family with the defendant. It was further pleaded that there having been no demand and refusal of maintenance, the plaintiff had no cause of action.

*Held*, 1st, that the testator had not created, by his will, a specific charge on the inheritance of his estate within the meaning of the provision of Act XIV of 1859, but had merely imposed upon the defendant an obligation, in case the will would interfere with the ordinary Hindu law, entitling his widows to maintenance, to make allowances for their support of a kind analogous to that which the law would have provided.

2nd, that there was no condition in the will making the plaintiff's right to maintenance dependent upon her living under the same roof with the defendant and that she was, therefore, left in the ordinary position of a Hindu widow, in whose case separation from the ancestral home would not generally disentitle her to maintenance suitable to her rank and position.

3rd, that, although there was no evidence of a specific demand for maintence, there was ground for believing that maintenance had been withheld under circumstances amounting to a refusal, giving rise to a cause of action.

THIS was an appeal from a decree of the Bombay High Court, dated the 27th April 1875, affirming, with some variation as to the amount awarded, a decree passed by the subordinate Judge of Dharwar on the 20th July 1872, in a suit in which Ramabai, the present respondent, was plaintiff and Narayanrao, the present appellant, was defendant. The plaintiff was the widow and the defendant the eldest son of one Ramchandra Pant. The plaintiff's suit was to recover from the defendant six years' arrears of maintenance, and for a declaration of her right to future maintenance during her life-time. The decrees of the Court below were in the plaintiff's favour.

Mr. *Benjamin*, Q. C., and Mr. *P. Myburgh* appeared for the appellant. The respondent was not represented.

The material facts of the case, and the questions arising for determination on the appeal, sufficiently if appear in their Lordships Judgment, which was delivered by Sir Montague Smith :—

SIR MONTAGUE SMITH.—This was a suit brought by Ramabai, the widow of Ramchandra Pant, against Narayanrao Ramchandra Pant, his eldest son, to recover arrears of maintenance. The claim states : "The liability to maintain me according to the dignity of my family rests, under the Hindu law, with the defendant." Ramchandra Pant was subadar in the service of the Maharajah, the ex-Peishwa. He died on the 22nd July 1855, leaving two wives, and children by each. The defendant was the step-son of the widow Ramabai, the plantiff. A great deal of litigation has taken place in this family, owing to disputes which arose immediately after Ramchandra Pant's death. He left a will which was disputed by his youngr sons, and an action was brought, which ultimately came upon appeal to Her Majesty in Council. After considerable discussion of the evidence which had been given at great length, the will was established. Another suit was brought by the widows to recover some jewels which they alleged to be their property under the will of the testator, in which the widow failed, it being decided that the jewels, to which they might lay claim under the will, were in their own possession. This antecedent litigation does not materially affect the question arising in the present suit, except so far as it shows the estate of hostility in the family, and accounts for the withholding, by the defendant, of the maintenance to which the plaintiff was entitled. The present suit, was brought on the 18th October 1871.

One point now raised is that the maintenance is barred by limitation ; the other point is that the maintenance is payable under the will of Ramchandra Pant, and that it is a condition precedent to the right to obtain it that the widow should live under the same roof in joint family with the defendant. Those are the two principle points which have been raised. A third point is that there has been no demand and refusal of the maintenance.

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The case has been tried in the Courts below upon several issues which it is not necessary to mention in detail, inasmuch as the three points just indicated are those which alone are relied upon at the bar. The result of the suit in the Courts in India was that the Subordinate Judge awarded a sum of Rs. 300 per mensem to the plaintiff for maintenance, and gave her arrears for six years amounting to Rs. 21,000. The High Court reduced the monthly allowance to Rs. 200, and proportionately reduced the amount of arrears, giving the sum of Rs. 14,400.

To comprehend the argument on the points which alone remain for decision, it is necessary to refer to the will of Ramchandra Pant. It is stated in the report of the appeal to Her Majesty in the 9th Moore's Indian Appeals, page 101. Mr. Benjamin read the will from this report. It is thus stated : "The effect of it, according to the English translation as made in the Zilla Court, was to declare that the testator was seventy-five years of age, that his eldest son had two sons and one daughter, and that his younger sons were childless. It then proceeded to express his hopes that his wives and his sons would all alive amicably together, and that all would look upon and consider his eldest son as the head of his family after his death. He then bebueathed the whole of his property, real and personal, to his eldest son, directing him to provide for both of his wives and to pay them proper respect, and to provide also for his younger brothers and for the testator's dependents; and he declared that he had made these provisions with a view to prevent dissensions in the family, and to enable them to live in peace and harmoney after his decease. If, however, the younger sons should not feel disposed to abide by these directions, and should insist on a separation from the family, then the eldest son was to receive the rents of two villages mentioned in the will, and pay over the proceeds to his younger brothers as such proceeds were from time to time received, and he was further to pay to each the sum of Rs. 25,000. The testator then gave Rs. 13,000 for the benefit of his granddaughter, the daughter of the appellant, on her marriage, and allotted Rs. 40,000 for what he calls the customary outlay in the first year after his death, including religious pilgrimages." The words of the will relating to the

points in issue, according to one of the translations in the present record, to which attention was called by the learned counsel during the argument, were : "Nana, the eldest son, shall provide for both the mothers, treating them with great respect ; and he shall regard each of his two younger brothers as a son, providing for them, and my old servants, in a manner be fitting their several conditions in life."

