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HANIF-UN-NISSA v. FAIZ-UN-NISSA.

of law, they will have their costs of the appeal incurred in England.

Appeal allowed and case remanded.

Solicitors for the appellants :—*T. C. Summerhays & Son.*

Solicitors for the respondents :—*Barrow, Rogers & Nevill.*

P. C. 1911 *February* 15.

BHAWANI KUNWAR (DEFENDANT) *v.* HIMMAT BAHADUR AND ANOTHER (PLAINTIFFS).

[On appeal from the High Court of Judicature at Allahabad.]

Hindu Law—Widow—Payment by wife of husband's debts during his lifetime—Voluntary payment—Absence of proof of obligation to repay—Onus of proof.

In this case, which was an appeal from the decision of the High Court in the case of *Himmat Bahadur* v. *Bhawani Kunwar* (1) the Judicial Committee merely affirmed that decision on the ground that the appellant on whom the onus lay had not proved that there was any obligation on the part of the husband or his estate to pay the moneys which were paid by his wife, and dismissed the appeal.

APPEAL from a judgement and decree (1st May, 1908) of the High Court at Allahabad, which reversed a decree (11th August, 1905) of the Subordinate Judge of Shahjahanpur.

The question for determination in this appeal was as to the right of the respondents (plaintiffs) to recover from the appellant (defendant) certain property in her possession which the plaintiffs alleged had originally belonged to their maternal grandmother, and which they alleged had been sold by her without legal necessity to one Jiwan Sahai, the vendor to the appellant.

The Subordinate Judge dismissed the suit with costs. On appeal the High Court (Sir JOHN STANLEY, C. J. and KARAMAT HUSAIN, J.) reversed that decree and gave the plaintiff a decree for possession of the property on certain terms. The facts of the case will be found fully stated in the judgement of Mr. Justice KARAMAT HUSAIN reported in I. L. R., 30 All., 352.

On this appeal :—

W. A. Raikes, for the appellant, contended that there was abundant evidence of the legal necessity ; that the respondents being daughter's sons the question of legal necessity did not really

Present :—Lord MACNAGHTEN, Lord ROBSON, Sir ARTHUR WILSON and Mr. AMEER ALI.

(1) (1908) I. L. R., 30 All., 352.

arise, and the respondents were bound by the acts and transfers made by their grandmother and mother; that the respondents were also bound by the acts of their great-grandfather who was the head of a joint Hindu family; and that the grandmother and mother of the respondents (who were the reversioners) had complete power to deal with and transfer the property. Reference was made to *Succaram Morarji Shetay* v. *Kalidas Kalianji* (1); *Chimnaji Govind Godbole* v. *Dinkar Dhondev Godbole* (2); *Karim-ud-din* v. *Gobind Krishna Narain* (3), and *Raj Bullubh Sen* v. *Oomesh Chunder Rooz* (4).

DeGruyther, K. C., and *Ross*, for the respondents, contended that it was for the appellant to show legal necessity justifying the alienation of the property; and the power of a female manager of a joint family was very restricted.

Payment by a wife of her husband's debt in his lifetime was merely voluntary; such payment involved no obligation on the husband to repay it; nor, it was submitted, was there any assumption that there was a contract by him to repay it. Reference was made to Mayne's Hindu Law, 7th Edition, page 850, paragraph 653, and *Sham Sundar Lal* v. *Achhan Kunwar* (5). There was no sufficient evidence of legal necessity justifying the sale of the 30th of September, 1890; it was not binding on the respondents, and they were entitled to recover the property transferred by that deed on the conditions imposed by the High Court, whose decision should be upheld.

Raikes replied.

1911, *February* 15th:—The judgement of their Lordships was delivered by Lord MACNAGHTEN:—

The facts of this case are very complicated in detail, but it seems to their Lordships that judgement can be given in a single sentence.

The appellant has not proved that there was any obligation on the part of Nityanand or his estate to pay the moneys which were paid by his wife. The obligation lay upon the appellant to prove that there was such liability, and she has not satisfied it.

(1) (1894) I. L. R., 18 Bom., 631.
(2) (1886) I. L. R., 11 Bom., 320.
(3) (1909) I. L. R., 31 All., 497: L. R., 36 I. A., 138.
(4) (1878) I. L. R. 5 Calc., 44.
(5) (1898) I. L. R., 21 All., 71.

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Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed, and the appellant will pay the costs.

Appeal dismissed.

Solicitors for the appellant :—*T. L. Summerhays & Son.*

Solicitors for the respondents :—*Ronken Ford, Ford & Chester*

J. V. W.

P. C. 1911. *February* 15, 17, 28.

UMRAO SINGH AND ANOTHER (PLAINTIFFS) *v.* LACHMAN SINGH AND ANOTHER (DEFENDANTS).

[On appeal from the Court of the Judicial Commissioner of Oudh at Lucknow.]

Act No. 1 of 1869 (*Oudh Estates Act*)—*Will of taluqdar—Sanad executed by Taluqdar through the mediation of family friends—Whether document was testamentary or non-testamentary—Registration of document—Act No. III of* 1877 (*Indian Registration Act*), *sections* 17 *and* 49—*Instrument affecting immovable property—Ground not specifically taken in argument in courts below—Costs.*

A taluqdar in 1862, in compliance with the directions issued by the Government, made a declaration that, "I wish and file this application, that after my death Umrao Singh the eldest son (*sic*) my estate should continue in my family undivided in accordance with the custom of the *raj-gaddi*, and that the younger brothers shall be entitled to get maintenance from the *gaddi-nashin*."

Held (affirming the decision of the Courts in India) that it was a valid testamentary disposition by the taluqdar of his estate in favour of his eldest son.

The same taluqdar, having three sons, with one of whom he was on bad terms, executed in 1881 the following document, which he called a sanad :—"For Prithipal Singh, who is my son, I fix Rs. 300 annually, so that he may maintain himself. Besides this whatever I may give I will give equally to the three sons, except provisions, which they may take from my godown (*kothar*). The marriage and *gauna* expenses of the sons and daughters shall be borne by me. After me the three sons are to divide the property movable and immovable. This has been settled through the mediation of Thakur Jote Singh of Bihat, and Thakur Ratan Singh of Rojah."

Held (reversing the decision of the Judicial Commissioner's Court) that it was a non-testamentary instrument. It was a family arrangement arrived at by the mediation or arbitration of two gentlemen, friends of the family and interested in its honour, and it was plainly intended to be operative immediately and to be final and irrevocable.

Held also that it required to be registered under section 17 of the Registration Act (III of 1877) in order to make it effective as regards immovable property, and, being unregistered, was, so far, void.

Present :—Lord MACNAGHTEN, Lord ROBSON, Sir ARTHUR WILSON, and Mr. AMEER ALI.