

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.*

1903,  
March 23.

HAYATH BIHIMASHAHEBA (PLAINTIFF), APPELLANT,

v.

SYAHSA MEYA (DEFENDANT), RESPONDENT.\*

*Mahomedan Law—Partition of father's estate between brother and minor sister—Sister represented by husband—Debt owing by husband set off against amount due to his wife—Subsequent suit for entire share—Scope of guardianship—Validity of guardian's act.*

Plaintiff's husband had, on the occasion of her marriage, sent her father Rs. 938 for her benefit, which sum was entered in the father's accounts to plaintiff's credit. The father died, and plaintiff's brother, the defendant, entered the same amount to her credit. A partition then took place between plaintiff and her brother, in which plaintiff, being a minor, was represented by her husband. It was found that the husband owed the estate Rs. 1,700, whilst the estate owed him Rs. 400, and the net sum due by him was, with the minor plaintiff's consent, set off against the sum due by the estate to the plaintiff, and the balance still due by the husband was allotted to plaintiff as a portion of her share in the estate. On a suit being filed by the plaintiff (after attaining her majority) for the Rs. 938 :

*Held*, that it was beyond the scope of her husband's duty, though he might have been plaintiff's guardian during her minority, to set off a debt due to her from the estate against a debt due by himself to it, and that the defendant could not rely on that transaction as binding on the plaintiff. Nor did it make any difference that the plaintiff, while a minor, assented thereto. The transaction was really in the nature of a contract and the fact that the minor was privy to it could not bind her.

*Suit for money.* Plaintiff sued her brother for Rs. 938-1-3, due to her from the estate of her father, a Muhammadan. On the occasion of plaintiff's marriage (she being then a minor), her husband sent to her father money and other property to the value of Rs. 938-1-3. Her father entered this in his accounts to the credit of the plaintiff, and on his death the defendant, his son, entered it to the credit of the plaintiff. A partition then took place between plaintiff (who was still a minor) in 1891, when it was found that her husband owed the estate Rs. 1,724-4-8, the estate owing him Rs. 482-6-0. First defendant, with the

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\* Second Appeal No. 1599 of 1901, presented against the decree of W. M. Thornburn, District Judge of Kurnool, in Appeal Suit No. 130 of 1900, presented against the decree of Y. Krishnamurti, District Munsif of Kurnool, in Original Suit No. 480 of 1899.

plaintiff's consent, agreed to plaintiff's husband setting off against his net indebtedness to the estate the Rs. 938-1-3 due by the estate to the plaintiff, his net indebtedness being in that manner reduced to Rs. 303-13-5, which was treated as a portion of the assets of the estate and allotted to plaintiff as part of her share in the estate. Plaintiff now sued her brother for the original sum of Rs. 938-1-3. The District Munsif held that the defendant was not liable, and that the suit should have been brought by plaintiff against her husband, who had acted as his wife's guardian when the set off was effected. He dismissed the suit. The District Judge confirmed the Munsif's decree on appeal.

Plaintiff preferred this second appeal.

Mr. *D. Chamier* for appellant.

*P. R. Sundara Ayyar* and *V. Ramesam* for respondent.

JUDGMENT.--Upon the facts found by the Courts below the plaintiff is clearly entitled to a decree though it may be not for the whole amount claimed. The parties are Muhammadans. The facts found are that the plaintiff and defendant are sister and brother; that the plaintiff's husband on the occasion of their marriage; plaintiff being then a minor, sent to the plaintiff's father money and other property to the value of Rs. 938-1-3 for the benefit of the plaintiff; that the father entered the same in his accounts to the credit of the plaintiff; that, on the father's death, the defendant, his son, entered the same to the credit of the plaintiff; that there was a partition between the defendant and the plaintiff during the minority of the latter in 1891; that at that time, it was ascertained that the plaintiff's husband, Rosha Miah, was indebted to the estate in the sum of Rs. 1,724-4-8 and there was due to him a sum of Rs. 482-6-0, so the net debt due by him was Rs. 1,241-14-8. But the first defendant with the consent, as it is found, of the plaintiff agreed to Rosha Miah setting off against this Rs. 1,241-14-8 the sum of Rs. 938-1-3 which was due by the estate to the plaintiff herself and thus the balance of debt due by him was reduced to Rs. 303-13-5 which was treated as a portion of the assets of the estate and allotted to the plaintiff as part of her share in the estate.

The present suit of the plaintiff is to recover from her brother, the defendant, the sum of Rs. 938-1-3 due to her from the estate notwithstanding the arrangement made during her minority with her consent by which her husband was allowed to set off this

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amount against a debt due by him to the estate. Both the Courts below have dismissed the suit, holding that the plaintiff's remedy, if any, is against her husband not against the defendant.

In our opinion this view is erroneous. Though Rosha Miah may have been the guardian of the plaintiff during her minority yet it was clearly beyond the scope of his authority as guardian to set off a debt due to her from the estate against a debt due by himself to the estate; and the defendant, therefore, cannot rely on this transaction between him and Rosha Miah as binding on the plaintiff, and in our opinion it makes no difference that the plaintiff while a minor assented thereto. The transaction was really in the nature of a contract and the fact that the minor was privy to it cannot bind her.

The plaintiff is therefore entitled to recover the debt due to her from the estate of her father, but a portion of that estate has come to her hands in the partition and that portion must be charged with so much of the debt she now seeks to recover as bears to that debt the same proportion as the portion of the estate allotted to her in the partition bears to the portion of the estate taken by the defendant.

But as the defendant's action in allowing the set off in favour of Rosha Miah was not warranted, he ought to be chargeable with the amount allowed to be set off or so much of it as could have been recovered from Rosha Miah; and therefore the Rs. 938-1-3 or so much thereof as could have been recovered must be added to the property allotted to the defendant at the time of partition for the purpose of determining the proportion of the estate in the hands of the plaintiff and the defendant respectively.

Before, therefore, determining this appeal we remit the following issues to the District Judge: (1) Whether having regard to the financial condition of Rosha Miah, the whole or any part of the sum of Rs. 938-1-3 was irrecoverable; and (2) what was the value of the property allotted to the plaintiff and the defendant respectively at the time of partition. Fresh evidence on both sides may be taken.

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[Findings were in due course returned and the case decided on them.]

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