

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

**BHUP SINGH (DEFENDANT) v. LACHMAN KUNWAR (PLAINTIFF).\***

*Hindu Law—Hindu widow—Maintenance—Forfeiture for unchastity—Suit by Hindu widow to recover income of property assigned by way of maintenance—Act No. IX of 1887 (Provincial Small Cause Court Act), schedule II, articles 31 and 38.*

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IN pursuance of a compromise between a Hindu widow and the brothers of her deceased husband, to whose estate the widow had laid claim, the brothers assigned to the widow certain property by way of maintenance, but themselves remained in possession as managers on behalf of the widow. It was not made a term of the agreement that the income of the property so assigned should be payable to the widow only so long as she remained chaste.

*Held* that a suit by the widow for recovery of the income of the property so assigned was not a suit cognizable by a Court of Small Causes.

*Held* also that the widow would not, even if unchastity were proved against her, forfeit her right to the income of the assigned property in the absence of an express stipulation to that effect.

THE facts of this case are as follows :—

Three brothers, Mahtab Singh, the husband of the plaintiff respondent Lachman Kunwar, Bhup Singh and Het Singh, were the owners of Nagla Sikandarpur, a hamlet of mauza Jastrana. Mahtab Singh died in the year 1889, and thereupon a dispute arose between his widow Lachman Kunwar and her brothers-in-law as to her right to succeed to his property. Bhup Singh and Het Singh applied for mutation of names in their favour, to which Lachman Kunwar objected. Ultimately a compromise was entered into, by which it was agreed that the names of Bhup Singh and Het Singh should be recorded as owners of the property of Mahtab Singh, but that the plaintiff should retain in her possession sixteen plots of land yielding a rental of Rs. 140, and that she should out of these plots realize Rs. 120 annually during her life. A document was signed by Het Singh and Bhup Singh on the 30th of October, 1889, in which they declared that the property of Mahtab Singh had come into their possession, and that Rs. 120 a year had been fixed to be paid by them for the maintenance of the plaintiff during her life. Then in lieu of that amount they gave her 16 plots of land described by certain numbers, yielding an annual rental of Rs. 140, and they authorized the plaintiff during her life-time to realize the annual sum of Rs. 120 out of the rent of

\* Appeal No. 40 of 1903 under section 10 of the Letters Patent.

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these plots and they agreed to take the balance of Rs. 20 a year only themselves. Then it is declared that after the death of the plaintiff this land shall come into their possession; that the widow shall remain the owner and in possession during her life-time; but that she shall have no power to hypothecate or transfer the land in any way. After the settlement of the dispute in this way, Bhup Singh and Het Singh, for the sake of convenience, the plaintiff being a *parda-nashin* lady, received the entire rents of the plots of land in question, but owing to irregularities in the payment to her of her share of the income, the plaintiff intimated to Bhup Singh, Het Singh having died, that she would herself collect the rent of the land, and she required him to desist from collecting it; but Bhup Singh still continued to collect the rent. The widow thereupon brought a suit against Bhup Singh, claiming two half-years' rent, and also costs of suit and any relief which under the circumstances of the case may be advantageous to her. The defendant pleaded that the family was joint, and that on the death of Mahtab Singh he and his brother Het Singh had become the owners of the property by survivorship. He further alleged that the plaintiff, after the execution of the agreement of the 30th October, 1889, had become unchaste and in consequence had forfeited her right to maintenance. The Court of first instance (Munsif of Shikohabad), dismissed the claim on the ground that the plaintiff had become unchaste, and the lower appellate Court (Subordinate Judge of Mainpuri) confirmed that decree. The plaintiff appealed to the High Court. The appeal coming before a single Judge of the Court was decreed, the Judge overruling a preliminary objection to the effect that a second appeal was barred by the provisions of section 586 of the Code of Civil Procedure. The defendant thereupon appealed under section 10 of the Letters Patent.

Pandit *Moti Lal Nehru* and Pandit *Baldeo Ram Dave*, for the appellants.

Babu *Jogindro Nath Chaudhri*, for the respondent.

STANLEY, C.J. and BURKITT, J.—Having regard to the preliminary objection which has been raised to the hearing of this appeal, it will be well at the outset to endeavour to understand

