

APPELLATE CIVIL.

Before Das and Kulwant Sahay, JJ.

MUSAMMAT SOGIA

1927.

v.

Oct., 28.

MUSAMMAT KITABAN.*

Muhammadan Law—dower debt, widow in possession of husband's estate in lieu of—security, transfer of, whether valid.

A widow in possession of her husband's property in lieu of dower debt can transfer the security apart from the dower debt, and the transferee acquires a valid title so long as the debt is not satisfied.

Bibi Makbulunnissa v. Bibi Umatunnissa (1), Sheikh Nabijan v. Musammat Sahifan (2), and Abdulla v. Shamsulhaq (3), followed.

Sheikh Abdur Rahman v. Wali Mohammad (4), not followed.

Appeal by the defendants.

The facts of the case will appear from the judgment.

Saiyid Nurul Hassan, for the appellants.

Khurshed Husnain and *Syed Izhar Husain*, for the respondents.

KULWANT SAHAY, J.—This is an appeal by the defendants. The principal question for decision is as to whether Musammat Murti had the right to transfer and whether Eid Mohammad obtained a valid title

*Appeal from Appellate Decree no. 1341 of 1924, from a decision of Ananta Nath Mitra, Esq., District Judge of Saran, dated the 19th June, 1924, affirming a decision of Maulavi Aziz Ahmad, Additional Munsif of Chapra, dated the 27th September, 1923.

(1) (1923) I. L. R. 2 Pat. 84. (3) (1921) I. L. R. 43 All. 127.

(2) (1923) 4 Pat. L. T. 278. (4) (1923) I. L. R. 2 Pat. 75.

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under the transfer of the property by Musammat Murti under a deed of gift. Musammat Murti was the widow of one Basu, and it has been found that she was in possession of the property in lieu of her dower debt. Musammat Murti executed a deed of gift in favour of Eid Mohammad, the husband of the plaintiff no. 1 and the father of the plaintiffs 2 and 3. The defendants claim to be some of the heirs entitled to the property by right of inheritance, and their case is that the transfer by means of the deed of gift by Musammat Murti did not pass any interest in the property to Eid Mohammad and that the defendants were entitled as the heirs at law to the property.

The Courts below have held that the transfer by Musammat Murti to Eid Mohammad was a valid transfer and the suit has been decreed in favour of the plaintiffs.

The question is as to whether Musammat Murti had the right to transfer the property under the gift to Eid Mohammad. The finding of the learned District Judge is that what was transferred under the deed of gift was the security and not the dower debt itself, and one of the questions raised is whether the security could be transferred apart from the dower debt. This question was considered by this Court in *Bibi Makbulunnissa v. Bibi Umattunnissa* (1) and it was held that such a transfer of the security is a valid transfer and is binding against the widow and persons claiming through the widow, as also against the heirs at law so long as there is a debt due to the widow. The same view was taken in another case by a Division Bench of this Court in *Sheikh Nabijan v. Musammat Sahifan* (2). This view is supported by a decision of the Allahabad High Court in *Abdulla v. Shams-ul-haq* (3). A different view was taken by another

(1) (1923) I. L. R. 2 Pat. 84.

(2) (1923) 4 P. L. T. 278.

(3) (1921) I. L. R. 49 All. 127.

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Division Bench of this Court in *Sheikh 'Abdur Rahamn v. Wali Mohammad* (1); but with very great respect to the learned Judges who decided that case, I am of opinion that the view taken in the other two cases is the correct view. There seems to be no reason in law or in equity why such a transfer should not be held to be a valid transfer. The widow is in possession of the property which is clearly transferable in law, and the transferee of such a property from the widow would acquire a valid title so long as the debt is not satisfied. The interest, which the widow had to remain in possession of the property, would pass to the transferee, and there seems no reason why such a transfer should be held to be invalid apart from the debt itself. The view taken by the learned Judge on this point must, therefore, be accepted as correct.

Another point was taken by the learned Advocate for the appellants to the effect that the heirs of the widow and of her husband in the present case happen to be common and, therefore, the debt must be held to be extinguished, and the heirs would be entitled to take the property according to their legal shares. This point, however, does not appear to have been taken in the Courts below and we are not in a position to say as to whether the heirs of the widow and of her husband are the same.

Lastly it is contended that there has been no finding in the judgment of the District Judge as to whether Eid Mohammad, the husband of the plaintiff no. 1, is really dead. The question, however, does not appear to have been raised either in the trial Court or in the Court of Appeal below.

The result is that this appeal is dismissed with costs.

DAS, J.—I agree.

S. A. K.

Appeal dismissed.