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MATHURÁDÁS LOWJI v. GOCULDÁS MÁDHOWJI.

indenture to call a meeting and elect another trustee. The costs of the suit to be paid by the trustees out of the trust property and as between attorney and client.

Attorneys for plaintiffs :—Messrs. *Nánu and Hormasji.*

Attorneys for defendants 1 and 3 :—Messrs. *Winter and Burder.*

Attorneys for defendant No. 2 :—Messrs. *Crawford and Buckland.*

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Farran.

1886. *July* 9, 23.

L. W. J. RIVETT-CARNAC, ADMINISTRATOR GENERAL OF BOMBAY AND ADMINISTRATOR OF PROPERTY AND CREDITS OF FULVAHU, WIDOW OF MURA'R NA'RRON, (PLAINTIFF), *v.* JIVIBA'I, WIDOW OF KHA'RVA BHA'NA' DHUNJI, AND OTHERS, (DEFENDANTS).*

Hindu law—Widow's estate—Savings or accumulations by widow.

One Murár Nárron died in 1872, leaving him surviving his widow, F., and a grandson, G., and a daughter-in-law. The widow (F.) on her husband's death became entitled to a widow's estate in his immoveable property, and accordingly entered into possession and management thereof. Under certain agreements made between her and one K., the latter received the rents of certain portions of the said immoveable property, and in consideration paid F. certain fixed annual sums. On the 26th May, 1883, there was a balance of Rs. 1,787-10-3 due from K. to F. in respect of the yearly privilege of recovering and receiving the said rents. F. died intestate on the 18th December, 1884, and the plaintiff, having obtained letters of administration to her estate, demanded payment of the said sum of Rs. 1,787-10-3 from K. It appeared that, after F.'s death, K. had paid this sum to G., who was F.'s grandson and the reversioner expectant on the determination of F.'s widow's, estate, and on her death had succeeded to all the immoveable property as the right heir of her husband (Murár Nárron). The question was, whether the said sum of Rs. 1,787-10-3 belonged to F.'s estate, or remained portion of the immoveable property of Murár Nárron, and, as such, properly payable to G. as his heir.

Held, that the plaintiff was entitled to recover it as part of F.'s estate. There was nothing to show it to be "savings or accumulations" so as to give it to the heir to her husband's estate.

THIS was a case stated for the opinion of the High Court, under section 69 of Act XV of 1882, by W. E. Hart, Chief Judge.

"The parties are agreed as to the facts set forth in the plaint, copy whereof is as follows :—

*Suit No. $\frac{48}{5834}$ of 1885 on the file of the Small Cause Court, Bombay.

'Murár Nárron, the husband of the abovenamed Fulvahu, died at Bombay on or about the 17th of September, 1872, intestate, leaving him surviving the said Fulvahu, his widow, one Gokuldás Vullubdás, the son of his predeceased daughter, Nánki, and Gomtivahu, the widow of his predeceased son, Hurjivan, the only persons entitled, according to Hindu law, to any interest in, or to, his property, moveable and immoveable. The said Gomtivahu was entitled only to maintenance out of the estate of the said intestate.

'The said Murár Nárron was not, at the time of his death, possessed of any moveable property whatever, save only about Rs. 2,400 cash in the hands of Jairám Dámji and household furniture, copper and brass utensils and porcelain jars, &c., of the aggregate value of about Rs. 500.

'The said Murár Nárron was at the time of his death possessed of certain immoveable properties situate at Ganeshvádi, at Lohár Chawl, and at Picquet Road at Bombay.

'For some time prior to, and up to the time of the death of the said Murár Nárron, the said Khárvá Bhána Dhunji, in consideration of making an annual payment, the amount of which was fixed from year to year, was permitted by the said Murár Nárron to recover and receive the rents of the said properties at Lohár Chawl and Picquet Road.

'Upon the death of the said Murár Nárron, his widow, the said Fulvahu became entitled to a widow's estate in the immoveable property left by him, and she accordingly entered into possession and management of his estate, and, in pursuance of verbal agreements from year to year entered into between the said Fulvahu and the said Khárvá Bhána Dhunji, the latter continued until the 26th day of May, 1883, to recover and receive the rents of the said properties at Lohár Chawl and Picquet Road, respectively, in consideration of which he agreed from time to time to pay certain fixed annual sums to the said Fulvahu. The annual sum so payable by the said Khárvá Bhána Dhunji to the said Fulvahu was at first fixed at Rs. 2,700, afterwards at Rs. 2,425, and lastly at Rs. 2,200.

