

1926

MAHMUD-
UN-NISSA
v.
BARRAT-
ULLAH.

Subordinate Judge but extend the time of payment to two months from this date.

In view of the fact that the amount for which the creditor has obtained a decree exceeds by many times the principal originally advanced, we direct that the parties bear their own costs both in this Court and in the court below.

Appeal allowed.

Before Mr. Justice Walsh and Mr. Justice Pullan.

1926
May, 25.

MUNNI LAL (PLAINTIFF) v. SHIAMA SONARIN AND OTHERS (DEFENDANTS).*

Hindu law—Marriage—Illegality of, between distinct castes.

Although a marriage between persons belonging to different subdivisions of one large caste may be permissible, a marriage between members of two totally different castes, such as a Sudra and a Vaish, is totally illegal. *Padam Kumari v. Suraj Kumari* (1) and *Sespuri v. Dwarka Prasad* (2), followed.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Babu *Saila Nath Mukerji*, for the appellant.

Munshi *Kailas Chandra Mital*, for the respondents.

WALSH and PULLAN, JJ. :—The plaintiff in this case is the illegitimate son of a Sonar father and a Mallahin woman. He claims restitution of conjugal rights with a woman who is now admitted to be the legitimate daughter of Kasarwani Baniya parents. The only question which we have to decide is whether such a marriage can, under Hindu law, be considered legal. We have been shown several authorities in support of the view that marriages between different sub-castes of Sudras have been held to be legal, but we have seen no case in which it has been held that

* Second Appeal No. 1662 of 1923, from a decree of K. G. Harper, District Judge of Benares, dated the 17th of July, 1923, reversing a decree of S. M. Munir, Additional Munsif of Benares, dated the 16th of May, 1923.

(1) (1906) I.L.R., 28 All., 458.

(2) (1912) 10 A.L.J., 181.

a legal marriage can be contracted between a Sudra and a Vaish. In this case the girl is undoubtedly a Vaish and the plaintiff is a Sudra. The authority which we follow is that of this High Court in the case of *Padam Kumari v. Suraj Kumari* (1) in which it was held that a Brahmin could not legally marry a Chhattri, and again in *Sespuri v. Dwarka Prasad* (2) where it was held that *a fortiori* a Thakur man could not legally marry a Brahmin woman. In our opinion this question has already been settled by authority and the view taken by the lower appellate court is correct. We dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Kanhaiya Lal and Mr. Justice Ashworth.

TEJO BIBI (DEPENDANT) *v.* SRI THAKUR MURLIDHAR
RAJ RAJESHWARI AND MAHADEOJI (PLAINTIFFS)
AND LACHHMI AMMA (DEPENDANT).*

1926

May, 25.

*Religious endowment.—Trust for religious purposes.—Will—
Construction of document.*

A Hindu, who had installed three idols in a house owned by him in the city of Benares, thereafter executed a will in which, in respect of the house in question, it was declared as follows: The testator's two nephews as executors were to arrange for the carrying on of the worship of the deities installed therein, celebrate the customary festivals observed there and put up pilgrims in the house and attend to them. The executors were to reside in the house and look after its repairs, and whatever income was derived from the house should first be applied to the expenses of the worship of the said deities and the other religious ceremonies aforesaid and the balance was to be divided by the two executors between themselves in equal shares. The will further provided that neither of the executors should be entitled to transfer, mortgage or sell the house, and that, if they did so, the sale would be utterly null and void. It was also provided that if either of the executors or his heirs at any time proceeded to sell the said house the members of his community and

* First Appeal No. 12 of 1923, from a decree of Kauleshar Nath Rai, Subordinate Judge of Benares, dated the 18th of August, 1922.

(1) (1906) I.L.R., 28 All., 458.

(2) (1912) 10 A.L.J., 181.