

## APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.

1882  
April 4.

NAHALCHAND, PLAINTIFF, v. BAISHIVA AND ANOTHER, DEFENDANTS.\*

*Hindu law—Husband and wife—Widow—Remarriage—Liability of widow who has remarried for debt contracted during widowhood—Liability of wife for debt contracted during coverture—Personal liability of widow—Stridhan.*

A Hindu woman who was a widow when she executed a money bond, but has subsequently remarried, is personally liable for the debt. Her liability is not restricted merely to her *stridhan*.

UNDER section 617 of the Code of Civil Procedure, Rao Saheb Ranchhodlal K. Desai, Subordinate Judge of Borsad, submitted the following case for the opinion of the High Court.

“On the 28th of April, 1880, the defendants executed a money bond for Rs. 45 in favour of the plaintiff, thereby binding themselves to pay jointly and severally the amount of the bond personally, and the bond recites that this bond has been passed in settlement of the claim the plaintiff had against the deceased husband of the defendant No. 1, and on the terms of this bond the plaintiff has sued to recover the amount of the bond with interest from the person and property of both the defendants; but the defendant No. 1 has, as is admitted by the plaintiff, performed a remarriage since the execution of the bond sued on, and hence a question arises, whether a decree can be given against the person and property of the defendant No. 1, or must be restricted only to her *stridhan*?

“In the case of *Nathubhai Bhailal v. Javer Raiji*(1) it has been ruled by the High Court that, under the Hindu Law, a wife who has voluntarily separated from her husband, without any circumstances justifying her separation, is liable for debts contracted by her (even for necessaries) although without her husband's consent; but her liability is limited to the extent of any *stridhan* she may have, and this ruling was followed by the High Court in its Original Side in the case of *Govindji Khimji v. Lakhmidas Nathubhai, his wife Bai Gontibai and another*(2), even though the wife contracted for the debt jointly

\*Ci vil Reference, No. 9 of 1882.

(1) I. L. R. Bom. 121.

(2) I. L. R. 4 Bom. 318.

with her husband, and separately for herself with her husband's consent. It thus appears that the person of a Hindu married woman is protected, and not liable to arrest, for the payment of a debt contracted by her either with or without her husband's consent.

"I beg to confess my inability to find from any of the reported cases, or from the *Mitakshara*, or from the *Vyavahara Mayukha*, anything that will justify me in holding the person of a Hindu widow not liable for the payment of the debts contracted by her; but, on the contrary, I find from the old cases decided by the *Sadar Divani Adalats* of Bombay and Bengal (*Ootamram and Himutram, sons of Wajehram Desai, v. Mt. Bhancee, widow of Gokool Lakmidas, and another*(1); *Ootamram and Himutram, sons of Wajeharam Desai, v. Hargovindas Hurjeevandas*(2); and *Mt. Sootee Koawar v. Punuwo Roy*(3)) that the *Sadar Divani Adalats* ruled that a debt incurred by a Hindu widow is recoverable from her personally as well as from her separate property.

"In the *Vyavahara Mayukha* (translated by Rao Saheb Vishvanath Narayan Mandlik) certain modes of recovering the debts by a creditor are specified, and no distinction is therein made between a male and a female debtor as regards the modes of recovering the debts (*vide pp. 109 to 115*); but, on the contrary, a passage occurs at page 114 'that a woman shall pay the debts agreed to by her or contracted by her jointly with the husband or by herself alone; (and) she shall pay no other debts.' This shows that a woman, like any male debtor, is liable to pay the debts agreed to by her, or contracted by her jointly with her husband, or by herself. This passage also occurs in the *Mitakshara* (*vide Coleb. Dig., Book I, text 211*). The term used in these passages is 'woman', which includes both a married woman whose husband is alive and a widow; it thus appears that there is no distinction made between the liability of a Hindu married woman and that of a Hindu widow for debts contracted by them.

"The ruling in the cases of *Nathubhai Bhailal v. Jhaver Raiji and another* and *Govindji Khimji v. Lakmidas Nathubhai and*

(1) 2 Borr. p., 185, ed. of 1863.

(2) 2 Borr., p. 127, ed. of 1863.

(3) 6 Beng. S. D. A. Rep. 154.

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*others*, referred to above, that the liability of a Hindu married woman for debts contracted by her is limited to the extent of any *stridhan* she may have, seems to have been based, not on any particular text of Hindu law, but on the previous decisions of the High Court in Special Appeals Nos. 261 of 1861 and 467 of 1869. These decisions have not been reported; and thus I have no means of knowing the reasons or the authority on which the learned Judges based their decisions in the special appeals above referred to. Under these circumstances I am unable to find whether the High Court intended that the exemption from personal arrest should be extended to Hindu widows who have remarried after the contracting of the debt, and even to a Hindu widow who has not remarried.

“ In the case of a Hindu married woman it may, I submit, be considered that she contracted the debt with reference to her *stridhan*, which is analogous to a woman’s separate property in England; but in the case of a Hindu widow who has remarried subsequently to the contracting of the debt, it cannot be so considered, for the creditor had, at the time at which she contracted the debt, no means of knowing that she would marry again.

“ It will not be out of place here to state that this Court as well as all other Courts in this district have hitherto been giving decrees against the person and property of Hindu widows for debts contracted by them.

“ Considering that this point is of general importance, and that it is one on which I entertain some doubt, I deem this reference necessary.

“ My opinion on the point hereby referred being in the affirmative, I have given the decree against the person and property of the defendants contingent upon the decision of the Honourable the High Court.”

The parties did not appear.

*Per Curiam*.—The Court thinks that the decree passed by the Subordinate Judge is correct.