

(1879) 05 AHC CK 0006

Allahabad High Court

Case No: None

Jamna

APPELLANT

Vs

Machul Sahu

RESPONDENT

Date of Decision: May 23, 1879

Citation: (1880) ILR (All) 318

Hon'ble Judges: Spankie, J; Pearson, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Pearson, J.

The lower Courts have disallowed the plaintiff's claim to be maintained out of her husband's estate given by him on the 8th January 1850, shortly before his death, to the defendant, who was his nephew and partner in business, and who is stated in the deed of gift to have been adopted by him as a son, on the ground that, under the terms of that instrument, which bestows the whole estate on him without exception, reservation, or condition, she has no right to what she claims. I am not prepared to hold that the deed has been misconstrued, but the second ground of the appeal appears to me to be valid. As the wife is, under Hindu law, in a subordinate sense a co-owner with her husband; he cannot alienate his property or dispose of it by will in such a whole sale manner as to deprive her of maintenance; and I am therefore of opinion that the donee of the entire estate must be deemed to have taken and to hold it subject to her maintenance. This opinion is supported by the remarks at p. 366 of West and Burner's Hindu Law of Inheritance and Partition, 2nd ed. and the Privy Council decision, dated 30th November and 2nd December 1859, in the case of Sonatun Bysack v. Sreemutty Juggutsoondree Dossee 8 Ind. App. 66, and by a judgment of the Madras High Court, dated 27th October 1860, in which a sale of a piece of land by a Hindu was set aside on his wife's suit on the ground that it left her without maintenance.

2. The plea that provision was made for the maintenance of the plaintiff in the present case by her husband in the shape of an assignment of cash and jewels seems inconsistent with the terms of the deed, and the lower Court's finding that his entire estate was without exception or reservation given to the defendant, but the Courts below have not distinctly adjudicated upon it. I would direct the lower Appellate Court to adjudicate on that plea, and, if it should disallow it, to proceed to determine whether Rs. 25 per mensem, or what monthly amount, would be a suitable allowance for the plaintiff's maintenance. The lower Appellate Court should be instructed to submit its findings, when a week might be allowed for objections.

Spankie, J.

3. I agree with my learned and honourable colleague's proposal to refer the issue laid down above for determination by the lower Appellate Court.