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Sept. 21.

Special Appeal No. 303 of 1863.

BECHAR BHAGVA'N *Appellant.*
BA'I LAKSHMI *Respondent.*

Hindú Law—Widow—Alienation by Hindú Widow of Moveable or Immoveable Property.

A Hindú widow's right to alienate moveable property inherited from her husband, without the consent of his heirs, is absolute.

With respect to immoveable property inherited from her husband, a Hindú widow is little more than a tenant for life, and trustee for the heirs of her husband, and she is restricted from alienating it by her sole independent act, unless for necessary subsistence, or for purposes beneficial to the deceased.

THE appellant, plaintiff below, sued in the Court of the Munsif of Jambúsar, in the Broach District, to recover certain property, real and personal, in the possession of defendant, belonging originally to one Uká, the brother of the defendant, claiming under a deed of gift made to him after Uka's death by his widow, Prem, who was then seised of the property.

The defence was that the deed of gift was not genuine; that if genuine, Prem, the widow of Uká, had exceeded her powers in alienating her husband's property; that the defendant, Lakshmi, was heir of her deceased brother Uká, and had moreover received the property in dispute as a charitable gift; that the deed of gift sued on was invalid, being insufficiently stamped; that Prem was not in possession at the time she made the alleged gift of the property to the plaintiff.

The Munsif of Jambúsar, A'zam Náráyaṇráv Balvant, held that Prem had no authority to make the gift in question without the consent of her husband's heirs, and that this consent was not shown to have existed: he, therefore, rejected the claim with costs.

Plaintiff thereupon appealed, and the Assistant Judge of Broach, W. M. P. Coghan, recorded the following judgment:—

“The Court fixes three points as issues for decision in this appeal:—

“(1) Had the widow Prem authority to convey away by deed of gift the property she inherited from her deceased husband without the consent of his surviving relations?

“(2) If Prem had such authority, did it extend to articles not actually in her possession at the time ?

“(3) Is the deed of gift sufficiently stamped according to law ?

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“With regard to the question involved in the first issue, it is argued by the *vakil* for Bechar Bhagván, the appellant, that the widow Prem was absolute and sole heir of the deceased Uká, and had power to alienate or dispose of the property as she pleased ; that if there were any limitation to her power of alienation, it regarded the immoveable property, and that her right to transfer the moveable portion of the property was undoubted.

“The Munsif of Jambúsar, before whom the suit was tried, took the opinion of the Court Shástri of Súrat regarding the authority which a childless widow, such as Prem, can legally exercise over the property of her deceased husband. The Shástri recorded his opinion that a widow, so situated, has no authority to alienate the property by the deed of gift, without the consent of the next heir of the deceased husband.

“In Strange on Hindú Law, Vol. I., p. 246, we find it laid down, ‘with respect not only to what she may have inherited from her husband, but to its accumulated savings also, her [a widow’s] duty is to regard herself as little more than a tenant for life, and trustee for the next heirs of property so possessed, being restricted from alienating it by her sole independent act, unless for necessary subsistence, or purposes beneficial to the deceased * * * With regard to moveables she has a greater latitude.’

“Kátyáyana has the following doctrine on this question : ‘After the death of the husband, the widow preserving (the honour of) the family shall obtain the shares of her husband so long as she lives, but she has not property (therein to the extent of) gift, mortgage, or sale.’ The author of the Vyavahára Mayúkha, commenting on this text, says : * ‘It is a prohibition of gift of money or the like to the Bandi, Cháraṇa, and the like (swindlers.) But gift for religious objects not visible, and mortgage of the like suitable to those objects, may even be made.’

“In the case now under consideration the widow Prem has, without any assigned cause, conveyed by deed of gift all the property of her deceased husband, both immoveable and

* Stokes’ Hindú Law Books, p. 84.

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moveable. The property so conveyed consists principally of land and bonds. The opinion of the Shástri and the text above quoted are clearly to the point that she had no legal authority to alienate the immoveable property, except on emergency, or for a religious object connected with the deceased. The question remaining is, whether the law makes a distinction between immoveables and moveables in such cases as this.

“On the 10th of December 1818 the Supreme Court Pandits (Bengal) (a) were interrogated as to the right of widows succeeding to their husbands' estate; the questions and their answers were as follows (nine questions were put, the 1st and 4th only are quoted, as bearing directly on the point at issue in this appeal):—

‘Question 1.—If a Hindú widow succeed to the property of her husband dying without male issue, what interest does she take in his immoveable property, and what interest in his moveable property?’

