1910

BHAGIRATHI v. JOKHU RAM UPADHIA.

such a situation, i.e., whose wife had died in childhood and wished to obtain a second wife would otherwise have to seek for partition and break up the joint family before he could do that which the Hindu Law enjoins on him as a duty. I have no hesitation in holding that in such a case as this, the carrying out of a second marriage would be the duty of the manager of the family, and he could, in order to meet the expenses, charge the family property. The circumstances of the present case in my opinion fully justify the expenditure which was incurred by the uncle of Bhagwati Singh. Bhagwati Singh was a young man whose wife had died leaving in his charge a young child. It was but natural that he should seek to obtain another wife. It was not a case of a man marrying a second wife while the first was alive, nor of an elderly man, with sons and grandsons alive, seeking to take to himself without justifiable reason a second wife. In the circumstances of the present case it would be impossible to hold that there was no justifiable necessity. The necessity was clear, and the uncle of Bhagwati Singh was fully empowered to incur the expenditure. As to the form of marriage it seems to me that it is more or less immaterial what that form was, provided it was legal and binding and the money was properly spent in carrying it out. In this view of the case I also would dismiss the appeal.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

1910

May 11.

Before Mr. Justice Richards and Mr. Justice Tudball.

RUP RAM (PLAINTIFF) *v.* MUSAMMAT REWATI AND ANOTHER (DEFENDANTS).*

Hindu law—Widow's estate—Gift by a female to her daughter—Right of daughter's heir—Acceleration of estate.

The widow of a sonless separated Hindu, in possession as such of her husband's property, made a gift thereof in favour of her daughter. The donee predeceased the donor, and the donor remained in possession of the property the subject of the gift. *Held* that no action by the donee's heir to recover possession would lie during the donor's lifetime. *Bhupal Ram* v. *Lachma Kuar* (1) referred to.

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* Second Appeal No. 837 of 1909, from a decree of D. R. Lyle, District Judge of Aligarh, dated the 13th of May, 1909, reversing a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 25th of December, 1908.

(1) (1888) I. L. R., 11 All., 253.

1910

RUP RAM v. MUSAMMAT REWATI.

In this case the plaintiff sued for possession of certain zamindari and house property under the following circumstances. The property had originally belonged to one Narain Das, who died leaving him surviving a widow, Musammat Rewati, and a daughter, Musammat Durga. On the 3rd of December, 1894, Musammat Rewati made an absolute gift of all the property to her daughter Durga, who was then aged about five years. Musammat Durga died in 1900, and her mother remained in possession of the property, which she had probably never parted with. The present suit was filed in 1907. The Court of first instance (Subordinate Judge of Aligarh) decreed the claim, but this decree was reversed and the suit dismissed by the District Judge on appeal. The plaintiff appealed to the High Court.

Munshi *Govind Prasad*, for the appellant.

Mr. *G. W. Dillon*, for the respondents.

RICHARDS, J.—This appeal arises out of a suit in which the plaintiff claimed possession of certain zamindari and house property. It appears that the property in dispute was originally the property of Narain Das, who died leaving him surviving Musammat Rewati, his widow, and Musammat Durga, his daughter. On the 3rd of December, 1894, Musammat Rewati, by a deed of gift, after reciting that she was in possession of her husband's estate, who had died without a son and leaving Musammat Durga, his daughter, made an absolute gift of the property in favour of Musammat Durga, who was then a child, aged about five years. Musammat Durga died in the year 1900, and the present suit was instituted on the 27th of August, 1907. Apparently Musammat Rewati has remained all along in possession. It is said, however, that no question of limitation arises because the plaintiff, Rup Ram, the husband of Musammat Durga, was a minor. The claim of Rup Ram is as heir to Musammat Durga, and it is contended that the effect of the deed of 3rd December, 1894, was to give to Durga and after her death to the plaintiff the interests of Musammat Rewati, and that accordingly his suit for possession ought to be decreed. On the other hand the respondents contend that the only effect of the deed of 3rd December, 1894, was to accelerate the estate of Musammat Durga, in other words, that on the execution of that deed,

1910

RUP RAM v. MUSAMMAT REWATI.

