

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nándbhái Haridás.

1886.
September 14.

CHIMNAJI GOVIND GODBOLE, (ORIGINAL DEFENDANT, No. 2), APPELLANT, v. DINKAR DHONDEV GODBOLE, DECEASED, BY HIS HEIR, BHASKAR SHANKAR, (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Widow—Alienations by a widow of her husband's estate, in order to pay his time-barred debts—Widow's status as distinguished from that of a manager—Evidence—Copy of a copy—Practice—Objections taken in appeal to a document admitted in the Court of first instance.

According to the Hindu law, a widow is competent to alienate her husband's estate for the purpose of paying his debts, even though they may be barred by the law of limitation. Her alienations for such a purpose are legal and binding on the reversionary heirs.

A widow stands in a different position from that of a manager of a joint family. The latter can act only with the consent, express or implied, of the body of co-parceners. In the widow's case, the co-parceners are reduced to herself, and the estate centres in her. She can, therefore, do what the body of co-parceners can do, subject always to the condition that she acts fairly to the expectant heirs.

The rights of these heirs impose, on persons dealing with a widow, the obligation of special circumspection, failing which they may find their securities against the estate to be of no avail after the widow's death.

If no objection is taken, in the Court of first instance, to the reception of a document in evidence, it is not within the province of the Appellate Court to raise or recognise it in appeal.

SECOND appeal from the decision of G. Jacob, Assistant Judge, amending the decree of L. G. Fernandez, First Class Subordinate Judge of Ratnágiri, in Suit No. 231 of 1882.

This was a redemption suit. The plaintiff (respondent) was the cousin and heir of the mortgagor, Dinkar Dhondev Godbole.

The second defendant (appellant) was the assignee of the original mortgagee. The property in dispute was mortgaged for Rs. 32, in or about the year 1823 A. D., by the said Dinkar Dhondev Godbole to one Bápu Bhat, the father of the first defendant. The mortgage was accompanied with possession.

In 1833, Chimnáji, the second defendant, paid off the mortgage debt due to Bápu, obtained from him an assignment of his mortgage

* Second Appeal, No. 237 of 1884.

lien, and took possession of the property. This he appeared to have done with the knowledge and concurrence of the mortgagor.

Dinkar having died, Sávitribái, his widow, in the year 1839 executed, in favour of Chinnáji, a bond in which she acknowledged her obligation to pay off a time-barred debt of Rs. 130 which had been contracted by her husband twenty-six years previously, and for which he had passed a promissory note. As security for this debt and for the amount due upon the mortgage of 1823 she by the new bond mortgaged the same property to Chinnáji. The material portion of this mortgage bond (exhibit No. 33) was as follows:—

“ My husband borrowed from you in A.D. 1813 the sum of Rs. 130, for the repayment of which he has passed to you a promissory note. *I am bound to pay the aforesaid sum of money.....*My husband had mortgaged *thikán* Chipákar to Bápu Bhat bin Ganesh Bhat for Rs. 32. You paid off this sum with interest thereon, amounting in all to Rs. 44-4, and reduced the *thikán* aforesaid in 1833. You have since been in possession. Do you continue in possession as before. I hereby mortgage the said *thikán* to you as a security for the aforesaid sums of Rs. 130 and Rs. 44-4. When I repay these sums with interest, I shall take back from you both the *thikán* and this bond.”

A few months after Sávitribái had passed this bond, Chinnáji obtained from the plaintiff, (her husband's heir), a writing, whereby he approved and ratified the mortgage effected by the widow.

Subsequently, Sávitribái passed two other mortgage bonds in favour of Chinnáji—one in 1862 and the other in 1869—partly in renewal of the bond of 1839, and partly in consideration of further advances to herself, amounting, in all, to Rs. 418-8. Neither of these later bonds was ratified by the plaintiff.

On Sávitribái's death, the plaintiff Bháskar filed the present suit, as the cousin and reversionary heir of Dinkar Dhondey, to redeem the mortgage of 1823.

