

set aside with costs and the decrees of the Subordinate Judge should be restored.

Solicitors for the appellant : *Watkins & Hunter.*

Solicitors for the respondents : *T. L. Wilson & Co.; Pugh & Co.*

A. M. T.

Appeals allowed.

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MAHOMED
SOLAIMAN
v.
BIRENDBA
CHANDRA
SINGH.

APPELLATE CIVIL.

Before Richardson and Sukrawarthy JJ.

ASIATULLA

v.

DANIS MOHAMED.*

1922

June 7.

Dower—Limitation—Limitation Act (IX of 1908) Sch. I, Arts. 103, 104, 116—Suit for share of dower by heir of deceased wife where dower fixed by registered document.

Where, on the death of a Mahomedan lady, whose dower was fixed by a registered instrument, a suit was instituted by her father within six years of her death, for recovering his share of the dower :—

Held, that the suit was governed by Art. 116 of the Limitation Act and was within time.

Shahzada Mohamed Faiz v. Shahzadi Omdah Begum (1) not followed.
Tricom Das Cooverjee Bhoja v. Gopinath Jiu Thakur (2) referred to.

Second Appeals Nos. 1346 and 1162 of 1920.

These were two appeals by the defendants which arose out of two suits brought by the father of a

* Appeals from Appellate Decrees, Nos. 1162 and 1346 of 1920, against the decrees of Hem Chandra Bose, Subordinate Judge of Sylhet, dated Jan. 28, 1920, reversing the decrees of Nalini Nath Das Gupta, Munsif of Moulvie Bazar, dated July 30, 1919.

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Mahomedan lady for the recovery of his share of dower on the death of the lady. Two of the brothers of the husband, having stood surety for a portion of the amount of the prompt dower two separate suits were instituted, one against the husband, Asiatulla, and the other against his brothers. The main plea in defence was that the suits were barred by limitation as the lady had died more than six years before suit; the Court of first instance accepted this plea and dismissed the suits; the plaintiff appealed and the lower Appellate Court reversed the decision of the trial Court and decreed the appeals holding that the suits were within time as they were instituted before the expiry of six years from the date of the lady's death. The defendants thereupon preferred these appeals to the High Court.

Babu Hemendra Kumar Das, for the appellant.

Babu Nalin Chandra Pal, for the respondent.

SUHWARWARDY J. These two appeals have arisen out of suits for recovery of a portion of the amount of dower of the plaintiff's daughter under the following circumstances. Langina Bibi the daughter of the plaintiff died leaving as her heirs the plaintiff her father and her husband Asiatulla defendant the appellant before us. The dower was fixed at the marriage at 500 rupees of which 300 rupees was prompt and the balance 200 rupees deferred. The two other defendants who are the brothers of Asiatulla, the husband, stood surety for the sum of Rs. 100 out of the prompt portion of the dower. The plaintiff has therefore brought this suit for 200 rupees being his 8 annas share in the dower against the husband Asiatulla and for Rs. 50 in the other suit against the brothers. The defence was that the lady died more

than six years before the institution of the suit and hence the suit was barred by limitation. It was also pleaded that on receipt of the sum of 100 rupees the deceased lady had absolved the husband from all liability for dower. The first Court gave effect to these pleas. But on appeal the learned Subordinate Judge after a careful consideration of the evidence held that the lady died within six years before the institution of the suit and that there was no full satisfaction by payment of dower in her lifetime. On these findings he decreed both the appeals against which decrees these appeals have been brought.

It is argued in appeal that the period of limitation applicable to this case is provided by Articles 103 and 104 of the Limitation Act, and though the Kabinnama or the deed of dower was a registered document, Article 116 of the Limitation Act would not apply on the authority of the case, *Shahezada Mohomed Faiz v. Shahazadi Omdah Begum* (1), namely on the ground that the suit brought by the heirs of a Mahomedan lady for dower is not a suit which rests on contract but for recovery of the goods of the deceased in the hands of the defendant. The report of that case is so very scanty that we are not fully aware of the circumstances under which that case was decided or the contents of the Kabinnama or any special contract between the parties in that case. It has been held that Article 103 of the Limitation Act applies to suits brought by the heirs of the deceased wife against the husband, and there can be no question with regard to that. The heirs of the deceased wife suing for dower stand in her shoes and the attempt to enforce the contract which was entered into between her and her husband is maintainable by them. In some cases an attempt has been made to make a distinction

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between the deferred portion of the dower and the prompt portion of it on the ground that the cause of action for the deferred portion, except in case of divorce, arises only after the death of the wife. So that demand at any rate can be enforced by the heirs of the wife. But it does not appear that any distinction really lies between the two portions claimed for dower. The whole claim whether it is recoverable during the lifetime of the wife or after her death is based on contract or agreement by which the husband promised to pay her and indirectly her heirs representatives and assigns a certain amount of money under the marriage contract. That claim is enforceable as based upon that agreement either by the wife or after her death by her heirs. Some doubt might have arisen with regard to bringing this claim under Article 116 of the Limitation Act as to whether it is a case for compensation for breach of contract. But it has been set at rest by the recent decision of the Judicial Committee in *Tricom Das Cooverjee Bhoja v. Gopinath Jiu Thakur* (1). As I have observed this point was not raised in either of the Courts below and hence we have not the necessary facts and the result of the examination of the evidence on those facts before us. If it is argued as a bare point of law I must answer it by saying that in the present case Articles 103 and 104 are controlled by Article 116 of the Limitation Act.

I therefore hold that the suits were within time and those appeals must be dismissed with costs.

RICHARDSON J. I agree. In my opinion where the dower is payable under a registered instrument executed by the husband in favour of the wife, the suit whether it is brought by the wife during her life

time, or whether it is brought by her heirs after her death, is a suit for compensation for breach of contract in writing registered within the meaning of Article 116 of the Limitation Act. The distinction between prompt and deferred dower seems to me to be immaterial in this connection. The wife may sue the husband for her prompt dower at any time even during the continuance of the marriage. The wife may also sue the husband for her deferred dower in the event of the marriage being dissolved by divorce. In such cases the wife is clearly suing on the contract contained in the registered instrument. Where the suit for dower is brought by the heirs of the wife after her death it is still in my opinion a suit on the contract, the contract being one which under the Mahomedan law (apart possibly from exceptional cases) those heirs are entitled to enforce. The present suits were brought within 6 years of the date of the death of the wife and I agree that they were in time and that these appeals should be dismissed with costs. Any doubt as to the meaning of the expression "a suit for compensation for breach of contract" is removed by the decision of the Privy Council in the case to which my learned brother has referred.

A. S. M. A.

Appeals dismissed.

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