

APPELLATE CIVIL.

1879
M.L.S.*Before Mr. Justice Pearson and Mr. Justice Oldfield.*BHAWANI AND OTHERS (DEFENDANTS) v. MAHTAB KUAR AND OTHERS
(PLAINTIFFS).**Hindu Law—Widow's Estate, Forfeiture of—Unchastity during Widowhood*

It is sufficient for the protection of a Hindu widow's right to her husband's estate from forfeiture by reason of unchastity that such right has vested in her before her misconduct. It is not necessary for such protection that she should have acquired possession of the estate before her misconduct.

THE facts of this case, so far as they are material for the purposes of this report, were as follows: One Dariao Singh died in 1860 leaving him surviving two widows, Ganesh Kuar and Bhawani, three daughters, his mother, and a sister. On his death Ganesh Kuar's name alone was recorded as the proprietor of his landed estate. Ganesh Kuar died in 1870, and on her death a dispute arose between one Maharaj Singh, styling himself the legitimate son of Dariao Singh, on the one side, and Dariao Singh's mother and Bhawani on the other, as to the mutations to be made in the revenue registers consequent on Ganesh Kuar's death. In November, 1871, the settlement officer directed that Maharaj Singh, Dariao Singh's mother, and Bhawani should each be recorded as the proprietor of one-third of the landed estate of Ganesh Kuar. Subsequently Maharaj Singh sued for the shares recorded in the names of Dariao Singh's mother and Bhawani, on the ground that he was the legitimate son of Dariao Singh. This suit was dismissed. In 1873 Dariao Singh's mother died, and on her death Maharaj Singh's name was recorded as the proprietor of her share. The present suit was brought by Dariao Singh's sister against Maharaj Singh and Bhawani for the possession of the entire landed estate of her brother. The defendants set up as a defence to the suit, amongst other things, that the suit was not maintainable by the plaintiff in the presence of Dariao Singh's daughters. Subsequently the Court of first instance made Dariao Singh's daughters plaintiffs in the suit, and, with their consent,

* Regular Appeal, No. 153 of 1874, from a decree of Maulvi Muhammad Abul Majib Khan, Subordinate Judge of Sháhjahánpur, dated the 25th September, 1874.

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allowed Dariao Singh's sister to remain in the suit as a plaintiff. The Court gave the plaintiffs a decree, Dariao Singh's sister taking one moiety of his estate, with the consent of his daughters, who took the remaining moiety. The Court held that Bhawani, who had given birth to an illegitimate child in 1869, had forfeited her husband's estate by reason of her unchastity. It was of opinion that, assuming that, under Hindu law, a Hindu widow who has once inherited the estate of her husband does not forfeit that estate by reason of subsequent unchastity, that law did not apply, inasmuch as Bhawani did not acquire possession of her husband's estate until Ganesh Kuar's death in 1870, or after her misconduct. The Court further held that Maharaj Singh had no title to the property in his possession, not being the legitimate son of Dariao Singh.

The defendants preferred an appeal to the High Court, contending, among other things, that the fact that her husband's estate had vested in Bhawani before her misconduct was quite sufficient to protect her right from forfeiture, and possession was not necessary for such protection.

Pandit *Ajudhia Nath* and *Munshi Sukh Ram*, for the appellants,
Lala Lalta Prasad, for the respondents.

The judgment of the Court was delivered by

PEARSON, J.—There are no grounds for holding that Musammatt Bhawani, defendant, appellant, became unchaste during the life of her husband Dariao Singh. He died in 1860, and her illegitimate child would seem to have been born in or about 1869. It may be concluded therefore that the right of inheritance to her husband's estate jointly with his other wife, Musammatt Ganesh, had vested in her by law long before she was guilty of misconduct. The lower appellate Court considers that nevertheless she has forfeited that right by her misconduct because she had not acquired possession of her husband's estate before the death of his elder wife in 1870. His reason for thinking that she did not acquire possession of her husband's estate until after Musammatt Ganesh's death is merely that the latter's name only was recorded after Dariao Singh's death. But the reason does not seem to be a good one. Musammatt Ganesh, when her name was recorded as her husband's heir,

acknowledged the joint heirship of Musammat Bhawani, and there is no reason to doubt that the latter continued to live in her husband's house, and to be supported out of his estate, with the other widow. Musammat Ganesh was probably the head of the house and the manager of the estate, but Musammat Bhawani cannot be regarded as having been out of possession. But, however this may be, we conceive it to be sufficient for the protection of her right that it had vested in her by law before her misconduct. In her presence none of the plaintiffs have any right to succeed to the estate of Dariao Singh aforesaid. It is unnecessary to discuss the question of the legitimacy of the defendant, appellant, Maharaj Singh. We decree the appeal with costs, and dismiss the suit by reversal of the lower Court's decree.

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Appeal allowed.

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

KHETA MAL (DEFENDANT) v. CHUNI LAL (PLAINTIFF). *

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K, on the one part, and his creditors including *C*, on the other part, agreed in writing to refer to arbitration the differences between them regarding the payment of his debts by *K*. The award compounded *K*'s debts, and assigned his property to his creditors, and directed that *K* should dispose of such property for their benefit, and that, if he misappropriated any of the property he should be personally liable for the loss sustained by the creditors on account of such misappropriation. *C* signed the award, amongst other creditors, but the award was not signed by all the creditors. *C* received a dividend under the award. *Held*, in a suit by *C* against *K*, to recover a debt which had been compounded under the award, in which suit *C* alleged that several creditors had not signed the award; that some of them had sued *K* and recovered debts in spite of the award; that *K* had misappropriated some of the property; and that, if the plaintiff did not sue, there would be no assets left to satisfy his debt, that such suit was not maintainable.

THE facts of the case were as follows: By an instrument in writing dated the 9th May, 1877, the firm of Kheta Mal and Kashi Nath on the one part, and the creditors of that firm, amongst whom was one Chuni Lal, on the other part, agreed to refer the differences between them to arbitration. The arbitrators appoint-

* Second Appeal, No. 670 of 1878, from a decree of H. G. Keene, Esq., Judge of Agra, dated the 1st March, 1878, affirming a decree of Babu Avinash Chandar Banarji, Munsif of Agra, dated the 19th September, 1877.