

It is also, we think, an instrument executed by an agriculturist within the meaning of the section, even though only one of the executants is an agriculturist.

The Judge of the Court of Small Causes, in admitting the unregistered *khata* in evidence against the defendant, who is not an agriculturist, and in making a decree thereon, has, we think, acted illegally; for s. 56 of the above-mentioned Act provides that no instrument to which that section is applicable shall be "admitted in evidence for any purpose," unless it is written by or under the superintendence of, and attested by, a village-registrar. The use of the words "for any purpose" shows that the instrument in question, which was not written, and attested in accordance with the section, could not be admitted in evidence in any case whatsoever, not even to enforce a liability against one who was not an agriculturist.

We reverse the decree of the Court of Small Causes, and reject the plaintiff's claim with costs.

*Decree reversed.*

13 B. 218.

[218] APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

MULJI BHAISHANKAR AND ANOTHER (*Original Defendants*),  
Appellants v. BAIUJAM (*Original Plaintiff*), Respondent.\*

[16th April, 1888.]

*Hindu law—Widow—Widow's right to separate maintenance—Widow directed by the husband to be maintained in the family house—Just cause for not living in family house—Imputation of unchastity.*

A Hindu widow, who is directed by her husband to be maintained in the family house, is not entitled to maintenance if she resides elsewhere without a just cause.

P., a Brahmin, resided at Kava and died there in 1874 while his wife (the plaintiff), was living with her parents at Dabhoi. By his will he devised the greater part of his property to his nephew M., and bequeathed a house and certain other property to his wife "if she came to live at Kava." In 1883 the plaintiff sued M. and his brother for arrears of maintenance, alleging that they were in possession of her deceased husband's property, and, therefore, were liable for her maintenance. The defendants pleaded that the plaintiff led an immoral life, and had, therefore, forfeited her right to maintenance. They further contended that she was not entitled to maintenance, unless and until she came to reside at Kava, as directed by her husband's will. The Assistant Judge found that there was no evidence of plaintiff's unchastity, and that under the circumstances she could not live happily at Kava, where she had no relation, except the defendants, who had endeavoured to blacken her character. He awarded the plaintiff's claim.

*Held*, by the High Court confirming the decree, that the plaintiff had "a just cause" for not living with the defendants.

[R., 15 B. 236 (239); 24 C. 646 (656).]

SECOND appeal from the decision of W. H. Horsely, Acting Assistant Judge of Broach, in appeal No. 44 of 1885 of the district file.

of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-Registrar:

"Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding."

\* Second Appeal No. 164 of 1886.

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This was a suit by a Hindu widow to recover arrears of maintenance.

The plaintiff's husband, Prannath, was an Owdich Brahmin living in the village of Kava, in the Broach District.

In November, 1874, while the plaintiff was residing with her parents at Dabhoi, Prannath died. He left a will by which he devised the greater part of his property to his sister's son, Mulji Jethabhai, subject to the following provision for his wife's (the plaintiff's) maintenance:—

[219] "I have married a wife from Dabhoi, in the Baroda territory. Her name is Bai Ujam. She is at present with her parents there. If she comes to live at Kava, she is to have one of the houses and two sets of raiment and 18 maunds of grain and Rs. 15 in cash for miscellaneous expenses."

In 1883 the plaintiff sued Mulji Jethabhai and his younger brother to recover two years' arrears of maintenance, alleging that as they were in possession of her deceased husband's property, they were liable for her maintenance.

The defendants pleaded (*inter alia*) that the plaintiff led an immoral life, and had, therefore, forfeited her right to maintenance; and that she could not claim maintenance, unless and until she came to reside at Kava, as directed in her husband's will.

The Subordinate Judge of Jambusar dismissed the suit, on the ground that the plaintiff was not entitled, under the will, to claim separate maintenance at any other place than at Kava.

On appeal, the Assistant Judge found that there was no evidence to prove plaintiff's unchastity, and that it would be a hardship for the plaintiff to leave her parents' house at Dabhoi and take up her residence at Kava, where she had no relation or fellow members of her caste except the defendants, who had endeavoured to injure her character and to deprive her of her right to maintenance. He, therefore, reversed the decree of the Subordinate Judge, and awarded the plaintiff's claim, with costs throughout.

