APPELLATE CIVIL.

Before Mr. Justice Fulton and Mr. Justice Batty.

BAI PARVATI (ORIGINAL PLAINTIFF), APPELLANT, *v.* TARWADI DOLATRAM (ORIGINAL DEFENDANT), RESPONDENT.* 1900. *September* 13.

Hindu law—Maintenance—Daughter-in-law—Her claim to maintenance against self-acquired property devised by her father-in-law.

The widow of a predeceased unseparated son has no right to maintenance from a person to whom her father-in-law has bequeathed the whole of his self-acquired property.

Yamunabai v. *Manubai*(1) referred to and distinguished.

SECOND appeal from the decision of Ráo Bahádur Chunilal D. Kavishvar, Additional First Class Subordinate Judge, A.P., of Ahmedabad, reversing the decree of Ráo Sáheb Karpurram M., Additional Joint Subordinate Judge at Ahmedabad.

Suit for maintenance by a Hindu widow.

One Ishwar Vithal died on 30th July, 1895, possessed of self-acquired property. He left him surviving a daughter-in-law, Bai Parvati, the widow of a predeceased son.

By his will dated the 6th July, 1895, Ishwar bequeathed the whole of his property to his nephew Dolatram Motiram (the defendant).

In 1898 Bai Parvati brought this suit against the defendant claiming maintenance at Rs. 8 a month and also Rs. 168 as arrears of maintenance from 19th October, 1895, to 19th July, 1897. She also prayed that a house should be given to her for residence.

Defendant pleaded (*inter alia*) that Ishwar, the plaintiff's father-in-law, had left no ancestral property; that under his will defendant took an absolute interest in the whole of the property left by him; and that the plaintiff had no right, as against him, to any provision for maintenance and residence.

The Subordinate Judge passed a decree directing the defendant

* Second Appeal, No. 309 of 1900.

(1) (1899) 23 Bom. 608.

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to pay to the plaintiff Rs. 48 per year for maintenance and Rs. 84 as arrears, and to give possession of a house for her residence.

The following is an extract from his judgment:—

The main question is whether the plaintiff is entitled to any maintenance, and if so, at what rate. According to the current of decisions of all the High Courts, a father-in-law has only a moral and not a legal obligation to maintain his widowed daughter in-law during his lifetime out of his self-acquired property. This moral obligation becomes a legal obligation after his death by reason of self-acquired property going by inheritance into the hands of his son or heir (see *Adibai* v. *Kasandas*, I. L. R. 11 Bom. 119; *Janki* v. *Nandram*, I. L. R. 11 All. 194; and *Deviprasad* v. *Gunvanti Koor*, I. L. R. 22 Cal. 410). The Madras High Court differs on this point (see I. L. R. 11 Mad. 91). It held that a daughter-in-law could not enforce a claim for maintenance against the self-acquired property of her father-in-law, which had passed to his grandson, unless the father-in-law showed by conduct or otherwise an unequivocal intention that it should be taken subject to the obligation of providing for her support. As the other three High Courts are unanimous on this point I am bound to follow the ruling of the Bombay High Court. But the circumstances in all these cases are distinguishable from those of the present case in one important point. It is this, that while in the present case the father-in-law died having made a will in favour of the defendant, the father-in-law in those cases died intestate. The question therefore arises, whether a devisee is under a legal obligation to maintain a widow whom the testator was morally and not legally bound to support. If a husband makes a gift of his entire estate without reserving maintenance to his widow, the donee takes subject to the liability to maintain her (see *Jamna* v. *Machul*, 2 All. 315, and *Narbadabai* v. *Mahadev*, I. L. R. 5 Bom. 99). The same principle applies to a devisee (see Mayne's Hindu Law, 5th Edition, 552). As a husband is under a legal obligation to make a provision for his widow after his death, a father-in-law is under a moral obligation to make a provision out of his self-acquired property for the maintenance of his widowed daughter. It is a settled principle of law that a devisee or a donee of the entire property of a testator or donor is liable to pay all the debts due by the testator or the donor. This liability, in my opinion, extends not only to legal debts, but also to moral obligations. For all Hindu texts maintenance by a man of his dependants is a primary duty and the principles which convert the moral obligations into legal obligations when the property descends by inheritance hold good also when it is devised under a will. In the Allahabad case mentioned above, Mr. Justice Mahamood is reported to have observed on page 214: "I think I may safely say here that in this text, as also in similar original texts of the Hindu law, the word 'debt' is to be understood in a broad sense so as to include all classes of obligations, such as moral obligations in respect of maintaining widowed daughters-in-law and expenses of the marriage of unmarried daughters." For all these reasons I hold that the plaintiff is entitled to the maintenance. Looking to the caste of the parties and taking the amount of the

