(1933) 10 AHC CK 0010

Allahabad High Court

Case No: None

(Firm) Mangat Rai Hira Lal		APPELLANT
	Vs	
Mt. Sakina Begam and Another		RESPONDENT

Date of Decision: Oct. 12, 1933

Citation: AIR 1934 All 441

Hon'ble Judges: Collister, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Collister, J.

This is a defendant''s appeal. The plaintiff having failed in an objection under Order 21, Rule 58, Civil P.C., sued for a declaration that a certain house belonged to her and was not liable to be sold in execution of decree No. 303 of 1919 of a Court at Delhi which had been obtained by the defendant appellant against the plaintiff-respondent''s husband the plaintiff pleaded that the house in question had been sold to her on 18th November 1921 in lieu of her dower debt, which amounted to Rs. 2,000. The defence was that the sale deed was fictitious, that it bad been executed with a, view to defraud the creditors of the plaintiff''s husband and that the plaintiff was not owner of the said house.

2. The trial Court (the Munsif of Aligarh) dismissed the suit finding that the marriage between the plaintiff and her alleged husband, defendant 2, was not proved, that no dower debt was proved and that the transfer was a fictitious and collusive transaction. The lower appellate Court has reversed the finding of the first Court. The learned Subordinate Judge finds that the marriage is proved and that there was a dower debt of Rs. 2,000 due from defendant. He finds that the husband may have intended to defraud his other creditors but that his wife was not at fault and that she took the property in good faith. He has ordered that the house be sold subject to a charge for the plaintiff''s dower debt.

3. The learned Subordinate Judge has remarked that "Law presumes the dower to be prompt unless it is proved to be deferred." This presumption of law is challenged before us and we have to see whether it is correct or not. In Macnaghten''s Mahomedan Law Section 22 it is laid down that:

Where it may not have been expressed whether the payment of the dower is to be prompt or deferred, it must be held that the whole is due on demand.

4. That rule of law was quoted with approval by their Lordships of the Privy Council in Mirza Badar Bakht v. Mirza Khurrum Bakht (1873) 19 W.R. 315 and that judgment of their Lordships has been followed by a Fall Bench of the Madras High Court in Masthan Sahib v. Assan Bibi Animal (1900) 23 Mad. 371. It is however admitted that the parties with which both the above two cases ware concerned were Shias. The parties in the present case are Sunnis. In Umda Begam v. Muhammadi Begam (1911) 33 All. 291 it was laid down that:

In the case of Muhammedans of the sunni persuasion, where it is not settled at the time lot marriage whether the wife''s dower is to be prompt or deferred, part will be prompt and part deferred, the proportion referable to each category being regulated by custom, or in the absence of custom by the status of the parties and the amount of the dower settled.

5. The learned Judges who decided that case followed previous rulings of this same High Court. They referred to the Privy Council case reported in Mirza Badar v. Mirza Khurrum (1973) 19 W.R. 315 and to Masthan Sahib v. Assan Bibi Animal (1900) 33 All. 291 and they pointed out that in both those cases the parties were Shias. They remarked that the rule of law set forth in Macnaghten''s Maho-imedan Law, Section 22 is a rule of the Shia school of Mahomedan Law. There can be no doubt that the learned Subordinate Judge was wrong (so far as Sunnis are concerned) when he said that the law presumes that a dower debt is prompt.

6. Counsel for the defendant-appellant contends that this case should be remanded to the Court below for a trial of the issue as to what proportion was deferred. We note that defendant 2 who is the husband of the plaintiff, has stated on oath before the Court that the dower was prompt. There is no rebutting evidence, but the lower appellate Court has remarked that the register does not specify the nature of the dower debt. But it is argued on behalf of the respondent that even if the dower debt was deferred, the husband could nevertheless make a valid transfer to his wife. He has referred us to the case of Khodija Bibi v. Shah Mohammad Zahir Alam (1901) A.W.N. 64. In that case a Mahomedan, against whom a decree for money had been passed, about a week after the passing of the decree and in order to save the property from being taken by his creditors in execution thereof transferred certain Immovable property belonging to him to his wife, professedly in part satisfaction of a deferred dower debt due to the wife. It was held that such a transaction was not voidable as a transfer made with intent to defeat or delay the creditors of the

transferor. That case followed the earlier case of Suba Bibi v. Balgobind (1886) 8 All. 178 where it was held that a deferred dower debt could be treated as prompt by the husband. In Seth Nemi Chand v. Mt. Maluk Begam (1910) 5 I.C. 316 (All) it was held by a Bench of this Court that a deferred dower can form a valid consideration for the transfer of property during the lifetime of the husband who has not divorced the wife. It is laid down that a wife is not entitled as of right to demand payment of her deferred dower, but that the husband is entitled, if he pleases, to pay his wife her dower before it is due or to discharge and satisfy his obligation in any other legal way. We accept the contention that a wife is not entitled as of right to demand payment of her deferred dower debt and cannot enforce such a claim; but if she does demand it and if the husband thinks fit to pay it or to make a transfer of property in her favour in lieu thereof, he is legally competent to do so and such transfer will be valid.

7. In the view of the above findings we are of opinion that there is no force in this appeal and it is accordingly dismissed with costs.