

Before Mr. Justice Prinsep and Mr. Justice Grant.

AMJAD ALI (DEFENDANT) *v* MONIRAM KALITA (PLAINTIFF.)*

1885
August 4.

Hindu Law, Alienation—Sale by widow of husband's estate—Maintenance of widow remarried—Necessity—Legal expenses—Mortgage, Proof of existence of—Oral evidence.

Where a Hindu widow is remarried, or is living with another man, it does not necessarily follow that she would not be entitled to sell her deceased husband's estate for her maintenance.

Legal expenses incurred by a Hindu widow, in defending her life estate in her husband's property, constitute such a charge on the property, as to make a sale thereof by her binding as against the reversioners.

Where a question arises (not between mortgagor and mortgagee)—as to the previous existence or non-existence of a particular mortgage, the oral evidence of the mortgagee that it did exist will be sufficient to prove the fact, without the production of the mortgage deed.

THIS was a suit brought for the recovery of possession of certain lands.

The plaintiff was the cousin of one Gondhala Kalita, who died some years ago, leaving a widow one Kirikalitani, now deceased. On her husband's death Kirikalitani married again, and the plaintiff on that ground brought a suit against her to recover possession, as reversionary heir, of the property which had come to her through his cousin. The suit went up to the Privy Council, and the widow's life interest in a part only of the disputed property (including that now in suit) was eventually confirmed; and she obtained a potta for it in her own name. She subsequently sold it to the defendant in the present suit. She is now dead; and the plaintiff asks that he may be put in possession of the property, on the ground that Kirikalitani had only a life interest therein, and was in consequence incapable of alienating it. In the Court of the Extra Assistant Commissioner of Jorehat, where the case was originally tried, the main issue raised was "whether Mussamat Kirikalitani had any actual and legal necessity to sell her land for the purpose of liquidating debts as well as for maintaining herself."

* Appeal from Appellate Decree No. 58 of 1885, against the decree of Col. W. S. Clark, Esq., Subordinate Judge of Zillah Sibnagar, dated the 11th of September 1884, reversing the decree of Baboo Madhub Chunder Bordobi, Sadder Munsiff of Jorehat, dated the 31st January 1884.

On this issue the Assistant Commissioner found that the plaintiff had forced her into a very heavy litigation, for the costs of which he held a decree against her, that with the exception of this estate she had little if any other means of paying her debts and maintaining herself, and that the purchase-money was *bond fide* applied to the payment of a mortgage on the estate, and for her maintenance. The plaintiff moreover made no attempt to taint the transaction with fraud on her part, nor was there any allegation by him that the defendant had failed to make proper enquiries as to the existence of a legal necessity pressing upon her.

1885

 AMJAD ALI
 v.
 MONIRAM
 KALITA.

On these findings the Assistant Commissioner held that the widow was legally justified in selling, and that the sale was consequently a good one against her husband's reversionary heir.

The plaintiff's suit was accordingly dismissed with costs. Against this decision he appealed to the Deputy Commissioner of Sibsagar, who held that the expenses of litigation could not properly be pleaded as proof of a legal necessity to part with the estate; that the oral evidence put forward to prove the alleged mortgage was quite insufficient in law, the only admissible evidence being a duly executed and registered deed; that seeing she was living with another man she could hardly claim to sell her life estate for purposes of maintenance; and, lastly, that there was no evidence that defendant had made proper enquiries before purchase. Plaintiff's appeal was accordingly decreed with costs. Against this decree the defendant appealed to the High Court.

Baboo *Troiluckynath Mitter* for the appellant.

Baboo *Jogendra Chunder Ghose* for the respondent.

