APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

LAXMIBAI WAMANRAO DALVI (ORIGINAL PLAINTIFF) APPELLANT *v.* WAMANRAO GOVINDRAO DALVI (ORIGINAL DEFENDANT) RESPONDENT.* 1952 *Sept.* 26

Hindu Married Women's Right to Separate Residence and Maintenance Act (XXIX of 1946), s. 2 (4) and (7)—Husband marrying again before the coming into operation of the Act—Whether first wife entitled to relief under the Act—Whether Act can be given retrospective effect.

The plaintiff, whose husband had taken a second wife before the coming into operation of the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, sued her husband claiming separate residence and maintenance.

Held, the words 'if he marries again' occurring in s. 2 (4) of the Act must be interpreted as meaning 'if he marries again after the Act comes into force' and that marriage prior to the coming into force of the Act did not confer upon the wife the right to claim separate residence and maintenance;

Held, further that the second marriage, though without the consent of the plaintiff, was not a justifying cause which would enable the plaintiff to separate residence and maintenance under s. 2 (7) of the Act.

Mancharamma v. *Satyanarayana*,[1] distinguished.

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, does not deal only with matters of procedure but confers substantial rights on the wife and imposes corresponding obligations on the husband. It cannot, therefore, be given retrospective effect.

Sukhribai v. *Pohkalsingh*,[2] followed.

Laxmibai Ammal v. *Narayanaswami*,[3] dissented from.

Lane v. *Lane*,[4] referred to.

First Appeal from the decision of C. P. Fernandes, Civil Judge (Senior Division), Alibag.

The facts are set out in the judgment.

S. B. Bhasme for *K. S. Daundkar*, for the appellant.

V. M. Bapat, for the respondent.

RAJADHYAKSHA J. This appeal arises out of a suit filed by the plaintiff to recover from the defendant future maintenance at the rate of Rs. 100 per month and arrears of maintenance at the same rate for three years preceding the institution of the suit.

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* First Appeal No. 273 of 1949.

(1) [1950] A. I. R. Mad. 356. (2) [1950] Nag. 196.
(3) [1950] A. I. R. Mad. 321. (4) [1896] P. 133.

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The plaintiff who is the wife was married to the defendant about the year 1920. They lived together for about 15 years. But they had no issue of the marriage. In the year 1930, the defendant married a second wife and from this marriage a daughter was born to the defendant. As the defendant did not have a son, he married a third time in the year 1940 and he got a son from this marriage. The plaintiff alleged that the defendant had been acting entirely according to the wishes of the third wife and was not treating the plaintiff with the respect and courtesy that was due to her. In spite of all this she continued to live with the defendant. But for some reason or other, the defendant brought the plaintiff back to her father's house. The plaintiff tried to persuade the defendant to take her back and accordingly she did go back to her husband of her own accord. Even on this occasion, when the defendant was living at Mahad, she did not receive the treatment which she deserved and therefore she was compelled to go back to her father's house. Thereafter she served a notice upon the defendant requiring him to provide her with separate residence and maintenance. As the defendant failed to do so, she filed this suit for claiming arrears of maintenance and also future maintenance at the rate of Rs. 100 per month.

The defendant in his written statement denied the allegations of ill-treatment and stated that the plaintiff had left him and had gone to live with her father of her own accord. Under the circumstances he contended that she was not entitled to separate maintenance. He added that he was prepared to allow the plaintiff to stay in a separate house and to give her what he considered a reasonable amount for her maintenance.

On these pleadings the learned Judge raised the necessary issues and came to the conclusion that the plaintiff was not entitled to separate maintenance and residence. He found that the only allegation that was made against the defendant was that the defendant behaved according to the whims and fancies of his third wife and did not treat the plaintiff with the respect which was due to her as a senior wife. In his opinion, this was not sufficient to entitle plaintiff to separate residence and maintenance. This conclusion of the learned Judge is not assailed before us.

But on the date of the arguments, the learned pleader for the plaintiff applied for an amendment of the plaint seeking to base the plaintiff's claim for separate maintenance and residence on

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the Hindu Married Women's Right to Separate Residence and Maintenance Act, XIX of 1946. That application was granted and the amendment made in the plaint sought to base the plaintiff's claim for separate residence and maintenance on the ground that the defendant had married again. The original suit had been filed *in forma pauperis* on April 18, 1946. The Hindu Married Women's Right to Separate Residence and Maintenance Act came into force on April 23, 1946, that is, within five days after the suit was instituted. The learned Judge took the view that the Act was not retrospective in its operation as it dealt with the substantive rights of the parties and did not deal merely with matters of procedure. He also thought that the wording of s. 2 of the Act also showed that it did not have retrospective effect. Accordingly he held that the plaintiff was not entitled to the benefit of the provisions of the Act and could not therefore claim separate maintenance and residence. Accordingly he dismissed the plaintiff's suit with costs. Against that order the present appeal has been filed by the plaintiff.

