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February 23.

APPELLATE CIVIL.

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

GOBIND SINGH (DEFENDANT) *v.* BALDEO SINGH (PLAINTIFF) AND JANKI KUNWAR (DEFENDANT).*

Hindu law—Hindu widow—Sale by widow of deceased husband's property partly for legal necessity and partly not—Rights of next reversioner.

Where the widow of a separated Hindu sells property belonging to the estate of her deceased husband, the sale, as to a portion of the consideration therefor, being justified by legal necessity and as to the remainder of the consideration not so justified, it is competent to the next reversioner to the estate to sue for and obtain a decree that he is entitled after the death of the widow to recover the property sold by her from the vendee on payment of such portion of the consideration as represented moneys borrowed by the widow for legal necessity. *Phool Chand Lal* v. *Rughoobuns Suhaye* (1) and *Muttee Ram Kowar* v. *Gopaul Sahoo* (2) referred to.

IN the suit out of which this appeal arose the plaintiff claimed as reversioner to the estate of one Mohar Singh, deceased, and he asked for a declaration that a certain sale-deed executed by Musammat Janki, the widow of Mohar Singh, might be declared ineffectual beyond the life of the Musammat. The plaintiff also prayed in the alternative that, in the event of the Court being of opinion that any of the items which made up the consideration mentioned in the sale-deed were valid, as warranted by legal necessity under the Hindu law, he might then be allowed to pay that amount to the purchaser after the death of Musammat Janki, and recover possession of the property. The Court of first instance (Subordinate Judge of Moradabad) made a decree to a large extent in the terms of the plaint, granting the second relief, and declaring that upon payment of Rs. 2,339 by the plaintiff to the vendee after Musammat Janki's death, the plaintiff would be entitled to recover possession of the property conveyed by the sale-deed, and that until the plaintiff took such possession the vendee was bound to account to him for the rents and profits of the property after Musammat Janki's death, receiving interest at the rate of 6 per cent. from the plaintiff. From this decree the plaintiff appealed to the High Court.

* First Appeal No. 64 of 1901, from a decree of Babu Achal Behari, Additional Subordinate Judge of Moradabad, dated the 12th of December, 1900.

(1) (1868) 9 W. R., 108. (2) (1873) 11 B. L. R., 415.

Mr. *Abdul Jalil* and Pandit *Sundar Lal* (for whom Munshi *Gokul Prasad*), for the appellant.

Dr. *Tej Bahadur Sapru* (for whom Pandit *Mohan Lal Nehru*), for the respondents.

STANLEY, C.J. and BURKITT, J.—In this case the plaintiff, one Baldeo Singh, sues as reversioner to one Mohar Singh, deceased, for a declaration that a certain sale-deed executed by Musammat Janki, widow of the said Mohar Singh, be declared ineffectual beyond the life of Musammat Janki, and in the alternative prays that if the Court be of opinion that any of the items which made up the consideration mentioned in the sale-deed are valid as warranted by legal necessity under the Hindu law, he may be allowed to pay that amount to the purchaser after the death of Musammat Janki, and recover possession of the property. The Court below made a decree to a large extent in the terms of the plaint, granting the second relief, and declaring that on payment of Rs. 2,339 by the plaintiff to the vendee after Musammat Janki's death, the plaintiff would be entitled to recover possession of the property conveyed by the sale-deed, and that until the plaintiff took such possession the vendee was bound to account to him for the rents and profits of the property after Musammat Janki's death, receiving interest at the rate of 6 per cent. from the plaintiff. From this decree the defendant has appealed.

The first contention was that the decree made by the lower Court was a decree which ought not to have been passed; and, secondly, it was contended that the amount of consideration, on receipt of which the defendant was to restore the property, ought to be much larger than that laid down by the Subordinate Judge. The learned vakil for the appellant contended that the decree passed by the lower Court was one which ought not to be passed, it being, he contended, of the nature of a mortgage redemption decree. In our opinion, however, the form of the decree is correct, as was decided by Sir Barnes Peacock and Mr. Justice Dwarka Nath Mitter in the case of *Phool Chand Lal* v. *Rughoobuns Suhaye* (1). In that case the Court laid down:—"If there were any necessity such as the Hindu law warranted,

(1) (1868) 9 W. R., 108.

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for a sale of a part of the property, and the widow sold a larger portion of the estate than was necessary to raise the amount which the law authorized her to raise, it appears to me that the sale would not be absolutely void as against the reversioners, but that they could only set it aside upon paying that amount which the widow was entitled to raise with interest. This decision was followed by Mr. Justice Phear and Mr. Justice Ainslie in the case of *Muttee Ram Kowar* v. *Gopaul Sahoo* (1). In our opinion the present case is governed by the principle laid down in the case which has just been cited. Here we have the case of a widow who certainly was justified in raising money to pay off her husband's lawful debts. She did raise money to pay those debts, but she raised more than the circumstances of the case required. We think, therefore, that the appellant was justified in asking the Court to set aside the sale with effect from the death of the life-tenant, and to declare that on the happening of that event he would be entitled to possession of the property in dispute on payment of the amount which the widow might lawfully have raised as being legally necessary to discharge her late husband's debts, and other necessary legal expenses incurred by her.

