

This view of the law has been taken in a recent case, *Man Singh v. Baij Nath Sahai* (1), a ruling by a Bench of this Court. Learned counsel referred to *Kanhaiya Lal v. R. H. Skinner* (2). But that was an entirely different case where the lambardar alone could make collections and a co-sharer had made collections without any legal right.

For these reasons we dismiss this second appeal with costs.

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GAJRAJ
SINGH
v.
KALLU

Before Justice Sir Edward Bennet and Mr. Justice Verma

BELO (DEFENDANT) v. PARBATI (PLAINTIFF) AND JAMNA
(DEFENDANT)*

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January, 26

Hindu law—Woman's estate—No presumption that a Hindu woman must be holding a limited estate—Mortgage by Hindu woman—No question of legal necessity arises unless it is established that she has only a limited estate—Transfer of Property Act (IV of 1882), section 6(h)—Transfer for property in consideration of past cohabitation—Validity.

In a suit upon a mortgage executed by a Hindu woman the question of whether the mortgage was invalid for want of legal necessity does not arise unless the party assailing the validity of the mortgage has established by clear evidence that the mortgagor was not a full owner but the holder of only a limited estate.

Past cohabitation is not an unlawful consideration, and an assignment of mortgagee rights to a woman in consideration of past cohabitation is valid.

Mr. M. L. Chaturvedi, for the appellant.

Mr. E. V. David, for the respondent.

BENNET and VERMA, JJ.:—This is an appeal by the first defendant. The suit was for sale on foot of a deed of simple mortgage executed by Mst. Munno in favour of Lachhman Das on 4th November, 1925. The mortgagee, Lachhman Das, assigned his mortgagee rights to the plaintiff, Mst. Parbati, on 5th February, 1930. The

*Second Appeal No. 799 of 1937, from a decree of S. W. Alam, Additional Civil Judge of Muttra, dated the 20th of January, 1937, confirming a decree of F. A. Chisti, Munsif of Muttra, dated the 30th of May, 1935.

(1) I.L.R. [1939] All. 888.

(2) (1931) I.L.R. 54 All. 240.

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appellant was impleaded as defendant No. 1 on the allegation that she was in possession of the property. Mst. Jamna was impleaded as defendant No. 2 on the allegation that it was stated that she was a daughter of Mst. Munno. The courts below have decreed the suit.

The principal point which learned counsel appearing for the appellant has argued is that the courts below having found that no legal necessity for the mortgage in suit had been proved, the suit should not have been decreed. It seems to us, however, that before the point of legal necessity can be raised, it must be shown that Mst. Munno was in possession of the property holding the limited estate of a Hindu woman. The court of first instance states in its judgment that it has not been proved by the defendants that Mst. Munno was in possession of the property as a limited owner under the Hindu law. It has also been found that Mst. Munno's husband died before her *garna* was performed and that the defendant No. 2 is her illegitimate daughter. In these circumstances it was for the appellant to establish by clear evidence that Mst. Munno was not the full owner of the property with an absolute right of transfer. The courts below have correctly held that the appellant in these circumstances was not entitled to raise the question of legal necessity.

The only other point that has been argued is that the plaintiff, Mst. Parbati, was a mistress of Lachhman Das, that the assignment made by the latter in her favour was for an "immoral consideration" and that therefore the plaintiff was not entitled to maintain the suit. Reference is made by learned counsel to clause (h) of section 6 of the Transfer of Property Act which refers to section 23 of the Contract Act. It has, however, been consistently held in this Court that past cohabitation is not an unlawful consideration: *Man Kuar v. Jasodha Kuar* (1) and *Dhiraj Kuar v. Bikramajit Singh* (2). The latest case in this Court which deals

(1) (1877) I.L.R. 1 All. 478.

(2) (1881) I.L.R. 3 All. 787.

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with the subject is that of *Mt. Mahtab-un-nissa v. Rifaqat Ullah* (1), in which the learned Judge makes these observations: "When the agreement is that parties are to live in adulterous cohabitation in future the contract is obviously illegal, but if in order to compensate the woman for the past illicit connection the offending party gives her some property I would not be prepared to say that the consideration for it is illegal. The offence had already been committed." In the case before us it has not been suggested that the relation between Lachhman Das and Mst. Parbati was adulterous. The same view has been taken by the High Courts of Madras and Patna: *Lakshminarayana Reddyar v. Subhadri Ammal* (2), and *Godfrey v. Musammatt Parbati Paluni* (3). We agree with the views expressed in these cases. Learned counsel for the appellant has cited the case of *Sabava Yellappa v. Yamanappa Sabu* (4). In that case PATKAR, J., held that the transfer in question was in lieu of past as well as future cohabitation. He observes: "In the present case there was the immoral object so far as the future cohabitation with defendant No. 1 was contemplated by Sabu." No such point arises in the case before us. As to past cohabitation the learned Judge observes: "Past cohabitation would be consideration for an agreement under section 2(d) of the Contract Act, but is not good consideration for a transfer of property. A gift does not require consideration. It is difficult to hold that past cohabitation can be an object of a gift." The other learned Judge, BARLEE, J., did not entirely agree with the views expressed by PATKAR, J. As stated above, we prefer the view that has been held in this Court and in the High Courts of Madras and Patna. We are, therefore, unable to accept the contention of the learned counsel for the appellant.

For the reasons given above, we dismiss this appeal with costs.

(1) A.I.R. 1925 All. 474.

(3) (1938) I.L.R. 17 Pat. 308.

(2) (1902) 13 M.L.J. 7(13).

(4) A.I.R. 1933 Bom. 209(214).