

Before Justice Sir Cecil Walsh and Mr. Justice Ashworth.

1927
May, 5.

MASHAL SINGH (DEFENDANT) *v.* AHMAD HUSAIN
(PLAINTIFF) AND ZAFAR HUSAIN KHAN AND ANOTHER
(DEFENDANTS).*

*Muhammadan law—Dower—Widow's lien—Act No. I of 1877
(Specific Relief Act), section 9—Remedy of widow if
dispossessed.*

The lien of a Muhammadan widow over property, on account of dower debt, only operates so long as she remains in possession of the property. On being deprived of possession, she has a right, independently of her lien, to recover possession within six months under the Specific Relief Act. The lien gives her no title, or right to recover possession, but only a right to retain possession. *Ali Bakhsh v. Allahdad Khan* (1), approved. *Azizullah Khan v. Ahmad Ali Khan* (2), referred to.

THE facts of this case were as follows :—

The plaintiff sued as transferee of certain property from one Abadi Begam. His case was that the property belonged to one Haidar Khan and was retained by his widow Musammat Khatun Begam by right of lien for her dower debt of Rs. 60,000; that on the death of the widow Musammat Khatun Begam, one Zafar Hasan Khan, a son of Haidar Khan by another wife, took forcible possession of the property, although Musammat Abadi Begam, sister of the widow, was entitled to it and that Musammat Abadi Begam sold the plaintiff her interest. The plaintiff was undoubtedly entitled to the one-eighth of the property which the widow inherited from her husband, irrespective of any right of lien for her dower debt. That one-eighth passed to Musammat Abadi Begam, sister of the widow, and was transferred by her to the plaintiff. The first court held that, as Abadi Begam and her transferee, the plaintiff, were out of possession, the plaintiff could not, on the strength of the lien, sue for possession. The lower appellate court

* Second Appeal No. 1299 of 1924, from a decree of Tufail Ahmad, Subordinate Judge of Shahjahanpur, dated the 29th of May, 1924, reversing a decree of Ansuviya Prasad Ghildial, Munsif of Shahjahanpur, dated the 30th of June, 1923.

(1) (1910) I.L.R., 32 All., 551.

(2) (1885) I.L.R., 7 All., 353.

held that a Muhammadan widow or her legal representative, by reason of a lien, occupied a position analogous to that of a mortgagee in possession, and if that possession was disturbed, could sue to recover it on the basis of the lien. The court relied upon the decision in *Azizullah Khan v. Ahmad Ali Khan* (1). The defendant appealed.

Munshi *Narain Prasad Ashthana*, for the appellant.
Hafiz *Mushtaq Ahmad*, for the respondents.

WALSH, J. :—In our opinion this appeal must be allowed. In most respects we agree with the very clear judgement of the lower court, but there is one respect in which we find ourselves unable to agree with the Judge. In discussing the right of the widow to remain in possession till her dower debt has been satisfied and the right of her heirs, who are entitled to succeed her, to exercise and enforce the same right, the learned Judge makes this *addendum*: “and if wrongfully deprived thereof, to maintain a suit for its recovery.” That is true, but not in the sense in which the learned Judge used that phrase. The right to maintain a suit for recovery of possession, if wrongly deprived thereof, has nothing to do with the right of lien. It is the ordinary right under the Specific Relief Act of a person rightfully in possession to sue on a possessory title for recovery of possession if he has been wrongfully deprived of it, but such a suit must be brought within six months of the wrongful dispossession. That is not this case, nor can such a claim in a suit be justified by a claim to assert a lien. We do not propose to add to the complications, which are already sufficient, in the Law Reports, by discussing the various rights which arise in connection with what is called a dower debt. We are content to adopt the very clear and learned judgement of Mr. Justice TUDBALL in the case* of *Ali Bakhsh v. Allahdad Khan* (2). But a

1927

 MASHAL
SINGH
v.
AHMAD
HUSAIN.

(1) (1885) I.L.R., 7 All., 353.

(2) (1910) I.L.R., 32 All., 551.

1927

MASHAL
SINGH
v.
AHMAD
HUSAIN.

lien is not a right to possession, and although the right of lien may be analogous to the right of a mortgage, the comparison gives no assistance unless you define the mortgage to which the right of lien is analogous, and arrive at an agreement as to the essentials of a lien which are coterminous with the essentials of a particular form of mortgage. The mortgagee's right to possession is based upon the contract, but the right to a lien is based upon possession. It does not give a right to recover possession if it should be lost. The result is that we have to allow this appeal so far as the claim to the lien is concerned. It is admitted that the possession in this case was lost by the wrongful act of defendant No. 1. On the other hand, it has never been disputed, and inasmuch as the lower appellate court decided in favour of the plaintiff the question did not arise, that the plaintiff is entitled to a one-eighth share by way of inheritance. The claim for possession based upon lien, which was the substantial matter in the suit, must be dismissed, and the plaintiff must pay the costs of the suit in the court below and in this Court. She is entitled from us to a declaration that she is the owner, by virtue of inheritance from her deceased husband, of a one-eighth share in the property

ASHWORTH, J., (after reciting the facts):—I concur with my learned brother that the lien of a Muhammadan widow over property, on account of a dower debt, only operates so long as she remains in possession of the property. On being deprived of possession, she has a right, independently of her lien, to recover possession within six months under the Specific Relief Act. The lien gives her no title, or right to recover possession, but only a right to retain possession.

Nor, apart from section 9 of the Specific Relief Act, can the widow rely on the title arising from mere prior possession. Title based on mere prior possession

MASHAL
SINGH
v.
AKHMAD
HUSAIN.

is only available against someone other than the rightful owner. The heir is the rightful owner and the widow, only having a right of lien, has no title.

The decision of the lower appellate court invoked the authority of many cases by this Court and their Lordships of the Privy Council for holding that—

Ashworth, J.

“ a Muhammadan widow occupies a position analogous to that of a mortgagee, whose possession cannot be disturbed until the dower debt has been satisfied.”

It went on to hold that the heirs of a widow had a like right to retain possession of the property. So far I concur with the decision. But, when it would allow a widow or her heirs to bring a suit for possession on the basis of the lien, it quotes no authority and I concur with my learned brother that the decision should not be followed.

In the present case it would appear that the remedy under the Specific Relief Act is no longer available to the plaintiff and, indeed, that any right to claim the dower debt has become barred by limitation. I, therefore, concur in the order proposed by my learned brother.

Appeal allowed.

Before Justice Sir Cecil Walsh and Mr. Justice Ashworth.

RAM SURAT SINGH AND OTHERS (PLAINTIFFS) v. BADRI NARAIN SINGH AND ANOTHER (DEFENDANTS).*

Act No. IX of 1908 (Indian Limitation Act) schedule I, articles 142 and 144—Suit for possession of immovable property—Limitation—Adverse possession—Burden of proof.

1927
May, 5.

If a suit is for possession by a plaintiff who says that while he was in possession of the property he was dispossessed or has gone out of possession, then he must show possession within twelve years of the suit. But every other case in which a plaintiff claims possession of immovable property

* Second Appeal No. 1749 of 1924, from a decree of Baij Nath Das, District Judge of Azamgarh, dated the 29th of August, 1924, confirming a decree of Ram Ugrah Lal, Subordinate Judge of Azamgarh, dated the 9th of May, 1923.