

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

1906
November 27.

HUSAINI BEGAM (PLAINTIFF) *v.* KHWAJA MUHAMMAD KHAN AND ANOTHER (DEFENDANTS). *

Contract—Marriage settlement—Construction of document—Agreement to pay annuity to bride.

On the occasion of the marriage of the plaintiff, then a minor, with the son of the defendant, the defendant agreed with the father of the plaintiff to pay to the plaintiff unconditionally the sum of Rs. 500 a month from the date of the marriage, and the payment of this allowance was made a charge upon certain immovable property specified in the agreement. The plaintiff after a time refused, for reasons stated by her in her plaint, to live with her husband. Subsequently to this, the stipulated allowance having been stopped, the plaintiff sued on the agreement above referred to to recover arrears amounting to Rs. 15,000.

Held that the plaintiff, though not a party to the agreement in question, was entitled to sue on it; also, on a construction of the agreement, that, no conditions as to the conduct of the plaintiff being laid down therein, the fact that the plaintiff refused to live with her husband was no bar to the suit.

THIS was a suit to recover arrears of an annuity alleged to be payable under the following circumstances. On the occasion of the marriage of the plaintiff Husaini Begam with her husband, Rustam Ali Khan Nawab Khwaja Muhammad Khan, the father of Rustam Ali Khan, agreed with the plaintiff's father that in consideration of the marriage he would pay to the plaintiff Rs. 500 a month as pin money, described in the document which was subsequently drawn up as "pandan." It appears that this annuity was paid for a considerable time, but, owing to the fact that the plaintiff refused to live with her husband, or ceased to live with him, her father-in-law thought it fit to stop the payment of the annuity. The plaintiff sued to recover from her father-in-law arrears of the allowance due up to the end of October 1903.

A number of defences were set up in the Court below, the most important being that the plaintiff had ceased to live with her husband on account of quarrels and therefore was not entitled to the annuity, and that she had become unchaste and therefore had forfeited her rights in respect of it. It was also said that the agreement was illegal and opposed to public policy and was without consideration. Issues upon these defences were knit in the Court below, but all of them were determined in favour of

* First Appeal No. 258 of 1904 from a decree of Babu Rajnath Prasad, Subordinate Judge of Agra, dated the 16th of August 1904.

1906

HUSAINI
BEGAM
v.
KHWAJA
MUHAMMAD
KHAN.

the plaintiff, with the exception of the issue whether the plaintiff had ceased to live with her husband and so forfeited the annuity. The Court of first instance (Subordinate Judge of Agra) found that she had ceased to live with him, and on this ground that she had forfeited her right to the annuity. That Court accordingly dismissed the plaintiff's suit. The plaintiff appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Dr. *Tej Bahadur Sapru*, for the appellant.

Mr. *Karamat Husain* and Maulvi *Ghulam Mujtaba*, for the respondents.

STANLEY, C.J., and BURKITT, J.—This is an appeal by the plaintiff Nawab Husaini Begam, wife of Nawab Rustam Ali Khan, against the decree of the Subordinate Judge of Agra, dated the 16th of August 1904, dismissing her suit. On the occasion of the marriage of the plaintiff with her husband, Nawab Khwaja Muhammad Khan, the father of Rustam Ali Khan, agreed with the plaintiff's father that in consideration of the marriage he would pay to the plaintiff Rs. 500 a month as pin money, described in the document which was subsequently drawn up as "pandan." It appears that this annuity was paid for a considerable time, but, owing to the fact that the plaintiff refused to live with her husband, or ceased to live with him, her father-in-law thought it fit to stop the payment of the annuity. The amount claimed is for arrears due up to the end of October 1903.

A number of defences were set up in the Court below, the most important being that the plaintiff had ceased to live with her husband on account of quarrels and therefore was not entitled to the annuity, and that she had become unchaste and therefore had forfeited her rights in respect of it. It was also said that the agreement was illegal and opposed to public policy and was without consideration. Issues upon these defences were knit in the Court below, but all of them were determined in favour of the plaintiff, with the exception of the issue whether the plaintiff had ceased to live with her husband and so forfeited the annuity. The learned Subordinate Judge found that she had ceased to live with him, and on this ground that she had forfeited her right to the annuity. His words are:—"I hold that if the plaintiff prove

