1901
November 21.

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

THE BHARTPUR STATE (DEFENDANT) *v.* GOPAL DEI (PLAINTIFF).*

Hindu Law—Hindu widow—Widow's right to maintenance—Maintenance not a charge on the joint family property unless made so by a decree or by agreement.

The right of a Hindu widow to maintenance is not a charge upon the estate of her deceased husband unless and until it is fixed, and charged upon the estate by a decree or by agreement; and if such estate has been alienated and is in the hands of a *bonâ fide* transferee, the widow cannot follow the property, even though it be the case that the transferee had notice of her claim for maintenance. *Sheo Buksh Singh* v. *Mussumat Gunneshee Kooniwur* (1), *Lakshman Ramchandra Joshi* v. *Satyabhamabai* (2) and *Ram Kunwar* v. *Ram Dai* (3) referred to.

THE suit out of which this appeal arose was one brought by a Hindu widow to recover arrears of maintenance and for a declaration that certain immovable property in the possession of the defendants was charged with the payment of the plaintiff's maintenance. The plaintiff was the widow of one Damodar Das, the son of Joti Prasad, a wealthy banker of the city of Agra. In the year 1865 the plaintiff had sued her husband for maintenance on the ground that he was possessed of certain separate property. In that suit the Court found that Damodar Das was a member of a joint Hindu family, and that the property, with reference to which the suit had been brought, was not his separate property. The Court, however, having regard to the position of the family, gave the plaintiff a decree for maintenance at the rate of Rs. 120 per mensem. This maintenance allowance was paid for many years, but the family got into difficulties and its property was sold up; and amongst other items the villages which had been in the possession of Damodar Das at the time of the plaintiff's suit in 1865. The plaintiff's maintenance ceased to be paid and hence the present suit.

The Court of first instance (Subordinate Judge of Agra) decreed the claim, holding that the meaning of the judgment and decree of 1865, which decreed the widow's claim to maintenance "with reference to" the income of the property in the hands of her husband, was that the claim for maintenance should be a

*First Appeal No. 191 of 1898, from a decree of Maulvi Siraj-ud-din Ahmad, Subordinate Judge of Agra, dated the 24th June 1898.

(1) S. D. A., N.-W. P. 1864, Vol. I, p. 228.
(2) (1877) I. L. R., 2 Bom., 494.
(3) (1900) I. L. R., 22 All., 326.

charge on the property into whosesoever hands it might come, and that the defendants had constructive if not actual notice of the widow's claim.

An appeal was preferred to the High Court by one of the defendants who had purchased some of the property at auction sale; and it was contended that on a proper construction of the decree of 1865 no charge was created on the property, and that even if this defendant had knowledge of a claim for maintenance on the part of the widow, that was not sufficient to bind the property in his hands.

The Hon'ble Mr. *Conlan* (for whom Mr. *W. K. Porter*) and Mr. *D. N. Banerji* (for whom Dr. *Satish Chandra Banerji*), for the appellants.

Pandit *Moti Lal* and Babu *Satya Chandra Mukerji* (for whom Munshi *Gulzari Lal*), for the respondent.

STANLEY, C. J., and BURKITT, J.—This is an appeal from a judgment of the Subordinate Judge of Agra allowing the plaintiff's claim, which was for a declaration that arrears of maintenance, due to her, and also future maintenance, were charged upon certain properties under a decree made in the year 1865. The plaintiff is the widow of one Damodar Das, who was one of the sons of Joti Prasad, a well known Agra banker, who died in his father's life-time some time before the year 1865. In the suit of 1865, his widow, the present plaintiff, claimed delivery of possession of certain zamindari property as having been the separate property of her deceased husband. That property on the hearing of that suit was found not to have belonged to her husband, and the claim for possession was dismissed: but the learned Judge, having regard, as he says in his judgment, to the decision of the Sadr Court, in the case of *Sheo Buksh Singh and others*, dated the 29th February, 1864, decided that the plaintiff should get a maintenance allowance from the defendant. In the case to which he referred, it was decided that the Courts were "competent to assign maintenance to a widow of a deceased Hindu who cannot by law inherit her husband's property, and that in fixing the amount reference must be had to the value of the estate from which maintenance is claimed, and that not more than one-third should ever be

