

(1872) 01 CAL CK 0007

Calcutta High Court

Case No: None

Srimati Bhagabati Dasi

APPELLANT

Vs

Kanailal Mitter and
Others

RESPONDENT

Date of Decision: Jan. 8, 1872

Judgement

Phear, J.

The suit must proceed as against Kanailal, Kirti Chandra and Naffar Chandra, but must be dismissed against the other defendants. The two cases are very different. As against one who has taken the property as heir, the widow has a right to have a proper sum for her maintenance ascertained and made a charge on the property in his hands. She may also doubtless follow the property for this purpose into the hands of any one who takes it as a volunteer, or with notice of her having set up a claim for maintenance against the heir. I do not think, however, that in Bengal she has any lien on the property in respect of her maintenance against all the world irrespective of such notice. No such lien, as far as I know, has ever been established in these Courts; because I think the cases referred to by Mr. Branson have been rightly explained by Mr. Marindin. In truth, as I threw out in the course of the argument, if the heir has any power of alienation at all, it would be most unreasonable that a bon fide purchaser for valuable consideration should be subjected to the possibility of a charge springing up at any time, though it had no definite existence when he purchased. Lien for maintenance is a somewhat vague expression as long as the amount of maintenance is undetermined. It does not in my mind attain the character of a proprietary right, until the proper amount of maintenance is either ascertained, or is in the course of being determined. When the property passes into the hands of a bon fide purchaser without notice, it cannot be affected by anything short of an already existing proprietary right; it cannot be subject to that which is not already a specific charge or which does not contain all the elements necessary to its ripening into a specific charge. And obviously, the consideration received by the heir for the sale of the deceased's property will, so far as the widow's right of recourse to it is concerned, take the place of the property sold.

2. The case of Kirti Chandra and Naffar Chandra, however, stands on a very different footing from that against the other defendants, inasmuch as it was alleged by the plaintiff in her preliminary examination that they have obtained possession of the dwelling-house, and practically excluded her from it: at the most they have left her only a small room, and one of them threatens to eject her from that. This being so, the case of Mangala Debi v. Dinanath Bose 3 B.L.R., O.C., 72 seems to show that the widow has acquired a right of suit against these persons. It follows, too, from what I have said, that she has a right of suit against Kanailal for maintenance, and to have it charged upon any property in his hands. The suit must be dismissed as against Nandalal and the defendants other than Kanailal, Kirti Chandra, and Naffar Chandra, with costs No. 2.