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THE MUNICIPAL BOARD OF GHAZIPUR v. DEOKINANDAN PRASAD.

governed by article 120 and having been brought within six years of the refusal to refund the money is within time. The appeal is, therefore, dismissed. Costs will be costs in the cause and abide the result.

Appeal dismissed.

1914
June, 9.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

TAHIR-UN-NISSA BIBI (DEFENDANT) v. NAWAB HASAN AND ANOTHER (PLAINTIFFS).*

Muhammadan law—Dower—Right of widow to remain in possession of husband's property in lieu of dower.

The right of a Muhammadan widow to whom dower is due, and who has got into possession of property of her husband in lieu thereof, to remain in possession until her dower is paid may, perhaps, be descendible to her heirs: but no right to possession is descendible in a case where the widow herself never got possession at all. *Ali Bakhsh* v. *Allahdad Khan* (1) and *Mussumat Bebee Bachun* v. *Sheikh Hamid Hossein* (2) referred to.

THE facts of this case were as follows:—

One Zahur-ul-Hasan died on the 21st of February, 1904, leaving him surviving the plaintiff Chaudhri Nur-ul-Hasan his brother, and the defendant No. 1, his daughter. It was alleged by the defendant that he also left a widow Musammat Begam Bibi, but this the court below has found to be incorrect. The plaintiff complained that the defendant No. 1 had got more than her share of the property of the deceased Zahur-ul-Hasan, and he accordingly brought the present suit for possession of a moiety share in the property and mesne profits. The court of first instance partially decreed the plaintiff's claim. After the decree of the court of first instance the original plaintiff died and was succeeded by his son and daughter. The lower appellate court on appeal by the defendant modified the decree of the court of first instance. The defendant appealed to the High Court.

The Hon'ble Dr. *Sundar Lal*, Dr. *Satish Chandra Banerji*, the Hon'ble Dr. *Tej Bahadur Sapru*, and Maulvi *Muhammad Ishaq*, for the appellant.

The Hon'ble Pandit *Moti Lal Nehru*, for the respondents.

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* Second Appeal No. 660 of 1913 from a decree of H. E. Holme, District Judge of Allahabad, dated the 20th of February, 1913, modifying a decree of Rama Das, Additional Subordinate Judge of Allahabad, dated the 23rd of July, 1912.

(1) (1910) I. L. R., 32 All., 551. (2) (1871) 14 Moo. I. A., 377.

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TAHIR-UN-NISSA BIBI v. NAWAB HASAN.

RICHARDS, C. J., and BANERJI, J.—The facts out of which this appeal arises are as follows. One Zahur-ul-Hasan died on the 21st of February, 1904, leaving him surviving the plaintiff Chaudhri Nur-ul-Hasan his brother, and the defendant No. 1, his daughter. (It was alleged by the defendant that he also left a widow Musammat Begam Bibi, but this the court below has found to be incorrect). The plaintiff complains that the defendant No. 1 has got more than her share of the property of the deceased Zahur-ul-Hasan, and he accordingly brings this suit praying that he may be put into possession of a moiety share in the property and awarded mesne profits.

The court of first instance partially decreed the plaintiff's claim. The lower appellate court modified the decree of the court of first instance.

The only question which we have to decide in the present appeal is the following. It is stated that Musammat Tahir-un-nissa was peaceably in possession of the estate of her father, that she was entitled as heir to her mother to the latter's dower, and that just as her mother, had she lived and got peaceably into possession of her husband's estate, might have remained in possession of it until her dower was paid, the defendant as her heir has the same right. Dr. *Tej Bahadur*, on behalf of the appellant, quotes the ruling in *Ali Bakhsh* v. *Allahdad Khan* (1). He says that the case and the authorities which are mentioned in the judgement clearly establish the law that a widow who gets into possession is entitled to remain in possession until her dower debt is paid and he contends that the case is an authority that the right she had descends to her heirs.

It seems to us that there is a fallacy in the argument. Possibly the case would be authority for holding that if the widow had got peaceably into possession of her husband's estate after his death, the right which she had to remain in possession would descend to her heirs. But in the present case the widow never got into possession, (according to the finding she predeceased her husband) and her husband had not put her into possession. The very words in the judgement of their Lordships of the Privy Council in the case of *Mussumat Bebee Bachun* v. *Sheikh Hamid Hossein* (2), show that the widow has no legal right to

(1) (1910) I. L. R., 32 All., 551. (2) (1871) 14 Moo. I. A., 377.

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TAHIR-UN-NISSA BIBI v. NAWAB HASAN.

go into possession. Her right is that if she gets peaceably into possession without force or fraud, she is entitled to remain in possession until her dower debt is paid. If the widow has no legal right to take possession, such a right cannot descend to her heirs, because she never had it.

In our opinion the view taken by the court below was correct and we dismiss the appeal with costs.

Appeal dismissed.

1914

June, 16.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

BENI RAM AND OTHERS (DEFENDANTS) *v.* RAM CHANDAR (PLAINTIFF).*

Civil Procedure Code (1908), *order II, rule 2—Cause of action—Hundi given in discharge of debt on accounts—Failure of suit on hundi—Subsequent suit based on the accounts.*

A debtor gave his creditor a hundi for the amount of his debt. The creditor accepted the hundi, but the debtor failed to pay it at maturity. The creditor then sued the debtor on his hundi but failed to recover. *Held* that this was no bar to his suing on the accounts to recover the debt. The cause of action on the hundi was totally distinct from the cause of action in respect of the original debt. *Preonath Mukerji* v. *Bishnath Prasad* (1) doubted. *Payana Reena Layana Saminathan Chetty* v. *Pana Lana Pana Lana Palaniappa Chetty* (2) referred to.

THE facts of this case were as follows:—

There were commercial dealings between the plaintiff and the defendants. In October, 1909, a balance was struck, and it was found that Rs. 4,000 odd were due by the defendants to the plaintiff. An arrangement was come to by which the defendants agreed to pay off this sum by monthly payments of Rs. 50. Certain instalments were paid in pursuance of this arrangement and were duly credited to the defendants in the books of the plaintiff. Later on the plaintiff asked the defendants if they would accept a hundi for Rs. 500 if the plaintiff drew the same upon them and that the plaintiff would credit the defendants with the Rs. 500 in the books being the amount of the hundi. The defendants agreed to this. The plaintiff drew the hundi, the defendants accepted it but did not pay the amount on due date. The plaintiff had to pay the hundi and then brought a suit against the defendants for the Rs. 500. This suit failed. The plaintiffs then instituted the

* First Appeal No. 13 of 1914, from an order of Austin Kendall, District Judge of Cawnpore, dated the 21st of November, 1913.

(1) (1906) I. L. R., 29 All., 256. (2) (1913) 18 C. W. N., 617.