Privy Council Appeal No. 97 *of* 1916.

Bengal Appeals Nos. 41 *and* 42 *of* 1914.

Raja Braja Sundar Deb - - - - *Appellant,*

v.

Srimati Swarna Manjari Dei - - - - *Respondent.*

Same - - - - - - - - *Appellant,*

v.

Srimati Sarat Dei - - - - - *Respondent.*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH OCTOBER, 1917.

Present at the Hearing:

LORD BUCKMASTER.
SIR JOHN EDGE.
SIR WALTER PHILLIMORE, BART.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD BUCKMASTER.]

The question that is raised in these appeals is whether Swarna Manjari Dei, the respondent on the first appeal, and her daughter, the respondent on the second appeal, are entitled to maintenance as of right from the appellant, who is the brother-in-law of the first-named respondent.

On the 7th February, 1905, Swarna Manjari Dei married Pitambar Deo, the Raja of Aul, who died on the 21st March of the same year, the appellant being his successor in the Raj. At the date of her husband's death Swarna Manjari Dei was *enceinte*, and she was ultimately delivered of a child on the 23rd November, 1905, who is the respondent in the second appeal. In May 1905 the widow ceased to reside in the appellant's Nahar at Aul Rajbari, and she claims that she is, notwithstanding this fact, entitled to be maintained by him; in order to establish that right, she instituted the first of the two actions which have given rise to this appeal.

The second suit was brought by her infant daughter seeking similar relief.

These actions were tried together, and the Subordinate Judge who heard them made two decrees granting maintenance in each case. The High Court on appeal affirmed this judgment in principle, but by two decrees varied the amounts of maintenance allowed by the Subordinate Judge. From each of these decrees the appellant has appealed, his appeals being consolidated by order of the Board.

The real defence to the actions and the point argued on the appeal is this: that Killa Aul is an impartible Raj, succession to which is regulated by the law of the Mitakshara as modified by special family customs which have the force of law, and it is said that the special family custom applicable is of such a character that unless the widow resides, after the death of her husband, where she is directed to reside by the Raja she forfeits her right to maintenance. That contention is based upon certain answers that were given to questions that were put in 1814 to the Rajas and Chiefs of the Regulation and Tributary Mahals of Orissa by the Superintendent. These questions and answers are embodied in a treatise called "Pachis Sawal," or "25 Questions." The answer upon which the appellant relies is an answer to a question which runs in this form: "After the demise of a Raja, and his son succeeding him, what are the sources from which the ex-Raja's Ranis and brothers, and also brothers of the new Raja, derive their maintenance, and what are their respective rights and the position they hold?" The answer to that is: "They receive food and clothing, and remain in subordination to the Raja. They have no rights." It is the contention on the part of the appellant that the meaning of this is that the receipt of food and clothing is dependent and consequent upon subordination to the Raja, and refusing to live at the residence which he appoints is an act of insubordination, which forfeits the right to maintenance. Their Lordships are not prepared to determine, because they think it is unnecessary, what the true meaning of that answer may be, because, even assuming that it bears the interpretation for which the appellant contends, that does not, in their opinion, determine this appeal in his favour, because both Courts have found that the refusal of Swarna Manjari Dei to reside is a refusal which was based on reasonable grounds. It is unnecessary to define what those grounds are, and unnecessary to examine the evidence which was brought forward in their support. It is sufficient that she has been supported by the concurrent findings of both Courts in her refusal to reside in the Nahar. Consequently, if the custom is what the appellant asserts it to be, it has no longer any application to the case, for this custom does not, in their Lordships' opinion, deal with the question of an absence from the appointed residence due to just and reasonable causes. If the custom ceases to apply, the Mitakshara law applies unmodified, and by

that Mitakshara law the widow and her daughter are entitled to maintenance. That maintenance has been assessed by the High Court, and counsel for the appellant rightly apprehends that the fixing of that maintenance, which is a pure question of discretion, is a matter with which the Board would not interfere. It may, however, be pointed out, lest it be thought that residence away from the palace might throw an unfair burden upon the person upon whom the duty of maintenance was cast, that the question of determining the amount of maintenance is always a question for the discretion of the Court, and such discretion will be exercised having regard to all the circumstances affecting the case.

These appeals must therefore fail, and their Lordships will humbly advise His Majesty that they be dismissed with costs.

In the Privy Council.

RAJA BRAJA SUNDAR DEB

v.

SRIMATI SWARNA MANJARI DEI,

SAME

v.

SRIMATI SARAT DEI.

DELIVERED BY LORD BUCKMASTER.

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1917.