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MUHAMMAD SULAIMAN KHAN v. MUHAMMAD YAR KHAN.

1888 *November* 26.

the Code of Civil Procedure, should not be so exercised in this case as to interfere with the order of the learned Subordinate Judge.

I would dismiss this application with costs.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Mahmood.

GANPAT RAO (DEFENDANT) *v.* RAM CHANDAR (PLAINTIFF).*

Hindu Law—Joint Hindu family—Maintenance—Gift to widow by member of joint family—Construction—Gift presumed to be of life-estate only.

Disputes having arisen between the sole surviving member of a joint Hindu family and his brother's widow, an amicable arrangement was come to, and certain deeds were executed by both parties, under which the widow was placed in possession of a certain house. On the part of the brother-in-law it was recited that, with a view to permanently settling the matters in dispute, he had received in cash from the widow the value of his share in the house, that she had been put in possession of the house and was in sole proprietary possession thereof, and that he had no connection whatever with it. Subsequently, the widow executed a deed-of-gift purporting to convey to the donee an absolute proprietary title to the house. After her death, the brother-in-law brought a suit against the donee to recover possession of the house, on the ground that the deed-of-gift could not convey to him more than the life-interest of the widow donor.

Held that the deed-of-gift must be construed with reference to the nature of the general rights of the donor at the time of execution, as a Hindu widow in a joint Hindu family, entitled only to maintenance. *Sreemutty Rabutty Dossee* v. *Sibchunder Mullick* (1) and *Dinonath Mukerji* v. *Gopal Churn Mukerji* (2), referred to.

Held also, having regard to the rules of the Hindu law regarding the possession by widows of joint family property in lieu of maintenance, and to the experience of the Courts in connection with such matters, that it was for the donee to establish clearly and specifically that the donor, at the time when she executed the deed-of-gift, had any such absolute right of ownership as would entitle her to alienate the property for any interest beyond a life-estate.

Held further, that there was nothing in the deeds under which the donor obtained possession of the property, which placed beyond doubt the intention of the parties that she should be entitled to the absolute ownership of the property; and that her estate therefore could at best be regarded as a life-estate, and the deed-of-gift as binding upon the plaintiff during her lifetime, but not further.

* First Appeal No. 3 of 1887 from a decree of Babu Mirtunjoy Mukerji, Subordinate Judge of Benares, dated the 13th December, 1886.

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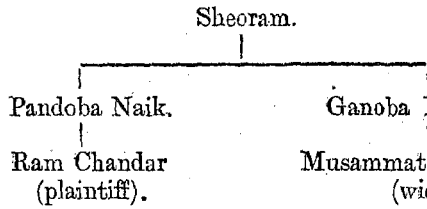
THE facts of this case are sufficiently stated in the judgment of Mahmood, J.

Munshi *Madho Prasad*, for the appellant.

Munshi *Juala Prasad*, for the respondent.

MAHMOOD, J.—This is a first appeal from the decree of the learned Subordinate Judge of Benares, and in order to explain the facts which require determination in the case it is convenient to bear in mind the following genealogical table :—



Sheoram died many years ago, leaving Ganoba and Pandoba, the sons above-mentioned. Pandoba died about 1849, leaving his son Ram Chandar, and thereafter Ganoba also died about the year 1852, leaving a childless widow Musammat Lachmi Bai, whose name appears in the pedigree.

It is admitted in the case by the parties that the family of Sheoram and his sons was a joint Hindu family, both in point of worship and food and also of residence and estate, so that upon the death of Sheoram his two sons would be the joint co-parceners of the joint family property, and upon the death of Pandoba in 1849, the remaining two members, Ganoba and Ram Chandar, the present plaintiff, would be the members of the joint co-parcenary.

It appears, however, that upon the death of Ganoba, Ram Chandar, plaintiff, claiming to be the sole surviving heir to the property of the joint Hindu family, took steps to assume the management and exercise the proprietary functions in respect of the entire family property, and this led to a complaint by Musammat Lachmi Bai, the widow of Ganoba above-mentioned. The complaint was preferred in the criminal Court on the 7th October, 1854, by the widow lady, in which she complained of various acts of the

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plaintiff Ram Chandar and prayed for the interference of the Court under the provisions of Act IV of 1840, which then related to such disputes as to possessory titles. The matter, however, does not appear to have gone further in the Court. We find, as is admitted in the present case, that an amicable arrangement was come to by the parties, and they, in the first place, executed two deeds, one called the deed of arrangement or *ikrárnáma* executed by Ram Chandar on the 31st October, 1854, and another executed by the same person on the same date called a deed of partition. On the same date a third deed was also executed both by the lady, Musammat Lachmi Bai, and the present plaintiff, Ram Chandar, in the form of a deed of compromise, which was filed in Court and verified, and in which, after referring to the other two deeds, the parties stated the conditions upon which they had arrived at an amicable settlement, and effect was given to the compromise by the Court's order of that date whereby it was decided that the compromise be accepted and the case be struck off the file.