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'The said Khárvá Bháná Dhunji used, from time to time, on behalf of the said Fulvahu, to pay the municipal rates, Government and *fazandári* rents and other outstandings in respect of the said properties, and used to debit the amount of such payments to the said Fulvahu, crediting her, on the other hand, with the annual sums from time to time payable by him as aforesaid. On the 26th May, 1883, there was a balance of Rs. 1,787-10-3 due from the said Khárvá Bhána Dhunji to the said Fulvahu in respect of the yearly privilege of recovering and receiving the rents as aforesaid.

'The said Fulvahu died intestate at Bombay on or about the 18th day of December, 1884. Letters of administration of her property and credits were granted to the plaintiff by the High Court of Judicature at Bombay.

'The plaintiff as such administrator as aforesaid has through his attorneys demanded payment from the said Khárvá Bhána Dhunji of the said sum of Rs. 1,787-10-3, but he failed to pay the same or any part thereof.

'The plaintiff prays judgment for Rs. 1,787-10-3 and the costs of the suit.'

2. "At the hearing it was alleged on behalf of the defendants, and not denied, that Khárvá Bhána Dhunji, after the death of Fulvahu, had paid the sum of Rs. 1,787-10-3 to Gokuldás Vullubdás, the grandson of Fulvahu and her husband, by their predeceased daughter, Nánki. It was further admitted on behalf of the plaintiff, that Gokuldás was the reversioner expectant on the determination of Fulvahu's widow's estate, and on her death had succeeded to all the immoveable property as the right heir of her husband. The only question raised by the defendants' counsel was whether such payment to Gokuldás was not good as against the representatives of Fulvahu, inasmuch as at her death the Rs. 1,787-10-3 formed no portion of her estate, but became payable to the heir to the immoveable property.

3. "The authorities cited in argument were Mayne's Hindu Law and Usage, *placita* 536—539 and the cases there mentioned, and *Anund Chundra Mundul* v. *Nilmony Jourdar*[1].

(1) I. L. R., 9 Calc., 758.

4. "It was argued on behalf of the defendants that the sum of Rs. 1,787-10-3 was rent due, but not paid at the time of the widow's death, and that inasmuch as it had not been paid to her, there had been no such reduction of it by her into her own possession as would sever it from the immoveable property whence it arose, so as to afford any presumption of an intention to create thereout a separate fund of her own.

5. "I was of opinion this argument proceeded on a false premise. The rent, as such, had been paid by the tenants and received by Khárvá Bhána Dhunji as Fulvahu's agent for its recovery on her account before her death. It had, therefore, been completely severed from the immoveable property whence it arose, and had been appropriated to Fulvahu's separate account. By far the greater part of the moneys so appropriated had, in fact, been drawn and expended by Fulvahu, who was only prevented by the accident of her death from drawing and expending the balance of Rs. 1,787-10-3, which forms the subject of this suit. The mere fact that she had not lived to draw and expend this balance would not, in my opinion, suffice to change its character in the hands of her agent for collection, and remit it to the immoveable estate, any more than it would in the hands of her bankers, supposing she had drawn it from him and paid it to them. In short, the case seemed to me not one of such 'accumulation or accretion' as Mr. Mayne instances, but rather one of an accidental balance such as those instanced in the case of *Sreemutty Puddo Monee Dossee* v. *Dwárká Náth Biswas*[1] which he cites at the end of the passage referred to above in para. 3.

6. "I, therefore, passed judgment for the plaintiff for the sum of Rs. 1,787-10-3 and costs, and certified Rs. 51 professional costs against the assets of Khárvá Bhána Dhunji in the hands of the defendants; but at the request of the defendants' counsel and on condition of the defendants giving satisfactory security for the payment of the amount of the judgment and Rs. 50 costs of the reference (which they have done by the deposit of Government promissory notes), such judgment was made contingent on the opinion of the High Court on the question whether the

(1) 25 Calc. W. R. Civ. Rul., 335.

