

other High Courts have taken a different view of the section under which such attachments should be made. Their Lordships of the Privy Council on the 5th of July 1882, in *Balkrishna v. Masuma Bibi* (1) held in a somewhat analogous case that, even if the Court executing a money decree had no jurisdiction to attach mortgaged lands out of its district, it had jurisdiction to sell in execution the right to enforce a mortgage held by the judgment-debtor over those lands. That decision was naturally not referred to in the case of *Mahadeo Dubey v. Bhola Nath Dicit*, which was decided on the 23rd of August 1882, and it appears to have escaped the attention of the learned Judges in *Ram Chand v. Pitam Mal*. Whether the attachment ought to have been made under the one section or under the other, all the parties interested knew that the rights and interests of the mortgagee under the mortgage were being put up for sale; and those interests having been sold and the sale having been confirmed and a certificate granted to the plaintiff, he was, so far as that point is concerned, entitled to maintain the suit.

The suit having been wrongly dismissed on this preliminary point, we set aside the decrees of both the Courts below, and remand the suit under section 562 of the Code of Civil Procedure to the first Court. The costs of the appeals will abide the result.

Appeal decreed and cause remanded.

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SHEO
CHARAN LAL
v.
SHEO SEWAK
SINGH.

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July 15.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

SHIAMANAND (APPLICANT) v HAR LAL (DECREE-HOLDER).*

Hindu law—Hindu widow—Revenue due on account of widow's estate paid by lambardar—Remedy of lambardar for recovery of money so paid on death of widow.

G. D., a separated sonless Hindu, died possessed of certain zamindari property, which passed to his widow J. During J.'s possession, the lambardar of the village paid certain Government revenue due by J. in respect of the property left by G. D. J. died, and the property in question passed to S. N. as heir to G. D. On

* Second appeal No. 508 of 1894, from an order of Maulvi Muhammad Jafar Husain, Subordinate Judge of Bareilly, dated the 16th April 1894, confirming an order of Pandit Giraj Kishore Dat, Munsif of Haveli, Bareilly, dated the 6th January 1894.

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suit by the lambardar to recover from S. N. the money paid on behalf of J., it was held that the only decree to which the lambardar was entitled was a decree against S. N. as J.'s representative payable out of the assets, if any, which had come to S. N. from J. *Seth Chitor Mal v. Shil Lal* (1) referred to.

THIS was an appeal from an appellate order disallowing the appellant's objection to the attachment and sale of certain property in his possession. It appears that one Gauri Dat, who was a separated sonless Hindu, was the owner of a certain piece of resumed muafi. Gauri Dat died, and on his death the land was taken by his widow Janki, whose name was recorded in respect thereof. During Janki's incumbency, Har Lal the lambardar paid on her behalf certain sums which were due by Janki for Government revenue. Janki died; and Shiamanand, the appellant, came into possession of the property as heir to Gauri Dat. The lambardar sued Shiamanand for the recovery of the sums which he had paid on behalf of Janki.

From the Court of first instance he obtained a decree which appears to have been a personal decree against Shiamanand. This decree was however modified by the appellate Court, which gave the lambardar a decree against the property of Janki only.

The lambardar attached in execution of that decree the property which had been of Janki in her lifetime. Shiamanand filed objections to the attachment, mainly on the ground that the property attached had come to him from Gauri Dat and was not liable to sale as the property of Janki.

The Court of first instance (Munsif of Bareilly) rejected the objections. Shiamanand appealed, and the lower appellate Court dismissed the appeal, holding that as Janki might have had power to alienate the property for the payment of Government revenue, the decree obtained by Har Lal was liable to be satisfied out of it.

The objector appealed to the High Court.

Mr. *E. A. Howard* for the appellant.

Mr. *Abdul Majid* for the respondent.

EDGE, C. J., and BLENNERHASSETT, J.—Mussammat Janki, who was the widow of a sonless separated Hindu, held some zamindari

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as his widow. Her status as his widow was her only title to the possession of the zamindari. The lambardar paid her quota of revenue. Musammat Janki died, and thereupon Shiamanand, the appellant here, who was the next reversioner to the widow's deceased husband, became entitled to and took possession of the zamindari. It is needless to say that Shiamanand did not inherit to Musammat Janki, nor did he take title through her. His title was that of reversioner to her late husband. It is also hardly necessary to say that the zamindari in question was not in the hands of Shiamanand assets of Musammat Janki. The lambardar brought his suit against Shiamanand to recover the moneys paid by him in respect of Musammat Janki's quota of land revenue. In the first Court he got a decree, the precise terms of which we do not know. The decree was, however, modified by the lower appellate Court, which exempted Shiamanand from all personal liability, and decreed the lambardar's claim against the property of Musammat Janki only. The lambardar seeks to execute that decree by sale of the zamindari which has come to Shiamanand. Shiamanand objected that the zamindari (as was the fact) was not assets of Musammat Janki.

The Court dismissed his objection. He has brought this appeal. In the case of *Chitor Mal v. Shib Lal* (1) it was held by a majority of the Full Bench that a payment by a lambardar or other third person of the Government revenue of a co-sharer who was in default did not give the person who paid a charge on that co-sharer's share. The result is that, so far as the payment in question is concerned, it must be regarded as a payment of an ordinary debt, which was due by Musammat Janki. Now there is no pious obligation on a reversioner, such as Shiamanand is, to pay the debts of a Hindu widow. Consequently the reversioner can only be made liable for the debts of a Hindu widow to the extent of such assets as may have come to his hands and have not been lawfully applied by him to the payment of other creditors. The case may be a hard one for the lambardar; but hard cases make bad law, and we cannot help

(1) I. L. R. 14 All. 273.

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him out of his difficulty by construing the decree which he got as a decree for the sale of the zamindari, a decree which would not have been a lawful one, there being no decree for sale except one passed under the Transfer of Property Act. We must regard the decree as lawfully made, and in that light it was simply an ordinary decree against a representative, to be enforced in respect of such assets of the deceased debtor as he might have. We allow the appeal and the objection of Shiamanand, and dismiss the application for execution with costs in all Courts.

Appeal decreed.

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July 16.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

RUSTAM SINGH (PLAINTIFF) v. MOTI SINGH (DEFENDANT).*

Hindu law—Mortgage by a married woman of property inherited from her father—Legal necessity—Expenses of daughter's marriage.

Ordinarily it is the duty of the father in a Hindu family to provide for his daughter's marriage; but where the father was not possessed of sufficient means to do so, and the mother, in order to raise money to meet the expenses of the daughter's marriage, mortgaged property of her own which had come to her from her father, it was held that the mortgage was made for legal necessity and was a valid mortgage.

THIS was a suit for sale on a mortgage made by a Hindu woman during the life-time of her husband of property which had come to her from her father. The mortgage was alleged by the plaintiff mortgagee to have been made in part to secure a former debt advanced for payment of Government revenue and in part to secure a present advance said to have been made to meet the expenses of the marriage of the mortgagor's daughter.

The suit was defended by one Kunjan Singh, uncle of the mortgagor's minor son, who pleaded that Musammat Alaf Kuar, the mortgagor, had no power to mortgage the property, at any rate for any period longer than her own life-time; that there was no legal necessity for the mortgage; that the alleged marriage took place long before the execution of the mortgage, and that the mortgage was in fact never executed by Alaf Kuar.

*Second Appeal No. 630 of 1894, from a decree of Syed Siraj-ud-din, Subordinate Judge of Mainpuri, dated the 1st June 1894, reversing a decree of Lala Ishri Prasad, Munsif of Mainpuri, dated the 7th August 1893.