The testator's property appears to have been self-acquired, and consisted of some villages and large sums of money in Government paper, and other personal property, and he refers in his will to an expected pension from the East India Company. It has been conceded at the bar that whatever was given by the testator to his wives in his life-time was not given in lieu of maintenance ; in fact, all that was given to them were son jewels, no doubt of considerable value. Nor has any question been made at the bar that, if the plaintiff is entitled to succeed, the amount awarded by the High Court is excessive. The only questions are those which have been already mentioned.

The first question arises upon the Statute of Limitations, and it is contended and this action is barred altogether, both for the maintenance and the arrears, by sub-section 13 of the 1st section of Act No. XIV of 1859, which is in these terms : "To suits to enforce the right to share in any property, moveable or immoveable, on the grounnd that it is joint-family property ; and to suits for the recovery of maintenance, where the right to receive such maintenance is a charge on the inheritance of any estate ; the period of twele years from the death of the persons from whom the property, alleged to be joint, is said to have descended, or on whose estate the maintenance is alleged to be a charge." It was contended that, under the will of the testator, the maintenance is made by the will a charge upon the estate. The effect of the will is, no doubt, to give the whole property of the deceased to the eldest son, mainly because he appears to have had more confidence in his eldest son than in the younger ones. But whilst given the estate to the eldest son he recognizes the claims, by Hindu law, of the younger brothers and the widows to maintenance. He makes specific provisions with regard to the younger brothers, giving

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them the profits of particular villages, but he makes no specific arrangment for the widows. He merely requires that they should be maintained, and treated with proper respect. He creates no charge on any specific portion of his property, but imposes an obligation upon the defendant to make allowances for the support of the widows of a kind analogous to the maintenance to which widows by Hindu common law are entitled, supposing probably that by his will he might have interfered with that law. It is to be observed that in the former suit brought by the widows they claimed under the will, and to take the benefit of it.

Assuming this to be the proper construction of the will, their Lordships think that the Subordinate Judge was right in his conclusion that it did not create a right which was a specific "charge oh the inheritance of any estate" within the meaning of those words in the 13th sub-section of the statute.

The language of two Act is not very clear ; and by two subsequent statutes of limitation the events from which the same of limitation is to run in the case of maintenance are wholly different. By common law the right to maintenance is one according from time to time according to the wants and exigencies of the widow ; and a Statute of Limitation might to much harm if it should force widows to claim their strict rights, and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable.

The only authority cited by the Subordinate Judge is the case of *Timmappa Bhat* v. *Parmeshriamma*(1) which sustains his judgment, though the facts are not altogether the same as the facts of the case now under appeal. No decision was cited at the bar opposed to the construction which the Subordinate Judge has put upon the Act.

Their Lordships have observed with some surprise that no mention of this points, which is undoubtedly one of some importance, was made in the judgment of the Hight Court, and they think that when an appellant comes to complain of the judgment of a Court upon a point which does not appear upon their judgment, it

(1) 5 Bom. H. C. Rep. (A. C. J.) 130. See the observations of Gibbs, J., at p. 132.

would be proper, and at least convenient, that some explanation should be given why the point does not so appear. It may be that this point was disposed of in the course of the argument. In the absence of explanation the High Court must be taken to have agreed with the Subordinate Judge.

The second point made was the plaintiff has disentitled herself to maintenance by separating from the son and living apart from him. It is argued that it was made condition of the will, to entitle her to maintenance, that she should reside under the same roof in joint-family with him. Their Lordships, however, think that no such condition is to be found in the will, and that she was to be left in this respect in the ordinary position of a Hindu widow, in which case separation from the ancestral house would not generally disentitle her to maintenance suitable to her rank and condition.

It was then said that no action could be maintained, because a demand and refusal had not been proved. There is no evidence that a specific demand was made for the maintenance; but the Subordinate Judge has found, and the High Court have not disagreed with him, that the maintenance was refused; and, taking all the circumstances of this family into consideration, their Lordships do not doubt that there was a with holding of this maintenance by the son under circumstances which would amount to a refusal of it.

These observations dispose of all the points which have been raised at the bar, and their Lordships think that this appeal fails, and they will humbly advise Her Majesty to affirm the decree of the Court below.

Appellant's agents.—Messrs. *Brooks, Jenkins & Co.*