1900
DEC. 19 & 20.

APPELLATE CIVIL.

28 C. 308

be ejected until a certain time had expired after the notice was served. The circumstance that the landlord has called upon the tenant to quit at a time when he could not compel him to do so does not, we think, vitiate the notice. A notice to quit without specifying any period would be open to the same objection on the ground that it was a notice to quit at once."

The suit for ejectment founded on the notice in question was not brought until two years after the expiry of the year 1303, and it is obvious therefore that the defendants could not have been prejudiced by reason of the notice not specifying the time at which they would be liable to ejectment under the provisions of s. 49 of the Act.

The appeal is dismissed with costs.

Appeal dismissed.

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28 C. 311.

[311] *Before Mr. Justice Banerjee and Mr. Justice Brett.*

GOPAL CHANDRA PAL *(Plaintiff)* *v.* RAM CHANDRA PRAMANIK AND ANOTHER *(Defendant).** [15th January, 1901.]

Hindu Law—Dayabhaga—Heir—Whether husband or brother is the preferential heir to moveable property obtained from her father, after her marriage, by a childless woman—Nuptial presents—Whether additions made to ornaments subsequent to marriage should be treated as part of the nuptial presents.

According to the Bengal School of Hindu Law the brother is the preferential heir to the husband to moveable property obtained from her father, after her marriage, by a woman who has died childless.

***Judoo Nath Sircar* v. *Bussunt Coomar Roy Chowdhry* (1) referred to.**

Additions made subsequent to her marriage to ornaments given by a father to his daughter at the time of her marriage must be treated as being in the nature of gifts subsequent to marriage, and as not being governed by the law applicable to nuptial gifts.

THIS appeal arose out of an action brought by the plaintiff to recover certain ornaments from the defendants. The allegations of the plaintiff were that the ornaments were presented to his wife, Tarangini, by her father at the time of her marriage; that subsequently her father made additions to these ornaments and got them made again; that his wife with these ornaments came to her brother's (defendant No. 1's) house and there she died on the 4th Aswin 1304 B. S., and that, although he made a demand of these ornaments from the defendant he did not deliver them to him, and hence the suit was brought. The defence mainly was, that the father of the deceased Tarangini did not give her any ornaments at the time of her marriage, that he did not subsequently make additions to the ornaments alleged to have been given and did not get them made again; that Tarangini brought certain ornaments with her, but *that* they were pledged by her before her death. The Court of First Instance having held that the husband was the preferential heir to the brother regarding the moveable properties given by the father to his daughter at the time of her **[312]** marriage gave a partial decree. But as regards the ornaments given by the father after marriage and as to the subsequent additions, he held that the brother was the preferential heir.

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* Appeal from Appellate Decree, No. 763 of 1899, against the decree of L. Palit, Esq., Officiating District Judge of Jessore, dated the 11th of February 1899, affirming the decree of Babu Sham Chand Roy, Subordinate Judge of that District, dated the 11th of June 1898.

(1) (1873) 19 W.R. 264.

The Lower Appellate Court on an appeal by the plaintiff upheld the decision of the First Court.

From this decision the plaintiff appealed to the High Court.

Babu *Sreenath Dass* (with him Babu *Brojo Lal Chuckerbutty*) for the appellant.

Babu *Saroda Prosunno Roy* for the respondent.

The judgment of the High Court (BANERJEE and BRETT, JJ.) was as follows :—

Two questions have been raised in this appeal by the learned vakil for the plaintiff appellant : *First*, whether according to the Bengal School of Hindu Law the husband or the brother is the preferential heir to moveable property obtained from her father, after her marriage, by a woman who has died childless, and *second*, whether additions made subsequent to her marriage to ornaments given by a father to his daughter at the time of her marriage should be treated as a part of the nuptial presents and as devolving according to the rule of law applicable to nuptial presents.

Upon the first question, though there is no doubt some conflict between the Dayabhaga on the one hand and the Daya Tatwa and the Dayakrama Sungraha on the other, the Dayabhaga, which is the work of paramount authority in the Bengal School, is clearly in favour of the brother's preferential right. This is evident from paragraphs 10 and 29 of s. III of Chapter IV of that treatise.

The learned vakil for the appellant contends that neither paragraph 10 nor paragraph 29 relates to property obtained by gift from the father.