The defendant, Chinnáji, contended that the plaintiff was not entitled to redeem the property without payment of the

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whole sum of Rs. 418-8 with interest, which included the sums in respect of which Sávitribái, as Dinkar's widow, had executed the aforesaid mortgages. The Court of first instance decreed redemption upon plaintiff's paying the whole of the amount claimed by the defendant under the mortgages executed by Sávitribái.

On appeal, the Assistant Judge held that the plaintiff was only bound to pay the original mortgage debt contracted by Dinkar Dhondev, and he amended the decree of the first Court accordingly, by ordering redemption upon payment of Rs. 32 to the defendant Chimnáji. He was of opinion that Sávitribái was not competent, under Hindu law, to revive her husband's debt of Rs. 130, which was time-barred, and that the further charges which she had created upon the estate were not supported by any legal necessity.

Against this decision, Chimnáji preferred a second appeal to the High Court.

Mahádev Chimnáji Apte for the appellant:—A widow is bound to pay her husband's debts, and may properly do so, even though they are barred by limitation—West and Bühler, (3rd ed.), p. 102. She is under a pious obligation to pay his debts, and if that obligation exists at all, it exists for all purposes—*Tilokchand Hindumal v. Jitmal Sudráam*⁽¹⁾ and *Bhála Nána v. Parbhu Hari*⁽²⁾. In the present case, the first mortgage No. 33 effected by the widow in 1839 was acknowledged and approved by the plaintiff in exhibit 53. That mortgage, therefore, is binding on him. The lower Appellate Court was wrong in excluding exhibit 53 from consideration, on the ground that it was a copy of a copy. No objection was taken to its admissibility in the Court of first instance. None, therefore, could be taken in appeal—*Shivráam v. Nawji*⁽³⁾ and *Rám Gopál Roy v. Gordon Stuart and Co.*⁽⁴⁾ As to the subsequent mortgages, they, too, are binding on the plaintiff. They were passed partly in renewal of the first mortgage and partly in consideration of further advances made to the widow, to enable her to pay off debts due to creditors for her maintenance.

(1) 10 Bom. H. C. Rep., 206.

(2) I. L. R., 2 Bom., 72.

(3) Printed Judgments for 1854, p. 219.

(4) 14 Moore's I. A., pp. 453, at p. 462.

Hon. Rāv Sāheb V. N. Mandlik for the respondent:—The writing (No. 53), relied on by the defendant as a ratification of the mortgage by the plaintiff, is only a copy of a copy, and is inadmissible under section 63 of the Indian Evidence Act (I of 1872). The Privy Council case of *Rām Gopāl Roy*⁽¹⁾ was decided before the Evidence Act was passed. Therefore it does not apply. The mere recital in a bond, that a debt is contracted under a legal necessity, is not of itself evidence of such necessity—*Rajlakhi Debia v. Gakal Chandra Chowdhry*⁽²⁾ and *Sikher Chand v. Dulputty Singh*³. Here there is no evidence to show that the advances made to the widow were for purposes warranted by the law. A widow's power of alienation does not exceed that of a manager of a joint family. A manager cannot dispose of the family property without the consent, express or implied, of the general body of co-parceners. It has been held that he cannot even acknowledge a barred debt without special authority from his co-parcener—West and Bühler, (3rd ed.), p. 317; *Gopālndrāin Mozoomdār v. Muddomutty Gupte*⁽⁴⁾; *Chinnaya Nayudu v. Gurunatham Chetti*⁽⁵⁾.

Persons dealing with the widow are bound to inquire into the necessity of the alienation. A mere declaration of necessity does not justify a purchase from a widow—*Gungāgobind Bose v. Sreemutty Dhunnee*⁽⁶⁾.

WEST, J.:—The widow Sāvitrībāi would, according to Hindu law, be at liberty, and indeed bound, to pay her husband's debts out of the estate she inherited from him—West and Bühler, (3rd ed.), pp. 102, 395, 777. This moral obligation could not be obliterated by the circumstance that the law of limitation barred or did not bar a suit against the widow, in 1839, for the recovery of the debts in question. See *Bhālā v. Parbhau*⁽⁷⁾. She filled the ownership of the estate, and could deal with it for all purposes consistent with her duty of husbanding its substance honestly for her successors.

(1) 14 Moore's I. A., 453.

(2) 3 Beng. L. R., 57, P. C.

