

(1912) 01 BOM CK 0019

In the Bombay High Court

Case No : Cross-Appeals No's. 476 and 477 of 1910

Rangubai

APPELLANT

Vs

Subaji Ramchandra Kulkarni
 Subaji Ramchandra
Kulkarni Vs Rangubai

RESPONDENT

Date of Decision : 30-01-1912

Acts Referred:

Citation : (1912) 14 BOMLR 267

Hon'ble Judges : Russell, J; Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, Kt., C.J.—This is a suit by the plaintiff for maintenance which she claims from the family of her husband. She states in her plaint that she had been living with her parents since her husband's death nine years ago.

2. The learned District judgement the facts that the plaintiff has chosen to live apart from her husband's relations and has adduced no reason to justify herself in so doing. He says : " In 1896 she filed a suit in forma pauperis to recover maintenance and certain exhibits show that negotiations were] also being carried on at that time. But there is nothing on the record except the plaintiff's brother's uncorroborated statement to show that maintenance was demanded and refused before 1906." He, therefore, decides that maintenance should only be awarded from the 1st of January 1906.

3. Now it may be that the claim for maintenance should not be decided according to proof of demand and refusal; we do not propose to decide it upon that ground. But, we think, upon the findings of fact of the lower Court we must affirm the judgment upon the principle stated by the Privy Council in Narayanrao Ramchandra Pant v. Ramabai ILR (1879) 3 Bom. 415. In that case it was decided that by the Hindu Common Law the right of a widow to maintenance is one accruing from time to time according to her wants and exigencies. Accordingly it

has been decided by a Full Bench of this Court in Savitribai v. Luximibai and Sadasiv Ganoba ILR (1878) 2 Bom. 573, that a widow's claim for maintenance should be regulated with reference inter alia to the amount of stridhan property which she has available for her support. Similarly, in Siddessury Dassee v. Janardan Sarkar ILR (1902) Cal. 557, Sir Francis Maclean puts the following case: " After the plaintiff had gone to her father's house, and her father through some change of fortune had become unable to maintain her, could it be fairly contended that the moral obligation of her father-in-law to maintain her had ceased, bearing in mind what has been laid down by the Privy Council in the case of Narayanrao Ramchandra Pant v. Ramabai ILR (1879) 3 Bom. 415, namely, that by Hindu Common Law the right of a widow to maintenance is one accruing from time to time according to her wants and exigencies. In this view the moral obligation was still subsisting at the time of the father-in-law's death."

4. On the facts found by the lower appellate Court, we are of opinion that there is no indication that the wants and exigencies of the plaintiff required a grant of maintenance prior to the 1st of January 1906.

5. On behalf of the appellant-plaintiff reference has been made to the dictum of Sir Charles Sargent in Girianna, Murkundi Naik v. Honama ILR(1890) 15 Bom. 236 where he states: " It is now well established that a Hindu widow is not bound to reside in her deceased husband's family house, and does not forfeit her right to maintenance by going to reside elsewhere, unless she leaves the house for an improper purpose." The answer to that argument is that Sir Charles Sargent was not there concerned with the question of the grant of arrears; and what sum shall be granted for arrears, must depend on the wants and exigencies of the widow as proved in the particular case.

6. For these reasons we affirm the decree of the lower appellate Court and dismiss the appeal with costs.