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(1901) 11 AHC CK 0002

Allahabad High Court

Case No: None

Gopal Dei		APPELLANT
	Vs	
The Bhartpur State		RESPONDENT

Date of Decision: Nov. 21, 1901

Citation: (1902) ILR (All) 160

Hon'ble Judges: John Stanley, C.J; Burkitt, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

John Stanley, C.J. and Burkitt, J.

This is an appeal from a judgment of the Subordinate Judge of Agra allowing the plaintiff''s claim, which was for a declaration that arrears of maintenance, due to her, and also future maintenance, were charged upon certain properties under a decree made in the year 1865. The plaintiff is the widow of one Damodar Das, who was one of the sons of Joti Prasad, a well known Agra banker, who died in his father''s life-time some time before the year 1865. In the suit of 1865, his widow, the present plaintiff, claimed delivery of possession of certain zamindari property as having been the separate property of her deceased husband. That property on the hearing of that suit was found not to have belonged to her husband, and the claim for possession was dismissed: but the learned Judge, having regard, as he says in his judgment, to the decision of the Sadr Court, in the case of Sheo Buksh Singh and ors. dated the 29th February, 1864, decided that the plaintiff should get a maintenance allowance from the defendant. In the case to which he referred, it was decided that the Courts were "competent to assign maintenance to a widow of a deceased Hindu who cannot by law inherit her husband''s property, and that in fixing the amount reference must be had to the value of the estate from which maintenance is claimed, and that not more than one-third should ever be assigned" of the annual profits of the family estates. Acting upon that decision the learned Judge thought fit to award to this lady maintenance at the rate of Rs. 120 a month.

The language in which the maintenance is given is as follows: "The plaintiff should get maintenance allowance from the defendants with reference to the income of the property, and for the sake of her satisfaction and (here the decree is torn) the plaintiff should get Rs. 120 a month from the defendants." It appears that the allowance so given has fallen into arrears, and the plaintiff''s claim against the defendants in the present suit is to have it declared that the maintenance is a charge upon the properties, delivery of possession of which was claimed, but was refused by the Court in the suit of 1865. These properties have been sold to bona fide purchasers, but it is said by the plaintiff that the purchasers had knowledge that the widow had a claim to maintenance, and are therefore liable to pay, the arrears, and also future maintenance. For the purposes of our judgment we may assume that they had this knowledge. The first question then is, whether or not, by the decree of 1865, maintenance was expressly charged upon the property of the then defendants, which is the property now sought to be made liable. It appears to us that there are no words in this decree which could possibly be regarded as creating a charge. The words "with reference to the income of the property" were evidently used in connection with the case decided by the Sadr Court to which we have referred, and in which it is stated that the allowance of maintenance ought to be made with reference to the income of the property. In other words, the income of the property was to be taken as a basis for estimating the amount of maintenance to which the widow was properly entitled. There is no charge created either in express words or by implication. It would appear that the words in the decree, "with reference to the income of the property," are copied from the judgment of the learned Judge. In it he says: "I rule for plaintiff to recover from the defendants maintenance with reference to the income of the property." If there has been no express charge of maintenance upon the property, then it is manifest upon the authorities that the plaintiff''s contention cannot prevail. In the case of Lakshman Ramchandra Joshi v. Satyabhamabai I.L.R.(1877) 2 Bom. 494 West, J., discussed the authorities at length, and held that there was no authority for the doctrine which makes the claim of widows not entitled to a share of property, in case of partition, a real charge on the inheritance; that in all oases it is a claim to maintenance merely, not interfering (so long as it has not been reduced to certainty by a legal transaction) with the right of the actually participant members to deal with the property at their discretion, provided this dealing is honest and for the common benefit. It was also decided in that case that "the mere circumstance that the purchasers had notice of the widow''s claim is not conclusive of the widow''s rights against the property in their hands." The question came before a Bench of this Court in the case of Ram Kunwar v. Ram Dai I.L.R.(1900) All. 326 and it was held by Banerji and Aikman, JJ., that "the maintenance of a Hindu widow is not a charge upon the estate of her deceased husband until it is fixed and charged upon the estate by a decree or by agreement, and that the widow''s right is liable to be defeated by a transfer of the husband''s property to a bond fide purchaser for value, even with the knowledge of the widow''s claim for maintenance, unless the transfer has further

been made with the intention of defeating the widow''s claim." In fact a widow''s right to receive maintenance is one of an indefinite character, which, unless made a charge upon the property by agreement or by a decree of the Court, is only enforceable like any other liability in respect of which no charge exists. For these reasons we are of opinion that the learned Subordinate Judge was in error in deciding that the decree in this case made the arrears of maintenance a charge upon the property. On this point, therefore, the appeal must be allowed.

2. It is argued, however, by the respondent''s vakil that the present appellant, viz. the Bhartpur State, is not entitled to maintain the appeal, inasmuch as the Bhartpur State has, as we understand him, no legal existence. It is sufficient for us to say that the Bhartpur State was, by the plaintiff herself, made a party to the suit as defendant, and a decree was obtained against it. It seems to us that it does not lie in the mouth of the plaintiff under those circumstances to raise this technical question. The Bhartpur State then having appealed, and having succeeded in the appeal, u/s 544 of the Civil Procedure Code, the judgment which we shall pass will be for the benefit of all the other defendants. Our order accordingly is, that we allow the appeal, set aside the judgment and decree of the lower Court, and direct that the suit stand dismissed with all costs.