

APPELLATE CIVIL.

Before B. B. Ghose and S. K. Ghose JJ.

ASHUTOSH SIKDAR

v.

CHIDAM MANDAL.*

1929

Aug. 9.

Hindu law—Legal necessity—Payment of deceased husband's timebarred debts—Pious duty—Alienation of whole estate by widow to pay such debt, if justified.

The payment of a husband's debt, though barred, has been held to be a pious duty on the part of the widow, and it is not necessary that there should be any danger to the estate, in order to entitle the widow to incur debts, or to alienate the property of her husband in order to pay off barred debts. The Hindu law does not take cognizance of any bar of limitation.

The payment of a deceased husband's debt by his widow who has received assets from him falls within the first class of religious acts enunciated by the Privy Council in *Sardar Singh v. Kunj Bihari Lal* (1) and is an essential duty on her part for which she may alienate the property inherited from her husband.

Udai Chunder Chuckerbutty v. Ashutosh Das Mozumdar (2) and *Tarini Prasad Chatterjee v. Bhola Nath Mukerjee* (3) approved.

SECOND APPEAL by defendants Nos. 1 to 4.

The disputed lands, which were the only properties left by the deceased owner Gadadhar, had been leased out on *mourasi pāttā* by his widow Gunamani on the 4th Chaitra, 1289 B.S., to one Kailash, whose interest was purchased by defendants Nos. 1 to 4, in execution of a money decree. The *nazar (selāmi)* of the *pāttā* had gone to pay some debts due to a creditor of the husband's, which had become time-barred. The widow having died in Baisakh, 1328 B.S., the plaintiff, her predeceased daughter's son, brought this suit, as her reversioner, for recovery of possession of the said lands.

*Appeal from Appellate Decree, No. 2356 of 1927, against the decree of Janaki Nath Mukherji, Subordinate Judge of Jessore, dated July 11, 1927, affirming the decree of Banku Behari Bhaduri, Additional Munsif of Jhenidah, dated March 16, 1926.

(1) (1922) I. L. R. 44 All. 503 ;
L. R. 49 I. A. 383.

(3) (1891) I. L. R. 21 Calc. 190,
foot-note.

(2) (1893) I. L. R. 21 Calc. 190.

The principal defence was that the permanent transfer by the widow was binding on the plaintiff, inasmuch as it was for legal necessity. The Munsif held that the lease was not binding on the plaintiff and that decision was upheld by the Additional Subordinate Judge on appeal. Both the courts were of opinion that there was no pressure on the estate justifying a permanent alienation. The defendants Nos. 1 to 4 appealed to the High Court.

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Mr. Prafullakamal Das, for the appellants. The payment of a deceased husband's time-barred debt is a legal necessity under the Hindu law. The principle, underlying the rule, is that the widow is under a pious obligation to promote the spiritual benefit of her husband, whose estate she has inherited. One of the ways in which this benefit can be promoted is by getting him released from the penalty or sin of leaving the debts unpaid. It may be legal to evade payment of a just debt by taking shelter under the law of limitation, but such conduct is generally regarded as dishonest, and this is still more so under the Hindu law, under which the obligation of the payment of debts is elevated into a religious duty. The doctrine of pious action of the Hindu law takes no account of the law of limitation. A Hindu widow can alienate the whole of her husband's property for payment of her husband's debts though time-barred if payment of such debt requires such alienation. If alienation of a part cannot clear the entire debt, it will serve no useful purpose. The debt will remain unpaid notwithstanding the alienation of the part. The debt remaining unpaid, the husband's soul will continue to be subjected to tribulations in after-life. The alienation of a part will in such case be therefore altogether infructuous.

Mr. Atulchandra Gupta, for the respondent. I do not dispute that there was legal necessity for the widow's alienation; but legal necessities fall under two classes as laid down by their Lordships of the

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Privy Council in *Sardar Singh v. Kunj Bihari Lal* (1). The necessity in this case falls under the second class of religious acts as explained in that case, since the paying of a husband's barred debts is not so obligatory as performance of his obsequial rites. It may be a purely pious act, for which the widow is justified in alienating only a fraction of her husband's estate.

Mr. Prafullakamal Das, in reply.

B. B. GHOSE J. This is an appeal by defendants Nos. 1 to 4, against the judgment and decree of the Subordinate Judge, affirming those of the Munsif. The suit was brought by the plaintiff for recovery of possession of some lands, on the ground that he was the reversionary heir of one Gadadhar. The defendants claimed the property under a *mokarrâri* lease given by the widow of Gadadhar. The defendants pleaded that the *mourasi pâttâ* was executed by the widow Gunamani, on the 4th Chaitra, 1289 B.S., for legal necessity, that with the *nazar* paid by the defendants or their predecessor-in-interest, the lady paid off some debts of Gadadhar, defrayed the expenses of his *srâdh*, paid rents of the *mâlik*, defrayed the expenses of her own maintenance and those of her visit to Gaya. The trial court did not accept the second and the fifth grounds urged by the defendants. The main question, on which the defendants relied, was that there was a bond executed by Gadadhar dated 1276 B.S., and, in order to pay off that debt, the widow executed the *mourasi pâttâ*. The learned Munsif held that, even accepting that the payment of the debt of the husband was true, it could not amount to legal necessity; firstly, because the debt was not proved to have been alive at the time or, in other words, the debt was barred by limitation and secondly, because there was no legal necessity for the widow to transfer the entire corpus of her husband's estate. His view was that, when

