

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

MIR ALLI HUSSAIN AND ANOTHER (PLAINTIFFS NOS. 1 AND 2),
APPELLANTS,

1897.
April 2.

v.

SAJUDA BEGUM AND OTHERS (DEFENDANTS NOS. 1, 2 AND 3),
RESPONDENTS.*

Muhammadan Law—Shi'as—Inheritance by childless widows.

The childless widow of a Muhammadan of the Shiya school is not entitled to any share in the land left by her husband.

SECOND APPEAL against the decree of M. B. Sundara Rau, Subordinate Judge of Chittoor, in Appeal Suit No. 75 of 1893, modifying the decree of A. F. Elliot, District Munsif of Vellore, in Original Suit No. 20 of 1891.

The plaintiff sued to recover possession of a share in the property of Mir Abbas Mirza Saheb, deceased, an adherent of the Shiya sect.

The District Munsif passed a decree for plaintiff which was modified by the Subordinate Judge on appeal.

Plaintiff preferred the second appeal.

Pattabhirama Ayyar for appellants.

Mr. Ramasami Raju for respondent No. 1.

JUDGMENT.—The authorities in support of the Munsif's finding that a childless widow of the Shiya school is not entitled to any share in the land of her husband are to be found in *Mussamut As'loo v. Mussamut Umdutoonnissa*(1) and *Mussumat Toonanjian v. Mussumat Mehndee Begum*(2). We see no reason to differ from those decisions. Elberling's work referred to by the Subordinate Judge in support of the contrary view is no authority.

We, therefore, reverse the Subordinate Judge's decree and restore that of the Munsif, with this modification that, in place of the sum of Rs. 125 to be divided between the parties in the proportions stated, the sum of Rs. 218 be inserted.

* Second Appeal No. 298 of 1896.

(1) 20. W.R., 297.

(2) 3 Agra High Court Reports, 13.

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We make this modification in the Munsif's decree in accordance with the findings of the Subordinate Judge which were overlooked in the passing of his decree. We also modify the decree of the Munsif as to costs by directing that the costs of the parties be borne by themselves throughout.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

SAMI AYYANGAR (DEFENDANT NO. 2), APPELLANT,

v.

PONNAMMAL (PLAINTIFF), RESPONDENT.*

Hindu law—Mortgage—Loan at time of mortgage—Whether mortgage binding on the property of the mortgagor's undivided son.

In order to justify a sale or a mortgage by a father so as to bind his son's share of the property, there must be in fact an antecedent debt, *i.e.*, a debt prior to the mortgage or sale.

SECOND APPEAL against the decree of T. M. Horsfall, District Judge of Tanjore, in Appeal Suit No. 504 of 1894, affirming the decree of A. Sambamurthi Ayyar, District Munsif of Valangiman, in Original Suit No. 358 of 1889.

The appellant (defendant No. 2) was the undivided son of defendant No. 1 who in 1883 executed a hypothecation bond to the husband (since deceased) of the plaintiff who brought this suit on the bond, it having fallen to her share on a razinama entered into between her and another widow of her husband.

Both the lower Courts gave a decree for the amount claimed on the security of the mortgaged property including the second defendant's share. Hence this appeal.

The Acting Advocate-General (Hon. V. Bhashyam Ayyangar) and *Gopalasami Ayyangar* for appellant.

Sankaran Nayar for respondent.

JUDGMENT.—As regards the liability of the son's share for the debt of the father as a mere money claim, there can be no question, since it is found that the mortgage was for consideration and was not illegal or immoral.

* Second Appeal No. 1597 of 1895.