

## APPELLATE CIVIL.

*Before Dalip Singh and Agha Haidar JJ.*

GAUHAR (DEFENDANT) Appellant

*versus*

SHAFI MUHAMMAD (PLAINTIFF) } Respondents.  
LALLA (DEFENDANT) }

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March 12.

Civil Appeal No. 3017 of 1924.

*Custom—Alienation—necessity—expenses on second marriage—after first wife's death.*

*Held*, that on general principles there is no reason why the expenses incurred on the *second* marriage of an agriculturist in the Punjab should not be considered a legal necessity.

*Muhammad Din v. Thakar Singh* (1), distinguished.

*Second appeal from the decree of Lala Chuni Lal, District Judge, Gurdaspur, dated the 6th August 1924, reversing that of Pandit Daulat Ram, Subordinate Judge, 2nd class, Gurdaspur, dated the 22nd February 1924.*

NAWAL KISHORE, for Appellant.

*Nemo*, for Respondents.

The judgment of the Court was delivered by—

AGHA HAIDAR J.—The facts leading up to the present appeal are as follows:—Lalla, defendant No. 1, and Gauhar, defendant No. 2, were brothers. By a sale deed, dated the 3rd January, 1917, Lalla transferred the property in suit to Gauhar, defendant No. 2, for a sum of Rs. 1,500. The son of Lalla, namely, Shafi Muhammad, has brought the present suit for a declaration that the alienation of the year 1917 shall not affect his reversionary interests on the death of the alienor. The trial Court dismissed the

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plaintiff's suit. The plaintiff went up in appeal to the District Judge. The learned District Judge only maintained the two items of Rs. 82 and Rs. 850 out of the sale consideration. As to the rest of the items detailed at page 7 of the paper book, he allowed the plaintiff's claim subject to the proviso that when succession opens the plaintiff shall be entitled to get possession of the property in suit on payment of Rs. 932. The defendant has come up to this Court in second appeal. It is to be regretted that the respondent is not represented in this Court.

The main point which was argued before us is the item of Rs. 400 which, according to the sale deed in suit, was taken to meet the expenses of the contemplated marriage of the alienor, Lalla. The learned Judge has held that because Lalla was a man aged about 45 and had a son alive, therefore, the marriage which he proposed to enter into was not a legal and valid necessity and his son was not bound by the alienation to the extent of Rs. 400. We think there is a considerable force in the argument put forward by the appellant. He contends that the first marriage being admittedly a necessity in the case of a bachelor, there is no reason why a second marriage should not be held to be a necessity as well and the fact that the alienor had a son alive does not make any difference. The case of *Muhammad Din and others v. Thakar Singh and Jhanda Singh* (1), quoted by the lower appellate Court in support of the proposition that the marriage of Lalla in the circumstances of the present case was not a legal necessity cannot be treated as a binding authority as regards the question before us. It is true that there are

(1) (1921) 60 I. C. 461.

certain observations in *Muhammad Din v. Thakar Singh* (1) which seem to lend some support to the plaintiff's contention, but having regard to the fact that the appeal was dismissed because the necessary certificate under section 41 (3) of the Punjab Courts Act was not forthcoming the said observations as to the validity or otherwise of the necessity can only be treated as a mere *obiter dicta*. We have to consider the matter on general principles and we do not see any reason why the second marriage of an agriculturist in the Punjab, even if he has a son alive by his first wife, should not be considered a legal necessity. We, therefore, allow this item of Rs. 400.

Now remain three items, namely, 3, 4 and 5. The total of these items comes to about Rs. 168 only. The amount of the sale consideration is Rs. 1,500 and consideration and necessity having been proved for a sum of Rs. 1,332, the balance of Rs. 168 is a comparatively small sum and the mere fact that the defendant cannot prove necessity for the same should not prevent him from retaining the property which he had obtained under the sale deed, dated the 3rd January, 1917.

We, therefore, allow the appeal and modifying the decree of the lower appellate Court dismiss the plaintiff's suit with costs in all Courts.

A. N. C.

*Appeal accepted.*

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