1927

IN THE MATTER OF ALLAHABAD TRADING AND BANKING CORPORATION, LIMITED.

case are entitled to disown the decree. So the decision relied on, instead of being in favour of the petitioners, is against them. The counsel for the petitioners with great pertinacity maintains that his clients should be allowed to produce their account books to prove the claim. For the reasons set forth above by me there does not now exist any claim except the decree. In refusing to satisfy the decree the Liquidators have been held to be justified and there is nothing else in existence creating any liability against the insolvent company.

For the above reasons I hold that this application must fail. As an Official Liquidator has argued the case himself I make no order as to costs.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Ashworth.

MUHAMMAD SHOAIB KHAN (PLAINTIFF) v. ZAIB JAHAN BEGAM AND OTHERS (DEFENDANTS).*

1927
November, 4.

Muhammadan law—Dower—Nature of widow's possession in lieu of dower.

The right of a Muhammadan widow is founded on her power as creditor for her dower, to hold the property of her husband, of which she has lawfully and without force or fraud obtained possession, until her debt is satisfied. But it does not follow from this that unless and until the widow actually enters into possession of the estate on the express assertion that she is taking possession in lieu of her dower debt, she cannot subsequently be allowed to raise such plea. *Mussumat Bebee Bechun* v. *Sheikh Hamid Hossein* (1), *Ali Bakhsh* v. *Allahdad Khan* (2) and *Ramzan Ali Khan* v. *Asghari Begam* (3), followed.

*First Appeal No. 69 of 1926, connected with First Appeal No. 388 of 1924, from a decree of Kashi Prasad, Additional Subordinate Judge of Aligarh, dated the 14th of May, 1924.

(1) (1871) 14 Moo. I. A., 377. (2) (1910) I.L.R., 32 All., 551.
(3) (1910) I.L.R., 32 All., 563.

1927

MUHAMMAD SHOAIB KHAN v. ZAIB JAHAN BEGAM.

THE facts of this case were as follows :—

This appeal and the connected first appeal No. 388 of 1924 arose out of two suits for recovery of possession brought by two sets of rival claimants against Musammat Zaib Jahan Begam, the defendant in possession. Bakhsh Ali Beg was the last full owner of the property in dispute and on his death he left a widow Musammat Hazur-un-nissa, a son Yusuf Beg and a daughter Musammat Hayat-un-nissa. The son and the daughter survived the widow. Thus they got a two-third and a one-third share, respectively, in the estate of Bakhsh Ali Beg. Yusuf Beg died in 1920, leaving Musammat Zaib Jahan Begam, his widow, and his sister as two of his heirs. The remaining share in his estate would go to the residuaries, if any, and failing them to the distant kindred. On the death of Yusuf Beg no claim was put forward either by any residuary or by distant kindred, and the names of Musammat Zaib Begam and Musammat Hayat-un-nissa were recorded on specific shares.

In 1922 Musammat Hayat-un-nissa died, and soon after her death the present plaintiff, Muhammad Shoaib Khan, obtained a sale-deed from Nur Beg and Yakub Beg who asserted themselves to be the residuaries of the deceased. Suit No. 39 of 1923, out of which this appeal arose, was instituted by Muhammad Shoaib Khan. The other suit was filed by Afsar Beg and others who claimed to be the distant kindred. In the mutation court Musammat Zaib Jahan Begam had succeeded mainly on the ground of her possession.

The rival claimants did not admit the title of the opposite party, and Musammat Zaib Jahan Begam denied the rights of both sides. The court below found in favour of Afsar Beg and others and held that they were the distant kindred, and found that the plaintiff Muhammad Shoaib Khan had failed to prove that his transferors

were the residuaries of the deceased. It further found that Musammat Jahan Begam was in possession of the estate left by Yusuf Beg, excluding, of course, her own share, in lieu of her dower-debt. The amount of her dower-debt was found to be Rs. 5,000. Musammat Zaib Jahan Begam submitted to the decree in favour of Afsar Beg and others, but Muhammad Shoaib Khan appealed in both the suits.

Mr. *A. M. Khwaja*, Mr. *T. A. K. Sherwani* and Maulvi *Mukhtar Ahmad*, for the appellant.

