

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

NURRIBI (ORIGINAL PLAINTIFF), APPELLANT, v. HUSEN LAL (ORIGINAL DEFENDANT), RESPONDENT.*

1883
September 6.

Act XI of 1865, Sec. 6†—Jurisdiction—Court of Small Causes—Suit by the mother of a child to recover from the father the cost of its maintenance.

A Mahomedan wife, divorced by her husband while pregnant, subsequently gave birth to a son. The father refused to maintain the child, which was, therefore, maintained by the mother, who now sued the father to recover the amount expended by her in the child's maintenance.

Held that the obligation on which the suit was based was one, if it existed at all, that was imposed on the father by the law, and did not arise out of any contract, express or implied; hence the suit was one not cognizable by a Court of Small Causes, but by the ordinary Civil Court.

THIS was a reference by S. H. Phillpotts, Judge of Ahmedabad, under section 617 of the Code of Civil Procedure, for the orders of the High Court.

The plaintiff was the 'nika' wife of the defendant, and was divorced by him on the 12th of October, 1880. She was pregnant at this time, and gave birth to a son on the 10th of April following. She subsequently requested her late husband to support the boy, but he refused to do so. She accordingly maintained him herself, and sued the defendant to recoup herself. She presented her plaint to the Judge of the Court of Small Causes at Ahmedabad, who returned it, on the ground that he had no jurisdiction. The plaint was next presented to the Subordinate Judge at Ahmedabad, who in his turn refused to accept it, on the ground that it was cognizable by the Court of Small Causes, and not by the ordinary Civil Court. The plaintiff thereupon appealed to the District Judge. The Judge was of opinion that the suit was one on an implied contract to recover the price of necessaries supplied to the infant for his nurture, and being for an amount

* Civil Reference, No. 30 of 1883.

† Section 6.—The following are suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of five hundred rupees, whether on balance of account or otherwise.

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les; than Rs. 500 was cognizable by the Small Causes Court; but entertaining a doubt on the subject, submitted the case to the High Court.

There was no appearance by either party in the High Court.

WEST, J.—The obligation of a father to support his child is one imposed on him by the law of the family in some form or other, either of civil or criminal liability (see *Bazeley v. Forder*⁽¹⁾), under every civilized system. If the father fails to support a child, it is the mother's duty to nurture it if she can. Whether she can recover the amount necessary for this purpose from the father according to the Mahomedan law is a question that the Court will have to try. But the father's obligation to recoup the mother, and to provide money for the future maintenance of his child by a wife whom he has divorced during her pregnancy, is one which, if it subsists, does not arise from contract, but is imposed on the father by the law, without any bargain or assent on his part. The suit, therefore, in this case is not one cognizable by a Small Cause Court, but by the ordinary Civil Court, and the order for returning the plaint made by the Subordinate Judge should be set aside, and the suit dealt with on its merits.

(1) L. R., 3 Q. B., at p. 564.

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RAMLINGA KHANAPURE (ORIGINAL PLAINTIFF), APPELLANT, v. VIRUPAKSHI KHANAPURE (ORIGINAL DEFENDANT), RESPONDENT.*

Hindu law—Partition—Agreement never to divide—Perpetuity.

An agreement between co-parceners never to divide certain property is invalid by the Hindu law as tending to create a perpetuity.

THIS was a second appeal from the decree of G. Druitt, Assistant Judge of Poona at Sholapur, reversing the decree of the Subordinate Judge of Barsi.

The plaintiff Ramlinga sued his elder brother, Virupakshi, for partition of certain immoveable property. The defendant an-

* Special Appeal, No. 477 of 1882.