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(1880) 05 CAL CK 0007

Calcutta High Court

Case No: None

Ramcoomar Mitter

APPELLANT

Vs

Ichamoyidasi

RESPONDENT

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Date of Decision: May 27, 1880

Citation: (1881) ILR (Cal) 37

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

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Judgement

Jackson, J.

We are unable to concur in the judgment of the Courts below, although, of course, in dissenting from two Hindu gentlemen on such a point we feel considerable diffidence. But it appears to us that the plain rules of Hindu law, as well as those of equity and good conscience, are in favour of the plaintiff in this case. If the widow, to whom this money was advanced by the plaintiff, had, in order to pay it off, either alienated or pledged a portion of the estate, we should have had no difficulty at all, because that would have been an alienation or a pledge for a purpose, which is distinctly laudable and recognized as such by authorities on Hindu law;--laudable I say and proper, because the purpose for which the money was borrowed was to promote the marriage of the son's daughter of Bindu-basini's deceased husband. Now, it appears to us, and we think it admits of no doubt, that the male issue of such a marriage, supposing a male to result, would be capable of producing spiritual religious benefit to the deceased husband of Bindubasini, being the son of his son's daughter. Then it appears that no alienation took place, and the suit is not to recover property alienated for such purpose. The matter proceeded no further than the incurring of a debt, and the present suit is to recover that debt. The question is, whether the debt is such as either to amount to a charge upon the estate, or more simply such as the defendants now in possession of the estate of Bindubasini's deceased husband are liable to pay. It appears to us that there is nothing in the circumstances which constitutes it a charge, properly so-called, upon the estate; but we have no doubt that the defendants are liable to pay that debt.

There is a case--Umrootram Byragee v. Narayundas Rusee(sic)das 2 Borr. Ed. 1863 201, cited in 1 Morley's Digest, p. 285, No. 39)--which shows that, in a case much resembling this, apparently the heirs of a deceased Hindu were obliged to pay, and the estate was held liable to satisfy a debt incurred by that deceased Hindu's widow for a proper purpose. That appears to us to be a just and equitable decision, and we think we are entitled to follow it. It appears that if these daughters had not been married before they attained the age of puberty, spiritual consequences of a most serious kind might be expected, according to Hindu doctrines, to arise both to their deceased father and deceased grandfather; and therefore the widow must be held to have been right in doing what she did to avert such consequences. We think the judgment of the lower Courts must be set aside, and as the other points raised have not been determined, the case must go back to the Court of first instance for trial. The costs of this appeal will follow the result.