

MISCELLANEOUS CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

MAN SINGH (PETITIONER) v. MUSAMMAT GAINI (OPPOSITE PARTY).*

Hindu Law—Leprosy—Development of leprosy not a disqualification as regards capacity to deal with property.

1917,
November, 2.

There is no principle of Hindu Law under which a person who contracts the disease of leprosy is thereby disqualified from dealing with his own property or from dealing with joint family property so as to bind his sons, provided the alienation is made for legal necessity.

THIS was a suit to set aside an alienation made by the father of the minor plaintiff of certain property which was admittedly the joint ancestral property of the minor and his father. The court of first instance and the court of first appeal both found that the alienation was made for legal necessity. There was an antecedent debt binding on the father which it was the son's duty to discharge, and in these circumstances an alienation by the father, even of joint ancestral property, would be binding on the son. There was, however, a second appeal preferred to the Commissioner of Kumaun, but the plea was there raised that the alienation was invalid because the father was at the time suffering from the disease of leprosy. The Commissioner accepted this plea; and reversing the decrees of the courts below, decreed the plaintiff's suit. At the instance of the defendant, the Local Government referred the case to the High Court under rule 17 of the Kumaun Rules, 1894.

Munshi *Lakshmi Narain*, for the petitioner.

Babu *Sheo Dihal Sinha*, for the opposite party.

PIGGOTT and WALSH, JJ.:—This is a reference by the Local Government under Rule 17 of the Rules and Orders relating to the Kumaun Division. The suit in question was brought to set aside an alienation made by the father of the minor plaintiff of certain property which was admittedly the joint ancestral property of the minor and his father. There is a concurrent finding by the court of first instance and by the court of first appeal to the effect that the alienation in question was made for legal necessity. There was an antecedent debt binding on the father, which it was the son's pious duty to satisfy, and under these

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circumstances an alienation by the father, even of joint ancestral property, would be binding on the son. There was a second appeal to the court of the Commissioner of Kumaun and there the case took an entirely different turn. The learned Commissioner has not dissented from the finding that the alienation in question was made for legal necessity. He has taken up a plea, which was certainly suggested in the plaint as what may be called an alternative line of attack, to the effect that the alienation was invalid because the father, Sobha, was suffering from leprosy. The question before the court had nothing to do with the right of a person suffering from leprosy or similar incurable disease to inherit property: the property was the father's and had come to him from his ancestors. We have not been referred to any principle of Hindu Law, nor do we find that any such principle exists, under which a person who contracts the disease of leprosy is thereby disqualified from dealing with his own property or from dealing with joint family property so as to bind his sons, provided the alienation of the same is made for legal necessity. The Commissioner's order suggests an opinion on his part that, whatever may be the general Hindu Law on the subject, there is a custom prevalent in the Kumaun Division, and binding on the parties, which disqualifies a leper from dealing with his property. He refers to a decision of one of his predecessors in the year 1887, in which a somewhat anomalous principle is laid down that a leper has only a life-interest in any property belonging to him, that he can alienate that property for his life-time but cannot make any alienation binding upon his heirs or successors after his death. We do not find from an examination of the record that any local custom to this effect was pleaded, much less was established by evidence. The decision, therefore, seems to rest simply upon a pronouncement of the Kumaun High Court in the order of 1887, which may or may not have rested upon adequate evidence in that particular case, but which cannot be regarded as laying down a proposition of law binding upon the parties concerned in any future litigation. In the course of argument before us a suggestion has been thrown out that the order of the Commissioner might be supported, not on the ground on which it proceeds, but on the strength of

certain remarks made in the concluding portion of the Commissioner's judgement. It is there stated that this man Sobha had left his home and was living as an out-caste and leper on the banks of the Ganges. A man suffering from a virulent type of leprosy would naturally leave his home and take up his residence somewhere outside his village. It does not seem to have formed any part of the plaintiff's case in the courts below that Sobha had renounced the world and had adopted the life and status of a Hindu ascetic. The fact that he executed the sale deed in suit in satisfaction of a debt previously contracted by him shows in itself that he retained an interest in mundane affairs and did not consider himself to have renounced all his rights to his property. We do not think that the order of the Commissioner can be supported upon this or upon any other ground.

Our answer therefore to this reference is that in our opinion the Commissioner should have dismissed the second appeal preferred to his court, and that the costs of the entire proceedings, including this reference, should be borne by the unsuccessful plaintiff. The petitioner, that is to say, the original defendant in the suit, should be allowed to charge pleader's fee in this Court at the rate actually certified.

REVISIONAL CRIMINAL.

Before M. Justice Tudball.

EMPEROR v. BAHAWAL SINGH.*

Criminal Procedure Code, section 250—Fivolous or vexatious accusation—

Compensation—Against whom order for compensation can be made.

It is not necessary that the person against whom an order for compensation under section 250 of the Code of Criminal Procedure is made should be the person who himself gives information to a Magistrate in consequence of which another is accused of an offence provided that he is the person upon whose information an accusation is made.

THE facts of this case were as follows:—

One Jagmohan Dom gave information to the Revd. G. Spooner of the Wesleyan Mission to the effect that the accused constable had extorted from him the sum of Rs. 10. The Revd. G. Spooner made an inquiry on his account and then reported the matter to

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* Criminal Reference No. 838 of 1917.