

1901

BHAGWAN
DAS
v.
SHAM DAS.

we need not say anything. For the above reasons we allow the appeal, set aside the decree of the lower appellate Court, and restore the decree of the Court of first instance on the question of redemption and possession.

Appeal decreed.

1901
June 7.

Before Mr. Justice Banerji and Mr. Justice Chamier.

GHULAM ALI (DEFENDANT) v. SAGIR-UL-NISSA BIBI (PLAINTIFF).*

Muhammadan Law—Dower—Widow in possession in lieu of dower—Widow not precluded from suing to recover her dower.

Held that there was nothing to prevent a Muhammadan widow who was in possession of property of her late husband in lieu of dower from suing to recover her dower from the heirs of the deceased husband. *Aziz-ullah Khan v. Ahmad Ali Khan* (1), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *Abdul Raof*, for the appellant.

Mr. *Abdul Majid* (for whom Mr. *Muhammad Ishaq Khasi*), for the respondent.

BANERJI and CHAMIER, JJ.—This appeal arises out of a suit brought by a Muhammadan lady to recover her dower from one of the heirs of her deceased husband. She alleges that the amount of her dower was Rs. 2,100; that in lieu of the said dower her husband had put her in possession of his property; that she is in possession, and that upon her husband's death she is entitled to recover three-fourths of the amount of her dower from the defendant who has inherited a three-fourths' share of her husband's property. The suit was resisted on various grounds, the main ground being that the plaintiff being in possession could not sue for her dower. This contention found favour with the Court of first instance. On appeal to the lower appellate Court the learned Judge held that there was nothing in the law to prevent the plaintiff from claiming her dower, and that although her possession might be analogous to that of a mortgagee, that analogy was not so complete as to bar her right to claim her dower. He set aside the decree of the Court of first instance, and remanded the

* First Appeal from order No. 135 of 1900 from an order of J. E. Gill, Esq., District Judge of Alkhabad, dated the 24th June 1900.

case to that Court under section 562 of the Code of Civil Procedure. From this order of remand the present appeal has been preferred.

In our opinion the view of the learned Judge is correct. Under the Muhammadan law a woman to whom dower is due is entitled to claim it whenever the right to recover it has accrued to her. It is conceded that upon the death of her husband the dower due to the wife becomes payable. It is also conceded that even when the wife has been placed in possession of her husband's property in lieu of her dower, there is nothing in the Muhammadan law which precludes her from claiming her dower. It has, no doubt, been held that if a Muhammadan woman entitled to dower has obtained possession of her husband's estate lawfully and without force or fraud in lieu of her dower, such possession cannot be disturbed by her husband's heirs until the dower-debt is discharged; but from this it does not follow that she cannot claim her dower if she chooses to do so. It has also been held in the case of *Aziz-ullah Khan v. Ahmad Ali Khan* (1) that a Muhammadan widow lawfully in possession of her husband's estate in lieu of dower occupies a position analogous to that of a mortgagee; but it has never been held—and in our opinion it is not the law—that the possession of a Muhammadan woman under such circumstances is, in all respects, that of a usufructuary mortgagee. We think the learned Judge has rightly observed that the analogy is not complete. If the position of the plaintiff had been that of a usufructuary mortgagee, section 67 of the Transfer of Property Act would have precluded her from suing to recover her dower, but as she is not a usufructuary mortgagee that section has no application to her case. We have not been referred to any authority under which we could hold that a Muhammadan woman in possession of her husband's estate in lieu of dower cannot claim her dower, though she offers to surrender possession. We think the Court below was right, and dismiss the appeal with costs.

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NISSA.

**Appeal dismissed.*