(3) I. L. R., 5 Calc., 363.

(4) 14 Beng. L. R., at p. 46, 47.

(5) I. L. R., 5 Mad., 169.

(6) 1 Calc. W. R., Civ. Rul., 60.

(7) I. L. R., 2 Bom., 72; and see *Bhāu v. Gopāla*, *post*, page 325.

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It was not any breach of this duty if she paid the debts of the late proprietor; the estate passed to her as an aggregate, property and obligations together, and she was at least justified in applying the one to satisfying the other. Her special obligation as a widow towards her husband made the payment more incumbent on her than on a more distant connexion. The Vyavahára Mayúkha, Ch. V, sec. iv, para. 17, prescribes this duty, and Ch. IV, sec. viii, para. 4, allows the alienation of the estate by a widow for pious purposes, of which none can be more sacred in her case than the payment of her husband's debts—*Lukmeerám v. Khooshalce*⁽¹⁾. A manager stands in a different position. He can act only with the assent, express or implied, of the body of co-parceners. In the widow's case, the co-parceners are reduced to herself, and the estate centres in her. Sávitribái can, therefore, do what the body of co-parceners can do, subject always to the condition that she acts fairly to the expectant heirs.

The rights of these heirs impose, on persons dealing with a widow, an obligation of special circumspection, failing which they may find their securities against the estate of no avail after the widow's death. The surest safeguard is a distinct recognition of the widow's transaction by those interested next in succession to her. The mortgagee in the present case seems to have been quite alive to the necessity or advantage of an express concurrence by Bháskar, the next heir, in the mortgage made to him by the widow. He obtained from Bháskar the original of exhibit 53. This document has been excluded by the Assistant Judge as being the copy of a copy; but its reception was not objected to, and the copy, from which it was taken, was filed in a suit between the predecessors in title of the present parties. This last fact accounts, probably, for no objection being taken to the admission of exhibit 53; but however that may be, no objection was taken, and it was not within the province of the Assistant Judge to raise or recognise it in appeal. This document refers to another document, a mortgage of the same year, *Shake* 1761 (A.D. 1839-40), which can be no other than the mortgage exhibit 33

(1) Borr., 455.

produced by the plaintiff Bháskar himself. But by this document, exhibit 53, Bháskar acknowledges and adopts the mortgage No. 33 made by the widow Sávitribái. There can be no further question of her fairness in the transaction towards Bháskar when he himself has adopted it.

For the subsequent bonds passed by Sávitribái to the defendant the same sanction as against Bháskar and his sons is wanting. They embrace advances made needlessly to Sávitribái, and they go to impose on the successors to Sávitribái a burden of compound interest, to which they might not have assented, and which they might have averted had they been consulted. So far the transaction may be regarded as void against them.

The plaintiffs must pay double the sum secured by the mortgage No. 33 and the costs of the suit and the appeals within six months as the condition of redeeming the property, or be for ever foreclosed.

Decree amended.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nánabhái Haridás.*

BHA'U BA'BA'JI, (ORIGINAL DEFENDANT), APPELLANT, v. GOPA'LA
MAHIPATI, (ORIGINAL PLAINTIFF), RESPONDENT.*

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November 10.

Hindu law—Widow—Obligation of widowed daughter-in-law in possession of father-in-law's estate to pay his debts—Sale of part of estate by her for that purpose—Suit by reversioner to have sale declared void beyond her life-time—Widow not bound to evade payment by availing herself of protection of the Dekkhan Agriculturists' Relief Act—Necessity justifying sale.

A childless Hindu widow, having succeeded to the estate of her father-in-law, sold a portion of it, in order to pay off his debts. The estate was situate in a district in the Presidency of Bombay subject to the Dekkhan Agriculturists' Relief Act (XVII of 1879). The plaintiff, as reversioner, sued for a declaration that the sale was void beyond the life-time of the widow. Both the lower Courts made the declaration prayed for by the plaintiff, on the ground that there was no necessity for the sale, as the widow might have availed herself of the provisions of the Dekkhan Agriculturists' Relief Act. On appeal by the defendant to the High Court

* Second Appeal, No. 671 of 1884.

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