

APPEAL CIVIL.

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

1929

November,
15.

SARNAM (PLAINTIFF-APPELLANT) v. RAJA BISHESH-
WAR BAKHSH SINGH AND ANOTHER (DEFENDANTS-
RESPONDENTS).*

Hindu law—Widows' estate—Decrees for arrears of rent obtained by widow but not realized by her in her lifetime, if follow the estate—Creditors of widow, whether can attach the decrees—Sir cultivation of widow—Bullocks necessary for cultivation of her sir if appurtenant to estate or her personal property.

If the savings of a Hindu widow from her husband's estate are not disposed of by her in her lifetime the income as it accrued and saved but not alienated follows the estate out of which it arose. *Isri Dut Koer v. Musammat Hansbutti Koerain* (1), relied on.

Where, therefore, a Hindu widow obtained certain decrees for rent due from the estate which had come into her possession as the estate of her husband but she never realized them in her lifetime they follow the estate and could not be treated as her personal property and liable for the payment of her personal debts. The same is the position of the arrears of rent of the estate which were not realized in her lifetime.

Where a Hindu widow had some *sir*, the bullocks which she kept for its cultivation could not be treated as appurtenance to the *sir* lands or to their cultivation. They may have been necessary for the purpose of cultivation but that fact alone cannot clothe them with the character of a part of the estate. They were her personal property and liable for her personal debts.

Mr. *Ishri Prasad*, for the appellant.

Mr. M. H. *Kidwai*, for the respondents.

*Second Civil Appeal No. 256 of 1928, against the decree of S. Asghar Hasan, District Judge of Gonda, dated the 7th of May, 1928, reversing the decree of B. C. Ghose, Subordinate Judge of Bahraich, dated the 3rd of July, 1927.

(1) (1883) L. R., 10 I. A., 150.

STUART, C. J. and HASAN J.:—These three appeals are the plaintiffs' appeals. Appeal No. 256 is from the appellate decree of the Subordinate Judge of Bahraich, dated the 30th of July, 1927, and the other two appeals are from the appellate decree of the District Judge of Gonda, dated the 27th of August, 1928.

1929
SARNAM
v.
RAJA
BISHESHWAR.
BAKHSH
SINGH.

For the facts of these appeals, see the remand order of this Court, dated the 3rd of May, 1929, under which the following issue was remitted for trial to the Court of the Subordinate Judge of Bahraich.

Whether Raja Bisheshwar Bakhsh Singh has received any personal property or money belonging to Rani Itraj Kuar and whether to that extent he can be held to be personally liable.

The learned Subordinate Judge has now tried this issue and returned his findings to us. The findings are objected to by the plaintiffs and the defendant, Raja Bisheshwar Bakhsh Singh. At the hearing of the appeals, however, the Counsel for the latter withdrew his objections.

A few facts should now be stated. In the three suits, out of which these appeals arise, the plaintiffs claim a decree for the recovery of a certain sum of money from the defendant, Raja Bisheshwar Bakhsh Singh, on the basis of a hand note executed by one Rani Itraj Kuar. Rani Itraj Kuar held the possession of the Gangwal estate in the district of Gonda in the character of a taluqdar's widow and on her death the taluqdari estate was adjudged by a decree of this Court in favour of the defendant, Raja Bisheshwar Bakhsh Singh. Other property, which may be described to be non-taluqdari property held by the deceased Rani, was held to belong to other heirs of her husband in the right of reversioners under the Hindu law. The question therefore which the issue

1929

SARNAM
v.
RAJA
BISHESHWAR
BAKHSH
SINGH.

remitted by this Court seeks to determine is the liability of Raja Bisheshwar Bakhsh Singh in respect of the personal debts of Rani Itraj Kuar to the extent of any assets of the Rani which he might have received on her death.

Stuart, C. J.
and
Hasan, J.

The specification of such items of assets as are in controversy between the parties is given in the finding of the learned Subordinate Judge. They are as follows:—

- (1) Decree, dated the 26th of August, 1924, in favour of Rani Itraj Kuar against Thakur Pirthipal Singh and two others for Rs. 22,368, inclusive of costs (exhibit 6).
- (2) Decree, dated the 29th of August, 1924, in favour of Rani Itraj Kuar against Rani Abhilakh for Rs. 432-9-0, inclusive of costs (exhibit 3).
- (3) Decree, dated the 23rd of December, 1924, in favour of Rani Itraj Kuar against Raja Bisheshwar Bakhsh Singh (defendant no. 2) for Rs. 4,746-4-0, inclusive of costs (exhibit 8).
- (4) Arrears of rent due to Rani Itraj Kuar for the year 1330 to 1332 *fasti*.
- (5) Produce of the *sir* lands of Rani Itraj Kuar.
- (6) Two elephants and two horses.
- (7) One *shamiana*.
- (8) One *palki gari*.
- (9) Forty bullocks and 15 cows.
- (10) Furniture.

