

1879  
February 10.

## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Spinkie.*

ABADI BEGAM (PLAINTIFF) *v.* ASA RAM (DEFENDANT).\*

*Agreement affecting Land—Transfer of the Land—Covenant running with the Land.*

*S*, by an instrument in writing, duly registered, agreed, for valuable consideration, for himself, his heirs and successors, to pay his wife, *A*, a certain sum monthly out of the income of certain land, and not to alienate such land without stipulating for the payment of such allowance out of its income. He subsequently gave *L* a usufructuary mortgage of the land subject to the payment of the allowance. *L* gave *R* a sub-mortgage of the land, agreeing orally with *R* to continue the payment of the allowance himself. *Held*, in a suit by *A* against *L* and *R* for arrears of the allowance, that *A* was not affected by any agreement between *L* and *R* as to the payment of the allowance, and *R*, being in possession of the land, was bound to pay the allowance.

THE facts of this case were as follows: On the 26th February, 1866, Maujad Ali Shah, who was indebted at that time to his wife, Abadi Begam, in a sum of Rs. 14,000, being her dower, by an instrument in writing, duly registered, covenanted for himself, his heirs and successors, to pay his wife Rs. 12 per mensem out of the income of certain land in lieu of dower. He further covenanted not to alienate the land without stipulating for the payment of this allowance. On the 1st December, 1870, Maujad Ali Shah gave Lachman Singh a usufructuary mortgage of the land for seven years, stipulating in the deed of mortgage that the mortgagee should pay Abadi Begam Rs. 12 per mensem out of the income of the mortgaged property. On the 24th August, 1874, Lachman Singh sub-mortgaged the land to Asa Ram, and gave him possession of it. At the time of this mortgage Lachman Singh agreed orally with Asa Ram to continue to pay Abadi Begam her allowance himself. The present suit was brought by Abadi Begam against Lachman Singh and Asa Ram for the arrears of the allowance. The Court of first instance gave the plaintiff a decree against Asa Ram alone. On appeal by Asa Ram the lower appellate Court reversed the decree against him, and gave the plaintiff a decree against Lachman Singh.

The plaintiff preferred an appeal to the High Court, contending that she was entitled to a decree against Asa Ram.

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\* Second Appeal, No. 964 of 1878, from a decree of R. F. Saunders, Esq., Judge of Farukhabad, dated the 29th July, 1878, reversing a decree of Pandit Gopal Sahai Munsif of Farukhabad, dated the 8th May, 1878.

Pandit *Ajudhia Nath* and Munshi *Sukh Ram*, for the appellant.

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Munshi *Hanuman Prasad* and Lala *Harkishen Das*, for the respondent.

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The judgment of the High Court was delivered by

SPANKIE, J.—The plaintiff's husband, by a deed registered on the 29th April, 1866, settled upon her a sum of Rs. 12, in lieu of dower, to be paid monthly from the income of the rent-free land of Nagla Asadnagar, in mauzas Nurpura, Jasmai, Asmatpur, and Dhalawal, by himself, and his heirs and successors after him. If either he or any of his heirs or successors failed to make the payment monthly, the lady was at liberty to sue for the sum due in the Civil Court. The deed further provides that no transfer of the property shall be made unaccompanied by a condition providing for and securing the required monthly payment of Rs. 12 from the profits. When the plaintiff's husband, Maujad Ali Shah, had subsequently mortgaged the property to Lachman Singh, one of the defendants, and to Madho Singh, on the 1st December, 1870, it was recorded in the deed of mortgage that a monthly allowance of Rs. 12 was to be paid to the plaintiff. The first mortgagee acknowledged this fact. The first mortgagee subsequently, on the 24th August, 1874, sub-mortgaged the property to Asa Ram, the other defendant. The plaintiff therefore sued him along with Lachman Singh, the first mortgagee, as being in possession of the lands from which the allowance was to be paid. The Munsif decreed against Asa Ram in favour of the plaintiff, exempting Lachman Singh. The Judge, however, held that there was no clause in the second mortgage-deed binding him to continue the payment of Rs. 12 monthly to the plaintiff, as had been the case in the first mortgage-deed with regard to the first mortgagee, and further he found that it was clearly shown by Asa Ram's witnesses that, at the time of entering into the sub-mortgage, Lachman Singh had bound himself to continue the payment, whereas the second mortgagee had never undertaken to pay it. Moreover, Lachman Singh's sons and others had purchased the proprietary rights in the property, and Lachman Singh's interest in it had never ceased. The Judge decreed Asa Ram's appeal, and gave the plaintiff a decree against Lachman Singh alone.

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It is contended that Asa Ram, sub-mortgagee, being in possession of the property charged with the payment of the monthly allowance of Rs. 12, is bound to pay it.

We are of opinion that the contention is right. The plaintiff is not affected by any arrangement made between Lachman Singh and Asa Ram. She looks to payment of her allowance from the income of the land charged with the burden of paying it, and therefore she has a claim upon the party who is in possession of the lands. In this case the sub-mortgagee, in accepting the mortgage from Lachman Singh, must have been aware of the conditions under which the latter had accepted the original mortgage, and therefore also must have been aware of the lien created by Maujad Ali Shah in favour of his wife, and which lien, with or without notice, extends to all persons claiming to hold the lands, to the extent of the amount of the profits set apart for the benefit of the plaintiff. With this view of the case we decree the appeal, reverse the decree of the lower appellate Court, and restore the decision of the first Court, with costs.

*Appeal allowed.*

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## FULL BENCH.

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*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*

HANUMAN TIWARI (PLAINTIFF) v. CHIRAI AND ANOTHER (DEFENDANTS).\*  
*Hindu Law—Adoption of an only son.*

*Held (TURNER, J., dissenting) that the adoption of an only son cannot, according to Hindu law, be invalidated after it has once taken place.*

THE facts of this case were as follows: One Mata Bakhsh, claiming to be the adopted son of Durga Prasad, deceased, sold a certain dwelling-house, of which Durga Prasad had died possessed, to Chirai, on the 25th February, 1874. The plaintiff in this suit, Durga Prasad's brother, claiming to be his heir, sued Mata Bakhsh and Chirai for a declaration of his right to, and possession of, the house, and the

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\* Special Appeal, No. 5 of 1876, from a decree of J. W. Sherer, Esq., C. S. I., Judge of Mirzapur, dated the 27th September, 1875, affirming a decree of Maulvi Zain-ul-Abdin, Subordinate Judge of Mirzapur, dated the 29th May, 1875.