

APPELLATE CIVIL.

1883.
February 13.*Before Mr. Justice Straight and Mr. Brodhurst.*

GUR DAYAL (DEFENDANT) v. KAUNSILA (PLAINTIFF)*

*Hindu Law—Hindu wife—Maintenance—Charge on husband's estate—
Transfer of estate for payment of debts.*

The *bonâ fide* purchaser for value of the estate of a Hindu husband, sold in order to satisfy the husband's debts, does not take such estate subject to the wife's maintenance, even if such maintenance is fixed and charged on the estate. *Jamna v. Machul Shahu* (1) and *Sam Lal v. Banna* (2) referred to.

THE plaintiff in this suit, wife of the defendant Sitau, sought by the present suit to obtain (i) avoidance of a deed of gift of two houses made by her husband to the defendants Madho, Ramdial and Bisheshar, on the 10th June, 1876, as also of a sale-deed in respect of one of the houses executed by those persons in favour of the defendant Gurdial, on the 25th September, 1877; (ii) a declaration of her right to reside in both the houses covered by the deed of gift; (iii) a declaration of her right to maintenance at the rate of Rs. 5 per mensem against the person of the defendant Sitau, as also against the houses above-mentioned; (iv) arrears of maintenance to the amount of Rs. 285 against the person of the defendant Sitau, and by sale of the two houses. The Court of first instance (Subordinate Judge) gave the plaintiff a decree for Rs. 5 per mensem as maintenance and Rs. 150 for arrears against the defendant Sitau and the two houses. It also declared her entitled to reside in a particular portion of one of the houses (No. 1), as also that the deed of gift and the sale-deed, in so far as they affected her right to maintenance and residence, should have no effect. The defendant Gurdial alone appealed to the District Judge, alleging, *inter alia* that the rent of house No. 1 was sufficient for the plaintiff's maintenance, and therefore that house No. 2, purchased by him, could not be liable; that he bought the house No. 2 in good faith for valid consideration, and without notice of any maintenance being chargeable on it; and that the suit was instituted by the plaintiff in collusion with her husband. The District Judge agreed

*Second Appeal No. 806 of 1882, from a decree of W. Duthoit, Esq., D.C.L., Judge of Allahabad, dated the 1st April, 1882, affirming a decree of Babu Promoda Charan Banarji, Subordinate Judge of Allahabad, dated the 6th September, 1881.

(1) I. L. R., 2 All. 315.

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

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In second appeal to the High Court the defendant Gurdial urged (i) that a wife had no lien for her maintenance against the property of her husband and could not follow it into the hands of a purchaser for value; (ii) that there was nothing to establish notice to the appellant of any charge; (iii) that the house purchased by him could not be sold until it was established that all the other available property of Sitau was inadequate to discharge the plaintiff's maintenance.

Pandit *Ajudhia Nath* and Babu *Aprokash Chandra Mukarji* for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Munshi Hanuman Prasad*, for the respondent.

The Court (STRAIGHT and BRODHURST, JJ.) delivered the following judgment:—

STRAIGHT, J. (After stating the facts as set out above, continued):—The personal obligation of the defendant Sitau to maintain the plaintiff-respondent is conceded, and as regard house No. 1 the defendants Madho, Ramdial, and Bisheshar neither appealed to the Judge nor have they to this Court. The sole point for us to determine, therefore, is, whether the maintenance of the plaintiff-respondent was such a charge on the property of her husband Sitau, that his donees and the appellant Gurdial the vendee from them took the house No. 2 subject to such maintenance. Much stress is laid upon the ruling of this Court in *Jamna v. Machul Sahu* (1) in which it was held that where a husband in his lifetime made a gift of his entire estate, leaving his widow without maintenance, the donee took and held such estate subject to her maintenance. But the circumstances of that and of the present case are somewhat different; for here the donees of the alleged gift asserted that it was made to them by Sitau in consideration of their discharging certain debts due from him, and it would seem that a mortgage of the two houses was first made to raise money sufficient to pay such debts; and then house No. 2 was subsequently sold to

(1) I. L. R., 2 All, 315.

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 *bona 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 *bona 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.

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

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*February 21.**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. 883 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.