Item No. 10, that is furniture, may first be disposed of. The plaintiff has failed to establish the price of any furniture which might have come into the

hands of the defendant, Raja Bisheshwar Bakhsh Singh, as an asset of Rani Itraj Kuar.

1929

SARNAM

v.

RAJA

BISHESHWAR

BAKHSI

SINGH.

Item No. 6, two elephants and two horses. The learned Subordinate Judge states in respect of this item of property that under the judgment of this Court in the title case, the title to these animals has been adjudged in favour of other persons and not in favour of Raja Bisheshwar Bakhsh Singh. This is not disputed. We agree therefore with the learned Subordinate Judge that Raja Bisheshwar Bakhsh Singh is not liable to account for the price of these animals.

Stuart, C.J.

and

Hasan, J.

Item No. 5, produce of the *sir* lands. The true state of facts in relation to this item of property is as follows:—At the time of Rani Itraj Kuar's death there was no grain accumulated as *sir* produce which came into the hands of Raja Bisheshwar Bakhsh Singh. Rani Itraj Kuar admittedly had some *sir* cultivation on lands which belonged to the estate. At the time of her death crops on some of such lands were standing ungathered and it was some time after her death that the crops were cut and the grain gathered by the Receiver who was put in possession of the estate during the pendency of the litigation as to title. We agree with the learned Subordinate Judge that in this state of things the produce of the *sir* lands which came into the hands of Raja Bisheshwar Bakhsh Singh as part of the estate of Gangwal cannot be treated as the personal property of Rani Itraj Kuar.

Items Nos. 1, 2 and 3 may be disposed of together. The plaintiffs' contention is that these decrees in their essence represent claims for rent for property which formed part of the estate of Gangwal and as the decrees in respect of this rent were obtained by Rani Itraj Kuar for the period of time during

1929

SARNAM

C.
RAJABISHUESHWAR
BAKHSH
SINGH.Stuart, C. J.₂
and
Hasan, J.

which she was entitled to the enjoyment of the profits of the estate they should be treated as her personal property. We are unable to accept this contention. Had Rani Itraj Kuar realized these decrees and left the realized amount as her savings undisposed of, the question might have arisen as to whether they could be treated as her personal property but in the circumstances as they are we are clearly of opinion that the decrees cannot be so treated. The dictum of their Lordships of the Judicial Committee in the case of *Isri Dut Koer v. Musammat Hansbutti Koerain* (1) appears to us to be conclusive on the point. "To decide this question it is necessary to examine the authorities, which are by no means in accord. But their Lordships do not treat as authorities on this question the numerous cases cited at the bar to show that a widow's savings from her husband's estate are not her *stridhan*. If she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose. The dispute arises when the widow, who might have spent the income as it accrued, has in fact saved it and afterwards attempts to alienate it." This dictum has always been treated as authority for the view that income as it accrued and saved but not alienated follows the estate out of which it arose. The present case is stronger than a case where income has been collected and saved. Here the widow Rani Itraj Kuar only established her title to the recovery of the rent under the three decrees mentioned above. It is agreed that she in her lifetime never realized the decrees and it is also agreed that the decrees related to rent due from the estate which had come into her possession as the estate of her husband. The plaintiffs' claim therefore in respect of these three decrees must be rejected.

(1) (1883) L.R., 10 I.A., 150.

Item No. 4. This item relates to unrealized rent which was in arrears at the date of Rani Itraj Kuar's death. It is agreed that the rent had become due in her lifetime but that it was the rent due from the estate which she held in the character of a taluqdar's widow. Our remarks in relation to the decrees are apposite to the case of arrears of rent, and we reject the claim in respect of them on the same ground.

1929

SARNAM
P.
RAJA
BISHESHWAR
BAKHSH
SINGH.

Stuart, C. J.
and
Hasan, J.

It may be mentioned that there is some oral evidence which the learned Subordinate Judge has accepted as reliable as to the Rani's intention in respect of these arrears. That evidence shows that the Rani intended to leave the arrears in the hands of the tenants to be realized by her successor in the estate.

