APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Fforde.

Mussammat BHOLI BAI (PLAINTIFF) AND NARAIN DAS (DEFENDANT) } Appellants

1924

April 24

versus

DWARKA DAS AND SHAM SARUP (DEFENDANTS) Respondents.

Civil Appeal No. 2152 of 1921.

Hindu Law—claim for partition by one heir against a co-heir who has borne the expense of maintenance of deceased's widow and daughter and of the daughter's marriage—Whether claimant must pay his share in such expenditure and also in the estimated expenses of the marriage of the co-heir himself when no marriage has as yet taken place.

Held, that by Hindu Law an heir is legally bound to provide out of the estate which descends to him maintenance for those persons whom the late proprietor was legally or morally bound to maintain and therefore when defendant 1, one of the sons and heirs, has paid for the maintenance of the widow and daughter of the deceased the other heirs are not entitled to partition of the deceased's property without reimbursing defendant 1 for their share of the expense borne by him.

Held also, that the same principle is applicable to money spent on the marriage of a daughter.

Held however, that an item of Rs. 500 allowed by the lower Appellate Court as expenses for the marriage of defendant 1, himself, was not admissible as the latter had not yet married, especially in view of the decision of the Privy Council in *Ramalinga Annavi* v. *Narayana Annavi* (1).

Second appeal from the decree of Rai Bahadur Lala *Ganga Ram*, Soni, *District Judge, Multan, dated the 19th June 1921, reversing that of* Mirza *Nawazish Ali Khan, Junior Subordinate Judge, Multan, dated the 9th February 1921, and awarding the plaintiff possession by partition.*

(1) (1922) I. L. R. 45 Mad. 489 (P. C.).

1924

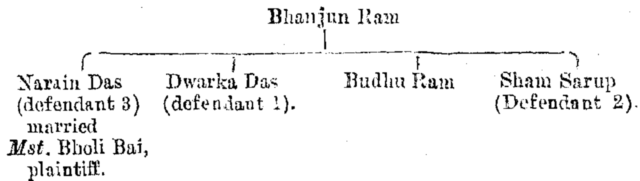
Mussammat BHOLI BAI *v.* DWARKA DAS.

HARGOPAL and FAKIR CHAND, for Appellants.

JAGAN NATH, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—The pedigree table of the parties to the suit out of which the present second appeal arises is as follows :—



The suit is for partition of a house which belonged to Bhanjun Ram, deceased. Each of the sons of Bhanjun Ram owned ¼th of it, and Budhu Ram having been absent for more than seven years his brothers claimed to be entitled to his share. Narain Das made a gift of ¼th of the whole house to his wife *Mussammat* Bholi Bai who brought this suit for partition of her share. The lower Courts have decreed the claim conditional upon *Mussammat* Bholi Bai and her husband Narain Das paying to Dwarka Das Rs. 816-10-8 on account of their 1/3rd share of certain expenses for which the family property is said to have been liable and which were borne by Dwarka Das alone.

From this order the plaintiff and Narain Das, appellant, have filed a second appeal to this Court. The items claimed by Dwarka Das are six in number and are dealt with in the judgment of the learned District Judge on pages 16 and 17 of the paper book. Items 1, 4 and 5 are not contested before us and the appellants' Vakil agrees that his clients should pay 1/3rd of those sums. Item No. 2 is Rs. 1,104 allowed as having been spent by Dwarka Das on the maintenance of his widowed mother and his sister after the death

1924

Mussammat BHOLI BAI *v.* DWARKA DAS.