Musammat Durga became entitled just as if Musammat Rewati were then dead. The case of *Bhupal Ram* v. *Lachma Kuar* (1) is relied on by the respondents. In that case a Hindu widow had made a gift to her daughter, and a suit was brought by the reversioner claiming a declaration that the gift was not binding on him. The Court dismissed the plaintiff's suit giving as a reason that the daughter's estate was merely accelerated as the effect of the gift. It has been conceded that if a Hindu widow makes an alienation either by sale or gift in favour of a stranger, the sale or gift will hold good during the lifetime of the widow. I confess that I felt some difficulty in understanding why a gift in exactly the same words in favour of a daughter ought not also to hold good during the lifetime of the widow. The case of relinquishment by a Hindu widow in favour of the reversioner for the time being stands on a somewhat different basis. There the relinquishment is in favour of a person who might not necessarily be the reversioner at the time of the widow's death, i.e., when the succession opens up. However, it does appear to have been the opinion of this Court in more than one case that the effect of a gift in favour of a daughter by a Hindu widow is merely to accelerate the daughter's estate. In the present case the merits are entirely with the defendants. I doubt very much that the deed of gift was ever acted upon in any way. I would dismiss the appeal with costs.

TUDBALL, J.—I fully concur with the opinion of my learned colleague. The trend of opinion in this Court seems to be that where a Hindu widow gives property inherited from her husband to a person who, if she were to die at once, would take the property, whether with a life estate or a full estate, her gift would only be tantamount to relinquishment of her rights and acceleration of the rights of the person next entitled to possession after her. In the case of a male heir the matter is beyond doubt and covered by authority. The case of *Bhupal Ram* v. *Lachma Kuar* (1) which was the case of a gift to a daughter was decided on the same principle. I would therefore dismiss the appeal.

(1) (1888) I. L. R., 11 All., 253.

1910

RUP RAM v. MUSAMMAT REWATI.

BY THE COURT.—The order of the Court is that the appeal is dismissed with costs.

Appeal dismissed.

1910
May 12.

Before Mr. Justice Richards and Mr. Justice Tudball.

MULLA SINGH (PLAINTIFF) *v.* JAGANNATH SINGH AND OTHERS (DEFENDANTS.)*

Contribution -Decree for costs -Some defendants not contesting suit—Liability for contribution not a necessary consequence of a joint decree.

The mere fact that a decree for costs has been made against several persons jointly will not of itself render the co-defendants liable in a suit for contribution; but if one of the defendants pays the full amount of costs and then sues his co-defendants for contribution, he should show some equity existing between himself and his co-judgement debtors making the latter liable for contribution. *Dearsly* v. *Middlewesk* (1) referred to.

THE question in this case was whether the respondents were liable to contribute towards the amount paid by the appellant in execution of a decree jointly passed against the plaintiff and the respondents for the costs of a suit in which the parties to the present suit were arrayed as co-defendants. The facts which gave rise to the appeal are fully stated in the judgement of the Court.

Munshi *Gulzari Lal*, for the appellant, contended that the decree was joint against all, and all the persons were jointly and severally liable for the amount of the costs decreed against them and paid by the appellant alone. Under the circumstances the plaintiff alone was not liable for the costs, and as he had to pay the entire amount, for which the respondents were also liable, they must contribute their quota of the liability. He relied upon *Siva Panda* v. *Jujusti Panda* (2) and *Kishna Ram* v. *Rakmini Sewak* (3).

Pandit *Baldeo Ram Dave*, for Narain Prasad, respondent, contended that the mere fact that the costs were decreed jointly and severally against all the defendants to the original suit and that those costs were recovered from the plaintiff alone did not

* Second Appeal No. 770 of 1909, from a decree of Muhammad Siraj-ud-din, Judge, Small Cause Court of Cawnpore, exercising the powers of a Subordinate Judge, dated the 20th of April, 1909, confirming a decree of Piare Lal, Munsif of Akbarpur, dated the 24th February, 1909.

(1) (1881) L. R., 18 Ch. D., 236. (2) (1901) I. L. R., 25 Mad., 599.
(3) (1887) I. L. R., 9 All., 221.