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Srivastava,
J.

by saying that the entire share had been sold with all the rights appurtenant to it. This seems to indicate that the intention was to transfer the full proprietary rights in the entire share. The sentence relating to reservation which follows describes the plots reserved as *bila lagani* and not as exempt from Government revenue. In the circumstances the use of the words "*bila lagani*" seems to me to indicate that the rights reserved in the said plots were of a subordinate character or in other words that were it not for the reservation the vendor would be liable to pay "*lagan*" in respect of the said plots. I am therefore of opinion that the correct construction to be placed upon the document is that the rights reserved by the vendors in the excepted plots of land are those of an under-proprietor and not that of a full proprietor. The result is that the relationship between the parties is not that of co-sharers, and the present suit under section 108, clause (16) is not maintainable.

In view of the conclusion reached by me above, it is not necessary to discuss the question of the defendants' liability for payment of revenue.

For the above reasons I allow the appeal, set aside the decree of the lower Court and dismiss the plaintiff's suit with costs throughout.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

1935
August 23
SHEO DAS PANDEY (PLAINTIFF-APPELLANT) v. MUSAMMAT
RAM KALI (DEFENDANT-RESPONDENT)*

Injunction—Hindu widow's right to enjoy income of her husband's money deposits in Banks, etc.—Reversioner's right for injunction to restrain her from waste—Widow's renewal of

*Second Civil Appeal No. 71 of 1934, against the decree of Babu Gauri Shanker Varma, Subordinate Judge of Gonda, dated the 19th of February, 1934, upholding the decree of Babu Mahesh Chandra, Munsif of Gonda, dated the 31st of August, 1933.

bonds and deposits in her own name, whether amounts to waste—"Waste", meaning of.

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Though no restrictions can be placed upon a Hindu widow's enjoyment of the income of her husband's property, it can not be said that the money deposited by her husband in any bank or the post office and the debts due to him from his debtors are included in the income of the property and the reversioners can, therefore, get an injunction, restraining the widow from withdrawing the deposits without legal necessity.

Where a Hindu widow gets bonds renewed in her own name in place of bonds that stood in her husband's favour and the recitals of the new bonds show as if consideration was paid in cash, it amounts clearly to waste so far as the reversioners are concerned and they can sue for injunction to restrain such waste. *Kailasha v. Bitto* (1), referred to.

Mr. Mahabir Prasad, for the appellant.

Mr. Hargobind Dayal, for the respondent.

ZIAUL HASAN, J.:—The plaintiff-appellant brought a suit against the respondent, the widow of his uncle, asking for a permanent injunction restraining the widow from withdrawing the money deposited by her late husband in the post office savings bank or cashing the post office cash certificates and directing her to realise the debts mentioned in the list attached to the plaint and to deposit the amount in a bank.

Both the Courts below dismissed the plaintiff's suit holding that to give the plaintiff the injunction sought would be to restrict the defendant's legal rights as a Hindu widow. The plaintiff has therefore come here in second appeal, and the question is whether or not the plaintiff-appellant is entitled to any of the reliefs claimed by him.

I am of opinion that though no restrictions can be placed upon a Hindu widow's enjoyment of the income of her husband's property, it cannot be said that the money deposited by her husband in any bank or the post office and the debts due to him from his debtors are included in the income of the property. In the case of *Musammat Kailasha v. Bitto* (1) it was held that

(1) (1912) 15 O.C., 223.

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the principal of the debts due to the husband and inherited by the widow forms part of the corpus of the estate over which the widow would not have an unlimited power of disposal. In fact, it is not disputed that the debts and the money deposited in the bank or post office form the corpus and not the income of the property, but it is said that plaintiff has not succeeded in proving that any act of waste has been committed by the respondent. It is in evidence, however, that the respondent got bonds renewed in her own name in place of bonds that stood in her husband's favour and the recitals of the new bonds showed as if consideration was paid in cash. This is clearly waste so far as the plaintiff is concerned as after the death of the widow and even in her lifetime the plaintiff can have no means of proving that the consideration for these bonds formed the assets of his uncle. So far as the plaintiff is concerned the principal of these debts which admittedly form part of his uncle's property, would be quite lost to him. It cannot also be denied that the respondent must naturally have more affection for her own brother's sons than for the plaintiff and if she chooses to give away the money in question to her nephews, she will be destroying or wasting the corpus of her husband's property so far as the plaintiff's claims are concerned. It cannot therefore be contended with reason that there is no danger of any waste being committed by the widow.

The plaintiff-appellant has withdrawn his suit so far as the debts due to his late uncle are concerned and the question now relates only to the post office cash certificates and the money in the savings bank and I am of opinion that the appellant is entitled to a decree in respect of these assets.

The appeal is partly allowed and the plaintiff's suit decreed for an injunction to the effect that the respondent should not withdraw the money deposited in the

savings bank without legal necessity and that she should renew the post office cash certificates after maturity or otherwise invest the amount due on them on maturity. The parties are ordered to bear their own costs of the appeal.

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Appeal partly allowed.

MISCELLANEOUS CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and Mr.
Justice G. H. Thomas*

RAJA PIRTHIPAL SINGH AND OTHERS (DEFENDANTS-APPLICANTS) v. RAI BAHADUR RAGHUBAR DAYAL SHUKLA (PLAINTIFF OPPOSITE-PARTY).*

1935
August 28

United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 30(2) and 5—Decree which has been subject of appeal—Application for reduction of interest under section 32(2), Agriculturists' Relief Act, whether lies in trial Court or Court of appeal—Sections 5 and 30, Agriculturists Relief Act, object of.

An application under section 30, clause (2) of the United Provinces Agriculturists' Relief Act (XXVII of 1934), for reduction of the amount of interest awarded in a decree, which has been modified on appeal, lies in the trial Court rather than in the Court of appeal. In section 30 of the U. P. Agriculturists' Relief Act, the legislature seems to have given the power of reducing the amount of interest to the Court which passed the decree, irrespective of the consideration whether the decree has been the subject of appeal or not, and it would be most in consonance with the intention of the legislature and best conducive to convenience of business to hold that the expression "Court which passed the decree" in section 30(2) means the Court of first instance and not the Court of appeal.

The provisions contained in sections 5 and 30 of the Agriculturists' Relief Act relating to amendment of decrees, are in a sense provisions enacted with the object of regulating the enforcement and execution of such decrees.

Mr. Akhtar Husain, for the applicant.

Mr. M. H. Kidwai, for the opposite party.

*Civil Miscellaneous Application No. 591 of 1935 in First Civil Appeal No. 113 of 1933, against the decree of Babu Mahabir Prasad, Subordinate Judge of Lucknow, dated the 6th of September, 1933.