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 UTTAM CHAND
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 DEVI.

We have been referred by counsel for the appellant to certain documents printed on pages 4-8 of Paper Book A in proof of an acknowledgment. The documents, of which these are translations, are contained in certain records which were sent for in the trial Court, but it was not stated there with what object these were sent for. In our opinion it is quite clear that they were not sent for for the purpose of proving an acknowledgment within the meaning of section 19 of the Limitation Act. The law as laid down in Order VII, rule 6 of the Civil Procedure Code is quite clear, and, in our opinion, it would not be fair to the defendants to allow the plaintiff an opportunity of proving that there had been an acknowledgment as now alleged. To allow him to do so would mean that the case would have to be remanded for further enquiry. Unless an acknowledgment be proved the suit is time-barred not only against the property, but also as regards the personal liability of defendants 2 and 3. The appeal accordingly fails and is dismissed with costs.

M. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Le Rossignol and Mr. Justice Abdul Qadir.

SHADI (PLAINTIFF)—*Appellant,*

versus

MST. JEONI AND OTHERS (DEFENDANTS)—

Respondents.

Civil Appeal No 2173 of 1917.

Custom—widow of a co-sharer in a joint estate—right of, to obtain partition—parties of Jullundur District—onus probandi—Riwaj-i-am—Punjab Land Revenue Act, XVII of 1887, section III.

Held, that as the *Riwaj-i-am* of the Jullundur District to which the parties belong is in favour of a widow's right to claim partition of her husband's share in a joint estate the *onus* of proving the negative was on the plaintiff-collateral who alleged it.

Parshotam v. Raj Devi (1), distinguished.

Mussanmat Bhay Bhari v. Wazir Khan (2) and *Abdul Qadir v. Mst. Rabia* (3), referred to, also Rattigan's Digest of Customary Law, article 15.

(1) 219 P. L. R. 1913.

(2) 70 P. R. 1912.

(3) 4 P. R. (Rev.) 1917.

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Feb. 22.

Second appeal from the decree of A. E. Martineau, Esquire, District Judge, Jullundur, dated the 25th June 1917, affirming that of Lala Muna Lal, Subordinate Judge, 1st Class, Jullundur, dated the 16th January 1917, dismissing plaintiff's suit.

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KANWAR NARAIN, for Appellant.

NEMO, for Respondents.

The judgment of the Court was delivered by—

ABDUL QADIR J.—The sole question in this second appeal is whether a widow governed by agricultural custom and having only a life estate in the land left by her husband is entitled to claim partition under any circumstances ?

In this case one Shadi sued *Mussammât Jeoni*, widow of his brother, for a declaration that on account of unchastity she was not entitled to hold her deceased husband's property and that, in any case, she was not entitled to obtain her share of the joint holding by partition. The trial Court found that no unchastity was proved and decided the case against the plaintiff on that point. With regard to the widow's right to ask for partition the decision was in favour of the widow on the authority of *Mussammât Bhag Bhari v. Wazir Khan* (1). The plaintiff appealed and his appeal was rejected by the learned District Judge who agreed with the Court of first instance on both the above points. It was contended before him that the *onus* of proving that a widow has by custom a right to claim partition should have been laid on the widow and was wrongly placed on the plaintiff, and a reference was made to a decision of the Punjab Chief Court, *Parshotam v. Raj Devi* (2), where it is laid down that in a suit in which a widow claims partition, and the parties are governed by custom, the *onus* lies on the widow of proving that she can claim partition. The plaintiff has now come up to this Court on second appeal through Mr. Kanwar Narain who advances the same contention before us.

We think there is no force in this appeal. In the first place, it may be pointed out that *Parshotam v. Raj*

(1) 70 P. R. 1912.

(2) 219 P. L. R. 1918.

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Devi (1) cannot help the appellant because it relates to a case in which the suit claiming partition was brought by a widow. What happened here was that the widow applied to the revenue authorities for partition and it is her husband's brother, the present plaintiff-appellant, who was referred to a civil suit. Moreover, in the case before us, the *riwaj-i-am* of the Jullundur District, to which the parties belong, is in favour of the defendant, and in view of that the trial Court was perfectly justified in placing the *onus* on the plaintiff to prove that the widow was not entitled to obtain partition. The *riwaj-i-am* clearly states that a widow can get her husband's share in a joint estate partitioned.

Section 111 of the Land Revenue Act makes it clear that the widow, as a joint owner of the land (though possessed of limited ownership rights) is entitled to apply for partition. This principle is recognised in *Abdul Qadir v. Mst. Rabia* (2) by the learned Financial Commissioner who has held that a widow has a *locus standi* under section 111 of the Punjab Land Revenue Act to apply for partition. He, no doubt, favours the view that under Customary Law ordinarily a widow would not be entitled to get partition because of the limited nature of her estate, but a reference to paragraph 15 of Rattigan's Digest of Customary Law shows that she may at times obtain a separation of the share to secure her a full participation of the profits in cases in which she cannot secure the full enjoyment of her rights otherwise. This is exactly what it appears that she desired in this particular case, when she applied for partition. As stated by the trial Court the object of her husband's brother seems to be to keep her out of her due share of produce. Under these circumstances, we think that the plaintiff's suit has been rightly dismissed by both the Courts below and, agreeing with them we dismiss this appeal with costs.

Appeal dismissed.

(1) 219 P. L. R. 1918.

(2) 4 P. R. (Rev.) 1915.