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assigned" of the annual profits of the family estates. Acting upon that decision the learned Judge thought fit to award to this lady maintenance at the rate of Rs. 120 a month. The language in which the maintenance is given is as follows:—"The plaintiff should get maintenance allowance from the defendants with reference to the income of the property, and for the sake of her satisfaction and (here the decree is torn) the plaintiff should get Rs. 120 a month from the defendants." It appears that the allowance so given has fallen into arrears, and the plaintiff's claim against the defendants in the present suit is to have it declared that the maintenance is a charge upon the properties, delivery of possession of which was claimed, but was refused by the Court in the suit of 1865. These properties have been sold to *bonâ fide* purchasers, but it is said by the plaintiff that the purchasers had knowledge that the widow had a claim to maintenance, and are therefore liable to pay the arrears, and also future maintenance. For the purposes of our judgment we may assume that they had this knowledge. The first question then is, whether or not, by the decree of 1865, maintenance was expressly charged upon the property of the then defendants, which is the property now sought to be made liable. It appears to us that there are no words in this decree which could possibly be regarded as creating a charge. The words "with reference to the income of the property" were evidently used in connection with the case decided by the Sadr Court to which we have referred, and in which it is stated that the allowance of maintenance ought to be made with reference to the income of the property. In other words, the income of the property was to be taken as a basis for estimating the amount of maintenance to which the widow was properly entitled. There is no charge created either in express words or by implication. It would appear that the words in the decree, "with reference to the income of the property," are copied from the judgment of the learned Judge. In it he says:—"I rule for plaintiff to recover from the defendants maintenance with reference to the income of the property." If there has been no express charge of maintenance upon the property, then it is manifest upon the authorities that the plaintiff's contention cannot prevail. In the case

of *Lakshman Ramchandra Joshi* v. *Satyabhamabai* (1), West, J., discussed the authorities at length, and held that there was no authority for the doctrine which makes the claim of widows not entitled to a share of property, in case of partition, a real charge on the inheritance; that in all cases it is a claim to maintenance merely, not interfering (so long as it has not been reduced to certainty by a legal transaction) with the right of the actually participant members to deal with the property at their discretion, provided this dealing is honest and for the common benefit. It was also decided in that case that "the mere circumstance that the purchasers had notice of the widow's claim is not conclusive of the widow's rights against the property in their hands." The question came before a Bench of this Court in the case of *Ram Kunwar* v. *Ram Dai* (2), and it was held by Banerji and Aikman, JJ., that "the maintenance of a Hindu widow is not a charge upon the estate of her deceased husband until it is fixed and charged upon the estate by a decree or by agreement, and that the widow's right is liable to be defeated by a transfer of the husband's property to a *bonâ fide* purchaser for value, even with the knowledge of the widow's claim for maintenance, unless the transfer has further been made with the intention of defeating the widow's claim." In fact a widow's right to receive maintenance is one of an indefinite character, which, unless made a charge upon the property by agreement or by a decree of the Court, is only enforceable like any other liability in respect of which no charge exists. For these reasons we are of opinion that the learned Subordinate Judge was in error in deciding that the decree in this case made the arrears of maintenance a charge upon the property. On this point, therefore, the appeal must be allowed.

It is argued, however, by the respondent's vakil that the present appellant, *viz.* the Bhartpur State, is not entitled to maintain the appeal, inasmuch as the Bhartpur State has, as we understand him, no legal existence. It is sufficient for us to say that the Bhartpur State was, by the plaintiff herself, made a party to the suit as defendant, and a decree was obtained against it. It seems to us that it does not lie in the mouth of the plaintiff

(1) (1877) I. L. R., 2 Bom., 494. (2) (1900) I. L. R., 22 All., 326.

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under those circumstances to raise this technical question. The Bhartpur State then having appealed, and having succeeded in the appeal, under section 544 of the Civil Procedure Code, the judgment which we shall pass will be for the benefit of all the other defendants. Our order accordingly is, that we allow the appeal, set aside the judgment and decree of the lower Court, and direct that the suit stand dismissed with all costs.

Appeal decreed.

1901
November 27.

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

BRIJ MOHAN LAL (PLAINTIFF) v. SHIAM SINGH (DEFENDANT).*

Arbitration—Award—Suit for specific enforcement of award—Case in which compensation in money considered impossible to assess.

The defendant leased a village to the plaintiff for a term of five years. In the second year of the lease disputes arose between the parties, which they agreed to submit to arbitration. On the questions submitted to him, the arbitrator delivered an award, which was to the effect—(1) that the lessee should surrender possession at a fixed time within the term of the lease, (2) that the lessee should pay the sum of Rs. 800 to the lessor, and (3) that as to arrears of rent due from the tenants, the lessee should obtain decrees and execute a conveyance of them to the lessor, who was to pay to the lessee the aggregate amount of the decrees.

The other terms of the award having been performed, the lessee sued for specific performance of the remainder. He filed with his plaint a number of decrees obtained by him against the tenants together with a sale-deed conveying those decrees to the defendant, and prayed that the defendant might be ordered to accept the conveyance and pay the amounts of the decrees.

Held that even if the award were bad, the defendant having acted on it and accepted the benefits it gave him, had precluded himself from impeaching it; also that the case was not one in which it was possible to assess compensation in money for the breach of the particular condition in the award, and that the plaintiff was entitled to specific performance of the award, and this was directed in terms of the order made in the case of *Bell* v. *Denver* (1).

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Moti Lal*, for the appellant.

Pandit *Sundar Lal*, for the respondent.

STANLEY, C. J., and BURKITT, J.—This is an appeal from a decree of the Subordinate Judge of Moradabad dismissing the plaintiff's suit.

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* First Appeal No. 113 of 1901, from a decree of Babu Mata Prasad, Subordinate Judge of Moradabad, dated the 13th April 1901.

(1) (1886) 54 Law Times Reports, 729.