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NAWAB SHARAF JEHAN BEGAM v. NAWAB MIRZA MOHAMMAD SADIQ ALI KHAN.

pointed out by their Lordships of the Judicial Committee in the case of *Rajindra Narain Singh* v. *Sundara Bibi* (1).

Having regard to the above circumstances, therefore, we do not consider that it would be just or convenient to make an order for the appointment of a receiver in respect of the whole *taluqa*. On these grounds we dismiss this appeal. As regards costs we would direct that each party shall bear her and his costs in both the courts.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Sir Louis Stuart, Kt., Chief Judge, and Mr. Justice Muhammad Raza.*

1926 *December*, 21.

UDAI DAT (PLAINTIFF-APPELLANT) *v.* AMBIKA PRASAD AND OTHERS (DEFENDANTS-RESPONDENTS).*

*Hindu law—Alienation by Hindu widow to provide suitable dowry for her daughter, validity of—Dowry given by Hindu widow to her daughter, alienation for.*

*Held*, that a Hindu widow of a separated Hindu governed by the Mitakshara law has a right to make an alienation to provide a dowry for her daughter in ordinary circumstances, and such an alienation cannot be questioned by the reversioners, provided it is a reasonable alienation in the circumstances of the case. The question whether it is or is not a reasonable alienation in the circumstances of the case is a question of fact. *Mahadeo Prasad* v. *Dhanraj Kuar*, (1926) 3 O. W. N., 529 : S. C., I. L. R., 1 Lucknow, 477, and *Churaman Sahu* v. *Gopi Sahu*, (1910) I. L. R., 37 Calc., 1, followed.

The provision of a suitable dowry is in the same category as the provision of suitable garments and ornaments, and the

* Second Civil Appeal No. 183 of 1926 against the decree, dated the 8th of February, 1926, passed by Ziauddin Ahmad, officiating Subordinate Judge of Gonda, upholding the decree dated the 23rd of November, 1925, of Bishnath Hukku, Munsif, Gonda, dismissing the suit.

(1) (1925) L.R., 52 I.A., 262.

obligation to provide the dowry cannot be separated from the obligation to provide other requisites of the ceremony.

Where the clear object of a gift by a Hindu widow is to provide her daughter with dowry which has been found not to be excessive in the circumstances of the case, it is immaterial whether the deed was executed before or after the marriage.

*Stuart, C. J., and Raza, J.*

Mr. *Ram Bharosey Lal*, for the appellant.

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

STUART, C. J., and RAZA, J. :—The facts as finally found by the lower appellate court are that Mahesh Dat died on the 31st of January, 1920, a separated Hindu whose estate was governed by the Mitakshara law. He left a widow, Musammat Phuljhari, and a daughter, Musammat Durpadi. After his death Musammat Phuljhari bore a posthumous son, who died very shortly after. Musammat Phuljhari executed a registered deed of gift on the 12th of May, 1924, by which she transferred a 2 annas share in an under-proprietary tenure which formed a portion of her deceased husband's estate to her daughter, Musammat Durpadi, and Ambika Prasad, Musammat Durpadi's husband. The marriage of Durpadi had taken place on the 28th of April, 1924. The validity of this document was challenged by Udai Dat, a cousin of the late Mahesh Dat. It has been held by the lower courts to be a valid disposition under Hindu law. There can be no question as to the right of a Hindu widow of a separated Hindu governed by the Mitakshara law to make an alienation to provide a dowry for her daughter in ordinary circumstances, and such an alienation cannot be questioned by the reversioners, provided it is a reasonable alienation in the circumstances of the case. The question whether it is or is not a reasonable alienation in the circumstances of the case is a question of fact. A Bench of

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this Court decided in favour of this view in *Mahadeo Prasad* v. *Dhan Raj Kuar* (1) (F. C. A. 15 of 1925) on the 13th of April, 1926. This decision followed the decision in *Churaman Sahu* v. *Gopi Sahu* (2) in which the Bench deciding the appeal dealt exhaustively with the provisions of the Mitakshara law on the subject. But it is argued on behalf of the plaintiff-appellant, who questions the validity of the gift, that in this case Musammat Phuljhari had no right to make the alienation as it has been found on the facts that in this family daughters are by custom excluded from inheritance and as the transfer was made 14 days after the marriage ceremony had taken place. The courts below have found that the alienation in question was a reasonable alienation in the circumstances of the case. The decision is clearly correct upon the merits. The finding that daughters are excluded from succession by custom in this family is a finding which is binding upon this Court. We do not, however, consider that the circumstance that in this family daughters are excluded from succession renders the law, which has been previously stated, inapplicable. As has been laid down in the exhaustive decision in I. L. R., 37 Calc., 1, the provisions of the Mitakshara law are that inasmuch as it is the duty of a Hindu father to arrange for the marriage of his daughter and inasmuch as he incurs discredit in his religion if he does not do so, such daughters must be married to a suitable husband, and if the father owing to death is unable to perform this duty before the daughter has attained the age of puberty, the duty devolves upon his son, if any, and in absence of his sons upon his widow. As we read the provisions of the Mitakshara law upon the subject (it is not necessary to enumerate them as

(1) I.L.R., 1 Lucknow p. 477, S. C. (2) (1910) I.L.R., 37 Calc., 1. (1926) 3 O.W.N., 529.

they are discussed at length in the Calcutta decision to which we referred) the provision of a suitable dowry is essential. There is no differentiation between the apportionment of expenditure upon a dowry and expenditure upon other expenses incurred in the ceremony. It is clear that, whether a daughter is or is not excluded from succession, it is the duty of her father, and after him of her brothers, if any, and in absence of brothers of her mother, to unite her in marriage to a suitable husband before she attains the age of puberty in the interest of the religious benefit accruing to her father; and this duty is equally incumbent whether she be or be not excluded from inheritance under a family custom. In order to perform such a ceremony it is necessary to provide the daughter with such garments and such ornaments as are necessary in her station in life, and it cannot be suggested that in a case in which she is excluded from inheritance under a family custom it is any less obligatory to provide her with such garments and such ornaments. In our opinion the provision of a suitable dowry is in the same category as the provision of suitable garments and ornaments, and the obligation to provide the dowry cannot be separated from the obligation to provide other requisites of the ceremony. We do not consider that the fact that the deed of gift was executed a few days after the wedding ceremony can be urged by the appellant in his favour. The clear object of the gift was to provide Musammat Durpadi with a dowry which has been found not to be an excessive dowry in the circumstances of the case. It was immaterial whether the deed was executed before or after the ceremony, as the object of executing it was to provide such a dowry. In these circumstances the appeal fails and is dismissed with costs.

*Appeal dismissed.*