

1895.

DAVALAVA
v.
BHIMAJI
DHONDO.

It was, indeed, urged by appellant's pleader that appellant No. 4 could not act as guardian of appellants Nos. 1 and 2, as she was their mother, and our attention was drawn to *Sita Rám v. Amir Begam*⁽¹⁾ and *Bábu v. Shiváppa*⁽²⁾. The point thus urged does not appear to arise in the present case. The widow and the son represented the estate, and it was immaterial whether the widow could or could not act as guardian. It may also be noted that, under Mahomedan law, the sons make the daughters residuary heirs only, and it is easy to understand the reason why the minor daughters were passed over by the creditor who brought the son's name on the record. We accordingly confirm the decree of the lower Court, and reject the appeal with costs on appellants.

JARDINE, J.:—I concur. It has been admitted by the pleader for the appellants that the whole property had been mortgaged and was liable for the debt, and passed under the decree. If, then, the appellants were members of a Hindu family governed by the Mitákshara law, there would be no difficulty in upholding the decision of the District Judge on the strength of *Hari v. Jairám*⁽³⁾ and the judgments of the Privy Council there expounded. The present case is one of a Mahomedan family, to which in *Khurshelbibi v. Keso*⁽⁴⁾ similar principles were applied. I follow that authority.

Decree confirmed.

(1) I. L. R., 8 All., 324.

(2) I. L. R., 14 Bom., 597.

(3) P. J., 1895, p. 25; ante p. 199.

(4) I. L. R., 12 Bom., 101.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Fulton.

KRISHNAJI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. MAHESHVAR LAKSHMAN GONDHALEKAR (ORIGINAL DEFENDANT No. 1), RESPONDENT.*

Mortgage—Agreement in a subsequent deed to postpone redemption until payment of another debt—Agreement valid.

* Second Appeal, No. 277 of 1893.

1895.

February 14.

An agreement contained in a deed executed for a fresh consideration subsequent to a mortgage-deed to postpone redemption of the mortgage until the payment of another debt which has not been made a charge on the land, is valid.

THIS was a second appeal from the decision of T. Walker, Assistant Judge of Ratnágiri, amending the decree of Ráo Sáheb R. B. Chitalé, Subordinate Judge of Dápoli.

Suit for redemption. The plaintiff sued to redeem a mortgage. The defendants contended that the plaintiffs were not entitled to redeem without also paying off certain money debts secured by bonds which (they alleged) were by the terms of the bonds to be paid off before the mortgage was redeemed.

The lower Court passed a decree for redemption on payment of the bonds as well as of the sum due upon the mortgage.

The plaintiffs appealed to the High Court.

Vándeo R. Jyotekar, for the appellants (plaintiffs):—The Judge was wrong in holding that we could not redeem the mortgage before the amount of the money bonds was paid. The decree passed by the Judge has clogged the equity of redemption. Supposing that the amount of the money bonds was a charge on the land, still as the suit was filed after the expiration of twelve years from the dates of the bonds, the claim for the amount is time-barred—*Naráyan v. Ráoji*⁽¹⁾.

[SARGENT, C. J., referred to *Yashwant v. Vithoba*⁽²⁾.]

Ganesh K. Deshamúch for the respondent (defendant):—We rely on *Hari Mahádáji v. Bálambhat*⁽³⁾; *Sundar Malhár v. Bápúji Shridhar*⁽⁴⁾.

SARGENT, C. J. :—Having regard to the decision in *Yashwant Shenvi v. Vithoba Sheti*⁽²⁾ affirming the validity of an agreement embodied in a mortgage-deed to postpone redemption of the mortgage until payment of another debt which had not been made a charge on the land, we are unable to hold that a similar agreement contained in a subsequent deed executed for a fresh consideration is invalid.

We, therefore, confirm the decree with costs.

Decree confirmed.

(1) P. J., 1884, p. 254.

(2) I. L. R., 12 Bom., 231.

(3) I. L. R., 9 Bom., 233.

(4) I. L. R., 18 Bom., 755.

1895.

KRISHNÁJI
2.
MA'HESHVAR
LAKSHMAN
GONDHAR-
KAR.