

APPELLATE CIVIL.

1873
June 18.

Before Mr. Justice Phear and Mr. Justice Ainslie.

MUTTEERAM KOWAR (DEFENDANT) v. GOPAUL SAHOO (PLAINTIFF).*

*Hindu Law—Widow's power to alienate her Husband's Property—
Pilgrimage to Gya—Sradh—Necessity—Spiritual Purposes.*

Expenses incurred by a Hindu widow for a pilgrimage to Gya and for the performance of *sradh* are legitimate expenses for which she can alienate her husband's property (1).

Where the amount expended was Rs. 1,700, and the property was sold for Rs. 4,000, held, in a suit by the heir against the purchaser to have the sale set aside, that the plaintiff not having offered to repay Rs. 1,700 and interest, his suit must be dismissed.

THIS was a suit brought by Gopaul Sahoo for possession of an eight-anna share of Mauza Kawta, by setting aside a *kabala* executed by Sona Sahoo, the widow of one Gooroochurn Sahoo, deceased, in favor of the defendant, on the allegation that he was the heir of Gooroochurn, and that the widow had alienated the property without legal necessity; and that the widow being dead, he, as the heir of Gooroochurn, was entitled to possession.

The defendant set up (*inter alia*) in defence, that the property was sold by the widow of Gooroochurn to pay off the debts incurred by her husband, and to defray the expenses of a pilgrimage to Gya, and for performance of *sradh* and *kartik-udyapan*.

The Subordinate Judge found that there was no evidence to show the amount of the debt of Gooroochurn for the payment of which, it was alleged, the property had been sold; that the evidence of Davee, who was a nephew of Sona Sahoo, showed

* Special Appeal, No. 1115 of 1872, from a decree of the Judge of Bhaugulpore, dated the 1st May 1872, affirming a decree of the Subordinate Judge of that district, dated the 13th May 1871.

(1) See *Mohomed Ushruf v. Brojessuree Dossee*, *ante*, p. 118.

that she never went to Gya ; that the expenses incurred for the performance of *kartik-udyapan* could not be considered as having been incurred for a legal necessity, it being nowhere acknowledged to be of such superior efficacy as to legalize the sale of property by a Hindu widow for its performance ; and that the defendant having failed to prove any legal necessity for the sale, the plaintiff, as the next heir, was entitled to recover possession. He, accordingly, passed a decree in favor of the plaintiff.

On appeal the Judge found that the alleged payment of debts incurred by Gooroochurn was not proved ; that there was no evidence to show that there was any pressure on the estate for payment such as to justify the alienation ; that there was no necessity for a sale of the property to defray the expenses of the pilgrimage to Gya, as Sona Sahoo was well off, and could easily have defrayed the expenses without alienating the property ; and that the defendant had failed to make out a case of legal necessity to justify the alienation. He, accordingly, dismissed the appeal.

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The defendant appealed to the High Court.

Baboos *Romesh Chunder Mitter* and *Tarruck Nath Dutt* for the appellants.

Baboos *Kaliprosonno Dutt* and *Chunder Madhub Ghose* for the respondent.

Baboo *Tarruck Nath Dutt* contended that the widow was justified in making a pilgrimage to Gya, and that the sum spent on the occasion was a legitimate expense for the spiritual benefit of Gooroochurn Sahoo. The performance of *sradh* and *kartik-udyapan* were for the benefit of her husband's soul. The profits of the estate left by Gooroochurn were barely sufficient for the maintenance of the widow. The widow can alienate for the spiritual benefit of her husband—*Ramchunder Surma v. Gungagovind Bunkhojiah* (1) and *Chowdhry Junmejoy Mullick v.*

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Sreemutty Russomoyee Dossee (1). A Hindu widow is bound to pay the debts of her husband ; hence the alienation was justifiable.

(1) *Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.*

The 26th August 1868.

CHOWDRY JUNMEJOY MULLICK
(ONE OF THE DEFENDANTS) v. SRE-
MUTTY RUSSOMOYEE DOSSEE
(PLAINTIFF).*

*Hindu Law—Alienation—Sradh—
Limitation.*

Baboo *Aushootsh Chatterjee* for the appellant.

Baboos *Kissen Sucka Mookerjee, Sreenath Doss, Kally Mohun Doss, and Doorga Mohun Doss* for the respondents.

THE judgment of the Court was delivered by

MITTER, J.—This was a suit instituted by the plaintiff, now respondent before us, to recover possession of certain moveable and immoveable properties described in the plaint. The case set up by the plaintiff was that the properties sued for by her were held and owned by her father, the late Gudadhur Roy ; that, on the demise of her father without male issue, his whole estate, real and personal, devolved upon her mother *Sreemutty Deyee* as his next heir and successor ; that, on the death of her mother, which took place on the 19th Bhadra 1273 (16th September 1866) the plaintiff, as the only heir and representative of her father, wanted to take possession of the estate, but that she was opposed by the defendants in the cause under color of various titles alleged to have been created in their favor by the said

Sreemutty Deyee. The cause of action was stated to have arisen on the 14th May 1866, the date when their opposition was alleged to have been offered. The principal *Sudder Ameen* of Midnapore, *Baboo Nobinkissen Palit*, has given a decree to the plaintiff in respect of a portion of her claim, and the present appeal has been accordingly preferred to us by the defendant *Chowdry Junmejoy Mullick*.

The properties involved in this appeal may be conveniently arranged under the following heads :—

1st.—8 annas of *Joonbuldia*.

2nd.—1 anna 5 gundas of *Mehal Chuck Shampallora*.

3rd.—204 bigas of *lakhiraj* land referred to in paragraph 6 of the written statement filed by the appellant.

4th.—222 bigas of *lakhiraj* land referred to in the 7th paragraph of the written statement filed by the appellant.

With reference to the first item of property it is contended that the decision of the Principal *Sudder Ameen* is erroneous on the question of limitation as well as on that of title. We are of opinion that the contention is sound. The principal *Sudder Ameen* has overruled the plea of limitation on the ground that the action, has been brought within twelve years from the date of the death of the plaintiff's mother ; and on the question of title he has held that the evidence produced by the plaintiff has satisfactorily shown that her father was in possession. It is contended that the appellant does not claim the property in question upon a title created in his favor by the mother of the plaintiff, and the plaintiff

* Regular Appeal, No. 323 of 1867, from a decree of the Principal *Sudder Ameen* of Midnapore, dated the 3rd August 1867.