(1) (1922) I. L. R. 44 All. 503 (511); L. R. 49 I. A. 383 (391).

the creditor allowed the debts to lapse by efflux of time, the widow might have a moral duty to pay off the debt, but there was no legal obligation to pay and the payment was only voluntary. The learned Subordinate Judge seems to have confirmed the view of the Munsif. He stated that there was no danger to Gunamani's husband's estate, on account of the dues of the bond; and as the Munsif came to the conclusion that the lease was not granted by Gunamani for legal necessity, the learned Subordinate Judge supported the decision of the Munsif.

The defendants contend that the payment of barred debts of the husband by his widow, who has inherited the property of her husband, is a legal necessity. The cases to which we have been referred are those of *Udai Chunder Chuckerbutty v. Ashutosh Das Mozumdar* (1) and *Tarini Prasad Chatterjee v. Bhola Nath Mukerjee* (2) in which the decisions of other High Courts have been reviewed. There is no doubt that the courts below were in error in holding that the payment of the barred debt of a husband does not amount to legal necessity. With regard to the proposition that there was no danger to the husband's estate at the time for the dues upon the bond on which the learned Munsif has relied, he was evidently in error. The payment of husband's debt, although barred, has been held to be a pious duty on the part of the widow, and it is not necessary that there should be any danger to the estate in order to entitle the widow to incur debts or to alienate the property of her husband in order to pay off such barred debts. The question of danger to the estate has been taken probably from the well known case of *Hunoomanpersaud Panday v. Babooee Munraj Koonweree* (3) but that is not the only ground upon which a widow can alienate the property of her husband. For instance, pilgrimage to Gaya can never be a pressure on the estate. But it is the accepted law that a

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(1) (1893) I. L. R. 21 Calc. 190.

(3) (1856) 6 M. I. A. 393.

(2) (1891) I. L. R. 21 Calc. 190,

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widow can incur debts and alienate property sufficient for the purpose of expenses for the pilgrimage to Gaya and the expenses of the *srâdh* of her husband. The learned advocate for the respondent does not contest the proposition that the payment of barred debts of the husband is a legal necessity, so far as the widow is concerned. But his contention is that, assuming, as the lower court assumed, that the *mokarrâri* lease was granted for legal necessity, the widow had no necessity to alienate the whole of the husband's property by way of a permanent lease in order to pay off a barred debt. His argument is based on the observations of their Lordships of the Judicial Committee in the case of *Sardar Singh v. Kunj Bihari Lal* (1), where their Lordships say that there are two sets of religious acts for which a widow can alienate her husband's property, one set to be essential and the other not essential or obligatory, but still pious acts which conduce to the bliss of the departed soul. With regard to the second set of acts, it is said that a widow can alienate a small portion of her husband's estate. In that particular case a gift was made to a Brahmin of Puri. Within this second class of religious acts, fall digging of tanks, establishing of idols, building of temples, *etc.* The learned advocate for the respondent contends that the payment of barred debts falls within the second category, because, as he seems to argue, that debt could not have been enforced by the creditor against the husband's estate. The Hindu law does not, however, take cognizance of any bar of limitation. As Mr. Mayne has observed: "It is very much to be doubted whether "the plea of limitation would be accepted in the "court of the Hindu Radhamanthus * * *," and I do not remember to have found any text which would support the contention of the respondent. On the other hand, there are texts which enjoin on the son, grandson, and great-grandson the duty of the payment of their ancestors' debts, even if they have not obtained any assets from their

(1) (1922) I. L. R. 44 All. 503 (511); L. R. 49 I. A. 383 (391).

ancestor. According to the Hindu *shâstras*, so far as I am aware, a person dying without payment of his debts is subject to tribulations in after-life and it is, therefore, the pious duty of his descendants to pay off his debts even if they have got no property from him. It is only, in the case of the fourth generation that this pious duty of repaying any debt, even if he got no estate, is exonerated. It seems to me, therefore, that payment of a deceased's debts by his widow, who has received assets from him, falls within the first class of religious acts. I am of opinion that it is an essential duty of the widow, for which she may alienate the property inherited from her husband. In this case, however, the fact whether the widow executed the lease in favour of the predecessor-in-interest of the appellants for payment of any debt of her deceased husband although barred, has not been found by either of the courts below. It is, therefore, necessary to send the case back to the lower appellate court for a finding on the point. If it is found that the lease was granted for payment of the debt of the husband although barred, the alienation will stand. It would however, be necessary to go into the question whether it was possible for the widow to raise the money by alienating a portion of the property or not. With these observations, the case is remitted to the lower appellate court for final disposal. Costs will abide the result.

S. K. GHOSE J. I agree.

Case remanded.

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