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the Munsif had no jurisdiction. The Government was not a party to the litigation, and was not acting in any personal capacity. If the court did not desire, it was not bound to hold any inquiry. It was for the benefit of the Court itself, where no forged documents should be presented, that an inquiry was rendered necessary. It is true that in proceedings under section 476 of the Code of Criminal Procedure where the Munsif takes action he acts as a civil court. At the same time there is no provision in chapter XXXV of the Code of Criminal Procedure as to the grant of costs to any party. Under these circumstances the civil court would have jurisdiction to award costs to one or the other party in a case where the parties were the same as those in the civil litigation In the present case, as already pointed out, neither the King-Emperor nor the District Magistrate by himself was a party in the civil litigation, and therefore the Munsif had no jurisdiction to award costs in the proceedings under section 476.

In the result I set aside the order of the Munsif as regards costs in his order dated the 5th of March, 1928. I make no order as to costs here.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman, Acting Chief Justice, and Mr. Justice Kendall.

BAIKUNTH NATH AND OTHERS (PLAINTIFFS) *v.* JAI KISHUN (DEFENDANT).*

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Hindu law—Hindu widow purchasing property—Accretion to husband's estate or stridhan*—Burden of proof—Presumption.*

There is no presumption in law that the money with which a Hindu widow in possession of her husband's estate makes a purchase of property came out of the savings from her husband's estate. The burden is on the reversioner who, after the death of the widow, claims to recover such property

*First Appeal No. 524 of 1924, from a decree of Man Mohan Sanyal, Subordinate Judge of Benares, dated the 4th of September, 1924.

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from the person in possession to establish that the property was acquired out of such savings. *Dakhina Kali Debi* v. *Jagadishwar Bhattacharjee* (1) and *Diwan Ran Bijai Bahadur Singh* v. *Indarpal Singh* (2), referred to.

THE facts material for the purpose of this report were briefly as follows:—On the death of Ganga Dhar his widow, Musammat Mungi Bahu, succeeded to his estate. In 1885 she sold a house of her husband and realized Rs. 2,000. In 1903 she purchased a house for Rs. 600. After her death the plaintiffs, as reversionary heirs of Ganga Dhar, sued for recovery of possession of this house (among other properties) from the defendant, who was the brother's son of Musammat Mungi Bahu. No evidence was given on either side to show the source from which the Rs. 600, price of the house, came.

Dr. *Kailas Nath Katju* and Pandit *Ambika Prasad Panday*, for the appellants.

Babu *Peary Lal Banerji*, Munshi *Gadadhar Prasad* and *Shah Zamir Alam*, for the respondent.

SULAIMAN, A.C.J., and KENDALL, J.:—[After dealing with other points the judgement continued.]

The next question that remains is whether the house in Mohalla Bhairon Baoli, which was purchased by Mungi Bahu, can be claimed by the plaintiffs. The house was purchased under a sale-deed, dated the 4th of July, 1903, for a sum of Rs. 600. This sum consisted of Rs. 500 advanced by her previously, and a sum of Rs. 100 paid at the time. There is absolutely no evidence on either side to show where she had got the money which she advanced as a loan in the first instance, and where she got Rs. 100 from. The learned Subordinate Judge remarks that in the year 1885 she had sold a house of her husband for Rs. 2,000. The house in dispute was purchased 18 years after 1885, nevertheless the learned Subordinate Judge has said: "It is difficult to trace the source of the money out of which the house in dispute was purchased, but one thing is clear, viz., that she had Rs. 2,000

(1) (1897) 2 C. W. N., 197. (2) (1899) I. L. R., 26 Cal., 871.

in hand out of her husband's estate, and she could therefore very well manage to save Rs. 600 out of that to purchase the house in dispute even after a lapse of 18 years."

We find it very difficult to assume that Rs. 600 remained in the hands of the lady after the lapse of 18 years, and that it was with that amount that she must have purchased this house. This circumstances must accordingly be ignored. There is, therefore, no evidence either way. The learned Subordinate Judge has held that it was for the defendant to prove that the money did not come out of the income of the husband's estate. No authority has been cited before us in support of the contention that there is any presumption that the money in the hands of the lady is presumed to come out of the savings of her husband's estate. Cases have been cited which show that where it is known that property was purchased out of the savings, it would be treated as accretion to the estate if it had not been disposed of before the widow died. Those cases are distinguishable. The only case which is at all applicable is the case of *Dakhina Kali Debi* v. *Jagadishwar Bhuttacharjee* (1), and that is in favour of the defendant and shows that there is no such presumption in law. The case of *Diwan Ran Bijai Bahadur Singh* v. *Indarpal Singh* (2) also suggests that there is not any general presumption that the widow can own no property herself. We accordingly think that in the absence of any evidence to show the contrary, it must be held that the plaintiffs have failed to establish that the said house was acquired out of the savings of the widow's estate. Their claim as regards this house should accordingly be dismissed.

[The judgement then proceeded to deal with other matters not relevant to this report.]

(1) (1897) 2 C. W. N., 197. (2) (1899) I. L. R., 26 Cal., 871.