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defendant denies the plaintiffs' title, it would be open to the Court to act under s. 23, cl. (1) of Act IX of 1887.

We reverse the order of the lower appellate Court and direct that the plaint be returned to the plaintiffs for presentation in the Court of Small Causes. The parties to pay their own costs of this appeal. Other costs to be costs in the cause.

Order reversed.

17 B. 45.

APPELLATE CIVIL.

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

MOTILAL PRANNATH AND OTHERS (*Original Defendants*), *Appellants v.*
BAI KASHI, WIDOW OF GOPAL PRANNATH (*Original Plaintiff*),
*Respondent.** [1st February, 1892.]

Hindu law—Maintenance—Widow's maintenance—Withholding of maintenance—Demand and refusal—Arrears of maintenance—Limitation—Decree providing for reduction of maintenance in event of altered circumstances of persons paying it.

K., a Hindu widow, sued the undivided brothers of her deceased husband for maintenance. She also claimed arrears of maintenance for six years prior to the institution of the suit. The Court of first instance passed a decree in her favour awarding her maintenance at the rate of Rs. 52 a year during her lifetime, but "subject to variation according to the change in defendants' circumstances for the worse." The Court also awarded her arrears of maintenance for three years only (not six as claimed) on the ground that she was only twenty years old, and had always lived with her father and been maintained by him, and that a formal demand had only been made on the defendants three years previously. On appeal, the District Court increased the rate of maintenance to Rs. 65 per annum, and awarded the plaintiff arrears for six years, holding that the fact of the demand having been made only three years before suit did not prevent her from recovering arrears for six years.

Held by the High Court that although the withholding of maintenance, which constituted the cause of action, might be proved otherwise than by a demand and refusal, yet in this case it had not been shown that there were any circumstances [46] which would amount to a refusal of maintenance. The decree of the lower appeal Court was, therefore, confirmed, except so far as it gave the plaintiff arrears of maintenance for six years, which period was altered to three years. The clause as to the reduction of maintenance in the event of altered circumstances was also struck out.

[R., 24 B. 386 (392); 13 C.P.L.R. 156 (157); 16 C.P.L.R. 30 (32); Cons., 24 M. 147 (155) (P.G.)=2 Bom.L.R. 945=5 C.W.N. 74=27 I. A. 151=10 M.L.J. 294=7 Sar.P.C.J. 761.]

THIS was a second appeal from the decision of E. H. Moscardi, Acting Assistant Judge with full powers, of Broach.

Suit to recover maintenance.

The plaintiff, Bai Kashi, widow of one Gopal Prannath, who died a minor, sought to recover from the defendants, who were the undivided brothers of the deceased, arrears of maintenance for six years prior to the institution of the suit, and also for an order directing that the defendants should continue to pay her maintenance annually in future, and that, in default, she should recover it from their property.

The defendants, Motilal, Lallubhai and Ranchhod Prannath, urged (*inter alia*) that the plaintiff was unchaste; that she had from the

* Second Appeal No. 10 of 1891.

time of her husband's death lived with her father, and that, therefore, she was not entitled to recover maintenance.

The Subordinate Judge (Rao Saheb Gulabdas Laldas) found that the allegation as to the plaintiff's unchastity was not proved, and that she was entitled to recover future maintenance and arrears thereof only for three years, and not more. He, therefore, made the following order:—

"The order is that the plaintiff do recover from the defendants Rs. 144 for the three years pending the suit, and Rs. 48 more for the period until the 16th August 1838, and the defendants do go on paying to the plaintiff her maintenance, Rs. 52 (fifty-two) a year during her lifetime, subject, of course, to variation according to the change in defendants' circumstances for the worse, on the 16th August every year from the year 1889, and that, in default of the defendants paying the same, the plaintiff may, recover the same from the family property of the defendants."

The reasons assigned by the Subordinate Judge for awarding arrears for three years only were as follows:—

"There is no objection to their award for a longer period on the ground of limitation, but the plaintiff is only twenty years [47] old. She has lived all the time with her father, and been fed by him as her natural protector. No separate accounts for her food are kept. According to the rules of the caste to which the parties belong, a female does not go to reside permanently with her husband before the age of sixteen. Until then she is simply a visitor at her husband's house, and is, therefore, generally maintained by the parents. Though, as a rule of Hindu law, the female is entitled to be maintained by her husband and his relations from the date of her marriage, it is only in theory; practically she is maintained by them after sixteen years of age. As she has been put to no expenses, and has to contract no debts, the award of a lump sum is simply to enrich her, and, therefore, it should not be for more than three years only.

