APPELLATE CIVIL.

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

1923

Oct. 10.

JOWALA RAM AND OTHERS (DEFENDANTS) Appellants,

versus

HARI KISHEN SINGH AND OTHERS (PLAINTIFFS) Respondents.

Civil Appeal No. 2269 of 1919.

Abatement—Sufficient cause for making a belated application to set it aside—Ignorance of death—Hindu Law—Widow—Power to gift a reasonable share of her husband's property on occasion of daughter's marriage.

One of the respondents died on the 16th July 1922, and an application to make his legal representative a party and set aside the abatement was not made until the 3rd of April 1923.

Held, that the appellants had shown sufficient cause for not making the application within time, the deceased respondent having no stationary residence and the appellants being ignorant of his death.

Held also, that by Hindu Law it is competent for a Hindu widow to make an absolute gift of a reasonable and moderate portion of her deceased husband's estate on the occasion of her daughter's marriage, and that 70 bighas out of 300 bighas was not an unreasonable amount.

Churaman Sahu v. *Gopi Sahu* (1), and *Ramasami Ayyar* v. *Vengidusami Ayyar* (2), followed.

Second appeal from the decree of Lt.-Col. A. A. Irvine, District Judge, Ambala, dated the 4th August 1919, affirming that of Lala *Munshi Ram, Subordinate Judge, 1st class, Ambala, dated the 31st January 1919, decreeing the plaintiffs' claim.*

TEK CHAND, for Appellants.

GOBIND RAM for G. C. NARANG, for Respondents.

(1) (1909) I.L.R. 37 Cal. 1. (2) (1898) I.L.R. 22 Mad. 113.

1923

JOWALA RAM
v.
HARI KISHEN SINGH.

The judgment of the Court was delivered by—

FFORDE J.—A preliminary objection to this appeal has been raised, namely, that the appeal has abated by reason of the death of Naurang Singh, one of the plaintiffs-respondents.

Naurang Singh died on the 16th July 1922, and an application to make his legal representatives a party was not made until the 3rd April 1923. As the application was not made within the time limited by law the appeal has abated so far at least as Naurang Singh is concerned.

We are asked, however, to set aside the abatement on the ground that the appellants were prevented by sufficient cause from applying within the proper time to continue the appeal. It appears that the deceased respondent had no stationary residence. He sometimes lived in the Muktsar tahsil of Ferozepore District and sometimes at Dayalpur in the Patiala State. The appellants live at Phagwara in Kapurthala State. We are satisfied that the appellants were ignorant of the death of this respondent, and that they have shown sufficient cause for not making the application within the prescribed period of limitation. We accordingly overrule the preliminary objection and set aside the abatement.

The subject matter of the litigation which has resulted in this appeal consists of 70 *bighas* of agricultural land alleged to have been gifted by one *Mussammat* Parmeshri upon the occasion of her daughter's marriage. The facts, so far as it is necessary to state them for the purpose of making our judgment clear, are briefly as follows :—

One Labh Singh died in 1907, leaving real estate consisting of 300 *bighas* proprietary rights and 700 *bighas* of which he was mortgagee.

1923

JOWALA RAM
v.
HARI KISHEN SINGH.

He died sonless, leaving a widow *Mussammat* Parmeshri and one daughter *Mussammat* Malavi mentioned above. Upon his death a life interest in the estate devolved on the widow under Hindu Law. In 1909 the daughter married Madan Gopal, and it is alleged that upon the occasion of this marriage 70 *bighas* of the 300 was gifted by *Mussammat* Parmeshri to her daughter as dowry. These are the 70 *bighas* in dispute. Mutation was entered on the 12th December 1909. *Mussammat* Malavi died in October 1916, predeceasing her mother who died on the 17th June 1917. The plaintiffs-respondents' contention is that after the death of the widow and daughter the property should revert to them, while the defendants-appellants contend that the land having been given as dowry on the occasion of the daughter's wedding, the latter was entitled to it absolutely, and that they (defendants) are entitled to succeed to it as her heirs. Mr. Gobind Ram for the plaintiffs-respondents contends, first of all, that there is no finding of the lower appellate Court to the effect that the land in dispute was in fact gifted to *Mussammat* Malavi by her mother on the occasion of the former's marriage. There is a clear finding to this effect by the Court of first instance, and this finding has been adopted by the learned District Judge, who commences his judgment by stating that the facts of the case appear quite clearly from the lower Court's judgment with which he entirely agrees. The question of the factum of the gift, and of the occasion upon which it was made, do not appear to have been disputed in the lower appellate Court, and we accordingly find against Mr. Gobind Ram's contention on this portion of the case.

The only other point left for our determination is, whether *Mussammat* Parmeshri could under Hindu Law validly gift any of the property which she inherit-

ed from her husband absolutely to her daughter. There are many circumstances under which a Hindu widow can make an absolute gift of a reasonable or moderate portion of her deceased husband's estate, and amongst them is the case of a gift upon the occasion of the marriage of a daughter provided that the gift is confined to a reasonable portion of the estate of the deceased. It has been held in *Churaman Sahu* v. *Gopi Sahu* (1) that it is competent to a Hindu widow governed by the *Mitakshara* law to make a valid gift of a reasonable portion of the immoveable property of her deceased husband to her daughter on the occasion of the latter's *gowna* ceremony, and that such a gift is binding upon the reversionary heirs of her husband. We can see no distinction between a gift made upon the occasion of a daughter's *gowna* ceremony and a gift made as dowry upon the occasion of a daughter's marriage. It has been held in the case of *Ramasami Ayyar* v. *Vengidusami Ayyar* (2) that a mother who had acquired the estate of her deceased son could make a valid gift of a portion of the property to her son-in-law on the occasion of his marriage with her daughter provided that the gift was not found to be otherwise than reasonable in extent.

We are entirely in agreement with the principle established by these two cases, that a gift by the widow of a reasonable portion of the estate of a deceased Hindu for the purpose of dowry, is valid in law, provided that it does not exceed a reasonable portion of the inheritance.

The only question which remains then is as to whether or not the amount gifted in the present suit exceeds a reasonable portion of the immoveable property of the deceased Labh Singh. The portion of

(1) (1909) I. L. R. 37 Cal. 1 (2) (1898) I L. R. 22 Mad. 113.

1923

JOWALA RAM v. HARI KISHEN SINGH.

the gifted land amounts to less than $\frac{1}{4}$th of the proprietary rights of land. The donee would have been entitled, had her mother predeceased her, to the entire possession of the property absolutely.

We find that it is impossible under the circumstances of this case to hold that the portion gifted is not a reasonable portion of the whole inheritance. In the case of *Churaman Sahu* v. *Gopi Sahu* (1) the property in dispute was found to have been a little more than 1/4th and a little less than 1/3rd of the total value of the deceased's immoveable property of the estate. In the present case the total value of the gifted portion amounts to something less than 1/4th of the whole estate. We accordingly hold that in the present case the gift of the land in dispute was both proper and reasonable and conferred an absolute title upon *Mussammat* Malavi.

We accordingly accept the appeal and dismiss the suit with costs throughout.

A. N. C.

Appeal accepted.

(1) (1909) I. L. R. 37 Cal. 1.