

May 30.

## APPELLATE CIVIL.

*Before Mr. Justice Shadi Lal and Mr. Justice Martineau.*

GOWARDHAN DAS (PLAINTIFF) — *Appellant,*

*versus*

VIRU MAL AND MUSSAMMAT SUKH DEVI  
(DEFENDANTS) — *Respondents.*

Civil Appeal No. 2548 of 1915.

*Hindu Law—Alienation by widow—proof of necessity—debt paid to third person.*

*Held,* that under Hindu Law a widow cannot alienate immoveable property inherited by her from her husband except for special purposes. For religious and charitable purposes or for those which are supposed to conduce to the spiritual welfare of her husband she has a larger power of disposition than that which she possesses for purely worldly purposes, and to support such an alienation she must show necessity.

*Held also,* that the payment of a debt contracted by the widow from a third person does not of itself justify an alienation by her of immoveable property.

*Second appeal from the decree of H. F. Forbes, Esq., Additional District Judge, Lahore, dated the 10th June 1915.*

JAGAN NATH, for Appellant.

TEK CHAND, for Respondents.

The judgment of the Court was delivered by—

SHADI LAL, J.—This is an action brought by the collaterals of one Shankar Das to contest the sale of a house effected on the 3rd of October 1912 by his widow, *Musammatt Sukh Devi*, for Rs. 1,900. It is beyond dispute that the alienor being a *Brahmin* widow residing in a town, the transfer made by her must be judged by the doctrines of the Hindu Law applying to a case of an alienation by a widow; and the sole question for

determination is whether *Mussammât* Sukh Devi was justified in selling the house inherited by her from her husband.

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It appears that Shankar Das, who died nearly 30 years ago, left considerable house property; and that in pursuance of a partition carried out in 1901 between *Mussammât* Sukh Devi and her co-widow *Mussammât* Uttara Devi, the former got not only the house in dispute but also another large house. The latter house was sold by her for Rs. 3,000 in 1906, and the house in question was encumbered by means of two mortgages made by her in 1909. Now, one of the items which constituted consideration for the sale is a sum of Rs. 733 paid to the previous mortgagee, Lehna Singh, but there is not a scintilla of evidence upon the record to show that the money was borrowed from Lehna Singh for any necessary purpose.

The Additional Judge was evidently labouring under a misapprehension as to the law applicable to an alienation of immoveable property by a Hindu widow. It is a well recognized principle that a widow cannot of her own will alienate the property received by her from her husband except for special purposes. For religious or charitable purposes or for those which are supposed to conduce to the spiritual welfare of her husband she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last she must show necessity.

Now, the learned Judge of the Lower Appellate Court appears to be under the impression that the payment of a debt contracted by a widow from a third person justifies an alienation of immoveable property. That is no doubt the rule of Customary Law applicable to an alienation by a male proprietor; but the Hindu Law does not recognize the mere payment of such a debt to a previous creditor as a justification for an alienation by a widow. Neither the fact that the plaintiff did not contest the mortgages for three years, nor the circumstance that he ultimately compromised the suit instituted by him to contest the sale made in 1906 raises any presumption in favour of the validity

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of the mortgages. The learned Judge has incorrectly stated the facts in connection with that sale and the suit which was brought to impeach it. The sale was effected in favour of one Kartar Singh, and not of Shankar Das as wrongly stated by the Lower Appellate Court; and the plaintiff did not give up the claim until he had received Rs. 600, a matter entirely ignored by the Court.

There can be no doubt that the alienee upon whom the *onus* rested has failed to establish any necessity for the previous mortgages; and it is obvious that, if these mortgages cannot bind the reversioner interested in the husband's estate, the purchase of a house by the widow after the sale in dispute cannot be put forward as a justification. Upon the record there is no indication as to the pecuniary circumstances of the widow in 1909 beyond the fact that three years before she had alienated one of the houses for Rs. 3,000 out of which she must have kept some money with herself. Be that as it may, it was clearly the duty of the alienee to prove to the satisfaction of the Court that the transfer was binding upon the plaintiff, and this he has failed to do.

Accordingly we accept the appeal, and reversing the decrees of the Lower Courts allow the plaintiff's claim with costs throughout.

*Appeal accepted.*

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