"Moreover, the maintenance was demanded formally only three years ago from the defendants. This is also one of the principal grounds why she should not get a lump sum as arrears for a longer period."

Against the decree of the Subordinate Judge both the parties appealed to the District Court, and the District Judge being of opinion that the rate of maintenance awarded by the Subordinate Judge was lower than it ought to have been, and that though the plaintiff had demanded arrears of maintenance only for three years prior to the institution of the suit, still that circumstance did not debar her from getting the arrears for six years, varied the decree by increasing the rate of the arrears, as well as future maintenance, to Rs. 66 per annum and by awarding the arrears of six years.

The defendants appealed to the High Court, and the plaintiff respondent presented cross-objections under s. 561 of the Civil Procedure Code (Act XIV of 1882).

Manekshah Jehangirshah Taleyarkhan, for the appellants:—Though the respondent had claimed arrears of six years in her plaint, still it was during the three years prior to the institution of the suit that a demand for maintenance was made. We, therefore, contend that the lower Court was wrong in giving her arrears of six years. The Subordinate Judge awarded arrears of three years only, and he has given very good reasons for his doing so. In [48] order that a Hindu widow may be entitled to

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maintenance, there must be either a demand, or an improper withholding of maintenance from her—*Narayanrao v. Ramabai* (1); *Chanbasapa v. Cholarva* (2). The demand was made only three years prior to the institution of the suit, and no improper withholding on our part has been proved.

Chimanlal Harilal Shetalvad, for the respondent:—Irrespective of any demand or refusal, a Hindu widow is by law entitled to arrears of maintenance for six years, which is the period allowed by the Statute of Limitation (Act XV of 1877)—*Jivi v. Ramji* (3). The lower Courts have not gone into the question as to whether there was any demand and withholding, and we submit that it is not necessary in every case to prove any such demand and withholding.

The lower Courts have not conformed to the practice in framing the decree. The clause in the decree as to the reduction of the maintenance, in the event of the appellants' circumstances becoming unfavourable, should be left out.

JUDGMENT.

SARGENT, C. J.—The decision of the Privy Council in *Narayanrao v. Ramabai* (1) shows that a withholding of maintenance, which constitutes the cause of action, may be proved otherwise than by a demand or refusal. But the District Judge, in amending the finding of the Subordinate Judge which limited the arrears to three years, has not found that there were any circumstances which would amount to a refusal of maintenance as explained in the above decree. We must, therefore, confirm the decree, except so far as it gives the plaintiff arrears of maintenance for six years, which period must be altered to three years. It is not usual to reserve, in express terms in a decree for maintenance, the right of the parties paying the maintenance to ask for a reduction in the amount in the event of altered circumstances. Those words should, therefore, we think, be omitted from the decree. Parties to pay their own costs of this appeal.

Decree varied.

17 B. 49.

[49] APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

GOWRI (*Original Defendant*), Applicant *v.* VIGNESHVAR AND OTHERS
(*Original Plaintiffs*), Opponents.* [11th February, 1892.]

Parties—Practice—Appeal—Appeal by some of the parties to a suit—Decree in appeal binding parties to the suit who were not parties to the appeal—Civil Procedure Code (Act XIV of 1882), s. 244, cl. (c)—Decree—Execution.

The plaintiffs filed a suit in ejectment against A. B. and C. The Subordinate Judge decreed the claim. On appeal, the District Judge rejected it. The plaintiffs then preferred a second appeal to the High Court, which finally decided in plaintiffs' favour. To this second appeal the defendant A. was not made a party. In execution of the High Court's decree, A. was dispossessed, but was restored to possession by the Subordinate Judge under s. 332 of the Code of Civil Procedure (Act XIV of 1882). This order was reversed, on appeal, by the District Judge.

* Application No. 226 of 1891 under Extraordinary Jurisdiction.

(1) 6 I. A. 114.

(2) P. J. 1890, p. 172.

(3) 3 B. 207.