1921
April, 15.

Before Mr. Justice Gokul Prasad and Mr. Justice Stuart.

SHEO RAM PANDE (DEFENDANT) *v.* SHEO RATAN PANDE (PLAINTIFF) AND LACHMINIA PANDAIN (DEFENDANT)*

Hindu law—Alienation by Hindu mother succeeding to her son's estate for payment of her husband's debts—Legal necessity.

Although a Hindu son may be under a pious obligation to pay his father's debts, there is no authority which lays down that a mother is bound to satisfy that obligation on her son's death and can validly alenate for that purpose the estate which has come to her by inheritance from her son, unless such estate has been charged by the father with the payment of his debts. *Udai Chunder Chuckerbutty* v. *Ashutosh Das Mozumdar* (1) and *Bhala Nahana* v. *Parbhu Hari* (2) distinguished.

THE plaintiff, Sheo Ratan Pande, as the nearest reversioner, sued Sheo Ram Pande and Musammat Lachminia for a declaration that a mortgage-deed executed on the 17th of January, 1916, by Musammat Lachminia in favour of Sheo Ram for Rs. 1,999 is of no effect against the plaintiff or his heirs after the death of Musammat Lachminia. He alleged that Ramajor was the last male owner, that after his death his mother Musammat Lachminia, as his heir, was in possession of his property. The plaintiff contended that Lachminia had no right to mortgage the property, and that the deed was without consideration and legal necessity.

The defendant Sheo Ram did not admit the family tree put forward by the plaintiff and pleaded that he himself and not Sheo Ratan was the nearest reversioner; that the deed was executed for consideration to pay off her husband's debt, and for funeral ceremonies, and that the mortgage was executed for the protection of the property. There was also a plea that after her husband's death, Lachminia's possession became adverse.

Musammat Lachminia raised similar pleas, and said moreover that she executed the deed in order to pay off the debts incurred in prosecuting the suit No. 513 of 1908, brought by Ramajor minor in the court of the Munsif of Basti.

* Second Appeal No. 272 of 1919 from a decree of W. R. G. Moir, District Judge of Gorakhpur, dated the 4th of December, 1918, reversing a decree of Jotindro Mohan Basu, Subordinate Judge of Gorakhpur, dated the 25th of August, 1916.

(1) (1893) I.L.R., 21 Calc., 190. (2) (1877) I.L.R., 2 Bom., 67.

The court below framed issues:—

(1) Is the pedigeee set up by the plaintiff correct? What is the correct pedigree?

(2) Is the plaintiff's suit within time?

(3) Was the mortgage-deed in dispute executed for valid consideration and legal necessity?

On the first issue it held that the pedigree set up by the plaintiff was correct; on the second that the suit was within time; on the third that the mortgage-deed was executed for valid consideration and legal necessity in respect of Rs. 1,300, but that the payment of the balance of the consideration Rs. 699 was not proved. It therefore granted the plaintiff a declaratory decree that the mortgage-deed was not binding against him after the death of Lachminia except in regard to Rs. 1,300, and ordered the defendants to pay plaintiff one-half of the plaintiff's costs.

Both parties appealed. Sheoratan, against the finding that the deed was binding against him in respect of Rs. 1,300, and Sheo Ram against the finding that the deed was not binding against Sheo Ratan in respect of Rs. 699. The lower appellate court decreed the former and dismissed the latter appeal. Sheo Ram therefore appealed to the High Court.

Munshi *Girdhari Lal Agarwala*, for the appellant.

Munshi *Gulzari Lal*, for the respondents.

GOKUL PRASAD and STUART, JJ.:—The point raised in this appeal, put in short, comes to this. Whether a Hindu mother who has succeeded to her son's estate as such can validly alienate a part of the property in order to pay off certain time-barred debts of her husband. The lower appellate court has held the contrary, holding that there is no warrant in Hindu Law for validating such a transfer. The transferee comes here in second appeal. The argument put forward on his behalf to support the transfer for this account is that the son was under a pious obligation to pay certain debts contracted by his father and uncle respectively, and as the son died without paying those debts, his mother, who succeeded to the estate which originally belonged to her husband and her husband's brother, was justified in making the transfer of the family property to pay off those debts. The utmost extent to which the Hindu law has gone in this matter

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is that a son is under a pious duty to pay his father's debt, and also that a sonless widow can alienate her husband's estate to pay off her husband's debt. The Hindu law makes no difference between a time-barred debt and a debt which is not so barred; but there is no warranty or reason for holding that a nephew is bound to pay his uncle's debt, and there is no authority which lays down that a mother is bound to pay her son's debt and can validly alienate the estate which has come to her by inheritance from her son at his death. Our attention has been drawn to the case of *Udai Chunder Chuckerbutty* v. *Ashutosh Das Mozumdar* (1) and to the earlier Bombay case, *Bhala Nahana* v. *Parbhu Hari* (2), on which that case is based. The Bombay case proceeds upon a passage from *Narad.* (See *Bhala Nahana* v. *Prabhu Hari*) (2). The passage (at page 73) runs thus: "The debts contracted by the husband shall be discharged by the widow, if sonless, or if her husband has enjoined her to do so on his death-bed, or if she inherits the estate; for, whosoever takes the estate must pay the debts with which it is encumbered." Those cases are no authority for the proposition put forward before us by the learned counsel for the appellant. In the present case the estate was not encumbered with the debt of the husband. It was only the pious duty of the son to pay the debts of his father. The property was in no way encumbered. So that, even relying on this text of *Narad* the appellant must fail. The appeal fails on other grounds also. We think the view taken by the court below was right. We accordingly dismiss this appeal with costs.

Appeal dismissed.

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April, 27.

Before Mr. Justice Walsh and Justice Wallach.

JALESAR SAHU (PLAINTIFF) *v.* RAJ MANGAL AND OTHERS (DEFENDANTS).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 18 *and* 88*—Landlord and tenant—Occupancy tenant by agreement with the zamindar converting part of holding into a grove—Effect of such conversion on tenancy.*

The zamindar gave permission to an occupancy tenant to plant a grove on his holding. Trees were planted and grew up, and the land ceased entirely to be used for agricultural purposes.

* Second Appeal No. 731 of 1919 from a decree of I. B. Mundle, District Judge of Gorakhpur, dated the 11th of March, 1919, confirming a decree of Gopal Das Mukerji, Additional Subordinate Judge of Gorakhpur, dated the 16th of November, 1916.

(1) (1893) I. L. R., 21 Calc., 190. (2) (1877) I. L. R., 2 Bom., 67.