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clearly the nature of the plaintiff's suit. Three brothers, Mahtab Singh, the husband of the plaintiff respondent, Bhup Singh and Het Singh, were the owners of Nagla Sikandarpur, a hamlet of mauza Jasrana. Mahtab Singh died in the year 1889, and thereupon a dispute arose between his widow Musammat Lachman Kunwar and her brothers-in-law as to her right to succeed to his property. Bhup Singh and Het Singh filed an application in the Revenue Court for the recording of their names as owners, to which Musammat Lachman Kunwar objected. Ultimately a compromise was entered into, by which it was agreed that the names of Bhup Singh and Het Singh should be recorded as the owners of the property of Mahtab Singh, but that the plaintiff should retain in her possession 16 plots of land yielding a rental of Rs. 140, and that she should out of these plots realize Rs. 120 annually during her life. A document was signed by Het Singh and Bhup Singh on the 30th of October, 1889, in which they declared that the property of Mahtab Singh had come into their possession, and that Rs. 120 a year had been fixed to be paid by them for the maintenance of the plaintiff for her life. Then in lieu of that amount they gave her 16 plots described by certain numbers, yielding an annual rental of Rs. 140, and they authorized the plaintiff to realize during her life-time the annual sum of Rs. 120 out of the rent of these plots and they agreed to take the balance Rs. 20 a year only themselves. Then it is declared that after the death of the plaintiff this land is to come into their possession; that she shall remain the owner and in possession during her life-time, but that she shall have no power to hypothecate or transfer the land in any way. After the settlement in this way of the dispute, Bhup Singh and his brother Het Singh, for the sake of convenience, the plaintiff being a *parda-nashin* lady, received the entire rents of the plots of land in question and paid her annually Rs. 120, but owing to irregularities in the payment of the rent to her, the plaintiff in *Katik Sambat* 1957 intimated to the defendant, Het Singh being then dead, that she herself would collect the rent of the land, and she required him to desist from collecting it. Notwithstanding this she alleges in the plaint that the defendant

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collected the rent for *Katik Sambat 1957* and *Bysakh Sambat 1958*, and appropriated it to his own use. In her plaint she claims the following reliefs:—(1) a decree for Rs. 120 on account of the crop of *Katik Sambat 1957* and *Bysakh Sambat 1958*, (2) the costs of the suit and any other relief which under the circumstances of the case may be advantageous to her. The defendant filed a written statement in which he set up the case that Mahtab Singh, the husband of the plaintiff, Het Singh and the defendant were members of a joint Hindu family, and that on the death of Mahtab Singh, Het Singh and the defendant became the owners of the property by right of survivorship. Further he alleges that the plaintiff after the execution of the agreement of the 30th of October, 1889, became unchaste and consequently was not according to law entitled to the maintenance which she claimed. The Court of first instance dismissed the claim on the ground that she had become unchaste, and the lower appellate Court confirmed the decree. On second appeal an objection was taken to the hearing of the appeal on the ground that the suit was a suit for money had and received and therefore was within the cognizance of the Small Cause Court, and consequently, the amount in suit not exceeding Rs. 500, a second appeal was forbidden by section 536 of the Code of Civil Procedure. This objection was overruled by the learned Judge of this Court before whom the appeal was heard. He accordingly heard the appeal and came to the conclusion that under the agreement of the 30th of October, 1889, the plaintiff was entitled to succeed, inasmuch as the brothers-in-law agreed to give her Rs. 120 annually during her life-time and did not insert in the agreement any provision that that annuity should be forfeited in the event of her becoming unchaste. He accordingly set aside the decrees of the lower Courts and gave a decree in favour of the plaintiff.

From this decree the present appeal under section 10 of the Letters Patent has been preferred, and the preliminary objection which was raised before the learned Judge of this Court was pressed in argument before us. It is apparent from the facts which we have stated that the agreement of the 30th of October, 1889, was made by way of a compromise of a claim

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which the plaintiff put forward in respect of her husband's property. By it litigation was terminated and the defendant and his brother got from the plaintiff an acknowledgment of their title to her husband's property. It was not merely an agreement whereby maintenance was provided for her, but was something more. It was the consideration for the compromise of a claim, whether rightly or wrongly, preferred by her. It is urged on behalf of the respondent that the suit is nothing more than a suit for money had and received by the defendant for the use of the plaintiff, and therefore that it comes within the cognizance of a Small Cause Court. We do not think that this contention is correct. The suit was not one for money had and received, but was rather one to recover from the defendant rents of property which had under a special agreement been appropriated for the purpose of providing an annuity for the plaintiff. It was in a sense "a suit relating to maintenance" as also "a suit for the profits of immovable property belonging to the plaintiff which had been wrongfully received by the defendant" and so comes within the exceptions contained in the second Schedule to the Provincial Small Cause Courts Act, 1887, clauses 31 and 38. The learned Judge of this Court was therefore in our opinion right in overruling the preliminary objection.

As regards the merits of the claim it appears to us that the rule of Hindu law under which a widow's claim to maintenance becomes forfeited upon unchastity has no application to this case. The agreement of the 30th of October, 1889, was an agreement under which an annuity was provided by way of compromise of a claim, not a claim for maintenance, but a claim of title to immovable property, and the agreement expressly provided for the enjoyment of the annuity by receipt of rents during the life-time of the plaintiff. If the parties had intended that the plaintiff's title should determine in the event of her unchastity, provision to this effect should have been made. We therefore for these reasons consider that the conclusion arrived at by the learned Judge of this Court was correct and we dismiss this appeal with costs.

*Appeal dismissed.*