

some respects a distinct Province from the North-Western Provinces does not, in our opinion, take the case out of the operation of that ruling, inasmuch as Regulation XVII of 1806 was in force in Oudh as well as in the North-Western Provinces at the time of the foreclosure proceedings. The appeal is dismissed with costs.

1879

SURJAN
SINGH.
v.
JAGAN NA
SINGH.

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Spankie.

1879
May 21

JAMNA (PLAINTIFF) v. MACHUL SAHU (DEFENDANT).*

Hindu Widow - Maintenance.

A wife is, under the Hindu law, in a subordinate sense, a co-owner with her husband; he cannot alienate his property, or dispose of it by will, in such a wholesale manner as to deprive her of maintenance.

Held therefore, where a husband in his lifetime made a gift of his entire estate leaving his widow without maintenance, that the donee took and held such estate subject to her maintenance.

THIS was a suit, instituted in April, 1877, for a declaration of the plaintiff's right to an allowance for her maintenance of Rs. 25 per mensem. The plaintiff was the widow of Ramjewan, and the defendant was Ramjewan's nephew, to whom Ramjewan had in his lifetime, shortly before his death, made a gift of all his real and personal estate, under which the defendant had acquired possession of such estate in Ramjewan's lifetime. The material portion of the deed of gift, which was dated the 8th January, 1850, was as follows: "I have made a gift of my whole and entire property and possessions in lands, capital, houses made of bricks and mud situated in the city aforesaid, both ancestral and mortgaged, &c., money, ornaments, vessels, carpets, cash, &c., such as fall under the denomination of, and are called, property, constituting my whole estate and right, to Machul, son of Munna Lal and my nephew, who carries on the business of the firm jointly with me, and whom in absence of a son I have adopted as my son: I have made him its proprietor and my representative: the gift is valid, and lawful,

* Second Appeal, No. 1027 of 1878, from a decree of M. Brodhurst, Esq., Judge of Benares, dated the 1st June, 1878, affirming a decree of Pandit Jagat Narain, Subordinate Judge of Jaunpur, dated the 11th May, 1877.

1879

JAMNA

v.

MACHAL
SAHU.

it vests property and is just and proper: it is made in the form of *sila* (gift to a relative) without any dispute, and without any consideration or hopes (from the donee): it is unconditional and free from vicious and false conditions: I have put the said donee in possession, in my place, in respect of the whole and entire property the subject of the gift aforesaid, which is free from all defects and disputes: I have exempted this gift wholly from any claim of resuming it: the said donee may realize by virtue of this deed all that is due from the tenants on account of immoveable property and the money due, and may enjoy and possess the villages under *zur-i-peshgi*, lease, &c., by having his name recorded in respect of the same: in short he may enjoy and possess all the villages sold and mortgaged to, or taken on farm or purchased at auction and held by, me: after my death none of my heirs shall, for any reason or cause, have any right, claim, or cause of action thereto: and as the said donee has accepted the said gift and transfer of property, these few lines have been executed in the shape of gift and assignment of proprietary right, which may serve in evidence when required."

The defendant set up as a defence to the suit that he was not bound to maintain the plaintiff, and that Ramjewan had provided for the plaintiff's maintenance by gifts of money and jewels. The Court of first instance held that, inasmuch as the defendant had not succeeded to the estate of Ramjewan by inheritance, and inasmuch as the deed of gift did not provide for the plaintiff's maintenance, and the defendant had not entered into any agreement to maintain her, the defendant was not legally bound to maintain the plaintiff. The Court of first instance accordingly dismissed the suit, without determining the second issue raised by the defence, observing that the plaintiff might have impugned the gift on the ground that no provision had been made for her maintenance, had she not acquiesced in its validity for so long a period of time. On appeal by the plaintiff the lower appellate Court affirmed the decision of the Court of first instance, observing with reference to the second issue raised by the defence, that the great delay which had occurred in the institution of the suit supported the defendant's assertion that the plaintiff's husband had made a provision for her.

