

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice
Ziaul Hasan

THAKUR RAB PRASAD SINGH (DEFENDANT-APPELLANT) v. ¹⁹³⁶
CHHOTAY MUNWAN AND ANOTHER (PLAINTIFFS) AND September, 4
OTHERS, DEFENDANTS (RESPONDENTS)*

Hindu Law—Gift by Hindu father of joint family property in
favour of his concubine, validity of.

Held, that a gift of joint family property by a Hindu father,
during his life-time, in favour of his concubine is legally void
and invalid. *Ningareddi v. Lakshamawa* (1), and *Ramanarasu*
v. Buchamma (2), relied on.

Messrs. *Radha Krishna Srivastava* and *P. N. Chau-*
dhri, for the appellant.

Messrs. *Hyder Husain* and *B. K. Bhurgava*, for the
respondents.

NANAVUTTY and ZIAUL HASAN, JJ.:—This is a first
appeal against a decree of the Additional Subordinate
Judge of Sitapur arising out of a suit brought originally
by Chhote Munwan, respondent No. 1, and Sumer
Singh, respondent No. 5, sons of Amar Singh, respon-
dent No. 4, for possession of some property transferred
by their father by lease and gift to his mistress Musam-
mat Aziz Jan, respondent No. 3. Sheo Singh,
respondent No. 2, is a transferee of a portion of the
suit property from Sumer Singh who executed the sale-
deed in his favour on behalf of himself and his minor
brother, Chhote Munwan, respondent No. 1.

It appears that on the 10th of August, 1927, Amar
Singh, father of respondents 1 and 5, executed a lease
(exhibit 1) in respect of 31 bighas 9 biswas of land of
village Saraiyan Mahipat Singh in favour of his mistress
Aziz Jan for her life. On the 24th of March, 1930, he
executed a deed of gift (exhibit 2) in respect of a one

*First Civil Appeal No. 120 of 1934, against the decree of Pandit Pyare
Lal Bhargava, Additional Subordinate Judge of Sitapur, dated the 30th
of November, 1934.

(1) (1901) I.L.R., 26 Bom., 163. (2) (1899) I.L.R., 23 Mad., 282.

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anna share of village Saraiyan, certain *sir* plots situate in mauza Umarhar and *tehbazari* and cattle dues recoverable from a market in village Ramwapur in favour of Aziz Jan. On the 30th of May, 1933, Aziz Jan transferred the one anna share of Saraiyan and the *sir* plots of mauza Umarhar, which she had got by exhibit 2, to Rab Prasad Singh, the present appellant, by gift (exhibit 3). The plaintiffs' case was that Amar Singh was a member of a joint Hindu family with his sons (respondents 1 and 5) and that the property transferred by him to Aziz Jan by lease and gift being joint family property, he had no power to transfer it and the transfers are invalid. Hence they claimed possession of all the items of property, the subject of the lease of the 10th of August, 1927, and of the deed of gift of the 24th of March, 1930. Rab Prasad Singh was made a defendant as transferee from Aziz Jan.

The suit was contested by Rab Prasad and Aziz Jan only mainly on the ground that Aziz Jan was *avarudh stree* (permanent concubine) of Amar Singh and that the transfers made in her favour were valid. It was not disputed that the property in question was the joint family property of Amar Singh and his sons.

The learned Subordinate Judge decreed the plaintiffs' suit holding that Aziz Jan was not *avarudh stree* of Amar Singh and that the transfers in question were legally invalid. Musammam Aziz Jan has submitted to the decree of the lower court but Ram Prasad Singh has brought this appeal.

Aziz Jan not having appealed against the lower court's decree, that decree has become final and will stand so far as it related to the property which is the subject of the lease, and the only question before us is whether or not the gift of the 24th of March, 1930, made by Amar Singh in favour of Aziz Jan is valid. We think this question can at once be decided in the negative without going into the questions whether Aziz Jan is *avarudh stree* of Amar Singh, or whether she is

a Hindu or a Mahomedan and whether she is entitled to be maintained by Amar Singh, for whatever rights which might have been conferred by the Hindu law on an *avarudh stree* arises only after the death of her paramour. Sir D. F. MULLA, at page 585 of his book on Hindu Law (8th edition), says—

“A Hindu is not bound to maintain an *avarudh stree* kept by him. He can discard her at any moment, and she cannot compel him to keep her or to provide for her maintenance. But if she was in his exclusive keeping until his death his estate, in the hands of those who take it, is liable after his death for her maintenance.”

In the case of *Ningareddi v. Lakshamawa* (1) where also in a joint Hindu family the father made a gift of a portion of the family property during his life-time by way of maintenance to his concubine in consideration of past cohabitation, the gift was held not to be binding on his son. It was further held that under the Hindu law a concubine gets no right of maintenance against her paramour unless having been kept continuously till his death, it can be said that the connection had become permanent and that it is only on his death that his estate in the hands of those who take it becomes liable for her maintenance.

The Madras High Court has also held in *Ramanarasu v. Buchamma* (2) that a woman who has been kept by a man as his concubine for a number of years continuously and then discarded is not entitled under the Hindu law to claim maintenance from him. This being the law on the point it is clear that Aziz Jan can claim nothing whatever as Amar Singh's *avarudh stree* for the simple reason that Amar Singh is alive. It is admitted that the property in suit is the joint family property of Amar Singh and his sons and it follows therefore that the transfers made by Amar Singh in favour of Aziz Jan are legally void and invalid. Even

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granting that she is the *avarudh stree* of Amar Singh, that she is a Hindu and not a Mahomedan and that she is still in Amar Singh's keeping—facts which are disputed on behalf of the plaintiffs-respondents—we hold that she is not entitled to get anything from Amar Singh. We cannot accept the argument of the learned counsel for the appellant that as under Hindu law an *avarudh stree* is entitled to maintenance after the death of her paramour, a transfer to her of a small portion of his property by the latter in his life-time should not be objected to by his sons. Whatever moral obligation there may be on a Hindu to provide for his concubine in his life-time, it cannot by any stretch of imagination be said that there is any legal necessity for making such a provision and without legal necessity no father in a joint Hindu family can transfer the family property.

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The appeal has, in our opinion, no force and is dismissed with costs.

Appeal dismissed.

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*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

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LALLU RAM (PLAINTIFF-APPELLANT) v. DEPUTY COMMISSIONER, KHERI, MANAGER, COURT OF WARDS, MAHEWA ESTATE AND ANOTHER (DEFENDANTS-RESPONDENTS)*

Negotiable Instruments Act (XXVI of 1881), section 28—Promissory note executed by servant—Money borrowed by master—Master's name not appearing on pronote—Suit against master on promissory note, if maintainable—Claim on original consideration, if maintainable against master—Limitation—Appeal—Appellant, if entitled to time occupied in obtaining copies of both judgment and decree—Memorandum of appeal accompanied by copy of judgment only—

*Second Civil Appeal No. 358 of 1934, against the decree of Babu Gopendra Bhushan Chatterji, District Judge of Sitapur, dated the 9th of October, 1934, reversing the decree of S. Abid Raza, Additional Subordinate Judge of Kheri, dated the 7th of February, 1934.