

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

SHEO PRASAD SINGH (OBJECTOR) v. JALEHA KUNWAR AND

ANOTHER (RESPONDENTS).*

1901
December 19.

Act No. I of 1894 (Land Acquisition Act), sections 31 and 32—Land taken up for public purposes, such land being in possession of a Hindu widow holding in right of her deceased husband—How compensation in respect of such land should be allotted.

Where land which was taken up by the Government under the Land Acquisition Act for public purposes was held at the time by two widows holding the usual Hindu widow's life estate therein, it was held that the compensation awarded for such land should not be paid over to the widows, but should be invested in land to be held on similar terms. *Sheoratan Rai v. Mohri* (1) followed.

In this case certain land in mauza Saidpur, in the Ghazipur district, was taken up by Government under the Land Acquisition Act, 1894, for the Bengal and North-Western Railway. The land in question belonged to two Hindu widows who held the usual Hindu widow's estate in it, and were not the absolute owners. Compensation was duly allotted in respect of the land in question, when one Sheo Prasad Singh, who alleged himself to be the next reversionary heir, applied to stop the compensation from being paid over to the widows. The case was made over under section 18 of the Land Acquisition Act to the District Judge, who decided in favour of the widows. The reversioner appealed to the High Court.

Mr. *Muhammad Ishaq*, for the appellants.

Babu *Bishnu Chandar Moitra* for the respondents.

STANLEY, C. J., and BURKITT, J.—The question in this appeal arises under the Land Acquisition Act. Certain property was taken over by Government, the present owners of which are two Hindu widows whose husbands owned the property. A party, representing himself to be the reversionary heir, has objected to the payment of the compensation money to the widows on the ground that they were not parties competent to alienate the land within the provisions of section 31 of the Land Acquisition Act. It is clear that this section contemplates a present power to alienate, and it is also well settled that Hindu

* First Appeal No. 204 of 1898 from a decree of Kunwar Bharat Singh, District Judge of Ghazipur, dated the 29th July 1898.

(1) *Weekly Notes*, 1899, p. 96.

1901

SHEO
PRASAD
SINGH
v.
JALEHA
KUNWAR.

widows cannot, of their own free will, alienate property except for special legal necessities. This was so decided in the case of *Sheoratan Rai v. Mohri* (1). We consider that the decision in that case was perfectly correct and governs the present case, and we must therefore allow the appeal, and pass an order under the provisions of section 32 of the Land Acquisition Act, directing that the compensation money awarded shall be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or if such purchases cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit, and we direct that the payment of interest, rent or other proceeds of any such investment be made to the respondents as the persons for the time being entitled to the land. The appeal is allowed with costs.

Appeal decreed.

1901
December
21.

Before Mr. Justice Banerji and Mr. Justice Aikman.
ABU SAYID KHAN (DEFENDANT) v. BAKAR ALI AND ANOTHER
(PLAINTIFFS).*

Muhammadian law—Waqf—Waqf of money held to be valid.

Held, that according to the Muhammadian law a waqf of movable property may be validly constituted. *Fatima Bibee v. Ariff Ismailjee Bham* (2) dissented from.

In the suit out of which this appeal arose, the plaintiff claimed, as heir to one Fakhr-ud-din, deceased, first, a declaration that he was such heir; and secondly, a declaration that a document called a deed of endowment, dated the 10th of March, 1892, and registered on the 11th of March, 1892, was null and void, and had no effect as against the plaintiff. After the filing of the plaint, one Abu Sayid Khan, the mutawalli of the endowed property, was added as a defendant, the suit having been originally brought against Ahmadi Begam, the widow of Fakhr-ud-din alone. At a subsequent date, the original plaintiff having died, the names of his two sons, Bakar Ali and Muzaffar Ali, were substituted in the plaint, and the plaint was amended

* First Appeal No. 276 of 1898 from a decree of Babu Bopin Behari Mukerji, Additional Subordinate Judge of Cawnpore, dated the 30th June 1898.

(1) Weekly Notes, 1899, p. 96. (2) (1881) 9 C. L. R., 66.