The Court (PRINSEP and GRANT, JJ.) delivered the following judgment:—

We think that this case must be remanded to the lower Appellate Court for re-trial. Kirikalitani was the defendant in the suit which went up in appeal to the Privy Council, and is generally known as the Hindu Widow Unchastity case. The plaintiff in the suit now before us then sued this widow to obtain possession of the entire estate of her husband on the ground of her having forfeited her rights on account of her subsequent

1885
 AMJAD ALI
 v.
 MONIRAM
 KALITA.

unchastity. He succeeded in obtaining a decree for one-half that estate. The widow apparently was possessed of small means, and it has been found in the present case that she incurred debts on account of legal expenses in defending her rights in that litigation. The plaintiff, who has succeeded as heir of her husband on her death, now sues to set aside the sale by her to the defendant made on the 6th November 1879, as having been made without legal necessity. The defendant replied that the sale was effected by the widow to enable her to pay off the debts incurred in consequence of this litigation, and also for the purposes of her own maintenance. The defendant further pleaded that he had made the purchase after having made full enquiry in the manner enjoined in the well known case of *Hunooman Persad Panday* (1).

The Munsiff found all these points in favor of the defendant and dismissed the suit, but this judgment has been reversed on appeal by the Deputy Commissioner and the Subordinate Judge. In the commencement of his judgment, the Subordinate Judge states that the plaintiff was justified, "under the then existing law," as he terms it, in bringing the former suit to obtain possession of the property held by the widow. But he seems to think that the widow was not justified in incurring expenses in defending that suit so as to make them form a charge on the estate, thus to be eventually borne by the plaintiff. We have no doubt, on the facts found, that the legal expenses incurred by the defendant in that litigation were expenses with which a Hindu widow in the position of the defendant might reasonably charge her husband's estate. The lower Appellate Court then proceeded to find that, in the absence of the mortgage deed, the defendant cannot show that the money paid by him in the purchase of this property was money paid to satisfy a debt incurred by the widow. We think that this view of the law taken by the lower Appellate Court is incorrect. We observe that a person said to be the mortgagee, and another person said to hold a decree against the widow, who were thus both her creditors, have been examined in the present case, and have deposed that they lent her money for certain purposes. There is no reason why such evidence should

(1) 6 Moore's I. Ac., 393.

not be accepted for the purposes of the present suit; for the terms of the transaction between the widow and the so-called mortgagee and decree-holder, are not in issue in this case, but rather whether these persons were the creditors of the widow, and whether the property had been sold in order to satisfy their debts. The lower Appellate Court then proceeds to express an opinion that it cannot be pleaded that the widow, that is to say, the vendor who lived with a second husband, or, it would seem more properly, lived with another man after the decease of her husband, would have been driven to sell the estate to maintain herself. From this he would seem to mean that, if she lived with another man, she would not have to support herself. That is a matter which would depend upon evidence, and could not be assumed either one way or another, simply from the relation between the parties. Lastly, the lower Appellate Court states that it does not consider that the defendant could have used due diligence in ascertaining whether legal necessity on the part of the vendor existed. Now, if the evidence of the so-called mortgagee and decree-holder be believed—and on this point, sitting on second appeal, we are not able to express any opinion—we think their statements certainly justified a stranger in purchasing from a Hindu widow. We must, therefore, return this case to the lower Appellate Court for re-trial, having regard to the observations made above.

The costs will abide the result.

Appeal allowed and case remanded.

CRIMINAL REVISION.

Before Mr. Justice Pigot and Mr. Justice O'Keefe.

IN THE MATTER OF THE PETITION OF JUGGESHWAR DASS AND OTHERS.

JUGGESHWAR DASS AND OTHERS v. KOYLASH CHUNDER
CHATTERJEE.*

1885

September 22.

*Mischief—Penal Code (Act XLV of 1860), ss. 341, 425—Wrongful Restraint
—Invasion of right causing wrongful loss.*

Where complainant had for the purpose of removal placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the

* Criminal Revision No. 336 of 1885, against the order of J. G. Ritchie Esq., Officiating Joint Magistrate of Serampore, dated the 14th August 1885.

1885
AMJAD ALI
v.
MONIRAM
KALITA.