of Bhanjun Ram. Mr. Har Gopal does not deny that the widow and daughter had a right of maintenance from the property left by Bhanjun Ram. In the principles of Hindu Law by Mulla, 4th edition, paragraph 451, it is stated that "an heir is legally bound to provide out of the estate which descends to him maintenance for those persons whom the late proprietor was legally or morally bound to maintain. The reason is that the estate is inherited subject to the obligation to provide for such maintenance." Bhanjun Ram's heirs were therefore legally bound to provide out of the estate which descended to them maintenance for his widow and daughter. It is not denied that this maintenance was provided by Dwarka Das, and no objection has been raised before us as to the amount fixed by the Courts below. It is, however, contended that Dwarka Das having of his own free will maintained these persons out of his own private property has now no claim to be reimbursed out of the estate of Bhanjun Ram. Mr. Har Gopal has referred to paragraph 475 of Mulla's work in which it is stated that "the claim of a widow for maintenance is not a charge upon the estate of a deceased husband until it is fixed and charged upon the estate which might be done by a decree of Court or by an agreement between the widow and the holder of the estate." We have no quarrel with this *dictum*—Dwarka Das would have been perfectly justified in selling the house in dispute in order to provide for the maintenance of his widowed mother and his sister. Instead of doing this he preserved the estate intact and maintained them out of his own private property. There is no authority exactly on all fours with the facts of the present case, but in our opinion Dwarka Das's brothers are not entitled to partition of their shares in the house in dispute without reimbursing

1924

Mussammat BHOLI BAI v. DWARKA DAS.

Dwarka Das for their share of the expenses borne by him which they as well as he were legally bound to bear out of Bhanjun Ram's estate. It has been admitted that Dwarka Das could have sued his brothers for contribution on account of sums expended by him in maintaining his mother and sister. It is also clear that any sum awarded to him in such a suit could have been made a charge on the family property but it is contended that a claim for more than three years of past maintenance would have been barred by time. Dwarka Das, however, is a defendant and not a plaintiff, and the Statute of Limitations therefore does not apply to his claim. In our opinion he is equitably entitled to get from the appellants 1/3rd of the sums expended by him on the maintenance of his mother and sister.

The same remarks apply to the Rs. 600 spent by him on the marriage of his sister, for it is admitted that the marriage of a daughter is a valid charge upon the estate of her father in the hands of his heirs.

Item No. 6 is one of Rs. 500 allowed by the lower Appellate Court as expense for the marriage of Dwarka Das. Dwarka Das has, however, not yet been married and we do not see how this sum can possibly be allowed especially in view of the decision of the Privy Council in *Ramalinga Annavi and another* v. *Narayana Annavi and others* (1) in which it was held that a member of a joint Hindu family, who is then unmarried, is not, after the institution of a suit for partition entitled to have a provision made in the partition for his marriage expenses, although he marries before the decree in the suit is made. The principle of this decision applies, and counsel for the respondents admits that this sum cannot be allowed.

(1) (1922) I. L. R. 45 Mad. 489 (P. C.).

The total of items 1 to 5 is Rs. 2,313-4-0 and 1/3rd of this is Rs. 771-1-4. We therefore accept the appeal so far as to reduce the amount fixed by the lower Court and to make the decree for partition of the house in favour of the plaintiff conditional on plaintiff and Narain Das paying Rs. 771-1-4 to Dwarka Das. As appellants have succeeded only to a very small extent in their appeal we direct that they should pay 5/6ths of his costs to Dwarka Das, respondent.

C. H. O.

Appeal accepted in part.

APPELLATE CRIMINAL.

Before Mr. Justice Scott-Smith and Mr. Justice Fforde.

ALI—Appellant,

versus

THE CROWN—Respondent.

1924

April 29.

Criminal Appeal No. 88 of 1924.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), sections 339 and 339 (A)—Necessity of strict adherence to the terms of the section in trial of an approver after forfeiture of his pardon.

Four persons were tried by the Sessions Judge of Attock for murder and were acquitted on the 1st of January 1923. A., the present appellant, was an approver in that case, having been granted a conditional pardon under section 337 of the Code of Criminal Procedure. On the 1st of June 1923, the District Magistrate recorded an order that A. had forfeited his pardon, and directed that he should be tried for the murder. He was accordingly tried before the Sessions Judge, convicted, and sentenced to death.