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APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice.
Nanabhai Haridas.*

KALU (ORIGINAL DEFENDANT), APPELLANT *v.* KASHIBAI *alias*
LAKSHMIBAI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1882
December 19.

Hindu law—Son's widow—Right to maintenance as against a father-in-law where there is no family property.

A Hindu widow sued her father-in-law for maintenance for herself and her infant children. It was found that the defendant held no ancestral property, and that the property which he possessed was exclusively his own self-acquired property.

Held that they had no legal right to be supported by the defendant, notwithstanding that they were in indigent circumstances.

THIS was a second appeal from the decision of R. F. Mactier, Judge of the District Court of Satara, affirming the decreè of the Second Class Subordinate Judge of Wai.

This suit was instituted by the plaintiff Kashibai to recover maintenance for herself and her four infant children, at the monthly rate Rs. 5 for each. She alleged that the defendant Kalu was the father of her husband Vithu, who died on the 15th November, 1879; that she had three sons and a daughter (all minors) by the said Vithu; that she had asked the defendant to allow her and her minor children to live with him and to maintain them, but that he refused to do so; that the defendant had a large family property.

The defendant answered that his deceased son had been separated from him for thirty years that he (defendant) had had no ancestral property in his hands; that the property which he had possessed was self-acquired, and that the plaintiff and her children had no right to claim maintenance from him.

The Subordinate Judge awarded maintenance to the plaintiff and her children at the monthly rate of Rs. 3 each, to be paid by the defendant to the plaintiff till the children attained their majority.

In appeal the District Judge found that the defendant had no family property in his possession. But, following the decision

* Second Appeal, No. 46 of 1882.

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in *Udaram Sitaram v. Sonkabai* (1), he held the plaintiff and her children entitled to be maintained by the defendant. He, accordingly, affirmed the decree of the first Court.

The defendant appealed to the High Court.

Manekshah Jehangirshah for the appellant.—The lower Court has found that there is no family property in the possession of the defendant. The question is whether he is bound to maintain his daughter-in-law and her children out of his self-acquired property. I submit he is not, as held in *Savitribai v. Lakshmibai* (2), *Gangaram v. Sitaram* (3), and *Khettur Moni Dosi v. Kashinath Dos* (4). A Hindu may dispose of his self-acquired property as he likes. Nobody has a right over it as against the owner.

Nagindas Tulsidas for the respondent relied upon *Udaram Sitaram Sonkabai* (5).

Manekshah in reply.—The decision in *Udaram Sitaram* (6) must be considered as overruled by the later Full Bench decision of this High Court in *Savitribai v. Lakshmibai* (7).

SARGENT, C. J.—The District Judge has found that there was no ancestral property in the family of the respondent's deceased husband, and that the property which his father Kalu now possesses is exclusively his own self-acquired property. The question for our consideration is whether, under these circumstances, the widow and her infant sons, who are admittedly in indigent circumstances, have any legal claim to be supported by the appellant.

The legal obligation of a father-in-law to support the widow of his deceased son came before a Divisional Bench of this High Court, consisting of Mr. Justice West and Mr. Justice Nanabhai, in *Udaram Sitaram v. Sonkabai* (8). The facts of the case are unfortunately not stated by the Reporter as fully as might be wished, nor do the judgments delivered by the Court enable us to ascertain them with certainty. Mr. Justice West having

(1) 10 Bom., H. C. Rep., 483.

(5) 10 Bom., H. C. Rep., 483.

(2) I. L. R., 4 Bom., 573.

(6) 10 Bom., H. C. Rep., 483.

(3) I. L. R., 1 All., 170.

(7) I. L. R., 4 Bom., 573.

(4) 2 Beng. L. R., A. C. J., 15; S. C.

(8) 10 Bom., H. C. Rep., 483.

stated the question to be whether there was a legal obligation on the part of the father-in-law to support his indigent daughter-in-law, and referred to the cases, says: "The result is that the Hindu law, which still, notwithstanding separation, leaves to the other members of the family an interest in the property of the separated member to be realized on his widow's death, conversely gives to him and to his widow a claim to maintenance if, through destitution, they should come to need it." These remarks seem to assume that there had been joint family property. Mr. Justice Nanabhai, however, deals with the question on broader grounds; he says: "According to Hindu law among the duties of the head of a family that of maintenance by him of all the dependent members of that family is considered a primary duty. There can be no question but that the widow of a son is a dependent member of her father-in-law's family. She is, therefore, entitled to maintenance from the head of the family, her father-in-law." Further on he says: "And this right of hers would seem to be quite independent of any property acquired by her father-in-law from his deceased son, as well as of any ancestral property in which such son had a joint interest with him."

