

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

1911.
August 29.

GANGADHAR PARAPPA ALUR (ORIGINAL PLAINTIFF), APPELLANT, v. YELLU KOM VIRASWAMI SHIRAWALE (ORIGINAL DEFENDANT), RESPONDENT.*

Hindu Law—Inheritance—Wife—Unchastity during coverture—Condonation by husband—Husband and wife.

Under Hindu Law, a widow is not disqualified from inheriting to her husband on the ground of her unchastity during coverture, if it is condoned by her husband.

Where the husband and wife have lived together, without any open breach of marital relations up to the husband's death, it would be a dangerous principle to allow mere outsiders to come in and impute acts of unchastity to the wife during the period of her coverture.

SECOND appeal from the decision of V. V. Phadke, First Class Subordinate Judge, Appellate Powers, at Belgaum, confirming the decree passed by V. V. Wagh, Joint Subordinate Judge at Belgaum.

Suit to recover possession of property, which belonged originally to one Viraswami. He died leaving him surviving his widow Yellu (the defendant) and a daughter, Ginnana. The daughter sold the property to the plaintiff who sued to recover possession from Yellu. In answer to the defendant's claim to the property, the plaintiff alleged that she (the defendant) was disqualified from inheriting her husband's property on account of her unchastity during coverture.

The Subordinate Judge found that though the defendant led an incontinent life during coverture, her husband had condoned it: and that she was not thereby incapacitated from inheriting her husband's property. He, therefore, dismissed the suit. This decree was, on appeal, confirmed by the lower appellate Court.

The plaintiff appealed to the High Court.

T. R. Desai, for the appellant.

Nilkantha Atmaram, for the respondent.

* Second Appeal No. 493 of 1910.

BEAMAN, J. :—The only question here was whether the widow was to forfeit her succession to her husband on the score of unchastity. The allegation of the plaintiff was that that unchastity was committed during the husband's life-time, and at his express desire. It is conceded that the husband and wife lived, to all appearances, happily up to the time of the husband's death. In these circumstances it appears to us that the decision arrived at by the lower Courts was perfectly right. We think that it would be a dangerous principle, where the husband and wife have lived together, without any open breach of marital relations up to the husband's death, to allow mere outsiders to come in and impute acts of unchastity to the wife during the period of her coverture. That is, speaking for myself, entirely opposed to the general policy of the law in dealing with the relation of husband and wife. We also think that the decisions of the Courts below rest upon very good authority, if we treat them from the point of view of Hindu lawyers. We are, therefore, of opinion that this appeal must be dismissed with all costs.

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Decree confirmed.

R. B.

APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Chandavarkar.

JASUDIN WALAD AMBIR SAHEB FAKI (ORIGINAL PLAINTIFF), APPELLANT, v.
SAKHARAM GANESH SHROTRI (ORIGINAL DEFENDANT), RESPONDENT.*

1911.

August 29.

Contract of sale—Vendor's interest in the property sold ceasing to exist by Government Resolution—Vendor becoming entitled to other interest—Vendee cannot sue to recover the other right—Pre-emption—Personal right—Transfer—Transfer of Property Act (IV of 1882), section 6.

The defendant, who was occupant of certain Survey Numbers, had, under a Government Resolution, a right of pre-emption in stumps of trees standing on the lands, sold the stumps to the plaintiff. After the date of the sale, Government issued another Resolution by which the right of pre-emption was abolished, and the

* Second Appeal No. 571 of 1909.