

the issue before the Magistrate, that being, not whether Dr. Hall's advertisement was unprofessional, but whether the defendants had made themselves amenable to the criminal law of defamation for simply expressing the opinion in their journal that it was. The prosecution has utterly failed, and it is very much to be regretted that it was ever undertaken. Dr. Hall's character as a gentleman and his reputation as a medical man did not require such an ordeal, and as regards the defendants' conduct, if made the subject of legal complaint at all, that might have been more appropriately considered by a Civil Court, for although the remedies in cases of libel by civil suit and criminal prosecution are co-extensive, the wrong complained of in this case could have been sufficiently and indeed more satisfactorily inquired into in a Civil Court than in the Court of the Magistrate. At the same time I by no means desire to be understood as saying or suggesting that if the prosecutor had been plaintiff in a Civil Court, he would have had a better chance of success than he has had in these proceedings. I am very clearly of opinion that the convictions before me in this appeal cannot stand, but must be, and they are, set aside, the sentences are quashed, and the fines imposed on the defendants are remitted.

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## APPELLATE CIVIL.

1880

December 2

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*

TALEMAND SINGH (DEFENDANT) v. RUKMINA (PLAINTIFF).\*

*Joint Hindu Family—Widow's Right of residence in Family Dwelling-house—  
Auction-purchaser.*

The widow of a member of a joint Hindu family can claim a right of residence in the family dwelling-house, and can assert such right against the purchaser of such house at a sale in execution of a decree against another member of such family. *Gauri v. Chandramani* (1) and *Mangala Devi v. Dinanath Bose* (2) followed.

THE plaintiff in this suit, Rukmina, claimed to be maintained in possession of a certain house, basing her suit on her right to

\* Second Appeal, No. 631 of 1880, from a decree of Rai Bhagwan Prasad, Subordinate Judge of Azamgarh, dated the 28th February, 1880, modifying a decree of Mirza Kamar-ud-din Ahmad, Munsif of Azamgarh, dated the 12th December, 1879.

(1) I. L. R., 1 All., 262. (2) 4 B. L. R., O. C., 72.

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reside therein as heir to her deceased husband. It appeared that this house was the joint undivided property in equal moieties of the plaintiff's deceased husband and his first cousin, Jaipal. The plaintiff, on her husband's death, sold the house to one Gobind, whereupon Jaipal sued her and the purchaser to be maintained in possession of the house and to have that sale set aside. On the 29th August, 1873, Jaipal obtained a decree in that suit. On the 8th December, 1874, Jaipal gave the defendant in the present suit a bond in which he hypothecated the house as collateral security for the payment of certain moneys which he had borrowed from him. Subsequently the plaintiff sued Jaipal for maintenance, claiming Rs. 72 as her allowance from the 29th August, 1873, to the 28th February, 1875, at the rate of Rs. 4 per mensem. This suit was adjusted, it being agreed between the parties, under a compromise dated the 4th September, 1875, *inter alia*, that the plaintiff should be entitled to reside in the house so long as she lived, and Jaipal should make her an allowance of one rupee per mensem for her maintenance for her life. Subsequently the defendant in the present suit brought a suit on the bond given him by Jaipal, in which suit he obtained, it appeared, only a money-decree, and not a decree enforcing the hypothecation of the house. He caused the house to be put up for sale in execution of this decree, and purchased it himself. The plaintiff in the present suit resisted his obtaining possession of the house, and in the proceedings which arose out of such resistance an order was made against her. She accordingly brought the present suit. The defendant set up as a defence to the suit that his judgment-debtor, Jaipal, "had, prior to the compromise dated the 4th September, 1875, mortgaged the house in question to him, and it was in satisfaction of the mortgage-debt that the house was attached and sold, and that, the decree and the compromise having been made after his bond was executed, must be regarded as intended to defeat his right, and were collusive." Upon the issue, how does the compromise affect this suit, the Court of first instance held as follows:—"The Court holds that the compromise dated the 4th September, 1875, executed by the debtor, whereby he agreed to the residence of the plaintiff, is valid, seeing that, at the time of its execution, Jaipal, debtor, was possessed of proprietary rights: the plaintiff on its basis has certainly a right of resi-

dence according to the scope of the ruling in *Gauri v. Chandramani* (1) : the auction-purchaser cannot oust her during her lifetime, she having only a right of residence in the house : even if Jaipal became proprietor of the property left by Gopal, the husband of the plaintiff, he cannot deprive her of this right, and she will live in the same way as a lessee in the house, the defendant receiving rent at the rate of one rupee or any sum that a tenant should pay : the evidence produced by the defendant himself shows that Jaipal became owner of the house, having inherited it from Gopal, the husband of the plaintiff : it was not his (Jaipal's) own property." The Court of first instance accordingly gave the plaintiff a decree "for maintenance of possession of the house in question, by right of residence during her lifetime." On appeal by the defendant the lower appellate Court held that the plaintiff was only entitled to a decree in respect of a moiety of the house, one moiety only thereof having been the property of her deceased husband, the other moiety having belonged to Jaipal ; and modified the decree of the Court of first instance accordingly.

The defendant appealed to the High Court contending that the plaintiff's claim could not be maintained after the house had been sold in execution of a decree against Jaipal.

Maulvi *Obeidul Ruhman*, for the appellants.

Munshi *Hanuman Prasad*, for the respondents.

The judgment of the Court (STUART, C.J., and OLDFIELD, J.,) was delivered by

OLDFIELD, J.—We are of opinion that the Courts have rightly held that the plaintiff, a widow of a member of a joint Hindu family, can claim a right of residence in the family dwelling-house and can assert it against the auction-purchaser. The ruling is in accordance with the decision of this Court in *Gauri v. Chandramani* (1) and of the Calcutta Court in *Mangala Debi v. Dinanath Bose* (2), and with the authorities referred to in West and Bühler's Hindu law. We dismiss the appeal with costs.

*Appeal dismissed.*

(1) I. L. R., 1 All., 262.

(2) 4 B. L. R., O. C., 72.

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