The plaintiff appealed to the High Court, contending, amongst other things, that she was entitled to be maintained out of her husband's estate, and that the defendant was equitably bound to maintain her, it not being shown that any provision had been made for her maintenance by her husband.

187

JAMN
v.
MACHU
SAHU.

The *Senior Government Pleader* (*Lala Juala Prasad*), for the appellant.

Munshi Hanuman Prasad, *Pandit Bishambhar Nath*, and *Lala Jokhu Lal*, for the respondent.

The following judgments were delivered by the Court :

PEARSON, J.—The lower Courts have disallowed the plaintiff's claim to be maintained out of her husband's estate given by him on the 8th January, 1850, shortly before his death, to the defendant, who was his nephew and partner in business, and who is stated in the deed of gift to have been adopted by him as a son, on the ground that, under the terms of that instrument, which bestows the whole estate on him without exception, reservation, or condition, she has no right to what she claims. I am not prepared to hold that the deed has been misconstrued, but the second ground of the appeal appears to me to be valid. A wife is, under Hindu law, in a subordinate sense a co-owner with her husband; he cannot alienate his property or dispose of it by will in such a wholesale manner as to deprive her of maintenance; and I am therefore of opinion that the donee of the entire estate must be deemed to have taken and to hold it subject to her maintenance. This opinion is supported by the remarks at p. 366 of West and Bühler's Hindu Law of Inheritance and Partition, 2nd ed. and the Privy Council decision dated 30th November and 2nd December, 1859, in the case of *Sonatum Bysack v. Sreemutty Juggutsoondree Dossee* (1), and by a judgment of the Madras High Court dated 27th October, 1860, in which a sale of a piece of land by a Hindu was set aside on his wife's suit on the ground that it left her without maintenance.

The plea that provision was made for the maintenance of the plaintiff in the present case by her husband in the shape of an

(1) 8 Moore's Ind. App., 66.

assignment of cash and jewels seems inconsistent with the terms of the deed, and the lower Court's finding that his entire estate was without exception or reservation, given to the defendant, but the Courts below have not distinctly adjudicated upon it. I would direct the lower appellate Court to adjudicate on that plea, and, if it should disallow it, to proceed to determine whether Rs. 25 per mensem, or what monthly amount, would be a suitable allowance for the plaintiff's maintenance. The lower appellate Court should be instructed to submit its findings, when a week might be allowed for objections.

SPANKIE, J.—I agree with my learned and honorable colleague's proposal to refer the issue laid down above for determination by the lower appellate Court.

Cause remanded.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

GULAB DAI (PLAINTIFF) v. JIWAN RAM AND OTHERS (DEFENDANTS). *

Failure of Plaintiff to pay Court-fee for issue of Summons—Non-appearance of Defendant—Act VIII of 1859 (Civil Procedure Code), s. 110—Act XXIII of 1861, ss. 5, 7—Fresh suit—Act X of 1877 (Civil Procedure Code), s. 99.

Where the plaintiff in a suit failed to deposit the *talabana* required for the purpose of issuing summonses to certain persons whom it was proposed to make defendants in addition to the original defendants in such suit, and the Court on that ground irregularly dismissed such suit as against such original defendants by an order purporting to be made under s. 110 of Act VIII of 1859, on a day previous to that fixed for the bearing of such suit, *held* that such order of dismissal did not preclude the plaintiff from instituting a fresh suit.

THE facts of this case were as follows: On the 3rd August, 1866, one Radha Kishen instituted a suit against one Lachman Das and certain other persons in the Court of the Munsif for the possession of certain land. The 23rd August, 1866, was fixed for the settlement of issues in this suit. On that date no issues were fixed, but the Munsif made an order which had reference to the addition of other persons as defendants in the suit. On the 27th August, 1866, the pleader for the plaintiff applied that certain persons whom he named might be made defendants in the suit, and

* Second Appeal, No. 955 of 1878, from a decree of R. M. King, Esq., Judge of Meerut, dated the 26th June, 1878, affirming a decree of Muusli Ram Lal, Munsif of Ghaziabud, dated the 19th February, 1878.