The only question that we have to consider in this appeal is whether under the Hindu Married Women's Right to Separate Residence and Maintenance Act the plaintiff is entitled to the reliefs which she asks for in this suit. This question raises two issues: (1) whether the plaintiff could claim benefit of the Act which came into force after the institution of the suit, and (2) whether the facts of this case entitled the plaintiff to the relief which she seeks, particularly in view of the fact that the defendant had married a second and a third time long before the Act came into force.

The first point has not been pressed before us by the learned Advocate for the respondent defendant. It is not contended before us that because the Act came into force five days after the institution of the suit, the plaintiff could not obtain the benefit of it. The ordinary rule is that a Court should give its decision on the facts and circumstances as they existed at the date of the institution of the suit or at the date of any subsequent amendment of the pleadings and should not take notice of events or decisions which have happened after such date. In the present case when the amendment of the pleadings was allowed in April 1948, the Act had already come into force and therefore the plaintiff was entitled to get relief under the Act if the facts of the case came within its purview. Even otherwise the Court has power in proper cases to take

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notice of events subsequent to the suit in order to shorten litigation, avoid unnecessary expenditure and do complete justice between the parties. See *Lakshmi Ammal* v. *Narayanaswami*,[1]. As the point has not been pressed before us by Mr. Bapat for the respondent, we need not deal with it any further.

The only point which has been canvassed before us is whether the plaintiff can get a relief under cl. (4) of s. 2 of the Hindu Married Women's Right to Separate Residence and Maintenance Act. That section reads as follows:

"Notwithstanding any custom or law to the contrary a Hindu married woman shall be entitled to separate residence and maintenance from her husband on one or more of the following grounds, namely,

(1) if he is suffering from any loathsome disease not contracted from her;

(2) if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him;

(3) if he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish;

(4) if he marries again;

(5) if he ceases to be a Hindu by conversion to another religion;

(6) if he keeps a concubine in the house or habitually resides with a concubine;

(7) for any other justifiable cause;

Provided that a Hindu married woman shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by change to another religion or fails without sufficient cause to comply with a decree of a competent court for the restitution of conjugal rights."

The plaintiff's contention is that under cl. (4) of s. 2 she is entitled to separate residence and maintenance by reason of the fact that her husband has married again. The view which has been taken by the learned trial Judge is that as the second and third marriages of the defendant in this case had taken place long before the Act came into force, the provisions of cl. (4) of s. 2 would not apply. According to the learned Judge the second marriage of the husband which entitles a wife to claim a separate residence and maintenance from her husband is a marriage which takes place after the Act came into force. This conclusion of the learned Judge has been challenged before us by Mr. Bhasme on behalf of the plaintiff-appellant.

It is not disputed that the Act in question does not deal only with matters of procedure, in which case it could have

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retrospective effect. It confers substantial rights on the wife and imposes corresponding obligations on the husband. It cannot therefore be given retrospective effect. In *Sukhribai* v. *Poh-kalsingh*,[1] the learned Judges of the Nagpur High Court had to consider the nature of this Act, and the point canvassed before them was whether it was a declaratory Act as distinguished from a remedial Act. After an elaborate examination of the question the learned Judges came to the conclusion that the Act as a whole could not be called a "declaratory Act" in the strict sense of the term, and that therefore it could not be given a retrospective operation as a declaratory Act. They came to the conclusion that the Act was a remedial measure and cl. (4) of s. 2 thereof must be given prospective operation. They held that in order to entitle a wife to obtain separate residence and maintenance from her husband, the marriage of which she complains and which forms the basis of her suit, must be a marriage which takes place after the Act came into force.

Mr. Bhasme for the appellant does not dispute that the Act is not merely a declaratory one, but contends that even as a remedial measure it is open to the Court in certain circumstances to give the Act retrospective operation. He quoted the following observations from Blackstone's "Commentaries on the Laws of England", Book I, page 87:

> "There are three points to be considered in the construction of all remedial statutes; the old law, the mischief, and the remedy: that is, how the common law stood at the making of the Act; what the mischief was, for which the common law did not provide; and what remedy the parliament had provided to cure this mischief. And it is the business of the Judges so to construe the Act as to suppress the mischief and advance the remedy."

