

1890

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15 B. 236.

## APPELLATE CIVIL.

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LATE  
CIVIL.

15 B 236.

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

GIRIANNA MURKUNDI NAIK, MANAGER (*Original Plaintiff*),  
*Appellant v.* HONAMA KOM TIMMAPA NAIK (*Original Defendant*),  
*Respondent.*\* [12th August, 1890.]

*Hindu widow—Residence in family house directed by husband—Right to maintenance.*

A Hindu widow, whose husband has directed that she shall be maintained in the family house, is not entitled to maintenance if she reside elsewhere without cause.

[F., 36 B. 131 = 13 Bom. L.R. 1023 = 12 Ind. Cas. 708 ; R., 24 C. 646 (656) ; D., 36 B. 383 = 14 Bom. L.R. 267 = 14 Ind. Cas. 821.]

SECOND appeal from the decision of Gilmour McCorkell, District Judge of Kanara.

This was a suit brought by the plaintiff Honama to recover arrears of maintenance from the defendant Girianna, the undivided nephew of her deceased husband.

The defendant contended (*inter alia*) that the plaintiff was not entitled to recover maintenance, as the will made by the plaintiff's [237] husband directed her to reside with the defendant till his wife attained majority, and that his wife was still a minor.

The Subordinate Judge found that the plaintiff was, under her husband's will, bound to stay with the defendant till his wife attained majority, and that the plaintiff had left the defendant's house a year after her husband's death. The Subordinate Judge rejected the plaintiff's claim.

Against the decree of the Subordinate Judge the plaintiff appealed to the District Court. The District Judge reversed the decree of the Subordinate Judge, and allowed the plaintiff's claim ; but, in dealing with the question of cost, remarked, "as her (plaintiff's) conduct in the matter is most immoral, I direct that she pay all costs in both Courts."

Against the decree of the District Court the defendant appealed to the High Court.

*Narayan Ganesh Chandavarkar*, for the appellant.

No one appeared on behalf of the respondent.

## JUDGMENT.

SARGENT, C.J.—The District Judge is mistaken in considering that the ruling, as laid down in Mayne's Hindu Law, para. 415 (4th ed.), *viz.*, that "if a husband chose by his will to make it a condition, that his widow should reside in the family house, such a direction would be binding," is "at variance with the enlarged and liberal spirit which has in later years actuated our High Courts in dealing with questions as to the separate maintenance of widows." No doubt it is now well established that a Hindu widow is not bound to reside in her deceased husband's family house, and does not forfeit her right to maintenance by going to reside elsewhere, unless she leaves the house for an improper purpose—*Raja Pirihee*

\* Second Appeal No. 741 of 1899.

*Singh v. Rani Rajkooer* (1), but the Privy Council in their judgment in that case refer to the passage in the Vyavastha Darpana of Shamachurn Sircar, in which it is said: "The widow is not entitled to maintenance by residing elsewhere without a cause, if she was directed by her husband to be maintained in the family house," and point out that in that case there was no such direction. The law as laid down in Vyavastha Darpana [238] was also followed by Birdwood and Parsons, JJ., in *Mulji Bhaishankar v. Bai Ujam* (2). In that case they held that the defendant's conduct to the widow was such as to justify her leaving the place mentioned in her husband's will for her residence. Here, although the Judge's remarks in dealing with the costs show that he considered the widow had been to blame, there was no distinct finding whether she had just cause for leaving. We must, therefore, reverse the decree and send the case back for a fresh decision having regard to the above remarks.

Costs of this appeal to abide the result.

*Decree reversed.*

15 B. 238.

APPELLATE CIVIL.

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

BANDU (*Original Defendant*), *Appellant v. NABA (Original Plaintiff), Respondent.*\* [25th August, 1890.]

*Decree for possession, non-execution of—Title—Rightful owner—Possession—Possession taken by rightful owner without Court's intervention—Trespass.*

B. purchased land from M. and subsequently brought a suit against M. to obtain possession. He got a decree, but did not execute it within three years. M. died, and after his death and while his daughter (the plaintiff) was a minor, B. took forcible possession of the land. Eight years afterwards the plaintiff attained her majority, and she then filed this suit to recover the land. The lower Court held that B. having failed to execute his decree for possession was wrong in taking possession during the minority of the plaintiff without the intervention of a Court; that in so doing he was a trespasser, and that the plaintiff, as M.'s heir, was entitled to have possession given to her, until ousted in due course of law.

*Held* (reversing the decree) that, subject to the provision of s. 9 of the Specific Relief Act I of 1877, there is no reason for holding that in India the rightful owner dispossessing another is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law.

[F., 35 B. 79=12 Bom. L. R. 956 (970)=8 Ind. Cas. 639; Appr., 9 C. W. N. 1061 (1064); R., 36 B. 185=13 Bom. L.R. 1200=12 Ind. Cas. 913; 13 Ind. Cas. 237 =5 S.L.R. 140.]

THIS was a second appeal from the decision of S. Tagore, District Judge of Sholapur.

[239] Suit for possession. The plaintiff claimed, as heir of her father Manku, to recover certain land from the defendant. She alleged that the said land belonged to her father. He sold it to the defendant for Rs. 50, but the latter having failed to pay the price, the land remained with Manku.

\* Second Appeal, No. 591 of 1889.

(1) 12 B.L. R. 238 (249).

(2) 13 B. 218 (220).