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balance of Rs. 1,787-10-3, shown in the books of Khárvá Bhána Dhunji to the credit of Fulvahu, at her death formed a portion of her estate. If that question be answered in the affirmative, the present judgment will stand. If in the negative, the judgment for the plaintiff will be set aside, and the suit will be dismissed with Rs. 51 professional costs to be paid by the plaintiff out of the estate of Fulvahu."

Macpherson for plaintiff cited *Anund Chundra Mundul* v. *Nilmony Jourdar*(1); *Isri Dut Koer* v. *Mussumut Hansbutti Koerain*(2); *Hunsbutti Kerain* v. *Ishri Dutt Koer*(3); *Chundrabulee Debia* v. *Brody*(4); *Sreemutty Puddo Monee Dossee* v. *Dwárkánáth Biswas*(5).

The defendent did not appear.

July 23. SARGENT, C. J. :—It is clear upon the authorities that the savings or accumulations, as they are sometimes termed, by a widow out of the income of her husband's estate pass to his heirs on her death. In *Isri Dut Koer* v. *Mussumut Hansbutti Koerain*(6) the Privy Council laid this down as well-established law. They say: "If the widow has made no attempt to dispose of the savings from her husband's estate, there is no dispute but that they follow the estate from which they arose." This, however, leaves the question open as to what constitutes savings or accumulations. Is all unexpended income at the death of the widow "savings" within the rule? In *Chundrabulee Debia* v. *Brody*(7) the Court, consisting of Glover and Kemp, JJ., would appear, upon a more restricted view of the widow's estate than now obtains, to have considered it to be so. However, in *Hunsbutti Koerain* v. *Ishri Dutt Koer*(8) Mr. Justice Ainslie says that "the fact that unappropriated profits do not pass as *stridhan*, is to be explained on the theory that when the widow has left money accumulated, it was her intention to add such money to the estate, and to abstain from exercising her full rights over them." This view seems to us to be more reconcileable with the accepted

(1) I. L. R., 9 Calc., 758.
(2) 10 Ind. Ap., 150.
(3) I. L. R., 5 Calc., 512.
(4) 9 Calc. W. R. Civ. Rul., 584.
(5) 25 Calc. W. R. Civ. Rul., 335.
(6) 10 I. A., 150, at p. 158.
(7) 9 Calc. W. R. Civ. Rul., 584. I. L. R., 5 Calc., at p. 525.

theory as to the widow's estate at the present day, which allows of her not only enjoying the usufruct, but alienating her interest by anticipation, and leaves the question whether unexpended income at the time of the widow's death is to be regarded as an accretion to the husband's estate to depend upon whether it can be treated as an accumulation.

In the present case the cash balance in question does not amount to much more than half the yearly payment by Khárvá Bhána, and had not been separated from the general account so as to form a distinct fund which could be regarded as "savings." There is an entire absence of any outward sign of an intention to accumulate; whilst on the contrary the existence of debts rebuts any such intention, and points to the conclusion that the balance was held in suspense by the widow at the time of her death, to use the language of the Privy Council in *Isri Dut Koer* v. *Mussumut Hansbutti Koerain*[1].

We think, therefore, that the question referred to us must be answered in the affirmative.

Attorneys for the plaintiff:—Messrs. *Crawford and Buckland.*

(1) 10 I. A. at p. 158.

ORIGINAL CIVIL.

Before Mr. Justice Jardine.

THE PARELL SPINNING AND WEAVING COMPANY, LIMITED, IN LIQUIDATION, (PLAINTIFF), *v.* MA'NEK HA'JI, (DEFENDANT).*

1886. *July* 20.

Company—Winding up—Liquidator—Suit by liquidator for calls—Limitation—Period of limitation applicable to suit by liquidator for calls different from that applicable to suit by company itself—Limitation Act XV of 1877, *Sch. II, Art.* 120.

The directors of the P. Company made a call of Rs. 100 per share upon its shareholders on the 1st October, 1882. On the 8th March, 1886, the company was ordered to be wound up by the Court, and an official liquidator was appointed. On the 17th March, 1886, the official liquidator filed this suit against the defendant, who was a holder of twenty-one shares in the company, to recover (along with other calls) the amount of the said call of 1st October, 1882. As to this part of the claim, the defendant pleaded limitation.

*Suit No. 167 of 1886.