

I would accordingly accept the appeal and dismiss the plaintiffs' suit with costs.

TEK CHAND J.

TEK CHAND J.—I agree.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

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

MUSSAMMAT TARA DEVI (PLAINTIFF) Appellant

versus

SARUP NARAIN DECREE-HOLDER (DEFENDANTS)
KARAM CHAND JUDGMENT-DEBTOR Respondents.

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Dec. 5.

Civil Appeal No. 1398 of 1925.

Hindu Law—Mother's claim for maintenance or residence—whether a charge on family property—as against a creditor who has lent money for family necessities—Mother and other women—distinction between—if any.

Held, that it is well settled that a Hindu widow's claim for maintenance or residence is *not* a charge on the family property unless it is fixed thereon by a decree, etc., and that it cannot be enforced against a creditor who has lent money for family necessities. There is no distinction between the position of a mother and that of other women under Hindu Law in this respect.

Mulla's Hindu Law, paras. 475, 478-A, Mayne's Hindu Law, paras. 464, 465, and Gour's Hindu Code, sections 83, 89 and 92, referred to.

First appeal from the decree of Sardar Sewa Singh, Subordinate Judge, 1st class, Amritsar, dated the 4th March 1925, dismissing the plaintiff's suit.

HUKAM CHAND and L. C. MEHRA, for Appellant.

DURGA DAS and BHAGWAN DAS, for Respondents.

JUDGMENT.

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BEHDE J.—The following short pedigree-table will explain the relationship of the parties :—

	RAM CHAND	
Hem Raj (adopted son)		Mussamat Tara Devi (Plaintiff)
		Karam Chand (Defendant No. 2).

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The house in dispute was attached and sold in execution of a money-decree for Rs. 903 against Karam Chand. The plaintiff, who is the mother of Karam Chand, raised an objection to the attachment in the execution proceedings but the objection was disallowed. She then instituted the present suit to establish her claim. The suit was dismissed by the Senior Subordinate Judge, Amritsar, and she has now filed an appeal in this Court.

Plaintiff based her claim on two grounds, *viz.* (i) that the house was sold to her orally by Ram Chand, her father-in-law, and (ii) that she has, at any rate, a right of maintenance and residence under Hindu Law and the house should have been sold subject to these rights.

As regards the first point, admittedly no document was executed in respect of the sale and the alleged sale by the father-in-law of which no definite particulars are forthcoming seems to be fictitious.

On the second point, the trial Court has found that the debt which resulted in the decree against Karam Chand was incurred for family necessity. This finding is based on the statement of Karam Chand who is a son of the plaintiff, and is not shown to be hostile to her in any way. There is also a copy of a mortgage-deed with respect to the house in dispute on the record which was produced on behalf of the plaintiff herself. This deed also shows that Karam Chand

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was carrying on a family business and thus lends support to Karam Chand's statement.

The proposition of Hindu Law is well-established that a widow's claim for maintenance or residence is *not* a charge on the family property unless it is fixed thereon by a decree, etc., and that it cannot be enforced against a creditor who has lent money for family necessities (*vide* Mulla's Hindu Law, paras. 475, 478-A, Mayne's Hindu Law, paras. 464/465, Gour's Hindu Code, sections 83, 89 and 92). It does not appear that there is any distinction between the position of a mother and that of other women under Hindu Law in this respect. The contentions of the learned counsel for the appellant to the contrary do not appear to be well-founded.

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I would dismiss the appeal with costs.

SHADI LAL C.J.

SIR SHADI LAL C. J.—I concur.

A. N. C.

Appeal dismissed.