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ever it seems to us that the course of action adopted by the learned District Judge has materially prejudiced the defendant-appellant. We accordingly allow the appeal, set aside the decree of the lower appellate court and send the case back to the lower court with the direction that it should be re-entered in the appropriate register at its original number and the plaintiffs should be required to amend their plaint so as to base their claim on the cause of action arising on the death of Musammat Kaunsilya. When the amendment has been carried out the defendants should be allowed an opportunity to raise necessary pleas in defence. The District Judge will then frame proper issues arising on these pleadings and try them either himself or remit them for trial to the trial court. Costs in this Court and hereafter shall abide the result.

Srivastava, A. C. J. and Thomas, J.

Case remanded.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Acting Chief Judge and Mr. Justice G. H. Thomas

1934 *September*, 27

HARCHARAN LAL (PLAINTIFF-APPELLANT) *v.* NURUL HASAN KHAN AND OTHERS (DEFENDANTS-RESPONDENTS)*

Transfer of Property Act (IV of 1882), section 55(1)(g)—'Incumbrances' in section 55(1)(g), meaning of—Person declared to have charge of guzara on certain property—Sale-deed of property without provision that vendee will be liable for guzara charge—Charge of guzara, whether vendor or vendee liable to pay.

Where a person is declared to have charge of a monthly *guzara* for life on certain property and that property is subsequently sold and there is not a word in the terms of the sale-deed which might indicate that the property was sold subject to that incumbrance, the vendors are bound under the provisions of section 55(1)(g) of the Transfer of Property Act to meet the charge of

*Second Civil Appeal No. 192 of 1933, against the decree of Chaudhri Akbar Husain, I.C.S., District Judge of Sitapur, dated the 22nd of April, 1933, upholding the decree of Pandit Piarey Lal Bhargawa, Munsif, Biswan, Sitapur, dated the 31st of August, 1932.

the *guzara*. The word "incumbrance" in that section is of sufficient amplitude to include also a recurring liability like that of the *guzara* in question.

Messrs. *Ram Bharose Lal* and *Suraj Sahai*, for the appellant.

Messrs. *M. H. Qidwai, Mohammad Ayub* and *Brij Bahadur*, for the respondents.

SRIVASTAVA, A. C. J., and THOMAS, J.:—This is an appeal by the plaintiff who has been unsuccessful in both the lower courts. It arises out of a suit for recovery of a sum of money by sale of a 1 anna 6 pies share of village Mitaura and certain other properties. In the alternative the plaintiff claimed a simple money decree.

The facts of the case which constitute common ground between the parties are that the defendant No. 1 owned the entire village of Mitaura and certain other properties. On the 17th of November, 1905, one Musammat Saiyed-un-nisa obtained a decree for *guzara* for her life at the rate of Rs.50 per mensem. This *guzara* was also declared to be a charge on village Mitaura and certain other properties. On the 3rd of September, 1924, defendant No. 1 together with his sons defendants 2 and 3 executed a sale-deed (exhibit 1) in respect of a 4 annas 6 pies share of village Mitaura in favour of the plaintiff. In 1926 Musammat Saiyed-un-nisa instituted a suit to recover the arrears of her *guzara* impleading the plaintiff also as a defendant. She obtained a decree and in execution of it put the 4 annas 6 pies share which had been purchased by the plaintiff, to sale. The share was actually sold but the plaintiff got it set aside on depositing the decretal amount.

In the present suit the plaintiff claimed to recover a portion of the amount which he had to pay to Musammat Saiyed-un-nisa proportionate to the liability of the share purchased by him. Both the lower courts have dismissed the suit on the ground that the plaintiff purchased the aforesaid 4 annas 6 pies share of Mitaura with notice of the charge of Musammat Saiyed-un-nisa. We

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Srivastava, A. C. J. and Thomas, J.

are not satisfied that there is any legal evidence to fix the plaintiff with notice of the charge. The only concrete fact to which our attention has been drawn in support of the plea of notice consists of a *dehanid* of a sum of Rs.765 made to Musammat Saiyed-un-nisa out of the consideration of the sale-deed exhibit 1. It is stated that the *dehanid* was made in respect of the arrears of *guzara* due to Musammat Saiyed-un-nisa. This by itself appears to us to be quite insufficient to fix the plaintiff with notice of the charge. The deed makes no mention of the *guzara* being a charge upon the property which formed the subject of sale. It was also pointed out that the Mukhtar of Musammat Saiyed-un-nisa was present at the time of the execution of the sale-deed exhibit 1. This fact also cannot fix the plaintiff with notice of the existence of the charge. The most that the evidence to which our attention has been drawn shows is that there was some arrear of *guzara* due to Musammat Saiyed-un-nisa from the vendors, but there is not an iota of evidence to show that the plaintiff was made aware of the said *guzara* being a charge on the share which was being sold to him. We are therefore unable to accept the finding of the learned Judge that the plaintiff was aware of the charge.

In any case it seems to us that the question of notice is immaterial. Under section 55 clause (1)(*g*) of the Transfer of Property Act the seller is under a statutory liability to discharge all incumbrances existing on the property at the time of sale except where the property is sold subject to incumbrances. It is admitted that there is not a word in the terms of the sale-deed which might indicate that the property was sold subject to the incumbrance of Musammat Saiyed-un-nisa. In the absence of any such provision in the sale-deed making the vendee liable for the incumbrance it seems clear that the vendors are bound under the provisions of this section to meet the charge of Musammat Saiyed-un-nisa. It has been argued that the word "incumbrances" used

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in this section cannot apply to the charge as existed in favour of Musammat Saiyed-un-nisa inasmuch as the decree in her favour created a recurring liability against the property. No authority has been cited in support of this argument. The word "incumbrances" is of sufficient amplitude to include also a recurring liability like the one in question. We are therefore of opinion that the defendants are liable to reimburse the plaintiff for the payment made by him in respect of the incumbrance of Musammat Saiyed-un-nisa. The plaintiff has in his appeal confined the amount of this liability to a sum of Rs.970. The provision in the sale-deed under which the vendors made some of their other properties liable on the happening of certain contingencies has no application because the contingency which has arisen is not one of the contingencies mentioned in the deed. The plaintiff is therefore entitled only to a money decree for the amount just mentioned.

Srivastava, A. C. J. and Thomas, J.

The result therefore is that we allow the appeal, set aside the decree of the lower court and grant the plaintiff a money decree for Rs.970 together with future interest on this amount from to-day's date till realization at the rate of 6 per cent. per annum. The plaintiff will also get his proportionate costs in all the courts.

Appeal allowed.

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

JAGDISH NARAIN (ACCUSED-APPLICANT) *v.* NAWAB SHAMS ARA BEGAM AND ANOTHER (COMPLAINANT-OPPOSITE-PARTY)*

1934 *October*, 4

Indian Penal Code (Act XLV of 1860), sections 182 and 499—Criminal Procedure Code (Act V of 1898), section 198—Complaint by private person under sections 182 and 499, I. P. C.—Sanction of court not obtained—Court can take cognizance of offence under section 499—Complaint under section 499

*Criminal Revision No. 105 of 1934, against the order of Pandit Tika Ram Misra, Sessions Judge of Lucknow, dated the 15th of May, 1934.