The same observations occur at page 91 of "Craies On Statute Law," fifth edition. The rules relating to the construction of remedial statutes are stated as follows in paragraph 653 at page 506 of Volume XXXI of Halsbury's Laws of England:

> "Judicial interpretation should be directed to avoiding consequences which are inconvenient and unjust, if this can be done without violence to the spirit or the language of a statute. If the language is ambiguous and admits of two views, that view must not be adopted which leads to manifest public mischief, or inconvenience, or to injustice. If, however, the words are plain, the Court has no right to put an unnatural interpretation on them simply to avoid mischief or injustice. In such a case no further effect should be given to the enactment than is required for the purpose of the Legislature to be achieved. In advancement of a

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remedial statute everything is to be done that can be done consistently with a proper construction of it, even though it may be necessary to extend enacting words beyond their natural import and effect."

Bearing in mind these principles, the question arises as to what the position of a Hindu married woman was before this Act came into force, what the mischief was for which the Legislation intended to provide a remedy and in what manner that remedy was provided. Under the law as it stood prior to the enactment of the Act, a Hindu married woman was not entitled to separate residence and maintenance merely by reason of the fact that her husband had married a second time. If the wife left her husband of her own accord, or if she left him for reasons which the law did not recognize or consider proper she could not get separate residence and maintenance from her husband. If, however, her husband was found to be guilty of acts of cruelty which would endanger her safety or if he kept a concubine in his house, or suffered from a loathsome disease, the wife could obtain separate residence and maintenance from her husband. If, on the other hand, the husband married again and was willing to keep his superseded wife in his own house and did not mete out treatment to that wife which could in law amount to cruelty, the wife could not claim separate residence and maintenance merely by reason of the second marriage. Act XIX of 1946 gave legislative effect to the decisions which permitted the wife to claim separate residence and maintenance in certain circumstances such as cruelty on the part of the husband, the husband's keeping a concubine in the house, or the husband's suffering from a loathsome disease (*see* cls. (*1*) (*2*) and (*6*) of s. 2 of the Act). The Act, however, added certain other grounds for claiming what is virtually a judicial separation, e.g., second marriage and apostasy (*see* cls. (*4*) and (*5*) of s. 2 of the Act). The intention in adding cl. (*4*) undoubtedly was to relieve the lot of women who would find life in their husband's house irksome if the husband married a second time and the superseded wife was not at liberty to ask for separate residence and maintenance. It is undoubtedly this mischief that was sought to be remedied by the Legislature in enacting cl. (*4*) of s. 2 of the Act. In this sense therefore the Act is undoubtedly a remedial measure.

But it does not follow that every remedial measure must necessarily be given a retrospective effect. The language of a statute has got to be considered and if the language is plain enough, it is not permissible to give retrospective effect to a

statute merely because that happens to be a remedial one. As pointed out in the passage from Halsbury's "Laws of England" quoted earlier in the judgment,

"If...the words are plain, the Court has no right to put an unnatural interpretation on them simply to avoid mischief or injustice. In such a case no further effect should be given to the enactment than is required for the purpose of the Legislature to be achieved. In advancement of a remedial statute everything is to be done that can be *done consistently with a proper construction of it*, even though it may be necessary to extend enacting words beyond their natural import and effect."

But there is also another point to be considered before coming to the conclusion as to whether a statute should be given a retrospective effect. Polygamy was widely prevalent in the Hindu Society, and indeed the Hindu law laid no limit on the number of wives which a husband could take. No corresponding right was conferred upon the wife to obtain a divorce from her husband under such circumstances. Modern opinion, imbued with ideas of justice and fairplay, frowned upon such practice and often a person who married a second time during the lifetime of his first wife was socially ostracized. In the State of Bombay bigamous marriages have been prevented by legislation. But Act XIX of 1946 an Act of All India application—confers fresh rights upon the wife and imposes fresh liabilities upon the husband. It may well have been the intention of the Legislature that such an Act should not have a retrospective effect. Before the Act came into force, a Hindu husband marrying a second time during the lifetime of the first wife could not have anticipated that by doing so, he would be laying himself open to the liability of providing separate residence and maintenance for the first wife. The Act would therefore impose upon the husband a new liability if the legislation were given a retrospective effect and the Legislature may have thought that it would not be fair to Hindu husbands to subject them to such new liability. After the Act came into force, a husband marrying a second time could do so with the full knowledge that his wife would have a right to claim separate residence and maintenance. An Act imposing a new liability on one party and conferring fresh rights on the other is not ordinarily given a retrospective effect.

