proprietary possession of the land and the defendant will have no right to put up any structures thereon without the express permission of the plaintiff.

I have virtually maintained the decree passed by the learned Subordinate Judge and, except a small modification which I have made as indicated in the above portion of my judgment, the decree passed by the Subordinate Judge shall stand. My order, therefore, is that this appeal, shall, subject to the modification indicated above, stand dismissed with costs.

Appeal dismissed.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Wazir Hasan.

MAHADEO PRASAD AND OTHERS (PLAINTIFFS-APPELLANTS) *v.* MUSAMMAT DHANRAJ KUNWAR AND OTHERS (DEFENDANTS-RESPONDENTS).*

1926 *April*, 13.

Hindu law—Alienations by widow to provide dowry for her daughter, reversioner's right to question—Dowry to a daughter having no brother, amount of.

Held, that in the case of a separated Hindu a widow is not only entitled but is bound in arranging for the marriage of a daughter who was unmarried at the time of the husband's death, to arrange as good a marriage as the father would have wished to arrange, had he been alive, and that she is justified in making substantial alienations of the family property for the benefit of the daughter, as according to the Hindu law the arranging of a suitable marriage for a daughter would confer religious benefit upon the deceased husband.

Held further, that the rules laid down in the Mitakshara to govern the dowry which should be given to unmarried sisters by their brothers cannot, in any way, be applied in the case of the marriage of unmarried girls who have no brothers. The reasonableness of the dowry can be decided on the circumstances of each particular case. [I. L. R., 45 All., 297, relied upon.]

* First Civil Appeal No. 15 of 1925, against the decree of Shyam Manohar Nath Shargha, Subordinate Judge of Gonda, dated the 30th of October, 1924.

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MAHADEO PRASAD v. MUSAMMAT DHANRAJ KUNWAR.

Mr. *Bisheshwar Nath Srivastava*, for the appellants.

Mr. *A. P. Sen*, for the respondents.

STUART, C. J., and HASAN, J. :—This is a plaintiffs' appeal against the decision of the learned Subordinate Judge of Gonda dismissing their suit to set aside a certain alienation. The alienation arose in the following circumstances. A Kayastha gentleman, called Bhagwati Prasad, owned property in the Gonda district which was distributed amongst some 20 villages. He married first a lady called Musammat Rachpali and he subsequently married a lady called Musammat Dhiraji, the daughter of Ram Manorath Lal, and at some subsequent period married Musammat Dhiraji's sister Musammat Saraswati. Musammat Rachpali bore him three daughters, Musammat Dhiraji bore him one daughter, and Musammat Saraswati bore him one daughter. It appears that before Bhagwati Prasad's death Musammat Rachpali was unable to remain on amicable terms with the two sisters Musammat Dhiraji and Musammat Saraswati, and she left the house with her children, and resided separately from her husband. Bhagwati Prasad died in 1920. After his death Musammat Rachpali lived separately with her three children, remaining in possession of one-third of his property, and Musammat Dhiraji and Musammat Saraswati lived together with Musammat Dhiraji's daughter and Musammat Saraswati's daughter, and remained in possession of the remaining two-thirds of the property. At the time of Bhagwati Prasad's death Musammat Rachpali's eldest daughter was aged about 19, her second daughter was aged about 15, her third daughter was aged 11. Musammat Dhiraji's daughter Musammat Par-

bati was aged 14 at the time of her father's death and Musammat Saraswati's daughter was aged about 5. It is clear that Bhagwati Prasad had not great opportunity of arranging the marriages of any one of his daughters with the exception of the marriage of the eldest daughter of Musammat Rachpali. That daughter died unmarried. Musammat Rachpali arranged a marriage for her second daughter. She was married and has since died. Dhiraji and Saraswati arranged together after Bhagwati Prasad's death the marriage of Parbati to a young gentleman called Jagdish Chandra, the son of Babu Nageshar Prasad, Deputy Collector in the province of Bihar. At the time of the marriage they agreed to settle upon Musammat Parbati and Jagdish Chandra (the settlement being a marriage settlement) certain landed property out of the estate. There was some dispute before the trial court as to when this settlement had taken place, but the learned Counsel for the plaintiffs-appellants has now waived this point, and agrees that, if the settlement can be upheld on other grounds, it cannot be questioned on the ground that it was not made at the right date. It was the settlement of this property which was attacked in the present proceedings. Before we proceed to examine its exact nature we may add some other particulars about the family. The marriage of Musammat Rachpali's youngest daughter was arranged by her mother and took place in June last. Musammat Saraswati has died since the institution of the proceedings. Her daughter has not yet been married.