property left by the deceased into consideration, I think Rs. 48 a year would be a reasonable and sufficient amount. She is also entitled to a residence and Rs. 84 as arrears.

This decision was reversed, on appeal, by the Additional First Class Subordinate Judge, A. P., who dismissed the suit. He held that there having been no ancestral property in the hands of Ishwar, the plaintiff's father-in-law, he was not legally bound to maintain the plaintiff and that under his will the defendant took his property absolutely free from all liability to provide maintenance or residence for the plaintiff.

Against this decision plaintiff preferred a second appeal to the High Court.

L. A. Shah for appellant (plaintiff).

G. S. Rao for respondent (defendant).

BATTY, J.:—The plaintiff in this case is a widow. Her husband, Motiram, died in the lifetime of his father, Ishwar Vithal, who bequeathed all his property to his nephew the defendant. None of the property is shown to have been the ancestral property of the deceased, and the will is not disputed. The plaintiff seeks in this suit to recover maintenance from the defendant, the devisee of her father-in-law. The Court of first instance declared plaintiff entitled to maintenance at the rate of Rs. 4 per mensem and to Rs. 84 as arrears, and also declared her right to a house for residence. The lower Appellate Court, however, reversed this decision of the Court of first instance and rejected the claim, holding that the widow would not have been entitled to claim maintenance from the self-acquired property of her father-in-law during the lifetime of her father-in-law, and that whatever moral obligation there might have been on the father-in-law to afford such maintenance, or whatever legal obligation might from that moral obligation have devolved on the heir of the father-in-law, the defendant having acquired not as heir, but as devisee under a will, from the father-in-law, was under no obligation whatever to maintain the plaintiff, no condition requiring him to maintain the plaintiff having been imposed on him either by the will or otherwise.

It has been contended for the plaintiff in this appeal that the

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principle on which the moral obligation of the father-in-law to afford maintenance is converted into a legal obligation binding on the heir on the devolution to him of the estate, cannot be shown on any reasonable or consistent grounds to have less force in a case where the estate of the father-in-law has passed by devise instead of devolving on an heir, and special stress has been laid upon the remarks of Mr. Justice Ranade in the case of *Yamunabai* v. *Manubai*,(1) and upon the decision of the Madras High Court in *Rangammal* v. *Echammal*.(2) The grounds of decision in the first mentioned of these two cases—*Yamunabai* v. *Manubai*—however hardly go to support the appellant's contention. That judgment points out that the spiritual benefit of the deceased owner, which the Allahabad High Court regards as the ground on which the moral obligation in the deceased is intensified into legal obligation in the heir, and the legal obligation on the heir to provide out of ancestral property for those whom his ancestors were bound morally or legally to maintain, which the Calcutta High Court regards as the ground of the heir's liability in such cases, both lead, though by divergent routes, to the same conclusion, *viz.* that the spiritual benefit of the deceased entails on the heir a special obligation when he takes the estate. And the judgment further proceeds to indicate that it is not the fact of the property being *ancestral*, but of its having been *inherited* from a source on which the widow's husband had an unextinguished claim, that renders that property liable for the widow's maintenance. Thus, the reasoning throughout the judgment seems specially to emphasize the importance of the mode of devolution by *inheritance* in determining the liability of the new holder, and it is specially observed that in the case of property self-acquired by the deceased owner, if the heir had been a testamentary devisee, the incidents of self-acquisition would protect the property even in his hands. Towards the conclusion of the judgment it is true that the liability of a father-in-law to support even from his self-acquired property the widow of a son not separated from him in interest, is said to be founded on texts which have in such cases mandatory and not merely "preceptive" force. And it is urged as a corollary from these remarks that