"No rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the

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language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." (*See* Maxwell on The Interpretation of Statutes, 9th Edition, page 222).

"...Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation." (Maxwell, page 223).

We have therefore to consider whether the language of s. 2 of the Act enables the Act to be given a retrospective effect.

The section is not altogether happily worded. Confining our attention for the moment only to cl. (4) of s. 2, it would appear that under that clause a Hindu married woman could be entitled to separate residence and maintenance if her husband married again. Supposing a case arises where a husband has married again and the second wife dies soon after the marriage. Does the mere fact of the second marriage entitle the first wife to claim separate residence and maintenance? From the language of the section it would appear that she would be entitled to it. If the object of the legislation was to remove the irksomeness of the first wife having to live under the same roof with the second wife of the husband, then in the case contemplated by us there would be no such irksomeness, and yet under the wording of the section the superseded wife would still have a right to claim separate residence and maintenance. In this view the section would appear to be more widely worded than was perhaps intended, unless one takes the view that the Legislature intended that the mere fact of the second marriage connotes such lack of affection towards the first wife that it would not be right to compel her to stay in the house of her husband even though the second wife has died. Under the proviso to that section, the right to separate residence and maintenance is conditional on her remaining chaste, remaining a Hindu and on her willingness to comply with a decree of a competent Court for the restitution of conjugal rights. It is not conditional on the second wife being alive or living with her husband. This criticism of cl. (4) is applicable, whether that clause is held retrospective or prospective. We have only referred to it to indicate that the clause as drafted might be regarded as being wider than it was intended to be, if the idea in the mind of the Legislature was not to compel the

superseded wife to live under the same roof with the second wife. The question that arises therefore is whether when cl. (4) of s. 2 says, "a Hindu married woman shall be entitled to separate residence and maintenance from her husband..... if he marries again," such marriage should take place after the Act came into force. In all clauses of s. 2 the present tense has been used. It may suggest that the various grounds on which the relief is claimed by the wife must exist after the Act came into force. In the present case, if it was the intention of the Legislature that the wife should be entitled to a separate residence, even though the husband had married a second time before the Act came into force, then the expression would have been, not "if he marries again" but "if he has married again," in which case the mere fact that the husband has married a second time—whether before or after the coming into force of the Act—would have entitled the superseded wife to obtain separate residence and maintenance. But it has been argued by Mr. Bhasme that the six conditions enumerated in s. 2 of the Act are merely descriptive of the positions of the husband irrespective of the time when the reasons which resulted in those positions arose. For this submission he has relied on a decision of a single Judge of the Madras High Court in *Lakshmi Ammal* v. *Narayanaswami.*[1]

"Reading s. 2 as a whole and the several clauses of the section together, there is no reason to hold that while all the other clauses which use the present tense refer to a state of affairs in existence at the date of a suit for separate maintenance by the wife, though it had its origin before the Act came into force, cl. (4) of s. 2 must have reference only to an event which occurs after the Act comes into force. The words 'marries again' therein are merely descriptive of the position of the husband as a twice married man at the date when the wife's claim for separate maintenance is made under the Act and do not exclude a husband who had taken a second wife before the Act from its operation. Therefore, wives superseded by a second marriage of the husband before the Act also are entitled to separate maintenance under s. 2 (4) of the Act."

With great respect, we cannot agree with the view expressed by the learned Judge. It is not altogether correct to say that the six clauses of s. 2 are merely descriptive of the position of the husband. If I may analyse s. 2 of the Act, the right of a Hindu married woman to obtain separate residence and maintenance arises :

(*a*) when the husband does certain acts, e.g.,

(4) when he marries again, or

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(5) if he ceases to be a Hindu by conversion to another religion;

(*b*) when certain circumstances with reference to the husband exist, e.g.,

(1) if he is suffering from any loathsome disease not contracted from her, or

(6) if he keeps a concubine in the house or habitually resides with a concubine; or

(2) if he is guilty of such cruelty towards his wife as renders it unsafe or undesirable for her to live with him, or,

(3) he is guilty of desertion, that is to say, of abandoning his wife without her consent and against her wish.

