

In these circumstances in my judgment these applications must be dismissed with costs.

ZAFAR ALI J.—I agree.

ZAFAR ALI J.

N. F. E.

Applications dismissed.

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Jai Lal.

SANTU RAM AND OTHERS (PLAINTIFFS) Appellants

versus

MST. DODAN BAI (DEFENDANT) Respondent.

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May 6.

Civil Appeal No. 582 of 1923.

Hindu Law—Widow—right of—to acknowledge or pay her husband's time-barred debts.

Held, that under the Hindu Law a widow is entitled to bind the estate of her husband by acknowledging or paying debts contracted by the husband which have become barred by time, but which were not repudiated by him during his lifetime, and that it is immaterial whether the debts became time-barred during the husband's lifetime or after his death. The duty of the widow to pay the time-barred debts of her husband is based on her pious obligation to discharge all his liabilities.

Chimanji Govind v. Dinkar Dhondev (1), followed.

Bhagwat Bhaskar v. Nivratti Sakharam (2), distinguished.

Second appeal from the decree of D. Johnstone, Esquire, District Judge, Multan, dated the 19th December 1922, affirming that of Lala Ganesh Das, Senior Subordinate Judge, Muzaffargarh, dated the 13th May 1921, directing the defendant to pay to the plaintiffs the sum of Rs. 2,659-10-0.

HAR GOPAL, for Appellants.

V. N. SETHI, for Respondent.

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The judgment of the Court was delivered by—

JAI LAL J.—On the 15th of January 1921, the appellant instituted a suit against the respondent for the recovery of Rs. 2,659-10-0, principal and interest, due on a balance struck by the latter. The defendant raised various pleas but the one, with which we are now concerned, was that the estate of her deceased husband in her hands was not liable for the payment of the debt in question. The allegation of the plaintiff was that the debt was contracted by the husband of the defendant and that the balance was struck by the defendant, his widow, after his death. It appears that when the husband died the amount due by him to the plaintiff had already become time-barred. The question that we have to determine on this appeal is whether under the Hindu Law a widow can acknowledge liability for a debt which was due from her husband but had already become barred by time before his death so as to bind the estate of the husband in her hands. The learned District Judge has answered the question in the negative and has declined to give the plaintiff a decree against the estate of the deceased.

The main ground given by the District Judge in support of his view is that as the husband of the defendant had allowed the debt to become time-barred during his lifetime, it may reasonably be inferred that he had declined to pay it and had therefore repudiated liability for the same. The learned Judge following *Bhagwat Bhaskar v. Nivratti Sakharam* (1) held that the widow was not entitled to bind the estate for the payment of such a debt. *Bhagwat Bhaskar v. Nivratti Sakharam* (1) did not relate to

the payment of a debt and there had been an express repudiation of the contract by the husband in a suit which was brought against him in his lifetime, and consequently it was held that the widow could not compromise the matter by recognising the contract after her husband's death when the limitation for enforcing it had expired so as to bind the estate. The facts in the present case are distinguishable. There had been no repudiation by the husband in this case and we do not think that the mere fact that the debt had become barred by time in his lifetime amounts to a repudiation by him of liability therefor.

The learned Counsel for the appellant contends that the present case was fully covered by *Chimanji Govind v. Dinkar Dhondev* (1). The report of that case shows that the debt had become barred by time during the lifetime of the husband and the widow acknowledged it after his death. The estate of the husband was held to be liable for the debt owing to its acknowledgment by the widow. There is ample authority in support of the proposition that a widow is entitled to bind the estate of her husband by acknowledging or paying debts contracted by the husband which have become barred by time, and we do not see any difference between a debt which had become barred by time during the lifetime of the husband and the one which becomes so barred after his death, as the duty of the widow to pay the time-barred debts of her husband is based on her pious obligation to discharge all his liabilities.

The consequence is that the plaintiff is entitled to a decree for the amount claimed against the estate of Jhangji Ram, the deceased husband of the defendant,

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and accepting the appeal with costs throughout we modify the decree passed by the Courts below accordingly.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Agha Haidar.

FATEH ALI AND OTHERS (PLAINTIFFS) Appellants

versus

GEHNA AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 318 of 1923.

Mortgage—prior mortgagee purchasing the rights of a subsequent mortgagee—whether he loses the rights secured to him under his prior mortgage—presumption.

Held, that a prior mortgagee by purchasing the rights of a puisne mortgagee does not lose the rights which had been secured to him by the earlier mortgage, even though the puisne mortgagee had been, according to the terms of the mortgage taken by him, authorized to redeem the prior mortgage. In such cases the presumption is that he intended to keep alive the prior security and would be entitled to fall back upon it in case of necessity.

Tenison v. Sweeny (1), and *Miln v. Walton* (2), referred to.

First appeal from the decree of Rai Sahib Lala Murari Lal, Khosla, Subordinate Judge, 1st class, Sialkot, dated the 22nd December 1922, declaring that the defendants cannot redeem the land in suit till they pay interest on the sum of Rs. 2,600.

G. C. NARANG and MAYA DAS, for Appellants.

S. A. NASIR and DHANPAT RAI, for Respondents.

JUDGMENT.

TEK CHAND J.

TEK CHAND J.—On the 13th of February 1914 defendants 4, 5 and 6, Nagahia, Sultan and Babu,

(1) (1844) 1 Jones & Lat. 710, 717. (2) (1843) 60 R. R. 184.