

Before Mr. Justice Sale.

1903  
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 Dec. 18.

PUNNA BIBEE  
 v.  
 RADHA KISSEN DAS.\*

*Hindu law—Mitakshara—Maintenance, wife's right to—Partition.*

A suit by a Hindu wife against her husband to establish her right to a share in his property, and for partition, in the absence of any allegation that he refuses or has ceased to maintain her, is not maintainable.

*Janna v. Machul Sahu* (1) and *Becha v. Mothina* (2) distinguished.

ORIGINAL SUIT.

The plaintiff, Punna Bibee, sued as the wife of one Kartick Kissen Dass Khettry for a declaration of her right to a present share in the property of her husband, for an injunction to restrain him and other defendants from alienating the same, and for partition and other reliefs.

The suit was set down for settlement of issues, and to determine, whether the plaintiff had any interest in the property or any *locus standi* to maintain the suit.

*Mr. Chakravarti* (*Mr. S. R. Dass* with him) for the defendants. The Plaintiff has no *locus standi*. A wife is not entitled to a definite share in her husband's estate, while he is alive, and the proposition that she is a co-sharer with him or a co-parcener in the family with her father-in-law and husband is incorrect. See *Mubaz Lachmia v. Chalekany Venkata Rama Jagganadha Row* (3), *Mayne's Hindu Law* (6th edn.), pp. 439, 539, 635, and I submit the plaintiff cannot maintain this suit.

*Mr. A. Chaudhuri* for the plaintiff. A Hindu wife in a sense is co-owner with her husband. See *Janna v. Machul Sahu* (1),

\* Original Civil Suit No. 151 of 1902.

(1) (1879) I. L. R. 2 All. 315.

(2) (1900) I. L. R. 28 All. 86.

(3) (1838) 2 Moo. I. A. 54.

Mayne's Hindu Law (6th edn.), p. 609, and *Becha v. Mithina* (1). She is entitled to maintenance and residence from her husband's estate. *Devi Persad v. Gunwanti Koer*(2), and is therefore entitled to maintain this suit and to ask for an injunction restraining the disposal of his share, and for a partition. See *Tarkalankar Mitakshara*, p. 118; *Colebrooke's Inheritance*, Chapter I, s.1, cl. 7; and *Mayne's Hindu Law* (6th edn.) p. 586.

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*Mr. Chakravarti* in reply. The cases cited by *Mr. Chaudhuri*, having reference to wills, are not applicable to the present case. To maintain such a suit as this, the wife's claim for maintenance must amount to a charge on the property. She cannot claim a share simply on the ground that she is entitled to maintenance.

SALE J. The plaintiff in this case seeks to establish her right to a share in certain property belonging to her husband and for partition.

The suit is against her husband *Kartick Dass Khettry*, and his father *Radha Kissen Dass Khettry* and also certain assignees of mortgages executed by both father and son and the defence is that the suit is not maintainable. The plea is in the nature of a demurrer, and it is therefore necessary to examine shortly the allegation upon which the claim is based. It appears that the property, the subject-matter of this suit, was originally joint family property, the family being governed by the *Mitakshara Law*. A partition was effected between various members of the family, and the result of the partition was that the property 18, *Mullick Street*—the property in suit—was allotted to *Radha Kissen Dass Khettry* as his separate property. After this *Radha Kissen* married, and a son, *Kartick*, was born. It appears that *Radha Kissen* executed a mortgage in respect of that property, upon which mortgage the mortgagee instituted a suit and obtained a decree. It appears that the son *Kartick* also executed mortgages in respect of his share or interest in the same property and subsequently an application was made in *Radha Kissen's* mortgage suit for an order for the sale of the property, the proceeds to

(1) (1900) I. L. R. 23 All. 86.

(2) (1895) I. L. R. 22 Calc. 410.

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be in the first place applied in payment of the mortgage debts and the balance to be divided between Radha Kissen or rather between the Official Assignee, Radha Kissen having then become an insolvent, and his son Kartick. The order was made on the consent of all parties, the defendant Kartick and his mortgagees coming into the suit for the purpose of consenting. The plaintiff claims that this arrangement amounts to a partition of the property between Radha Kissen and Kartick. She says that she, her father-in-law, and her husband Kartick formed a joint Hindu family governed by the Mitakshara Law, and that as a result of the sale she has been deprived of her maintenance, and accordingly she files this suit to have it declared that she is entitled to a one-third share in the property and for a partition on that basis. Now it has been contended, and I think rightly contended, by the defendant that the plaintiff is not entitled to partition, that she is not a co-sharer with her husband nor a co-parcener in the family jointly with her father-in-law and her husband. No authority has been cited to show that the plaintiff can be regarded as a co-sharer in the family estate with her husband.

It is said, however, that there is authority for the proposition that she is entitled to be regarded as a co-sharer in some subordinate sense, and in support of that proposition the case of *Jamna v. Machul Sahu*(1) has been cited. I think it is clear from that case that the expression "co-sharer" in a subordinate sense is used with reference to the right of a widow to maintenance out of her husband's estate, for it was held that the plaintiff in that case was entitled in respect of her maintenance to follow certain properties in the hands of the defendants to whom the properties had passed by virtue of a gift by the husband made in his lifetime. This case is followed in the later case of *Becha v. Mothina*(2). There it was held that the widow was entitled to have her maintenance secured on certain property in the hands of the defendant obtained by them under the will of the plaintiff's deceased husband. These two authorities seem to me to be distinguishable from the present case upon two grounds. In the first place the present suit is instituted by the plaintiff to

(1) (1879) I. L. R. 2 All. 315.

(2) (1900), I. L. R. 23 All. 86.

have her right to maintenance declared during her husband's lifetime as against a specific property assigned by her husband, and in the next place it is not against a person claiming under a gift made by the husband either *inter vivos*, or by will, but against the assignees for value of the husband. So far as I am aware there is no authority to show that a claim for maintenance by a wife in the lifetime of her husband is sustainable in the absence of any allegation that the husband refuses or has ceased to maintain her. There is no allegation of this character in the present suit. On the contrary it is admitted that the plaintiff is living with her husband as a member of the joint family.

Further it is admitted that the mortgagee defendants are assignees for value, although it is alleged that the moneys borrowed were used for immoral purposes and not for the benefit of the general family. These allegations are irrelevant for the purposes of the present case. It is conceded that, assuming the moneys borrowed on the mortgage were for selfish and improper purposes, still the mortgagees are not seeking to have their mortgage enforced against the joint estate, but only against the share of the husband.

It seems to me on the admitted facts and on the allegations made in the plaint itself that the plaintiff is not entitled either to claim or share in any portion of, the properties of her husband, nor does she show any cause of action in respect of her right to maintenance. That being so it seems to me that the suit must be dismissed with costs.

J. E. G.

Attorney for Plaintiff: *A. K. Guha.*

Attorney for Defendants: *O. C. Gangooly.*

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