Under (*a*) above, it is certain acts of the husband which confer a right upon his wife. Under (*b*) above, it is the state of his health or his course of conduct that confers the right. All these have relation to the acts done and circumstances existing at the time when the relief is sought after the act came into force and have nothing whatever to do with the past acts or past circumstances. The learned Judge, Mr. Justice Viswanatha Sastri, observes (p. 323):

> "It is unreasonable to construe s. 2 (*1*) of the Act as meaning that the loathsome disease therein described should have been contracted by the husband after the Act and if the disease had originated before the Act, the wife is not entitled to separate maintenance."

With very great respect, we think that it is immaterial whether the disease is contracted before or after the Act came into force. All that the section requires is that after the Act came into force, the husband should be suffering from some loathsome disease at the time when she makes a claim under the Act. We do not think that the precise date when the disease was contracted has anything to do with the claim of the wife to obtain separate maintenance and residence. It is possible, under cl. (*b*) above, i.e., under sub-cl. (*1*) and (*6*), of s. 2, to construe the word "is" in the sense of "has been", so as to indicate continuity, that is to say to read the two sub-sections as "the husband has been suffering from some loathsome disease," or "has been keeping a concubine". In both these cases, the state of things or the course of conduct may commence even before the Act came into force. But the wife will not be entitled to a claim for separate residence and maintenance, unless that state of things or the course of conduct exists at the time of the wife's making the claim. But

this reasoning cannot apply with respect to cl. (*a*) above i.e., to sub-cls. (*4*) and (*5*) of s. 2. One cannot say that those clauses contemplate a state of things or a course of conduct. The contingencies contemplated in those clauses refer to the doing of certain acts by the husband, such as marrying again, or changing his religion. There is no continuity contemplated under those sub-clauses. It would be an unreasonable interpretation to put on sub-cl. (*4*) to hold that the sub-clause contemplates the process of marrying again. Under these two clauses it is not the existence of a state of things which gives rise to the right of a wife but the doing of certain acts by the husband. A certain state of things must exist or a certain course of conduct must exist or the husband must do certain acts at the time when the wife makes a claim after the Act comes into force, no matter when the state of things or the course of conduct began. In all these cases the crucial point of time is the date on which relief is asked for. Similarly, under cls. (*4*) and (*5*), the act must be done after the Act came into force. If in cl. (*c*) above i.e., in sub-cls. (*2*) and (*3*) of s. 2 the word "is" is interpreted in the sense of "has been", so as to read that "the husband has been guilty of cruelty" or he "has been guilty of desertion," even so, we think, cruelty and desertion must exist at the time when the wife makes a claim after the passing of the Act. A person can be said to have been guilty of cruelty or to have been guilty of desertion even though that cruelty or desertion has been practised 20 or 25 years before the wife makes the claim under the Act. In both the cases, it can be said that the husband has been guilty of cruelty or desertion. It is hardly to be imagined that the Legislature intended to confer the right upon a wife to ask for separate residence and maintenance even though many years have passed since the husband was guilty of desertion or cruelty and thereafter the husband and the wife have lived happily and the husband has not been guilty of any conduct which could amount to cruelty or desertion at the time the wife makes the claim. Therefore under cls. (*2*) and (*3*) even if the word "is" is interpreted in the sense of "has been", the husband must be guilty of cruelty or desertion at the time when the claim is made by the wife, i.e. after the Act came into force. There is therefore no advantage in construing the word "is" in the sense of "has been." It is only under cls. (*1*) and (*6*) that the interpretation of the word "is" in the sense of "has been" would connote continuity and the existence of the state of things at the time when the claim is

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made by the wife. In our opinion, therefore, so far as sub-cl. (4) of s. 2 is concerned, the words "if he marries again" must be interpreted as meaning "if he marries again after the Act comes into force" and any earlier marriage of the husband prior to the coming into force of the Act will not confer upon the wife the right to claim separate residence and maintenance. In this view, we are in agreement with the decision of the Nagpur High Court in *Sukhribai* v. *Pohkalsingh*,[1]

Then Mr. Bhasme invited our attention to the case of *Lane* v. *Lane*[2]. In that case the court had to consider s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, where a somewhat similar question arose. Under that section,

> "Any married woman whose husband.....shall have been guilty of persistent cruelty to her or wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain, and shall by such cruelty or neglect have caused her to leave and live separately and apart from him, may apply to any court of summary jurisdiction." [for an order or orders under the Act.]

