

1869
Dec. 6.

Special Appeal No. 371 of 1869.

Melgirappa bin Solbappa Teli..... *Appellant.*

Shivappa bin Erappa..... *Respondent.*

Alienation by Hindu widow—Valid cause—Time-barred debt.

The payment of a time-barred debt of her deceased husband is not a valid cause for the absolute alienation by a Hindu widow of her deceased husband's immoveable estate.

Alienation by a Hindu widow of property inherited from her deceased husband is valid for the period of her own life, though the conveyance may purport to convey a greater interest.

This was a Special Appeal from the decision of M. B. Baker, Assistant Judge at Dharwar, in Appeal Suit No. 81 of 1869, affirming the decree of the Sadr Amin of Hubli.

This suit was instituted by Shivappa against Erava; and Melgirappa, a brother of Erava's deceased husband, to recover possession of a house and certain other property, which Erava had made over to him by a deed of sale dated 16th January, 1868, and from which he was turned out by force by defendant, Melgirappa.

Erava put in no reply. The defendant Melgirappa answered that Erava was his brother's widow; that she left her husband about sixteen years ago, when Kenshetappa, the husband married a second wife, and as Kenshetappa had no issue by her he adopted his (Melgirappa's) boy, Ramappa, and died about seven or eight years ago; that Ramappa, the adopted son of his deceased brother, was a minor, and that he Melgirappa occupied the house on Ramappa's account. He denied Erava's title to alienate her husband's property, and plaintiff's possession under the deed of sale.

The Sadr Amin of Hubli found that Ramappa's adoption by Kenshetappa was not proved. He held further that the deed of sale was proved, and that the widow, Erava, and not Melgirappa was in possession of the house. He accordingly decreed for the plaintiff.

The defendant, Melgirappa, appealed to the District Court of Dharwar, and the Assistant Judge, W. B. Baker, found:

(1) that the deed of sale was proved to be duly executed and grounded on a *bona fide* transaction ; (2ndly) that Erava, though a childless widow, had power to alienate the husband's estate for the payment of his debts; (3rdly) that the adoption of Ramappa by Kenshetappa was not proved ; and, lastly, that the possession of the house was with Erava. He accordingly affirmed the decree of the Sadr Amin.

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In recording his finding on the second issue, the Assistant Judge made the following observations :—

“The deed of sale purports to have been executed in satisfaction of two decrees which Shivappa had formerly obtained against Erava. One was obtained in 1861 on account of a bond of the husband, and the other was for a debt contracted by Erava herself in 1867. Though there is nothing to show that any proceedings for execution of the decree of 1861 had been taken, and the decree is barred by limitation, yet *mala fides* should not be presumed, because the law of limitation does not extinguish the right, but only bars the remedy. Melgirappa, moreover, is, by his own admission, a separated brother, and, though cognizant of the sale and the attachment in execution of the decree, stood by, and took no steps to declare his proprietary title.” For these reasons the Assistant Judge held that Erava could convey a valid title to the purchaser.

The defendant, Melgirappa, appealed from this decision, and the appeal came on for hearing before WARDEN and MELVILL, JJ.

Shantaram Narayan for the appellant:—The decree in this case will operate beyond the lifetime of Erava to the prejudice of the reversioners. Erava, as a childless widow, can only convey a good title for her life, unless it is shown that she was justified by any legal necessity. In this case the alienation was made for the satisfaction of two decrees, one for a debt of the widow herself, and the other a time-barred decree for a debt due by the husband. It is not clearly shown for what purpose the first debt was contracted. There was thus no occasion to justify the alienation by the

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widow, and the sale must be considered to be in the nature of waste against the interests of the reversioners.

Fakirappa for the respondent.

PER CURIAM :—The Assistant Judge has found that the alienation by Erava was on account of a time-barred debt of her deceased husband, and a debt of her own. The former debt cannot be considered as a sufficient cause of alienation to the prejudice of her husband's heirs. As to the latter debt the Judge has not found whether it was incurred for any such purpose as would justify alienation by a childless widow. If the validity of Erava's alienation were at issue it would have been necessary to send down issues. But whatever be the circumstances, Erava had a right to alienate for her own life only, and therefore the plaintiff is entitled to hold present possession, which is all he claims. The Court below should not have travelled beyond this simple issue. The decree must be amended, and possession awarded to the plaintiff, but without any determination as to what will be the rights of the parties after Erava's death.

Decree amended with costs on defendant throughout.