Item No. 7. The value of this item, which is a *shamiana*, is adjudged by the learned Subordinate Judge to be Rs. 600 and he holds that the defendant, Raja Bisheshwar Bakhsh Singh, is liable to that extent because he received it as an estate of Rani Itraj Kuar. We agree with the learned Subordinate Judge.

Item No. 8 is a *palki gari* of the value of Rs. 300 according to the finding of the learned Subordinate Judge. We agree with him that this item stands on the same footing as the *shamiana*, and that the defendant is liable for the value of it.

The only other item which remains to be considered is item No. 9, 40 bullocks and 15 cows. As regards the 15 cows we agree with the learned Subordinate Judge that the defendant is liable for the value of the cows which is Rs. 150. The value of 40 bullocks is fixed by the learned Subordinate Judge at Rs. 1,100. The learned Judge, however, thinks that the defendant, Raja Bisheshwar Bakhsh Singh, is not liable for the value of these bullocks for

1929

SARNAM
v.
RAJA
BISHESHWAR
BAKHSH
SINGH.

Street, C. J.
and
Hasan, J.

the reason that they must be treated as appurtenance to the *sir* cultivation which Rani Itraj Kuar had during her lifetime and which *sir* had come into the possession of Raja Bisheshwar Bakhsh Singh as an heir to the estate. We are of opinion that the learned Subordinate Judge is not right in this view of his. In no sense the bullocks could be treated as appurtenance to the *sir* lands or to their cultivation. It may be that they were necessary for the purpose of cultivation, but that fact alone cannot clothe them with the character of a part of the estate. We, therefore, hold that the defendant, Raja Bisheshwar Bakhsh Singh, is liable to account for the value of these bullocks.

The result is that the assets which came into the hands of Raja Bisheshwar Bakhsh Singh as assets of Rani Itraj Kuar and for the value of which he is liable to account are in aggregate value worth Rs. 2,150. This sum of money should rateably be distributed to the three plaintiffs in the suits, out of which these appeals have arisen. The appeals are partly allowed as follows:—

The plaintiff in appeal No. 256 is given a decree for a sum of Rs. 816-7-0 against Raja Bisheshwar Bakhsh Singh only.

In appeal No. 257 the plaintiff will get a decree for a sum of Rs. 789-2-0 against Raja Bisheshwar Bakhsh Singh only.

In appeal No. 414 the plaintiff will get a decree for a sum of Rs. 544-7-0 against the same Raja Bisheshwar Bakhsh Singh only.

The question of costs has already been dealt with by the order of remand, which directed that costs incurred till then by the respondent, Raja Bisheshwar Bakhsh Singh, the plaintiffs in each case must pay them to him irrespective of the finding which

might be arrived at by the learned Subordinate Judge in regard to the issue which was then remitted for trial. We affirm that order. As to costs since then our order is that the plaintiffs-appellants shall pay the defendant Raja Bisheshwar Bakhsh Singh's one-third costs only. The rest of the costs will be borne by the parties themselves.

1929
SARNAM
v.
RAJA
BISHESHWAR
BAKHSH
SINGH.

Stuart, C. J.
and
Hason, J.

Appeal partly allowed.

MISCELLANEOUS CIVIL.

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

IN THE MATTER OF A PLEADER.*

*Advocates—Enrolment as advocates—Bar Council's objections
to the enrolment of an advocate, weight to be attached
to—Oudh Civil Rules, rule 285(1)(c) and (d).*

1929
November,
15.

Where the Bar Council objects to the enrolment of a particular person as an advocate, the opinion of the Bar Council should not be treated as a negligible factor but due weight must be given to it. Objections based upon mere suspicion or prejudice should not be accepted, but it should be seen whether they are based on reason and fact. At the same time where the Bar Council has formed the considered opinion that an applicant should not be admitted into their number it is not necessary, in order to support those objections, for them to show that the applicant has shown by his conduct that he is not fit to be in the profession. If the Bar Council can establish that as fair-minded men, who have treated the case on its merits and in a reasonable manner, they are convinced that a certain member of the profession does not deserve to be enrolled as an advocate and that his enrolment will be prejudicial to the credit of the body of advocates, their objections should prevail.

Mr. J. Jackson, for the applicant.

Mr. G. H. Thomas, for Bar Council.

STUART, C. J. and RAZA, J.:—This is in the matter of accepting or refusing the application of

*Civil Miscellaneous Application No. 665 of 1929.