The question arose whether the section was retrospective or not. The learned President of the Probate Division came to the conclusion that the words "shall have been" were hardly ambiguous and in his view they dealt with all offences, past and future, and not only with future offences. The tense used was future perfect and naturally covered all acts up to the time of passing the judgment upon the husband, irrespective of whether such acts were prior to or subsequent to the Act. In the present case the tense used in clause (4) is present tense and not future perfect. Moreover, another consideration which weighed with the learned President was that the section provided a better way of enforcing an existing remedy. Before the Act, persistent cruelty would have entitled a married woman to a judicial separation from the Court, with all its attendant consequences. But the Act gave a speedier and cheaper remedy by enabling the wife to obtain an order from a court of summary jurisdiction. Whatever may be said of cls. (1), (2) and (6), which merely recognized and gave legislative sanction to the then existing position in law, it cannot be said that in enacting cl. (4) of s. 2, the Legislature was merely providing a better way of enforcing an existing remedy or giving statutory recognition to such remedy. Before the Act came into force, as we have already stated, the mere second marriage of the husband did not give

[1] [1950] Nag. 196. [2] [1896] P. 133.

any right to the wife to claim separate residence and maintenance. Therefore both the arguments which appealed to the learned President in giving retrospective operation to s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, do not exist in the present case.

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The last argument of Mr. Bhasme was that the case could at least be brought in the residual clause under cl. (7) of s. 2 which enables a wife to claim separate residence and maintenance for any other justifiable cause. Mr. Bhasme's argument was that when the defendant married a second time, he did so with the plaintiff's consent, and that when he married a third time, no such consent was obtained, and that therefore this might be regarded as a justifying cause which would enable the plaintiff to claim separate residence and maintenance. In support of this the learned advocate relied on the case of *Mancharamma* v. *Satyanarayan*.[1] In that case the husband brought a suit for restitution of conjugal rights against his third wife. He had married the third wife when the second wife was alive. He had abandoned the second wife and contracted his third marriage. While he was living with the third wife, he called back the second wife to live with him. The third wife refused to go back to her husband and thereupon the husband filed a suit for restitution of conjugal rights. In answer to the claim of the husband, the provisions of Act XIX of 1946 were pressed into service and it was argued that cl. (7) enabled the wife to get separate residence and maintenance for any justifiable cause. It was suggested that it would be a justifiable cause if the third wife had been married on the distinct understanding that her husband had once for all severed his connection with the second wife and had nothing more to do with her and he and the third wife alone would be living together. It was argued that the husband had not only taken the second wife back and was living with her, but that he was practically depending upon her bounty as he had settled all his property in her favour. On behalf of the third wife it was claimed that it would be unjust and inequitable that she should be compelled to live with her husband and that in the words of s. 2, sub-cl. (7), of the Act there was a justifiable cause for her claiming the right of separate residence and maintenance. The learned Judge was of the opinion that if the facts alleged by the third wife were true, they would be sufficient to enable her to claim separate

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residence and maintenance. It seemed to him that the husband could not be compelled contrary to his solemn pledges and understanding at the time of the marriage with the third wife to resile from that and compel her to live with him along with his second wife. He thought that sub-cl. (7) was very wide in its language and was designedly intended to take in various circumstances in relation to the particular case before the court which may make it unjust to compel the wife to live with the husband. We do not see how this case helps Mr. Bhasme. There is no suggestion here that the defendant husband had entered into an understanding with the plaintiff that he would not marry a second or a third time. If there had been such an agreement between them, then the reasoning of the Madras case could have been applied; as, in that event there would have been a breach of faith on the part of the husband in marrying a second and a third time. As a matter of fact, when the amendment of the plaint was sought in this case, it was specifically on the ground that the plaintiff was entitled to separate residence and maintenance by the mere fact of the second and the third marriages, reliance thus being placed on cl. (4) of s. 2. No contention was taken that there was any other justifiable cause which entitled the plaintiff to get separate residence and maintenance. If such contention had been taken, then the defendant might have been in a position to contest those allegations and to satisfy the court that there was no other justifiable cause. With respect we differ from the view taken in *Lakshmi Ammal* v. *Narayanaswami*[1] and agree with the view taken by the Nagpur High Court in *Sukhribai* v. *Pokkalsingh*,[2] that cl. (4) of s. 2 at any rate does not have a retrospective operation.

We are therefore of the opinion that the view taken by the trial court is correct, and the present appeal must therefore be dismissed. No order as to costs. A copy of this order should be sent to the Collector of Kolaba for the purpose of recovering the stamp to be paid by the plaintiff on the memorandum of Appeal.

Appeal dismissed.

K. B. S.

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[1] [1950] A. I. R. Mad. 321. [2] [1950] Nag. 196.