The settlement in question took the form of a deed which was called a deed of *shankalap*, dated the 15th of July, 1922, which assigned a proportion of the total property left by Bhagwati Prasad which, at the highest estimate, would be about two-elevenths

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of the total property and the lowest estimate would be about one-seventh of the total property. The plaintiffs, who are the persons who claim to be entitled to succeed as the reversionary heirs to Bhagwati Prasad upon the death of the widows, have challenged this alienation.

It is to be pointed out that in this particular case it has been found that under a family custom the daughters of Bhagwati Prasad and their sons are excluded from intestate inheritance. This point was found in favour of the plaintiffs in the trial court and we do not understand it to be challenged now by the respondents. In ordinary circumstances, if such a custom did not exist, the inheritance would be to the daughter's son, if any; and in view of the youth of Musammat Parbati and Musammat Rachpali's youngest daughter and the circumstance that Musammat Saraswati's daughter may yet be married the possibility of daughter's sons coming into existence at a later date would have had to be taken into account. In view, however, of this custom being established it may be taken that in absence of good alienation by the widow the inheritance will be to the reversioners on the death of the widows.

There is no contest between the parties as to the fact that when a separated Hindu, such as Bhagwati Prasad was, has died leaving unmarried daughters, the widows are under the same obligation, as their late husband would have been, to arrange for the marriages of those daughters and have the same right to incur expenditure and effect alienations of the family estate for the purposes as he would have had. The learned Counsel for the appellants has very frankly admitted this position and his only argument before us is that in the circumstances of the case Musammat Dhiraji and Musammat Saraswati have alienated a

larger portion of the family property than they were entitled to alienate to meet the marriage of Musammat Parbati. We have in evidence that there was considerable difficulty for these ladies in arranging the marriage of this girl. We agree with the learned Counsel for the appellants that there was no justification whatever for suggesting that the eldest daughter of Musammat Rachpali, the young lady who died unmarried, was of immoral character; but the fact remains, as is clearly shown by the evidence that these ladies had considerable trouble in arranging a suitable marriage for Musammat Parbati. The bridegroom, with whose father they were finally able to arrange the marriage, was a young man of good family and high connections. He was a very suitable person for Musammat Parbati to marry but we have it in evidence, which we believe, that his father insisted on a very substantial dowry before he would agree to the marriage; and we find that in order to obtain the father's consent it became necessary for the ladies to settle upon the married couple the property which they actually did settle upon them by the deed of the 15th of July, 1922. We consider that in a case of this nature we should proceed upon the principle that a widow is not only entitled, but is bound in arranging for the marriage of a daughter who was unmarried at the time of the husband's death to arrange as good a marriage as the father would have wished to arrange, had he been alive, and that she is justified in making substantial alienations of the family property for the benefit of the daughter, as according to the Hindu law the arranging of a suitable marriage for a daughter would confer religious benefit upon the deceased husband. We do not find that in a case in which there are no sons there can be any hard-and-fast rule as to the proportion of the

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estate which may fairly be alienated to provide a dowry for such a daughter. We agree with the principles that were approved in *Bhagwati Shukul* v. *Ram Jitan Tiwari* (1).

We do not find that the rules laid down in the Mitakshara to govern the dowry which should be given to unmarried sisters by their brothers in any way can be applied in the case of the marriage of unmarried girls who have no brothers. It is true that the allotment to be given to sisters by their brothers upon their marriage is laid down by the author of the Mitakshara in chapter I, section 7, rule 5, page 286, Colebrooke, third edition, 1895, as the fourth part of the brother's own share, but it is impossible to apply this principle in cases such as this in which there are no brothers in existence. We cannot accept the suggestion that the same rule can be applied substituting reversioners in the place of brothers. It is clear to us that the reasonableness of the dowry can only be decided on the circumstances of each particular case. There appears to be no point of law arising in the appeal. Both sides are agreed on the law, and both take the correct view of the law. It is agreed that the widows had the right to make an alienation and that the alienation cannot be questioned by the reversioners provided it was a reasonable alienation in the circumstances of the case. The question whether it was or was not a reasonable alienation in the circumstances of the case is a question of fact. We agree with the learned Subordinate Judge that the alienation was a reasonable alienation and taking this view of the matter dismiss this appeal with costs.

Appeal dismissed.

(1) I.L.R., 45 All., p. 297.