‘Answer.—According to the Dáyabhága and other Shástras prevalent in Bengal, there is no distinction in this instance between moveable and immoveable property. The widow has a life-interest in both, and is entitled to the enjoyment of the same, and to dispose of the same, by gift, mortgage, sale, or otherwise, for the benefit of her departed husband's soul, even without the consent of her husband's kinsmen. In so doing she will observe moderation. She has no authority whatever to dispose of the property by gift and so forth for worldly purposes unconnected with religious purposes, without the consent of her husband's kinsmen. If she does so, the act is invalid. She may make gifts and donations to the relatives of her deceased husband, and, with the consent of her husband's kinsmen, to her own family. The kinsmen of her husband have the priority to her own family with reference to gifts, because the widow is under their immediate control, it being incumbent on her to act as they direct.

‘Question 4.—Has the widow so succeeding a right to the possession of moveable property to which she has succeeded?’

‘Answer.—The widow so succeeding has a right to the possession of the moveable property to which she has succeeded, subject to the control before mentioned.’

(a) Vide Considerations on Hindú Law by Sir Francis Macnaghten, p. 11.

“Again, Sir Francis Macnaghten, in page 4 of his book on Hindú Law, says, ‘In property acquired by the death of another, and property acquired by the mere operation of Hindú Law, there is not (as it seems) any distinction made between real and personal, and moveable and immoveable, the whole current of Hindú Law appearing to flow in the same direction as regards the subject of inheritance by a widow, the authorities being more confluent and unanimous than on almost any other point of similar importance.’

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“The widow Prem then must be held to have exceeded her powers when she gave a deed of gift to Bechar Bhagván, (who is a very distant relation of the deceased Uká) transferring to him all the moveable and immoveable property, and the deed of gift held to be *ipso facto* void and of no effect.

“This decision on the first issue disposes of the appeal, and renders it unnecessary to enter on the questions raised in the other two issues. It may, however, be as well for the Court to record its opinion that a deed of gift is not valid except the property intended to be conveyed is either, at the time of executing the deed, in the possession of the giver, or has previously been transferred to the person in whose favour the deed is given.”

Against this decision plaintiff, Bechar, preferred a special appeal to the High Court, on the ground, among others, that, according to the Shástras and the custom of the country, a widow's right to dispose of moveable property is unrestricted, and as regards immoveable property she has a right to alienate it for necessary purposes.

The appeal was argued before FORBES, ERSKINE, and WESTROFF, JJ.

Dhirajlál Mathurúlás for the appellant.

Dáddbhái Frámji for the respondent.

FORBES, J., delivered judgment :—In this case we find that the widow Prem has sought to transfer by a deed of gift the whole of the real and personal estate of her husband to the plaintiff, Bechar, without the consent of her husband's heirs, and that the claim of Bechar founded on this deed of gift is resisted by Lakshmi, the sister of Prem's deceased husband, on the ground that Prem exceeded her powers in so transferring her husband's estate.

We are of opinion that the Hindú law existing on this side of India gives a widow absolute power over the moveable property of her deceased husband which has been inherited

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by her, but no power to alienate immoveable property except under special circumstances. We, therefore, reverse the decree of the lower court as regards the moveable property, and order that Bechar recover from Lakshmi the moveable property claimed. Costs to be borne by the parties proportionally throughout.

Decree amended.

Sept. 28.

Special Appeal No. 108 of 1863.

PARSHOTAM RANCHOD.....*Appellant.*

JAGJIVAN MAYA'RA'M*Respondent.*

Registration—Registered Deed preferred to prior Unregistered Mortgage—Reg. IX. of 1827, Sec. 6—Act XIX. of 1843, Sec. 2.

The first part of cl. 1, Sec. VI. of Reg. IX. of 1827 (a) is unrevoked, and therefore, a purchaser claiming under a deed of purchase duly registered is entitled to be preferred to a mortgagee claiming under a deed of mortgage executed before his purchase, but not registered until after the deed of purchase had been registered.

THE respondent (plaintiff below) brought this action to realise the amount due to him on a *sankhat* or mortgage deed dated the 26th of October 1861, and registered on the 17th of January 1862, by which Davalat, a defendant, had mortgaged to him a stable and other property specified in the mortgage; plaintiff alleged that Davalat had subsequently sold the stable to the defendant Parshotam. The plaintiff claimed to have the amount due to him in respect of his mortgage raised by sale of the property.

The defendant Davalat, the mortgagor, did not appear.

The defendant Parshotam appeared, and pleaded that he purchased the stable in question by a deed bearing date the 21st of November 1861, and registered on the 11th of January 1862; that the date of the registration of his deed of sale was prior to the registration of plaintiff's deed of mortgage; that plaintiff, Jagjivan, never had possession, and, therefore, his right to recover did not extend to the stable.

(a) 6. "First—Every deed or other writing transferring or mortgaging immoveable property situated within the Zillah, if registered in the register of title-deeds, shall, without regard to the date of execution, if proved to be valid, be preferred to and satisfied before any deed of the nature of those specified in Section 3, Clause 1 (sunnuds, deeds of sale, gift, devise, mortgage of lands, and awards . . . deeds of release or discharge of mortgages) either subsequently registered or not registered at all, but this preference shall extend only to the immoveable property thereby transferred or mortgaged."