

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Narayanrao Ramchandra Pant v. Ramabai, widow of Ramchandra Pant, from the High Court of Judicature at Bombay; delivered March 18th, 1879.

Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS was a suit brought by Ramabai, the widow of Ramchandra Pant, against Narayanrao Ramchandra Pant, his eldest son, to recover arrears of maintenance. The claim states: "The liability to maintain me according to the dignity of my family rests, under the Hindoo law, with the Defendant." Ramchandra Pant was Subadar in the service of the Maharajah, the ex-Peishwa. He died on the 22nd July 1855, leaving two wives, and children by each. The Defendant was the step-son of the widow Ramabai, the Plaintiff. A great deal of litigation has taken place in this family, owing to disputes which arose immediately after Ramchandra Pant's death. He left a will which was disputed by his younger sons, and an action was brought, which ultimately came upon appeal to Her Majesty in Council. After considerable discussion of the evidence which had been given at great length, the will was established. Another suit was brought by the widows to recover some jewels which they alleged to be their property under the will of the testator, in which the widows failed, it being decided that the jewels to which they might lay claim under the will were in their

own possession. This antecedent litigation does not materially affect the question arising in the present suit, except so far as it shows the state of hostility in the family, and accounts for the withholding by the Defendant of the maintenance to which the Plaintiff was entitled. The present suit was brought on the 18th October 1871.

One point now raised is that the maintenance is barred by limitation; the other point is that the maintenance is payable under the will of Ramchandra Pant, and that it is a condition precedent to the right to obtain it that the widow should live under the same roof in joint family with the Defendant. Those are the two principal points which have been raised. A third point is that there has been no demand and refusal of the maintenance.

The case has been tried in the Courts below upon several issues which it is not necessary to mention in detail, inasmuch as the three points just indicated are those which alone are relied upon at the bar. The result of the suit in the Courts in India was that the Subordinate Judge awarded a sum of Rs. 300 per mensem to the Plaintiff for maintenance, and gave her arrears for six years amounting to Rs. 21,000. The High Court reduced the monthly allowance to Rs. 200, and proportionately reduced the amount of arrears, giving the sum of Rs. 14,400.

To comprehend the argument on the points which alone remain for decision, it is necessary to refer to the will of Ramchandra Pant. It is stated in the report of the appeal to Her Majesty in the 9th Moore's Indian Appeals, page 101. Mr. Benjamin read the will from this report. It is thus stated: "The effect of it, according to the English translation as made in the Zillah Court, was to declare that the testator was 75 years of age, that his eldest son had two sons

“ and one daughter, and that his younger sons
“ were childless. It then proceeded to express
“ his hopes that his wives and his sons would
“ all live amicably together, and that all would
“ look upon and consider his eldest son as
“ the head of his family after his death. He
“ then bēqueathed the whole of his property,
“ real and personal, to his eldest son, directing
“ him to provide for both his wives and to pay
“ them proper respect, and to provide also for
“ his younger brothers and for the testator’s
“ dependents; and he declared that he had made
“ these provisions with a view to prevent dis-
“ sensions in the family, and to enable them
“ to live in peace and harmony after his decease.
“ If, however, the younger sons should not
“ feel disposed to abide by these directions, and
“ should insist on a separation from the family,
“ then the eldest son was to receive the rents
“ of two villages mentioned in the will, and
“ pay over the proceeds to his younger brothers
“ as such proceeds were from time to time
“ received, and he was further to pay to each
“ the sum of Rs. 25,000. The testator then
“ gave Rs. 13,000 for the benefit of his grand-
“ daughter, the daughter of the Appellant, on
“ her marriage, and allotted Rs. 40,000 for what
“ he calls the customary outlay in the first year
“ after his death, including religious pilgrim-
“ ages.” The words of the will relating to
the points in issue, according to one of the
translations in the present Record, to which
attention was called by the learned Counsel
during the argument, were: “Nana, the eldest
“ son, shall provide for both the mothers,
“ treating them with great respect; and he shall
“ regard each of his two younger brothers as
“ a son, providing for them, and my old servants,
“ in a manner befitting their several conditions
“ in life.”