Dr. *M. L. Agarwala* and Munshi *Sarkar Bahadur Johari*, for the respondents.

THE judgement of SULAIMAN, J., after setting forth the facts as above and discussing the evidence produced by the plaintiff appellant, continued as follows :—

No doubt there are some circumstances in the conduct of the defendants which might seem to strengthen the plaintiff's case, but his case must stand or fall by his own evidence. In a case of this kind, when the deceased ancestors died a long number of years ago and when all the evidence that is forthcoming is of witnesses of small status it is not safe for us to differ from the view taken of that evidence by the learned Subordinate Judge who had the opportunity of seeing the witnesses and examining their demeanour. It may be that he has given some reasons which are not strictly sound, nevertheless his general impression of the evidence stands, and that is against the plaintiff.

It is not necessary for us to consider the other point which was raised in this appeal, namely, whether Musammat Zaib Jahan Begam has made out her case that she is in possession of the property left by Yusuf Beg in lieu of her dower-debt. The first argument is that at the time when the mutation of names was effected in her favour she did not profess to enter into possession

1927

MUHAMMAD SHOAIB KHAN v. ZAIB JAHAN BEGAM.

Sulaiman, J.

in lieu of her dower-debt and that, therefore, she cannot be allowed to retain the property on that plea. No authority has been cited before us which would show that unless and until the widow actually enters into possession of the estate on the express assertion that she is taking possession in lieu of her dower debt, she cannot subsequently be allowed to raise such a plea. We are inclined to think that the observation of their Lordships of the Privy Council in the case of *Mussumat Bebee Bechun* v. *Sheikh Hamid Hossein* (1), makes it clear that "the right of a widow is founded on her power as a creditor for her dower, to hold the property of her husband, of which she has lawfully and without force or fraud obtained possession, until her debt is satisfied".

In many subsequent judgements the learned Judges have been careful to use the words "retain possession". We may also refer to the case of *Ali Bakhsh* v. *Allahdad Khan* (2), where RICHARDS, J., remarked: "In my opinion, where a Muhammadan widow, entitled to dower, gets quietly and peacefully into possession without fraud, she is entitled to retain possession until her dower-debt is paid"; and also to the remark of TUDBALL, J., in the case of *Ramzan Ali Khan* v. *Asghari Begam* (3), that "the balance of authority is in favour of the view that a widow, who from the nature of things on the death of her husband in many instances finds herself in possession of some, if not of the whole, of her husband's estate, is entitled to hold that estate against other heirs until her claim to dower is satisfied, without being asked to show either consent on their part or on that of the deceased husband".

It seems to me that if the power to retain possession of the estate so long as her dower-debt is not satisfied is exercised as a power of a creditor, the defendant Musam-

(1) (1871) 14 Moo. I.A., 377 (384). (2) (1910) I.L.R., 32 All., 551 (562). (3) (1910) I.L.R., 32 All., 563 (566).

1927

MUHAMMAD SHOAIB KHAN v. ZAIB JAHAN BEGAM.

mat Zaib Jahan Begam is entitled to say that her dower-debt must be satisfied before she is dispossessed, provided, of course, she did not enter into possession unlawfully or with force or fraud. There is no evidence to show that there was any force exercised or any fraud practised. Musammat Zaib Jahan Begam was undoubtedly a co-sharer, and her entering into possession, even of the undivided whole, cannot be called unlawful.

The next point urged is that on the death of Yusuf Beg she allowed Musammat Hayat-un-nissa's name to be recorded in the revenue papers and must, therefore, be taken to have given up possession of a part of the estate. The names of both were recorded jointly and the defendant has a finding of the revenue court in her favour that she was in possession of the whole even in the lifetime of Musammat Hayat-un-nissa. In any case she has now entered into possession both as an heir and on the claim of her dower. The mere fact that there was a contest in the mutation court is immaterial, for there was a similar contest in the case before their Lordships of the Privy Council referred to above. I am, therefore, of opinion that this circumstance does not debar the lady from pleading that so long as her dower-debt due from Yusuf Beg has not been satisfied, his heirs cannot dispossess her.

I would dismiss this appeal with costs.

ASHWORTH, J. :—I concur.

BY THE COURT. :—This appeal is dismissed with costs.

Appeal dismissed.