

question of fact for itself. Dealing with this question of fact, we think, the Subordinate Judge's conclusion must be accepted. He has pointed out circumstances which show that this passage has been used as a way and that both the defendant and the plaintiff have been enjoying the right. It is unnecessary to go into the reasons which the learned Subordinate Judge has given after considering the evidence upon the record, but it is sufficient to say that this Court accepts his appreciation of the evidence.

The District Judge's decree must be reversed and the Subordinate Judge's decree restored with costs both of this second appeal and of the appeal in the lower Court on the respondent.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Russell.

RANGUBAI *bhratar* KRISHNAJI RAMCHANDRA (ORIGINAL PLAINTIFF), APPELLANT, *v.* SUBAJI RAMCHANDRA AND ANOTHER (ORIGINAL DEFENDANTS 2 AND 3), RESPONDENTS, AND SUBAJI RAMCHANDRA AND ANOTHER (ORIGINAL DEFENDANTS 2 AND 3), APPELLANTS, *v.* RANGUBAI *bhratar* KRISHNAJI RAMCHANDRA AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT 1), RESPONDENTS.*

1912.

January 10.

*Hindu Common Law—Widow—Right to maintenance—Grant of arrears—
Exigencies of the case.*

By Hindu Common Law, the right of a widow to maintenance is one accruing from time to time according to her wants and exigencies.

The grant of arrears of maintenance depends on the wants and exigencies of the widow as proved in each particular case.

CROSS SECOND appeals against the decision of E. Clements, District Judge of Belgaum, modifying the decree of E. H. Waterfield, Assistant Judge.

* Cross Second Appeals Nos. 476 and 477 of 1910.

1912.

RANGUBAI
v.
SUBAJI
RAMCHANDRA.

Suit to recover arrears of maintenance.

The plaintiff alleged that her husband died in or about the year 1900 and ever since that time she had been living with her parents. Her husband was a member of an undivided family, the annual income of which was more than Rs. 2,000. The plaintiff sought to recover Rs. 648 on account of the arrears of maintenance of nine years at the rate of Rs. 72 per annum. The suit was filed in February 1909.

The defendants answered that the plaintiff had been living with them since her husband's death up to two years before the institution of the suit, that she had over-stated the income of the family and that she had some family ornaments which should be set off against her claim for maintenance.

The Assistant Judge found that the plaintiff had been living with her parents since the death of her husband, that the income of her husband's family was more than Rs. 1,000, that the plaintiff was not in possession of any ornaments belonging to the defendant's family and that maintenance at the rate of six rupees per mensem should be given to the plaintiff from the time of her husband's death. He, therefore, passed a decree for the plaintiff awarding her Rs. 72 per annum from the date of her husband's death.

On appeal by defendants 2 and 3, the District Judge found that Rs. 72 a year was a fair rate of maintenance, but he modified the decree by awarding to the plaintiff Rs. 288 on account of the arrears of four years only on the ground that there were circumstances in the case which justified him in giving the arrears for that period. He further ordered that "maintenance for 1910 to be recovered on or after 31st December 1910."

Plaintiff and defendants 2 and 3 preferred Cross Second Appeals, Nos. 476 and 477 of 1910, respectively.

V. V. Bhadkamkar for the appellant (plaintiff) in Second Appeal No. 476 and respondent 1 (plaintiff) in Second Appeal No. 477:—The District Judge dismissed the plaintiff's suit for arrears prior to 1906 on the ground that no demand was proved. We submit that it was not necessary to prove demand

and refusal to enable a widow to claim arrears of maintenance : *Parwatibai v. Chatru Limbaji*⁽¹⁾, *Jivi v. Ramji*⁽²⁾, *Ambabai kom Balaji v. Ramchandra Balaji*⁽³⁾. 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 immoral purpose : *Girianna Murkundi Naik v. Honama*⁽⁴⁾.

S. S. Patkar for respondents (defendants 2 and 3) in Second Appeal No. 476 and appellants (defendants 2 and 3) in Second Appeal No. 477 :—The arrears of maintenance are entirely within the discretion of the Court : *Raghubans Kunwar v. Bhagwant Kunwar*⁽⁵⁾. The plaintiff was bound to prove that she was in necessitous circumstances during the period for which she claimed arrears of maintenance : *Narayanrao Ramchandra Pant v. Ramabai*⁽⁶⁾. She failed to prove it. She was living with her father and she had no necessity for maintenance.