The testator's property appears to have been self-acquired, and consisted of some villages and large sums of money in Government paper, and other personal property, and he refers in his will to an expected pension from the East India Company. It has been conceded at the bar that whatever was given by the testator to his wives in his lifetime was not given in lieu of maintenance; in fact, all that was given to them were some jewels, no doubt of considerable value. Nor has any question been made at the bar that if the Plaintiff is entitled to succeed, the amount awarded by the High Court is excessive. The only questions are those which have been already mentioned.

The first question arises upon the Statute of Limitations, and it is contended that this action is barred altogether, both for the maintenance and the arrears, by sub-section 13 of the 1st section of Act No. 14 of 1859, which is in these terms: "To suits to enforce the right to share
" in any property, moveable or immoveable, on
" the ground that it is joint family property;
" and to suits for the recovery of maintenance,
" where the right to receive such maintenance is
" a charge on the inheritance of any estate; the
" period of 12 years from the death of the
" persons from whom the property, alleged to be
" joint, is said to have descended, or on whose
" estate the maintenance is alleged to be a
" charge." It was contended that under the will of the testator the maintenance is made by the will a charge upon the estate. The effect of the will is, no doubt, to give the whole property of the deceased to the eldest son, mainly because he appears to have had more confidence in his eldest son than in the younger ones. But whilst giving the estate to the eldest son he recognises the claims by Hindoo law of the younger brothers and the widows to maintenance.

He makes specific provisions with regard to the younger brothers, giving them the profits of particular villages, but he makes no specific arrangement for the widows. He merely requires that they should be maintained, and treated with proper respect. He creates no charge on any specific portion of his property, but imposes an obligation upon the Defendant to make allowances for the support of the widows of a kind analagous to the maintenance to which widows by Hindoo common law are entitled, supposing probably that by his will he might have interfered with that law. It is to be observed that in the former suit brought by the widows they claimed under the will and to take the benefit of it.

Assuming this to be the proper construction of the will, their Lordships think that the Subordinate Judge was right in his conclusion that it did not create a right which was a specific "charge on the inheritance of any estate" within the meaning of those words in the 13th subsection of the statute.

The language of the Act is not very clear; and by two subsequent statutes of limitation the events from which the time of limitation is to run in the case of maintenance are wholly different. By common law the right to maintenance is one accruing from time to time according to the wants and exigencies of the widow; and a Statute of Limitation might do much harm if it should force widows to claim their strict rights, and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable.

The only authority cited by the Subordinate Judge is the case of *Timmappa Bhat v. Parmeshriamma*, in the 5th Bombay Law Reports, 130, which sustains his judgment, though the facts are not altogether the same as the facts of the case now under appeal. No decision was cited

at the bar opposed to the construction which the Subordinate Judge has put upon the Act.

Their Lordships have observed with some surprise that no mention of this point, which is undoubtedly one of some importance, was made in the judgment of the High Court, and they think that when an Appellant comes to complain of the judgment of a Court upon a point which does not appear upon their judgment, it would be proper, and at least convenient, that some explanation should be given why the point does not so appear. It may be that this point was disposed of in the course of the argument. In the absence of explanation the High Court must be taken to have agreed with the Subordinate Judge.

The second point made was that the Plaintiff has disentitled herself to maintenance by separating from the son and living apart from him. It is argued that it was made a condition of the will, to entitle her to maintenance, that she should reside under the same roof and in joint family with him. Their Lordships, however, think that no such condition is to be found in the will, and that she was to be left in this respect in the ordinary position of a Hindoo widow, in which case separation from the ancestral house would not generally disentitle her to maintenance suitable to her rank and condition.

It was then said that no action could be maintained because a demand and refusal had not been proved. There is no evidence that a specific demand was made for the maintenance, but the Subordinate Judge has found, and the High Court have not disagreed with him, that a the maintenance was refused; and taking all the circumstances of this family into consideration, their Lordships do not doubt that there was a withholding of this maintenance by the son

under circumstances which would amount to a refusal of it.

These observations dispose of all the points which have been raised at the bar, and their Lordships think that this Appeal fails, and they will humbly advise Her Majesty to affirm the decree of the Court below.

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