We are unable to assent to this contention. It is clearly opposed to the language of the Dayabhaga. It is also opposed to the interpretation of the Dayabhaga as given in the case of *Judoo Nath Sircar* v. *Bussunt Coomar Roy Chowdhry* (1). It is true the point for decision in that case was not precisely the same as **[313]** the one now under consideration, but the reasoning upon which that decision is based is clearly applicable to this case, and we see no reason for dissenting from the view adopted in that case. That view, we may add, has been accepted as correct in Shama Charan's Vyavastha Darpana, 3rd Edition, pages 246 to 248 and 262, and also by Mr. Mayne in his Treatise on the Hindu Law and Usage, 6th Edition, page 875.

We were referred to a passage in Babu Golap Chunder Sircar's Hindu Law, page 284, in which it is said that with reference to a father's gifts other than nuptial presents the husband should come before the brother. The learned author however is careful to say, after noticing that there is a doubt about the authenticity of a particular passage in the Dayabhaga, namely Chapter IV, s. III, paragraph 33 ; " so the following order of succession should be taken as provisional only being not settled yet in that respect as well as in other respects." So that we have not here any decided opinion of the learned author on the point. Nor does he state his reasons for adopting the order of succession given by him ; and he remarks that the Bengal authorities are in conflict with each other with reference to succession to *stridhan*. Towards the conclusion of the chapter to which reference is made, the learned author moreover cites, apparently with approval, the case of *Judoo Nath Sircar* v. *Bussunt Coomar Roy Chowdhry* (2). The first question raised in the case must, therefore, be answered in favour of the preferential right of the brothers.

(1) (1878) 19 W. R. 264. (2) (1878) 19 W. R. 264.

1901 JAN. 15.

APPELLATE CIVIL.

28 C. 311.

As to the second contention, it is enough to say that the subsequent additions made to the ornaments, having regard to the nature of the additions, must be treated as being in the nature of gifts subsequent to marriage, and as not being governed by the Law applicable to nuptial gifts.

The appeal, therefore, fails, and must be dismissed with costs.

Appeal dismissed.

28 C. 314.

[314] *Before Mr. Justice Prinsep and Mr. Justice Handley.*

HARA KUMARY CHOWDHURANI AND OTHERS (*Petitioners*) *v.* R. SAVI (*Opposite Party*).* [5th July, 1900.]

Mortgage—Dishonestly or fraudulently preventing debt being available for creditors —Debt—Attempt—Application to withdraw money paid into Court—Penal Code (Act XLV of 1860), *ss,* 422 *and* 511.

The petitioners mortgaged their property, and under the terms of the agreement certain persons were appointed managers of the estate under certain conditions in regard to payment of the monies realized by them. In execution of a decree obtained by the managers in a suit brought in the names of the petitioners a certain *putni talug* was sold for Rs. 3,000. The debtor settled with the petitioners that, on payment of Rs. 1,000, the sale was to be set aside. The money was paid into Court, and an application was made by the petitioners for the withdrawal of this money. The Court, however, made no order on this application. The petitioners were convicted of an attempt to commit an offence under s. 422 of the Penal Code.

Held, that having regard to the relation between the petitioners and their managers, at whose instance the proceedings were taken, it could not properly be said that an attempt to commit an offence under s. 422 of the Penal Code was made. That the interference of the petitioners and their application to obtain the money paid into Court might have been breaches of their contract with the mortgagees, but such conduct could not necessarily be regarded as dishonest or fraudulent so as to render them liable to punishment. Their attempt to get this money was more to put an end to the management than to prevent the money from being available for payment of their debt under the mortgage.

Nobin Chunder Mudduck (1) referred to.

IN this case the petitioners mortgaged certain properties to the Eastern Mortgage and Agency Company in consideration of a loan of a lakh of rupees. The mortgage was a simple one, but contained a condition that the entire management of the properties was to be in the hands of Messrs. Garth and Weatherall, the nominees of the mortgagees, and that no change of management was to be effected without the consent of the mortgagees. [315] There were also certain other conditions in regard to payment of the monies relaized by the managers, who were to have entire control of all monies due from the mortgaged properties. In execution of a decree obtained by Messrs. Garth and Weatherall, as managers of their estate in a suit brought in the names of the petitioners and the mortgagors, a certain *Putni taluk* was sold for Rs. 3,000 and arrangements were made to enable the debtor to release his property from the sale on payment of certain money within a certain time. He was unable to fulfil the terms of the agreement, so he went to the

* Criminal Revision, No. 367 of 1900, made against the order passed by C. E. Pittar, Esq., Sessions Judge of Backergunge, dated the 8th of May 1900, affirming the order of N. D. Beatson Bell, Esq., District Magistrate of Backergunge, dated the 26th of March 1900.

(1) (1874) 22 W. R. Cr. 46.