

Before Mr. Justice Phear.

SRIMATI BHAGABATI DASÍ v. KANAILAL MITTER

AND OTHERS.

Hindu Law—Widow—Maintenance how for a Charge on Husbands's Estate 1872
January 8.
Law of Bengal.

As against one who takes as heir, a Hindu widow has a right to maintenance out of the property in his hands. She also has a right to maintenance out of such property in the hands of any one who takes it with notice of her having set up a claim for maintenance against the heir. 9. B L R 15

By the law of Bengal, she has no lien on the property for her maintenance against all the world ir respective of such notice.

THIS was a suit in *formâ pauperis* to have declared the right of the plaintiff as a Hindu widow to reside in the family dwelling-house and to maintenance out of the rents and profits of the said house and premises.

The plaintiff in her petition stated :—

That Ramgabind Mitter, a Hindu inhabitant of Calcutta, died in Aswin 1264 (September 15 to October 14th 1857), leaving one widow the plaintiff, one son the defendant, Kanailal Mitter, then an infant of the age of five years, and four daughters : that at the time of his death, Ramgabind was possessed of no property, moveable or immoveable, except a certain house and premises parts of which constituted his family dwelling-house, and the remainder of which he let out to different tenants, supporting himself and family from the rents received from such tenants, and from his salary as a sircar : that after Ramgabind's death, the plaintiff supported herself and family from the rents received for the house and premises until Kanailal attained the age of 16 years : that in Sraban 1275 (July 15 to August 14 1868) Kanailal attained the age of 16 years, and had since, in spite of the remonstrance of the plaintiff, sold or otherwise disposed of the whole of the house and premises to the defendants, who were in receipt of the rents from the tenants thereof : that the plaintiff was wholly unacquainted with the particulars of the sales or other alienations made by Kanailal which

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were all effected without her consent and most of them without her knowledge, and that when she became acquainted therewith, she had protested against such sales or other alienations, but her protestations were disregarded both by Kanailal Mitter and the purchasers : and that all the defendants at the time of such sales or alienations in their favour were acquainted with the state of Ramgabind's family, and knew of the existence of the plaintiff.

In her written statement the plaintiff further stated :—That Ramgabind in his life-time established a family idol in the family dwelling-house, which idol was, during Ramgabind's life and also while the estate was under the management of the plaintiff, provided for out of the rents and profits of the said estate : that some of the purchases were made by the defendants benami, and that one of the defendants, Dharmadas Paulit, had resold the portion purchased by him to the defendant Anandalal Mitter : that the defendant Naffar Chandra Bose, subsequent to his purchase, called on the plaintiff to remove from, and threatened to eject her from the said family dwelling-house : and that she was dependent for the necessaries of life upon the charity of her friends.

The plaintiff submitted that as widow of Ramgabind she was entitled to be maintained out of the rents and profits of the said house and premises ; that any property, which the purchasing defendants had acquired in the house and premises, was subject to the charge for her maintenance ; that as widow of Ramgabind she was entitled to reside in the family dwelling-house without any let, suit, or hindrance ; and that provision should be made for the daily and periodical worship of the family idol out of the rents and profits of Ramgabind's estate.

The plaintiff prayed that an adequate sum to be fined by the Court should be allowed her for maintenance out of the rents of the said premises ; that, if necessary, an injunction should be granted restraining the defendants from attempting by suit or otherwise to eject her from the family dwelling-house, and that if it appeared that the persons, in whose names some of the property had been purchased by some of the defendants, were necessary parties, they should be added as defendants in the suit.

Kanailal was the son of Ramgabind. All the other defendants were purchasers from Kanailal. The defendants Kirti Chandra and Naffar Chandra were purchasers of portions of the dwelling-house; the other defendants were purchasers of the remaining premises.

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The defendants, Kirti Chandra Mitter, Nandalal Mitter, and Anandalal Mitter, put in written statements in which they stated that the purchases had been made with the knowledge and consent of the the plaintiff, and that she had not made any objection to such purchases; that such purchases had been made by them for valuable consideration; and that the land purchased by them did not form part of the family dwelling-house, but was part of that which had always been let out to tenants. They submitted that the petition disclosed no cause of action against them; that the portion of the premises remaining unsold was sufficient to provide for the maintenance of the plaintiff; and that the plaintiff was not entitled to be maintained out of the rents and profits of the land purchased by them from the defendant, Kanailal Mitter, nor was such maintenance a charge upon the property so purchased by them.

The case came on for settlement of issues.

Mr. *Branson* and Mr. *Bonnerjee* for the plaintiff.

Mr. *Marindin* for the defendant, Kirti Chandra.

Mr. *Phillips* for the defendant, Anandalal.

Mr. *Lingham* for the defendant, Nandalal.

The other defendants did not appear.

Mr. *Marindin* contended that the plaint disclosed no cause of action. The decision in the case of *Mangala Debi v. Dinanath Bose* (1), is based on a text in *Katyana*; but that text does not bear out the decision based on it: it refers merely to giving away of property, not selling it. *Mangala Debi v. Dinanath Bose* (1) is decided more on the question of notice, than on the first point.

(1) 3 B. L. R., O. C., 72.

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Mr. *Phillips* for Anandalal.—The plaintiff is premature in bringing the suit. As to the text on which the case of *Mangala Debi v. Dinanath Bose* (1) is decided, the exception there would preclude anything at all being given away.