unchaste or refuse to live with her husband, there is no obligation on her father-in-law to pay her any allowance;" and further on:—"In this present case unchastity has not been legally proved, but her refusal to live with her husband is most satisfactorily proved, and I therefore hold that she is not entitled to her allowance." Now the agreement to pay the annuity was embodied in a document which has been adduced in evidence. It is dated the 25th of October 1877 and is very simple in its provisions. In it the defendant, Khwaja Muhammad Khan, after reciting that the marriage of his son Rustam Ali Khan, with the plaintiff had been fixed to take place on the 2nd of November 1877, declares that he will continue to pay Rs. 500 per month in perpetuity to the plaintiff for pin money (pandan) from the date of the marriage, that is, from the date of the plaintiff's arrival at her husband's house, out of the income of certain property in the Agra district and a jagir in the Dholpur State which is specified in the document. Then follows a provision that neither the executant nor his heirs or representatives shall have power to object to the monthly payment and that the whole property shall be liable for the amount of it; and further that the plaintiff shall have power to recover the annuity from all the property in the Agra district and the property in Dholpur in whatever way she pleased. This is the substance of the document. Details of the property the subject of the charge are then given, and the signature of the executant is appended with that of several witnesses. The execution of the document is admitted and it is also admitted that arrears of the annuity are due in case there be any liability on foot of the agreement. It is to be observed that there is no condition whatever attached to the payment of the annuity. There is nothing said as to the chastity or unchastity of the plaintiff, nor is there any provision under which the executant can claim freedom from liability in case the plaintiff cease to live with her husband or by reason of any other act done by the plaintiff. We therefore fail to understand how the learned Subordinate Judge arrived at the conclusion that the fact that the plaintiff was not living with her husband relieved the defendant, Nawab Khwaja Muhammad Khan, from his obligation to satisfy his undertakings. He is in our opinion clearly wrong as to this,

1908

HUSAINI
BEGAM
v.
KHWAJA
MUHAMMAD
KHAN.

1906

HUSAINI
BEGAM
v.
KHAWAJA
MUHAMMAD
KHAN.

We may point out that the reason assigned by the plaintiff for her refusal to live with her husband is that he has been in the habit of entertaining a prostitute in his house and otherwise misconducting himself, and that it was owing to his misconduct that she left his house. Our attention was not called by either the learned Counsel or the Advocate for the respective parties to the evidence upon the record, nor was it indeed necessary to do so in view of the fact that the execution of the agreement for the payment of the annuity is admitted and payment is not alleged.

Mr. *Karamat Husain* on behalf of the respondent contended that the plaintiff was no party to the agreement of the 25th of October 1877, and that at the time when it was executed she was a minor, and that therefore she could not take advantage of its provisions and sue upon it. We do not think that there is any substance in this contention. The document was executed in pursuance of an agreement entered into between Khwaja Muhammad Khan, the father of the intended husband, and the father of the plaintiff, who was a child of tender years at the time. In consideration of the agreement the father and guardian of the plaintiff allowed the marriage to take place, and on the faith of it the marriage between the girl and Rustam Ali Khan was consummated. The document provides that the plaintiff shall have power to recover the amount of the annuity, and she is expressly named in the document as the person for whose benefit the agreement was executed. Under circumstances such as these it is idle, we think, to put forward the plea that the plaintiff cannot take advantage of a document which was executed solely for her benefit.

We therefore allow the appeal, set aside the decree of the Court below, and give a decree to the plaintiff for the sum of Rs. 15,000, with interest at the rate of 6 per cent. per annum from the 10th of November 1903 up to the date of payment, with costs. We also declare that the annuity is well charged upon the property mentioned in the plaint and specified in detail in the agreement so far as that property is situate in British India. If the amount of the decree with interest be not paid on or before the 1st of June 1907, we direct that the said property or a sufficient part thereof be sold for the satisfaction of the plaintiff's claim. The decree

will be drawn up in accordance with the provisions of section 88 of the Transfer of Property Act. The plaintiff appellant will have the costs of this appeal and also the costs in the Court below against all the defendants.

Appeal decreed.

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

HASHMAT-UN-NISSA BEGAM AND OTHERS (DEFENDANTS) v. MUHAMMAD ABDUL KARIM (PLAINTIFF).*

Act No. VII of 1870 (Court Fees Act), section 17—Court fees—Suit embracing two or more distinct subjects—Claim on an agreement to sell with an alternative claim for pre-emption.

The plaintiff came into Court claiming in the first place specific performance of an alleged agreement to sell to him certain immovable property, and secondly, in the alternative, the enforcement of a pre-emptive right in respect of a mortgage of the same property executed by one of the defendants in favour of the other.

Hold that the suit was within the meaning of section 17 of the Court Fees Act, 1870, a suit embracing two distinct subject matters and therefore chargeable with the court fees assessable upon each alternative relief separately.

THE suit out of which this appeal arose was one for specific performance of an agreement alleged to have been entered into between the defendant Musammat Hashmat-un-nissa Begam and Musammat Zainab-un-nissa Begam and the plaintiff on the 27th of July 1902. In the alternative, the plaintiff prayed for a declaration that he was entitled to pre-empt a mortgage executed after the alleged agreement for purchase, on the 17th of September 1902. The plaintiff alleged that on the 27th of July 1902 Musammat Hashmat-un-nissa Begam along with Musammat Zainab-un-nissa Begam, her sister, entered into an agreement with him for the sale of 2 biswas of the village of Sheikhpur. The share which belonged to Hashmat-un-nissa was attached in execution of a decree, and in consequence of this, as the plaintiff alleged, it was agreed that the sale of the share of Zainab-un-nissa should be carried out forthwith, and that the sale of the share of Hashmat-un-nissa should be completed when permission was

1906

HUSAINI
BEGAM
v.
KHWAJA
MUHAMMAD
KHAN.

1906

December 5.

* First Appeal No. 249 of 1904 from a decree of Maulvi Muhammad Shah, Additional Subordinate Judge of Moradabad, dated the 30th of July 1904.