

redeem, and did not, in view of what has been said, affect the right of the reversioners. They had sixty years to redeem under section 15 of Act XIV of 1859, and their right would not have become barred in any case either under that Act or Act IX of 1871 by reason of section 2 of Act XV of 1877. But as a matter of fact they brought their suit within twelve years of the death of the widow and within sixty years of the mortgage, and their right to redeem would not, therefore, be barred either by Article 141 or by Article 148 of the Schedule to the Limitation Act, 1908.

1919.

BAI KANKU

v.

BAI JADAV.

Decree confirmed.

J. G. R.

CRIMINAL REVISION.

*Before Mr. Justice Heaton and Mr. Justice Shah.**In re CHANDULAL RANCHHOD.**

1919.

April 11.

Criminal Procedure Code (Act V of 1898), sections 488, 489—Magistrate—Order for maintenance to wife—Subsequent decree for restitution of conjugal rights—Decree puts an end to order for maintenance—Subsequent application by wife for increase in rate of maintenance not competent.

In 1910, a wife obtained an order for maintenance under the provisions of section 488 of the Criminal Procedure Code, 1898. In 1912, the husband obtained a decree against his wife for restitution of conjugal rights. The decree was never executed: and the husband continued to pay, without objection the allowance directed by the Magistrate's order of 1910. In 1918, the wife applied for and obtained from the Magistrate an order under section 489 of the Code for an increase in the amount of maintenance. The husband having applied to the High Court:—

Held, that the decree of 1912 having as a matter of law determined or put an end to the Magistrate's order under section 488, an application under section 489 of the Code was not competent to the wife.

* Criminal Revisional Application No. 14 of 1919.

1919.

CHANDULAL
RANCHHOD,
In re.

THIS was an application to revise an order passed by Bulakhidas Bapuji, City Magistrate, First Class, at Ahmedabad.

In 1910, one Bai Dahi obtained an order for her maintenance under the provisions of section 488 of the Criminal Procedure Code, 1898.

Bai Dahi's husband Chandulal (applicant) obtained in 1912 a decree from the civil Court for restitution of conjugal rights against Bai Dahi. This decree was never executed. Chandulal continued to pay to his wife the maintenance money as before.

In 1918, Bai Dahi applied to the City Magistrate at Ahmedabad for an increase in the amount of her maintenance, under the provisions of section 489 of the Criminal Procedure Code, 1898. The Magistrate granted her an increase.

Chandulal applied to the High Court under its criminal revisional jurisdiction against the order.

H. V. Divatia, for the applicant.

G. N. Thakor, for the opponent.

HEATON, J.:—This is in form an application under section 489 of the Criminal Procedure Code by a wife who in the year 1910 obtained an order under section 488 for maintenance from her husband. She asked for an increased allowance and that is granted, and now the husband has applied to us in the exercise of our revisional powers.

The facts we have to deal with are these : The order under section 488 was made in 1910. In 1912 the husband obtained a decree against his wife for restitution of conjugal rights. That decree was never executed. The wife has never since 1910 lived with her husband and the husband has continued to pay without

objection the allowance directed by the Magistrate's order of 1910. Those, as the case is presented to us, are undisputed facts.

It seems to me that the decree of 1912 did as a matter of law determine or put an end to the Magistrate's order under section 488, and for this simple, but to me convincing, reason. The decree for restitution of conjugal rights is a statement by a Court of matrimonial jurisdiction that husband and wife are under an obligation to live together and that the wife has no right to live apart from her husband. The Magistrate's order of 1910 was in law a statement that the wife had a right to live apart from her husband; but of course, in the nature of things, any order made by a Magistrate in the exercise of the limited powers conferred on Magistrates by Chapter XXXVI of the Criminal Procedure Code, is subject to the orders of civil Courts exercising matrimonial jurisdiction. For it is those latter Courts and they alone, that have the power to say finally what are the legal relations between the husband and the wife. A Magistrate under Chapter XXXVI of the Criminal Procedure Code is granted a very limited power for the sake of convenience and that only. Therefore it seems to me that the wife was not in a position to make a proper application under section 489, because there was no subsisting order under section 488. However, in all the circumstances of the case we have come to the conclusion that the Magistrate should treat the application nominally made under section 489 as an application made by the wife under section 488. The Magistrate should hear any further evidence that may be offered and what arguments are offered and then determine, in the light of the circumstances at or about the date of the application, whether the wife is or is not entitled to an order for maintenance under section 488, and, if she is, what the

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In re.

amount of that maintenance should be. The proceedings should be returned to the Magistrate for this purpose.

We set aside the order which the Magistrate has made.

SHAH, J. :—I agree.

Order set aside.

R. R.

CRIMINAL REFERENCE.

Before Mr. Justice Macleod and Mr. Justice Pratt.

1919.

May 7.

EMPEROR *v.* DHONDYA DUDHYA.*

Indian Railways Act (IX of 1890), sections 126 (a), 130—Minor offender—Magistrate—Jurisdiction to try.

A minor committing an offence punishable under section 130, read with section 126 (a), of the Indian Railways Act, 1890, can be tried by a Magistrate: he is not exclusively triable by a Court of Session.

THIS was a reference made by E. L. Sale, District Magistrate of Belgaum.

The reference was in the following terms.

“The accused Dhondya *bin* Dudhya, a boy of nine years, put a nail in the joint of the rails at mile No. 19/20 between Belgaum and Desur stations on 21st January, 1919. The Cantonment Magistrate, First Class, Belgaum, convicted him under section 126 (a) and ordered that his guardian Rama should execute a bond of Rs. 50 to prevent the boy from committing such offence again under section 130 of the Indian Railways Act, IX of 1890.

* Criminal Reference No. 18 of 1919.