Matters stood thus when, under the compromise, the lady Musammat Lachmi Bai was placed in the possession of the house now in dispute, namely, the house which, in the deed of partition and also in the other deeds of the 31st October, 1854, is described as the *haveli* situate in Mohalla Dudh Binayak, and similarly under the conditions of the other deeds the plaintiff was placed in possession of another *haveli* or house situate in muhalla Gobindji Naik. This arrangement is best represented in the words of the deed of partition executed by the plaintiff Ram Chandar. It goes on to say :—

"With reference to it, it has been agreed in this way between me and the said lady, with a view of permanently settling the dispute, and one having no connection with the other, that I have received Rs. 3,475 as the value of my half share in the house from the aforesaid lady, and have made over the deed appertaining to the said house *haveli*, to the lady, and have put her in possession of my half share of the house. Now the whole of the house is in the sole proprietary possession of the said Musammat, and I, the executant, have no connection whatever with it. Again, out of the house in

muhalla Gobindji Naik the one-third share of the Musammat has been annexed to my share, and I have in the same way paid Rs. 830 to the Musammat, and have taken possession and occupancy of the entire house, and the said Musammat has made over the deed of the house to me. In short, I have been put in proprietary possession of the entire house, and the said Musammat has no objection to it, nor shall she have any hereafter."

It appears that effect was given to this arrangement, and matters thus stood when on the 23rd November, 1882, Musammat Lachmi Bai, the widow of Ganoba, executed a deed-of-gift in favour of her brother's son, Ganpat Rao, who is the defendant-appellant in the cause. The deed assumes that the donor had an absolute, full and unqualified right in the ownership of the house in mohalla Dudh Binayak, and it purports to convey to the donee full proprietorship in the house. The deed does not appear to have been disputed during the lifetime of the widow, but the lady, Musammat Lachmi Bai, died on the 28th May, 1885, and it was soon after her death, namely, the 12th February, 1886, that the present suit was instituted with the object of recovery of possession of the property, upon the ground that the deed-of-gift dated the 23rd November, 1882, could not convey to the defendant-donee any rights higher than the life-interest of the donor, namely, the widow.

From the facts which I have stated, it is clear that, if matters stood and rested entirely upon the propositions of the Hindu Law of inheritance, the family of Sheoram and his sons being joint, the death of Ganoba in 1852 would result in entitling the lady, Musammat Lachmi Bai, only to a right of maintenance out of the joint family property, and not to any right either to obtain partition of the property or to institute any proceedings beyond the exigencies and requirements of her right of maintenance. I take this to be a settled principle of Hindu Law, and if we omit to consider the exact nature of the general rights of Musammat Lachmi Bai at the time when the deed of the 31st October, 1854, was executed, we should scarcely be in a position to understand the aims, objects and intentions of the arrangements into which the

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parties had entered. It seems to me that there was no reason why the lady, Musammat Lachmi Bai, should have assigned any share in the ancestral property. Such an arrangement must be referred to some legal right which would form the consideration passing from one party to the other. That consideration could only be the right of maintenance, and Ram Chandar need not have allowed the lady any more than the right to reside in the joint ancestral property and not any money allowance for maintenance. In this way of regarding the deed I think I am fortified by the manner in which their Lordships of the Privy Council disposed of the case of *Sreenauth Rabutty Dossee v. Sibchander Mullick* (1) when a deed somewhat similar in its nature was the subject of consideration, and also by the ruling of the learned Judges of the Calcutta High Court in *Dinonath Mukerji v. Gopal Churn Mukerji* (2) where the learned Judges held, in construing documents such as the arrangement and partition deeds of 1854, that the situation of the parties and their rights at the time of execution must be looked at, and indeed for this view they relied upon the ruling which I have already referred to.

Such then being the manner in which the deed should be regarded and construed, and keeping in view also the rules of the Hindu Law, whereby widows are placed in possession of the joint family property and also the general experience of the tribunals in connection with such matters, I am of opinion that it was for the defendant-appellant, Ganpat Rao, to establish in clear specific terms that the lady Musammat Lachmi Bai, when she executed the deed of gift of the 23rd November, 1882, in his favour, possessed any such absolute right of ownership as would entitle her to alienate and deal with it in any manner which would go beyond her life-interest. This of course would depend upon something contained in either of the deeds of the 31st October, 1854, but having carefully read through those deeds, I asked Mr. *Madho Prasad* to point out any expression used in the deeds that placed beyond doubt the intention of the parties that Musammat Lachmi Bai

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was entitled to have under them full ownership, and possessing such full ownership, was exercising the power of alienation which would be sufficient to confer an absolute and inalienable proprietary title. It is therefore clear that the estate of Musammat Lachmi Bai, putting the matter in its highest form, and looking to the time when the deeds were executed, could at best be said to be analogous to the position of a Hindu widow of a deceased brother, in other words, a life-interest and nothing more. But the deed of gift in favour of the defendant-appellant might be held to be good during her lifetime and could not bind the plaintiff under the Hindu Law when her interest in the property had ceased.

This arrangement, as I have understood it, is all the more conceivable, because it is perfectly possible, and indeed probable, that this sort of exchange of houses which took place under the partition deed of the 31st October, 1854, was entered into to prevent such disputes as would arise on account of the widow Musammat Lachmi Bai having a right to live in a portion of the house in muhalla Dudh Binayak and the plaintiff having a similar right to live in another house. The exchange of money, namely, Rs. 3,475, paid to the plaintiff and Rs. 830 paid by the plaintiff to the widow, is fully explainable as a desire on the part of both the parties to have peace and secure comfort, and is not necessarily a reason for supposing that the transaction amounted to a sale absolute either by one party or the other.

I think that the learned Judge of the lower Court rightly decreed the claim, and no case has been made out for interference by us. I would therefore dismiss the appeal with costs.

STRAIGHT, J.—I am entirely of the same opinion.

Appeal dismissed.