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GUR DAYAL v. KAUNSILA.

the appellant Gurdial in order to release the mortgage. Now it must be admitted that payment of her husband's debts, whether he be alive or dead, must take precedence of a wife or widow's maintenance, and we are unable to find anything in the Hindu Law authorizing the notion that such maintenance can stand in the way of sales or alienations being made by the husband during his lifetime, or by his heirs after his death, to satisfy his creditors. Since the ruling above referred to there has been a Full Bench decision of this Court—*Sham Lal* v. *Banna* (1)—by which it was held that "the maintenance of a Hindu widow is not, until it is fixed and charged on her deceased husband's estate by decree or agreement, a charge on such estate which can be enforced against a *bonâ fide* purchaser of such estate for value without notice." In that case it was further very clearly pointed out that if the estate had passed to a purchaser to satisfy a claim against the original owner for which it was responsible under the Hindu Law, the purchaser would not take it subject even to maintenance fixed and charged upon it before his purchase. We are unable to see how in this respect the maintenance of a wife and that of a widow stands upon a different footing; and in this view of the matter it seems to us necessary to have a clear finding on the following issue:—Was the sale of house No. 2 to the appellant Gurdial a genuine and *bonâ fide* transaction for good consideration; and was such consideration employed in discharging a debt or debts due and owing by Sitau. For the purpose of determining this question we remand the case under s. 566 of the Code.

Case remanded.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

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February 21.

RAM LAL (DEFENDANT) v. DALGANJAN (PLAINTIFF)*

Contingent damage—Removal of trees—Cause of action.

The plaintiff claimed the removal of certain trees, planted by the defendant on his own land, on the ground that the trees had been planted so near his land that when they grew up they would injure his crops. *Held* that until the plaintiff's enjoyment of his own land was directly and immediately interfered with by the growth of the defendant's trees, he had no right to ask for their removal, and he had therefore no cause of action.

* Second Appeal No. 888 of 1882, from a decree of W. Barry, Esq., Judge of Jaunpur, dated the 25th May, 1882, affirming a decree of Babu Lalta Prasad, Munsif of Jaunpur, dated the 15th March, 1882.

(1) I. L. R., 4 All. 296.

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THE plaintiff in this suit claimed the removal of two mango trees planted by the defendant at a distance of six feet from his field, on the ground that they were so near his field that when they grew up they would overshadow it, and injure his crops. The defendant set up as a defence to the suit, amongst other things, that the trees were at a distance of two "*lathás*" from the plaintiff's field, and caused him no injury. The Court of first instance found that one of the trees was less than a "*lathá*" from the plaintiff's field, and the other a little more than that distance, and gave the plaintiff a decree for the removal of the trees on the ground that, when they grew up, they would overshadow the plaintiff's field and thus cause him injury. On appeal the defendant contended that the plaintiff had no cause of action, as he had sustained no loss from the planting of the trees. The Lower Appellate Court disallowed this contention, and affirmed the decree of the first Court, observing as follows:—"It is clear that if these trees grow into great trees, they may extend over the plaintiff's field to the extent of thirty or forty feet, and their shadows would extend much further, and in this way about one half of the plaintiff's crops would certainly be destroyed, as none of the ordinary crops thrive under the shade of trees. The defendants say that the plaintiff cannot see till he sustains some injury; but if he is to wait for fifteen or twenty years till the trees grow up and begin to cause injury, he would then be too late; the defendants would have acquired a right of easement, and would successfully plead limitation. I see nothing to prevent the plaintiff from suing to prevent a prospective damage, which is as certain as anything can be, if the trees are allowed to grow to a great size."

In second appeal the defendant again contended that the plaintiff had no cause of action, not having sustained any injury from the planting of the trees.

Munshi *Hanuman Prasad* and Mr. *Niblett*, for the appellant.

Mr. *Conlan*, for the respondent.

The Court (STUART, C.J. and STRAIGHT, J.) delivered the following:—

JUDGMENT—The first plea taken in appeal is obviously a sound one, and it is clear that at present no cause of action has accrued

to the plaintiff-respondent entitling him to maintain this suit. Until his enjoyment of his own land is directly and immediately interfered with by the growth of the defendant-appellant's trees, he has no right to ask for their removal from the defendant's own land, who is entitled to have them there so long as he does not thereby injure the plaintiff.

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The appeal is decreed with costs, and the suit of the plaintiff will stand dismissed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.

PETMAN (DEFENDANT) *v.* BULL (PLAINTIFF).*

1883

February 23.

Patent—Suit for infringement—Jurisdiction—Transfer of suit—Civil Procedure Code, s. 25—Particulars of breaches—Act XV. of 1859, ss. 22, 34.

A suit for the infringement of certain inventions, instead of being instituted in the Court having, by virtue of s. 22 of Act XV. of 1859, jurisdiction to entertain it, was instituted in a Court subordinate to such Court not having such jurisdiction. The Court having jurisdiction to entertain such suit, at the joint request of the parties, transferred it for trial to itself under s. 25 of the Civil Procedure Code, and tried it.

The plaintiff did not, as required by s. 34 of Act XV, 1859, deliver with his plaint particulars of the breaches complained of in the suit. In his plaint, after describing his inventions, he alleged generally that the defendant had made and used them at a certain place without his license.

Held that, inasmuch as the parties had assented to the transfer of the suit, and its transfer brought it into the right Court, the fact that the suit had been originally instituted in the wrong Court did not render the transfer illegal, and the Court having jurisdiction had properly tried the suit.

Held also that, as required by s. 34 of Act. XV, of 1859, the plaintiff should have delivered with his plaint particulars of the breaches complained of, that the general allegation as to infringement contained in the plaint did not amount to such particulars; and that under these circumstances the plaintiff came into Court with a case which could not be tried.

THIS was a suit for Rs. 10,000, compensation for the infringement of a patent. In the first paragraph of the plaint the plaintiff stated as follows:—

"That early in June, 1872, the plaintiff invented a continuous flame kiln for burning bricks, in which the continuous action or draught is caused and maintained by the use of moveable iron chimneys, placed at intervals in such portions or parts of the kiln

* First Appeal No 53 of 1882, from a decree of A. Sells, Esq., Judge of Cawnpore, dated the 22nd May, 1882.