Mr. *Lingham* for Nandalal.

Mr. *Branson* for the plaintiff.—The question is the extent to which the maintenance of a Hindu widow is a charge on her husband's property. It is submitted she is entitled to maintenance from the whole of her husband's estate,—*Dayabhaga*, Ch. XI, section 1, sloke 41—*Mussamat Bheeloo v. Phoolchund* (2), *Mussamat Gola b Koonwar v. Collector of Benares* (3), *Rungama v. Atchama* (4), *Heeralall v. Mussamat Kousillah* (5), *Ram Churn Tewaree v. Mussamat Jasooda Koonwer* (6), *Sheo Dyal Tewaree v. Judoonath Tewaree* (7), and *Ramchandra Dikshit v. Sonbhai* (8).

The widow here is in the same position as under the Mitakshara law. The suit is not premature—*Comulmoney Dossee v. Rammanath Bysack* (9).

Mr. *Marindin* in reply.—All the cases cited are cases under the Mitakshara or Mithila law, there is no decision under the Bengal law. [PHEAR, J., refers to *Khettramani Dasi v. Kasinath Bose* (10)].

PHEAR, J.—The suit must proceed as against Kanailal, Kirti Chandra and Naffar Chandra, but must be dismissed against the other defendants.

The two cases are very different. As against one who has taken the property as heir, the widow has a right to have a proper sum for her maintenance ascertained and made a charge on the property in his hands. She may also doubtless follow the property for this purpose into the hands of any one who takes

(1) 3 B. L. R., O. C., 72.

(2) 3 Sel. Rep., 223.

(3) 4 Moore's L. A., 246.

(4) *Id.*, 1, sec 112.

(5) 2 Agra H. C. Rep., 42.

(6) 2 Agra H. C. Rep., 134.

(7) 9 W. R., 61.

(8) 4 Bom. H. C. Rep., 73.

(9) 1 Fulton, 189.

(10) 2 B. L. R., A. C. 15.

it as a volunteer, or with notice of her having set up a claim for maintenance against the heir. I do not think, however, that in Bangal she has any lien on the property in respect of her maintenance against all the world irrespective of such notice. No such lien, as far as I know, has ever been established in these Courts; because I think the case referred to by Mr Branson have been rightly explained by Mr. Marindin. In truth, as I threw out in the course of the argument, if the heir has any power of alienation at all, it would be most unreasonable that a *bonâ fide* purchaser for valuable consideration should be subjected to the possibility of a charge springing up at any time, though it had no definite existence when he purchased. Lien for maintenance is a somewhat vague expression as long as the amount of maintenance is undetermined. It does not in my mind attain the character of a proprietary right, until the proper amount of maintenance is either ascertained, or is in the course of being determined. When the property passes into the hands of a *bonâ fide* purchaser without notice, it cannot be affected by anything short of an already existing proprietary right; it cannot be subject to that which is not already a specific charge or which does not contain all the elements necessary to its ripening into a specific charge. And obviously, the consideration received by the heir for the sale of the deceased's property will, so far as the widow's right of recourse to it is concerned, take the place of the property sold.

The case of Kirti Chandra and Naffar Chandra, however, stands on a very different footing from that against the other defendants, inasmuch as it was alleged by the plaintiff in her preliminary examination that they have obtained possession of a dwelling-house, and practically excluded her from it: at the most they have left her only a small room, and one of them threatens to eject her from that.

This being so, the case of *Mangala Debi v. Dinanath Bose* (1) seems to show that the widow has acquired a right of suit against these persons. It follows, too, from what I have said, that she has a right of suit against Kanailal for maintenance, and to have

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it charged upon any property in his hands. The suit must be dismissed as against Nandalal and the defendants other than Kanailal, Kirti Chandra, and Naffar Chandra, with costs No. 2.

Attorney for the plaintiff: Baboo *Girish Chandra Ghose*,

Attorney for Kirti Chandra: Mr. *Dover*.

Attorneys for the other defendants who appeared: Messrs. *Beeby and Rutter*.

[APPELLATE CIVIL.]

Before Mr. Justice Loch and Mr. Justice Ainslie.

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MOHAN RAM JHA (DEFENDANT) v. BABOO SHIB DUTT SING
AND OTHERS (PLAINTIFFS).*

Act XI of 1859—Act VII of 1868, B. C.—Procedure for realizing Government Demands other than Revenue.

In sales held by the Collector for the realization of Government demands realizable as arrears of revenue, the procedure laid down in Act VII of 1868 (B. C.), is to be followed.

Therefore, where a fine had been imposed for non-attendance of proprietors before a Deputy Collector for the purposes of a partition under Regulation XIX of 1814, and the amount had been ordered to be paid on a given day, but was not so paid, but tendered subsequently, *held*, that the Collector ought not to have sold the property of the defaulters. He was bound to receive the amount tendered.

On the 23rd February 1869, the Deputy Collector, who was making a partition of Mauza Ramputti Singessurpur, under Regulation XIX of 1814, passed an order for the attendance, on the 15th March 1869, either in person or by mooktear, of Shib Dutt Sing and others, the proprietors of one-anna share thereof, for the purpose of making *simwari* (boundary) indications, and that in default of such attendance they would be liable to a daily fine. On the application of the Deputy Collector, the imposition of the

* Regular Appeal, No. 44 of 1871, from a decree of the Judge of Bhagalpore, dated the 30th May 1871.