Against this decision the defendants appealed to the High Court.

*Gokuldas K. Parekh*, for the appellants:—The law is well settled that a Hindu widow is ordinarily not bound to reside in the family house in order to be entitled to maintenance out of her husband's estate. But it is also equally settled law that where the husband expressly directs the wife to live in the family house, and then to receive maintenance, the wife is bound to obey that direction. She cannot live elsewhere and claim maintenance—*Narayanrao Ramchandra Pant v. Rama Bai* (1); [220] *Raja Pirthee Singh v. Bani Rajkoer* (2); *Shamacharan Sarkar's Vyavastha Darpan*, p. 370.

*M. B. Chaubal*, for the respondent:—The *Vyavastha* just cited shows that a widow can reside elsewhere for a just and proper cause, even though the husband has directed her to live in the family house. The defendants' conduct is a sufficient justification for the widow to live apart. To compel her to live with them would be to make her miserable.

#### JUDGMENT.

BIRDWOOD, J.—The plaintiff's husband, by his will, made the plaintiff's right to a widow's maintenance conditional on her residing at Kava. The defendants, who are in possession of the husband's property

(1) 3 B. 415=6 I. A. 114.

(2) 12 B. L. R. P. C. 238 (219).

under the will, refused to give her any maintenance unless she lived with them there. According to the *Vyavastha* No. 226, quoted at p. 261 of Volume I of Shamacharan Sarkar's "*Vyavastha Chandrika*," a widow is "not entitled to maintenance by residing elsewhere without a just cause if she was directed by her husband to be maintained in the family house." In the present case, the Assistant Judge has found that the defendants have sought to blacken the plaintiff's character by raking up, without justification, an old scandalous story against her, and is of opinion that she could not, under the circumstances, live happily at Kava. He also finds that the defendants have interpolated a passage into the will, for future use against the plaintiff, to the effect that the will had become necessary because she had not acted according to the testator's commands. We think that the plaintiff has a just cause for not living with the defendants; and on this ground we confirm the decision of the Assistant Judge, with costs.

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*Decree confirmed.*

13 B. 221.

[221] APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

BAJAJI KRISHNA (*Original Defendant*), Appellant v. PIRCHAND BUDHARAM (*Original Plaintiff*), Respondent.\*  
[17th April, 1888.]

*Sale for arrears of revenue—Suit for possession of land—Fraud—Limitation Act (XV of 1877), arts. 12, 95 and 144.*

The plaintiff's land was sold by the revenue authorities for arrears of assessment due to the *inamdar*. The plaintiff applied to the Mamlatdar to have the sale set aside on the ground of fraud on the part of the *inamdar*, but his application was rejected; and the sale was confirmed, in July, 1879. The auction-purchaser was thereupon put in possession. In 1886, the plaintiff sued to recover possession of the land in question.

*Held*, that the suit, having been brought more than one year after the date of the sale, was barred by art. 12, cls. (b) and (c) of sch. II of the Limitation Act (XV of 1877). The sale was one in pursuance of an order of the Collector or other officer of revenue, and if not for arrears of Government revenue was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff, as occupant of the land, was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale is a perfectly good title until the sale is set aside in due course of law.

*Held*, also, that the plaintiff's allegation, that the sale took place in consequence of the fraud of the *inamdar*, would make, not art. 144, but art. 95, applicable to the case.

[D., 14 A. 498 (499).]

APPEAL from the order of remand passed by T. Hart Davies, Acting Assistant Judge of Poona, in appeal No. 308 of 1886.

The plaintiff sued to recover possession of a piece of land, alleging that defendant No. 1, the *inamdar*, had fraudulently caused the land to be sold by the revenue authorities for default of payment of assessment, though nothing was really due to him. The land was purchased by defendant No. 2 at the auction sale. The plaintiff applied to the

\* Appeal from Order No. 6 of 1888.