Bhadkamkar, in reply :—The question of determining the rate at which arrears are to be awarded is in the discretion of the Court. The award of the arrears of maintenance is a matter of law and is not in the discretion of the Court : *Ambabai kom Balaji v. Ramchandra Balaji*⁽³⁾. A widow having thus a legal right to maintenance, her omission to make a demand can have no more legal effect than her living separate.

SCOTT, C. J. :—This is a suit by the plaintiff for maintenance which she claims from the family of her husband. She states in her plaint that she had been living with her parents since her husband's death nine years ago.

The learned District Judge finds on the facts that the plaintiff has chosen to live apart from her husband's relations and has adduced no reason to justify herself in so doing. He says : " In 1896 she filed a suit in *forma pauperis* to recover

1912.

RANGUBAI
v.
SUBAJI
RAMCHANDRA.

(1) (1911) 36 Bom. 131.

(4) (1890) 15 Bom. 236.

(2) (1879) 3 Bom. 207.

(5) (1899) 21 All. 183.

(3) (1895) P. J. p. 44.

(6) (1879) 3 Bom. 415.

1912.

RANGUBAI
v.
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RAMCHANDRA.

maintenance, and certain exhibits show that negotiations were also being carried on at that time. But there is nothing on the record except the plaintiff's brother's uncorroborated statement to show that maintenance was demanded and refused before 1906." He, therefore, decides that maintenance should only be awarded from the 1st of January 1906.

Now, it may be that the lower Court erred in disposing of the plaintiff's claim on the ground of her failure to prove demand and refusal; we do not propose to decide the case upon that ground. But, we think, upon the findings of fact of the lower Court we must affirm the decree upon the principle stated by the Privy Council in *Narayanrao Ramchandra Pant v. Ramabai*⁽¹⁾. In that case it was decided that by the Hindu Common Law the right of a widow to maintenance is one accruing from time to time according to her wants and exigencies. Accordingly it has been decided by a Full Bench of this Court in *Savitribai v. Luximibai and Sadasiv Ganoba*⁽²⁾, that a widow's claim for maintenance should be regulated with reference, *inter alia*, to the amount of *stridhan* property which she has, available for her support. Similarly, in *Siddessury Dasse v. Janardan Sarkar*⁽³⁾, Sir Francis Maclean puts the following case: "After the plaintiff had gone to her father's house, and her father through some change of fortune had become unable to maintain her, could it be fairly contended that the moral obligation of her father-in-law to maintain her had ceased, bearing in mind what has been laid down by the Privy Council in the case of *Narayanrao Ramchandra Pant v. Ramabai*⁽¹⁾, . . . namely, that by Hindu Common Law the right of a widow to maintenance is one accruing from time to time according to her wants and exigencies. In this view the moral obligation was still subsisting at the time of the father-in-law's death."

On the facts found by the lower appellate Court, we are of opinion that there is no indication that the wants and exigen-

(1) (1879) 3 Bom. 415.

(2) (1878) 2 Bom. 573 at p. 584.

(3) (1902) 29 Cal. 557 at p. 569.

cies of the plaintiff required a grant of maintenance prior to the 1st of January 1906.

On behalf of the appellant-plaintiff reference has been made to the *dictum* of Sir Charles Sargent in *Girianna Murkundi Naik v. Honama*⁽¹⁾, where he states: "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." The answer to that argument is that Sir Charles Sargent was not there concerned with the question of the grant of arrears; and what sum will be granted for arrears, must depend, as stated by the Privy Council, on the wants and exigencies of the widow as proved in the particular case.

For these reasons we affirm the decree of the lower appellate Court and dismiss the appeals with costs.

Decree affirmed.

G. B. R.

(1) (1890) 15 Bom. 236.

PRIVY COUNCIL.*

[On Appeal from the High Court of Judicature at Bombay.]

VISSANJI SONS & Co. (PLAINTIFFS) v. SHAPURJI BURJORJI BHAROOCHA.

Guarantee—Contract, construction of—Whether contingent or unconditional agreement—Inadmissibility of evidence of what took place after the execution of the contract on question of its construction—Contract Act (IX of 1872), sections 32, 34, 56 and 65.

The question for determination in this appeal was the construction of the following letter dated 7th August 1909, which was signed by the defendant, and given to the plaintiffs as security for the repayment of the loan of Rs. 1½ lakhs mentioned therein. "In consideration of your having at my request acceded to the proposal of the Secretaries, Treasurers and

* *Present* :—LORD MACNAGHTEN, LORD ATRINSON, LORD SHAW,
SIR JOHN EDGE AND MR. AMEER ALI.