The second point raised by the learned vakil for the appellant, namely that a larger sum should have been allowed him, we think is well-founded. There are seven items set forth as forming the consideration for the sale. Of these, the first is Rs. 1,731 said to be due on a bond for Rs. 1,000. Out of this the learned Subordinate Judge allowed only Rs. 1,188, holding that interest was overcharged. It is now, however, admitted by the learned gentlemen who appear for the parties that the sum really chargeable on this account was Rs. 1,355. The second item, Rs. 545, has been allowed by the Court below. The third item is one of Rs. 139, which represents a sum of Rs. 100, with interest, raised by Musammat Janki at a time when her infant son was alive, after her husband's death. She was setting about raising money to pay off her husband's debts, but as her son was alive it was incumbent on her to get the permission of the District Judge before she could sell. This

(1) (1873) 11 B. L. R., 415.

Rs. 100 she raised for the purpose of making the application to the District Judge, and for the various expenses incidental to such proceedings. We think this item of Rs. 139 may well be allowed as a charge against the estate, and we accordingly allow it. The fourth item, Rs. 606, has been allowed by the Judge. The fifth item, Rs. 78-8-0, has been disallowed. It represents the costs of the stamp paper on which the sale-deed, which is sought to be set aside, was written, and also for registering and engrossing expenses, and the like. The Subordinate Judge says that "according to law the vendee was bound to pay the expenses of the sale." This is no doubt true, but the universal experience in these Provinces is that in such cases it is the vendor who wants to raise the money who has to pay the expenses of the stamp, registration, and the like. We think the item also may be allowed. The sixth item is of Rs. 200. This refers to certain ornaments belonging to Musammat Janki's deceased husband which were said to have been pawned by him to Kundan Lal for Rs. 200, and were released by Musammat Janki out of the money she received as consideration for the sale. The Subordinate Judge says that there is no proof of the pawn of the ornaments, and he remarks that Kundan Lal was a "big banker" and would have some account in which this item would be entered. We think, however, that the fact of the pawning and release is sufficiently proved. Budh Sen, the son of Kundan Lal, positively swears to it: he swears that the ornaments were pledged with his father and that they were released by Gobind Singh on behalf of the plaintiff on payment of Rs. 200. The witness Lekhraj Singh, a brother of Musammat Janki, also speaks to the same effect; and he says that his brother-in-law, Mohar Singh, had, some six years before his death, borrowed Rs. 200 on pawn of the ornaments. We think this item is proved, and is a proper charge on Mohar Singh's property.

Adding together, then, the various items specified above, we arrive at the sum of Rs. 2,923-8-0, and we think that that is the sum which the plaintiff should pay as a condition precedent to getting possession on Musammat Janki's death of the property in dispute. We therefore modify the decree by

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substituting for the figures Rs. 2,339 the figures Rs. 2,023-8-0. In other respect the decree stands. The parties will have their costs of this appeal in proportion to failure and success.

Decree modified.

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Before Mr. Justice Blair and Mr. Justice Banerji.

ABDUR RAZZAQ (PLAINTIFF) *v.* MUMTAZ HUSAIN AND OTHERS (DEFENDANTS).*

Pre-emption—Compromise of suit for pre-emption by means of which property is transferred—Suit for pre-emption based on decree in such suit.

Held that no suit for pre-emption will lie, the basis of which is a decree for pre-emption in another suit.

THE plaintiff in this case came into Court upon the following allegations. He, along with eight other persons, had purchased a house from one Kumar Harbans Singh. After that purchase one Mumtaz Husain filed a suit for pre-emption of the house. In that suit three of the defendants allowed judgment to go against them, and a decree was drawn up which was in the following terms:—"The claim of the plaintiff for possession by right of pre-emption of one third of the house in dispute on payment of Rs. 66-10-8 and proportionate costs within fifty days of the decree be decreed against defendants Nos. 7 to 9. The rest of the plaintiff's claim with proportionate costs be dismissed against defendants Nos. 1 to 6. The defendants Nos. 1 to 6 will get all their costs from the plaintiff. And it is also ordered that the plaintiff will get possession of the share decreed to him when he has paid Rs. 66-10-8 within the time fixed by the Court, otherwise the decree for possession will stand dismissed." The plaintiff alleged that the confession of judgment by three of the defendants in the former suit was intended to be a fraud upon his rights as purchaser, and he contended that the effect of the decree in that suit, based as it was upon a collusive agreement, entered into between the then plaintiff and three of the defendants, was to give rise to a pre-emptive right on his part. The present suit was brought against the successful pre-emptor and the three confessing defendants in the former suit. The Court of first instance (Munsif of Nagina) held that no such suit was

* Second Appeal No. 167 of 1901, from a decree of Shah Amjad-ullah, Subordinate Judge of Moradabad, dated the 14th of November, 1900, confirming a decree of Babu Sheo Charan Lal, Munsif of Nagina, dated the 27th of June, 1900.