

4 B. 261.

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice F. D. Melvill.

1879

SEPTEMBER

APPELLATE

DATE

CIVIL

4 B. 261.

RAMCHANDRA VISHNU BAPAT (Original Defendant), Appellant v.
SAGUNABAI (Original Plaintiff), Respondent.*
September, 1879.]

Hindu law—Maintenance—A widow's right to separate maintenance.

A Hindu widow is not bound to reside with the family of her husband, and, if he were in union with them at the time of his death, she is entitled to a separate maintenance where the family property is sufficiently large to admit of an allotment of separate maintenance to her.

Where, however, the plaintiff, a Hindu widow, was satisfied for several years with the maintenance, viz., Rs. 16 per annum, fixed in an agreement executed by her and the defendant, and where the family of the husband was large and the family property small, the defendant being willing to maintain her in his house like the other members, the High Court declined to increase the amount, but gave the widow the right to elect between taking that sum and living separately or accepting the defendant's offer to receive and maintain her in his own house in the same manner as the other members of his family.

[F., 22 B. 52; R., 11 B. 199.]

THIS was a second appeal from the decision of W. M. Coghlan, Judge of the District Court at Thana, amending the decree of Narayan Bulvant, Subordinate Judge (Second Class) at Alibag. The plaintiff Sagunabai, widow of Sadashiv Vishnu, brought this suit against Ramchandra Vishnu, brother of her deceased husband, for Rs. 72, on account of her maintenance at Rs. 4 per mensem for eighteen months from the 26th March 1876 to the 8th September 1877. The plaint was filed on the 24th September 1877.

[262] The defendant answered that the plaintiff had agreed to live separately, and to receive Rs. 16 per annum for her maintenance; that she had executed an agreement (Ex. No. 36) to that effect on the 21st February 1866, according to which he was ready and willing to act.

The Subordinate Judge found the agreement proved, but held that it did not bind the plaintiff. He awarded maintenance to the plaintiff at the rate of Rs. 25-8-0 per annum.

In appeal the district Judge also held the agreement not binding upon the plaintiff, but that the amount awarded by the lower Court was insufficient. He increased it to Rs. 36 per annum, and made a decree accordingly on the 8th January 1879.

The defendant appealed to the High Court.

Ghanasham Nilkant, for the appellant.—The defendant is not entitled to anything more than what she had agreed to. There is no allegation that this agreement was obtained by fraud or imposture. It has been acted upon for many years. The lower Courts, therefore, were wrong in holding that it did not bind the plaintiff. Moreover, the plaintiff did not object by any cross appeal to the amount of maintenance decreed to her by the first Court. The plaintiff is not justified in living separately from the family of her husband, and is not entitled to claim separate maintenance, except as provided in her own agreement. The defendant

1879 is ready and willing to receive and maintain her in his own house like
 SEPTEMBER the other members of the family.

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 APPEL- Pandurang Balibhudra, for the respondent.—A Hindu widow is
 LATE entitled to separate maintenance, as held in *Kasturbai v. Shivajiram*
 CIVIL. *Deokurna* (1).

JUDGMENT.

4 B. 261.

WESTROPP, C.J.—Taking into consideration that the plaintiff entered into the agreement (Exhibit No. 36) so far back as the 21st February 1866, and has not filed this suit until the 24th September 1877, she must either have been satisfied with the maintenance fixed upon in that agreement, or, if she declined to receive it, must have found the means of maintenance independently of it. The defendant is willing to receive her into his family, and to maintain her in the same way as the other members [263] of the family, if she resides with him. The evidence shows that the means of the family are limited to the produce of, at the utmost, 25½ bighas of land, subject to a considerable assessment payable to Government, and, further subject to family debt, and that the family consists of thirteen members. A Hindu widow is not bound to reside with her late husband's family, and if he were in union with that family at the time of his death, she is entitled to a separate maintenance where there is family property, and it is not so small as not reasonably to admit of an allotment to her of separate maintenance—*Kasturbai v. Shivajiram Deokurna* (1): but though it may not be so small as to prevent any allotment of maintenance to her, yet it may be so small, or the family may be so numerous, as to admit only of a very moderate payment for a separate maintenance. Here, as we have said, the plaintiff was satisfied with the sum stipulated in the agreement for several years, and there is no proof that she was imposed upon—the family property is small and the family is large; hence, although the sum named in the agreement is itself small, yet we do not think that, under the circumstances of this case already noticed, the Court ought to increase that amount. The only variation which this Court is disposed to make, is to give to the widow the right to elect between taking the sum named in that agreement and living separately from her late husband's family, or of living with that family and being maintained and clothed by them in the same manner as the other members of that family. The decree of the District Judge must be varied accordingly, and the parties must respectively bear their own costs of the suit and both appeals.

Decree varied.