The question as to the right to maintenance by a widow from her husband's relations generally came before a Full Bench in *Savitribai v. Lakshmbai* (1), where the claim was sought to be enforced by a widow against her deceased husband's grandmother and uncle. The Court rejected the claim on two grounds—1st, that the defendant, the uncle, was separated in estate from the plaintiff's husband at the time of his death; 2nd, that at the institution of the suit the defendant had not in his hands any ancestral estate or any estate which had belonged to the plaintiff's husband. The judgment of the Court shows that the above grounds of its decision were based on the conclusion, arrived at after an examination of the Hindu text-books, that when the Hindu jurists speak of the right of the females of the family (other than a wife or mother) to maintenance without reference to the existence of family property "their tone is only preceptive, and the injunctions they contain are rather of ethical than of legal obligation". No text has been cited to us bearing on the

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obligation of a father-in-law in particular which militates against the above conclusion; and that the Full Bench itself regarded it as applicable to the case of a father-in-law, is shown by its expression of opinion that the decision in *Udaram v. Sonkabai* could only be supported on the supposition of there having been ancestral property, and that the father and son were undivided in estate. The principle of the decision of the High Court of the North-Western Provinces in *Gangaram v. Sitaram* (1) is a distinct decision against the liability of the father-in-law; and in the important Full Bench Calcutta case of *Khettur Moni Dosi v. Kashinath Dos* (1) we find Peacock, C.J., Macpherson, J., and Norman, J., expressing a strong opinion in accordance with the view of the Full Bench of this Court.

In this state of the authorities we must hold that Kashibai has no legal claim to maintenance against the defendant. It remains to consider the right of the infant grandsons to be supported by their grandfather. In support of this claim reliance was placed on the text of Manu, cited 3 Dig., Bk. V, chap. vi, sec. 2, and of art. 1: "A mother and a father in their old age, a virtuous wife, and an infant son, must be maintained, even although doing a hundred times that which ought not to be done." This text was treated by the Full Bench in its judgment in *Savitribai v. Lakshmbai* as mandatory in its tone and creating a legal obligation. It was urged that the word "son" is not to be construed literally, but in the larger sense in which it is frequently used in the Mitakshara as meaning descendants. However, in the passage of the Mitakshara on *sabhaction* of gifts, cited Strange's Manual, sec. 209, it is said: "Where there may be no property, but what has been self-acquired, the only persons whose maintenance out of such property is imperative are aged parents, wife, and minor children." It is true that in the passage in the Digest, where the text of Manu is cited, Jaganath would appear to regard the text as capable of being construed so as to comprise the son's family generally, whilst admitting that others might insist on the strict construction. It is to be remarked, however, that a man's aged parents, his wife, and his infant children appeal to

(1) I. L. R., 1 All., 170.

(2) 10 W. R. F. B., 89.

his protection in a special manner in which no other relations do, and the strength of the expression used in the injunction as to their protection points to children only being intended. To extend the legal obligation to descendants would impose in many cases a heavy burden. On the whole we think that, whatever the extent of the moral obligation may be amongst Hindus, the legal obligation should not be carried beyond what the language of the text creates according to its plain and obvious sense. The decree of the Court below must be reversed. Parties to pay their own costs throughout.

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Decree reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kembell.

VASUDEV BHAT (ORIGINAL PLAINTIFF), APPELLANT, v. NARAYAN
DAJI DAMLE (ORIGINAL DEFENDANT), RESPONDENT.*

1882

December 19.

Hindu law—Gift of land—Necessity of possession—Registration not equivalent to possession.

The plaintiff sued for possession of certain lands, alleging that they had been given to him under a deed of gift registered. It was found that no possession was given to him under the deed. It was contended for him that his title was complete without possession, as the deed had been registered, and that the object of the rule as to possession was to give publicity to the transaction.

Held that the plaintiff was only entitled to the land of which he had been put into possession.

According to Hindu law, in order to give complete validity to a gift of land as between donor and donee, the donee must be put into possession.

Registration gives the donee neither actual, constructive, nor symbolical possession, and, therefore, cannot be regarded as equivalent to delivery and acceptance.

THIS was a second appeal from the decision of J. L. Johnstone, Acting Assistant Judge at Ratnagiri, partially reversing the decision of K. S. Joglekar, First Class Subordinate Judge at the same place.

* Second Appeal, No. 668 of 1881.