(1) (1899) 23 Bom. 608, and see specially p. 613. (2) (1898) 22 Mad. 305.

the person claiming from a father-in-law who was under the obligation arising from such mandatory texts, would also be under a legal obligation to maintain the widow of an unseparated son of the testator. But it is to be observed, in the first place, that the assertion of a legal obligation operating from the mandatory force of such texts, on the self-acquired estate of an unseparated father-in-law, was by no means necessary for the decision of the case in *Yamunabai* v. *Manubai*, in which the passage referred to occurs; and in the second place the dictum, if it were intended as more than a statement of recognised spiritual obligation, would be distinctly in conflict with the law as laid down in the Full Bench decision in *Savitribai* v. *Luxmibai*,[1] where it was held that the widow is *not* entitled to maintenance from her husband's relatives, whether they were separated or unseparated from him at the time of his death, if they have not any ancestral estate or estate belonging to him in their hands—*Savitribai* v. *Luxmibai*.[2] And thirdly it is to be noted that even supposing such texts to have such mandatory force as to operate upon the self-acquired property of a separated father-in-law, yet the principles recognised at an earlier part of the judgment in *Yamunabai* v. *Manubai* [3] would suffice to show that in the hands of the testamentary devisee, the incidents of self-acquisition would protect such property even in his hands.

To accept the position that the widow of an unseparated son could claim maintenance as a legal right from the self-acquired property of her father-in-law while it was still in his hands, would be to revert to the doctrine enunciated in cases distinctly overruled by the Full Bench decision in *Savitribai* v. *Luxmibai* —and this we are not at liberty to do. And if there is no such legal obligation on the father-in-law in such circumstances, there is no authority whatever for the position that a testamentary disposition of such property by the father-in-law, in exercise of his "unrestricted power of disposing of it by gift or devising it by will," would attach to it any legal obligation in the hands of the devisee any more than a gift thereof *inter vivos* would attach thereto such legal obligation in the hands of the donee. The

(1) (1878) 2 Bom. 573. (2) (1888) 2 Bom. 620 *et seq.*

(3) (1899) 23 Bom. at p. 611.

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ripening of the moral obligation into a legal obligation on devolution by inheritance is due to the operation of principles peculiar to the doctrines of Hindu law which regards as *quasi* trustee for the family, and for the spiritual benefit of the deceased owner, a member into whose hands property comes by virtue of his status as a member of the family. But property acquired by valid testamentary disposition is not governed by the rules of the Hindu law of inheritance, and when the power of making such disposition is unrestricted, it is difficult to conceive any consistent ground on which the devisee could be held bound by an obligation from which the testator had power to relieve him and by the bequest had actually relieved him. In the case of *Rangammal* v. *Echammal*,[1] the remarks relied on for the appellant in the present case appear to be mere *obiter dicta*—suggestions thrown out on which the judgment distinctly stated it was not necessary to found the decision. It does not appear to be necessary in the present case to consider the history of the doctrine at present accepted in this Court and recapitulated in the judgment in *Yamunabai* v. *Manubai*—as it seems clear that the propositions contained in that case afford a sufficient answer to the argument offered on behalf of the appellant.

The decree of the lower Appellate Court is therefore confirmed and the appeal is rejected with costs. The plaintiff is to pay the Court fees throughout, which would have been paid by her if she had not been permitted to sue and appeal as a pauper.

Decree confirmed.

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[1] (1898) 22 Mad. 305.