APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1918.

March 22.

KARBASAPPA *bin* GOOLAPPA NAREGAL (ORIGINAL DEFENDANT), APPELLANT *v.* KALLAVA *kom* GOOLAPPA NAREGAL (ORIGINAL PLAINTIFF), RESPONDENT.*

Maintenance—Arrears of maintenance—Suit by a Hindu widow.

The Courts dealing with claims for arrears of maintenance have a very large discretion to grant or withhold those arrears with special reference to the urgent need and necessities of the widow.

As soon as the widow satisfies the Court that she was in want at the time at which she was entitled to maintenance, provided that time is within the period of limitation, the Court might in any given case award her arrears to that extent and that would be quite independent of any demand on her part. In other words, while a demand is allowed to be *prima facie* evidence of need on the widow's part, it is not in a demand that the right to obtain arrears of maintenance is rooted. Nor indeed is any demand necessary.

FIRST appeal from the decision of T. V. Kalsulkar, First Class Subordinate Judge at Dharwar.

Suit to recover maintenance.

The plaintiff sued to recover her maintenance from the defendant who was her step son at the rate of Rs. 400 per annum and she also claimed arrears of maintenance for six years before the suit at the same rate. It appeared that she had been living with her father.

The lower Court awarded her arrears of maintenance for six years at the rate of Rs. 75 per year, and held her entitled to recover future maintenance at the rate of Rs. 120 per year.

The defendant appealed to the High Court.

V. V. Bhadkamkar, for the appellant.

Nilkanth Atmaram, for the respondent.

* First Appeal No. 67 of 1916.

The following cases were cited in arguments:—*Rangubai* v. *Subaji Ramchandra* [1]; *Mallikarjuna* v. *Durga* [2]; *Ambabai* v. *Ramchandra* [3].

BEAMAN, J.:—On the point of arrears of maintenance the case-law, to which we have been referred, yields, as far as I can see, no definite principle upon which all cases of the kind can be decided. The most that can be said of it, I think, is that the highest authority sanctions a very large discretion in Courts dealing with claims for arrears of maintenance to grant or withhold those arrears with special reference to the urgent need and necessities of the widow, and this amounts virtually to saying that every such case must be decided upon its own facts. It is very clear that as soon as the widow satisfies the Court that she was in want at the time at which she was entitled to maintenance, provided that time is within the period of limitation, the Court might in any given case award her arrears to that extent, and that would be quite independent of any demand on her part. In other words, while a demand is allowed to be *prima facie* evidence of need on the widow's part, it is not in a demand that the right to obtain arrears of maintenance is rooted. Nor indeed is any demand necessary.

In the facts before us, therefore, we have no guide in the authorities to any principle which could be uniformly used in deciding whether arrears of maintenance ought or ought not to be granted. Here, the plaintiff has asked for six years' arrears and the lower Court has awarded them, though at a lower rate than the maintenance it has decreed to her in future. We are in some doubt, however, whether the facts warrant this liberality. It must always be a factor in dealing with the

[1] (1912) 36 Bom. 383. [2] (1900) 2 Bom. L. R. 945.

[3] (1895) P. J. 44.

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merits of a particular case that the plaintiff has postponed making her claim. If during a period of six years she has been living in her father's house, while it would not be safe to conclude that she was not in want and forced by want to continue to depend upon her father's bounty, it may be the ground of a reasonable inference that she was not driven by absolute necessity to enforce her rights of maintenance against her husband's family. Then, again, in cases of this kind the criterion cannot be that the woman had found a shelter somewhere and bare subsistence. For that would not be incompatible with her having been in real want, and, as far as I can see, no very adequate ground for transferring the responsibility for her maintenance from her husband's to her natural family. But one would suppose that if the pinch of want was being very severely felt a Hindu widow would insist upon her rights, particularly if her husband's family were well-to-do, while her father's family were extremely poor, long before six years had elapsed. It can only be upon the most general ground and a balance of the most general and shifting considerations of this kind that we can come to what must be called rather a common sense than any other conclusion upon the point before us. Treating the case in that manner, we have decided that justice does not require that the widow here should have more than three years' maintenance, and to that extent we amend the decree of the Court below.

As regards the quantum of her maintenance in the future, where we find a Hindu Subordinate Judge treating a Hindu widow with so much liberality as in the present case, we should be very reluctant indeed to interfere and so suggest that we generally agree with the extremely harsh and rigorous attitude of the Hindu mind towards women so unfortunately situated as

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Hindu widows often are. We have heard all the arguments that could be addressed to us upon the somewhat meagre evidence recorded, and while on that evidence the scale of maintenance might appear to be unduly liberal, one cannot say that the learned Judge is wrong in conjecturing that the defendant has managed to conceal his true means which are very likely much more ample than is revealed in the evidence.

We do not, therefore, think it right to interfere upon that part of the case, and we would, with the slight variation suggested above, confirm the decree of the lower Court and dismiss this appeal with all costs.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Stanley Batchelor, Acting Chief Justice, and Mr. Justice Marten.

1918.

March 22.

NIJALINGAPPA NIJAPPA HALAGATTI (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* CHANBASAWA KOM SATAVIRAPPA NESARI AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 2), RESPONDENTS.*

Mortgagor and mortgagee—Redemption—Lasting improvements made by mortgagee—Right to recover costs of improvements—Transfer of Property Act (IV of 1882) sections 63, 72 and 76.

In a redemption suit, a mortgagee is entitled to recover from his mortgagor the reasonable and proper costs incurred in making lasting improvements.

Henderson v. *Astwood*(1), approved.

* Second Appeal No. 44 of 1917.

(1) [1894] A. C. 150 at p. 163.