

(1873) 06 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 1115 of 1872

Gopaul Sahoo

APPELLANT

Vs

Mutteeram Kowar

RESPONDENT

Date of Decision: June 18, 1873

Final Decision: Allowed

Judgement

Phear, J.

After giving consideration to this case, we are of opinion that the 900 rupees, the debt incurred for Gya pilgrimage, and the 800 rupees, the debt incurred for the sradh, by the widow, were expenses to liquidate which it was within the power of the widow to alienate her husband's property. They are of the nature of expenditure for the purpose of procuring spiritual benefit for the husband, and it has been laid down by the Privy Council, and the doctrine has been constantly followed by this Court, that the widow's power of alienation for spiritual purposes is larger than the power of alienation to which necessity gives rise. It has been long settled that she is not, in any proper sense, trustee for the heirs: she has the whole inheritance in her with a limited power of alienation--a power of alienation which can only be exercised, perhaps I may say, in two classes of contingencies,--one class comprising cases of necessity, and the other class, cases of raising money for spiritual purposes. In this view it appears to us that the alienation was a good alienation, although it may be that the Rs. 1,700, which is the total of the two items to which I have referred, may have been an inadequate consideration for the sale: I suppose, indeed, we must take it to have been an inadequate consideration, because the actual purchase-money was Rs. 4,000.

2. Under these circumstances the alienation is not void, but, as was expressed by the late Chief Justice, in the case of Phoolchund Lall v. Rughoobuns Sukaye 9 W.R., 108, is voidable by the heir upon his offering to pay the real consideration (in this case it would be Rs. 1,700), together with reasonable interest thereon, and upon the further condition, of course, that the defendant should account for the rents and profits during the interval over which he had been in possession, both the interest and the account of rents and

profits to run from the date of the widow's death. We think, therefore, that the decrees of both Courts below, which have been passed in favor of the plaintiff without any qualification whatever, are wrong decrees, and must be reversed.

3. The plaintiff has not in this suit expressed his readiness to repay the defendant any portion of the purchase-money, but has sought to recover the property unconditionally.

4. Under the circumstances we think that the right order will be to dismiss the plaintiff's present suit, leaving him to any future remedy if he has any right to it. The defendant, appellant, must have his costs in all the Courts.