

Moreover, the position of the sentence in the section, coming as it does immediately after the mention of the particular description of buildings, points to the conclusion that by the term "conditions" was contemplated a possible qualification or restriction affecting the nature or extent of the holdings already referred to. The Standing Committee, which is a select portion of the Councillors, might well be expected to exercise a sound discretion in deciding upon the necessary conditions. We may remark that the several buildings in question, although deprived of the right to drawback by the conditions, will still be entitled to a refund when the entries are such as to fall under the provision of s. 175.

Costs of this reference to be costs in the municipal appeal, and to be taxed by the Taxing Officer of the High Court as on the original side of the High Court.

Attorneys for plaintiff :—Messrs. *Little, Smith, Nicholson, and Bowen.*

Attorneys for the defendant :—Messrs. *Crawford, Burder, Buckland and Bayley.*

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APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Telang.*

MANILAL (*Original Defendant*), *Appellant v. BAI TARA*  
(*Original Plaintiff*), *Respondent.*\* [22nd February, 1892.]

*Hindu law—Widow—Widow's right of residence in her husband's house after his death—House mortgaged by plaintiff's husband in his lifetime and sold in execution—Auction-purchaser—Notice of widow's claim to reside.*

In execution of a decree upon a mortgage effected by the plaintiff's husband in his lifetime, the house in dispute was put up to auction, and purchased by the defendant. The defendant was aware that the plaintiff (the mortgagor's widow) was residing in the house at the time of the Court sale. In a suit brought by the plaintiff to establish her right to reside in the house in question,

*Held*, that in the absence of any allegation that the mortgage effected by the plaintiff's husband was not for the benefit of the family, or was in any way in [399] fraud of the plaintiff's rights, the defendant as auction-purchaser took the house free from the plaintiff's right of residence as a Hindu widow, notwithstanding the fact that he had notice of her claim.

[R., 36 P.R. 1907=11 P.L.R. 1908=118 P.W.R. 1907; Cons., 27 M. 45=12 M.L.J. 270 (275).]

SECOND appeal from the decision of J. B. Alcock, District Judge of Surat, in appeal No. 64 of 1891 of the District File.

The plaintiff, Bai Tara, was the widow of one Nandlal Baharilal. In execution of a decree upon a mortgage effected by Nandlal and his son the house in dispute was put up to auction and purchased by the defendant.

The plaintiff thereupon sued for a declaration of her right of residence, as a Hindu widow, in the house in dispute, and for an injunction restraining the auction-purchaser from ousting her.

The Court of first instance rejected the plaintiff's claim.

On appeal, the District Judge found that the auction-purchaser had notice of the fact that the plaintiff was residing, and had a right to reside, in the house in dispute, and that the plaintiff could not be provided with a

\* Second Appeal No. 790 of 1891.

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residence in any other family property. He, therefore, awarded the plaintiff's claim, on the authority of *Dalsukhram v. Lallubhai* (1).

Against this decision the defendant appealed to the High Court. *Manekshah Jahangirshah*, for appellant.

*Nagindas Tulsidas*, for respondent.

The following authorities were referred to in argument:—*Nana Jivan v. Rama* (2); *Ramanadan v. Rangammal* (3); *Lakshman v. Satyabhamabai* (4); *Gauri v. Chandramani* (5); *Talemand Singh v. Rukmina* (6); *Srimati Bhagabati v. Kanailal* (7); *Dalsukhram v. Lallubhai* (1).

#### JUDGMENT.

JARDINE, J.—It is found below that the defendant, who represents the purchaser at the Court sale held under the decree obtained on the mortgage by the mortgagee against the plaintiff's husband, had notice of the plaintiff's claim to reside in the house then sold and in which she was then residing. But, in the absence [400] of any allegation that the mortgage effected by the plaintiff's husband was not for the family advantage, or was in any way in fraud of her rights; we are of opinion that the purchaser at the Court sale took the house free from her right of residence as a Hindu widow. This appears to have been decided by this Court in *Nana Jivan v. Rama* (2) and at Madras in *Ramanadan v. Rangammal* (3). The subject is also discussed in *Lakshman v. Satyabhamabai* (4) and in *Dalsukhram v. Lallubhai* (1).

For these reasons we reverse the decree of the District Judge and restore that of the Subordinate Judge. Plaintiff to pay costs of both appeals.

*Decree reversed.*

17 B. 400.

#### APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

BAI UGRI AND OTHERS (*Original Defendants*), *Appellants v. PETAL PURSHOTAM BHUDAR* (*Original Plaintiff*), *Respondent*.\*

[10th March, 1892.]

*Husband and wife—Marriage—Restitution of conjugal rights—Conditional marriage—Kudwa Kunbi caste—Custom—Public policy.*

The plaintiff, a member of the Kudwa Kunbi caste, sued in 1890 for restitution of conjugal rights, alleging that he had been married to the first defendant in 1927. The defendants alleged that at the date of the marriage the parties were only a month old; that the marriage was a *sata* (exchange) marriage, and that by the contract the plaintiff's father was bound, as a condition of his obtaining the second defendant's daughter for his son, to provide a girl to be married to the second defendant's son. They alleged that such conditional marriages were a custom of the caste, and they denied that the condition had been performed by the plaintiff's father. They further alleged that in 1936 the plaintiff's father, finding that he could not perform the condition, had passed a release (the plaintiff himself then being a minor) to defendant No. 2 (the father of defendant No. 1), giving up all claims to defendant No. 1; that a dispute having subsequently arisen after the plaintiff had attained his majority the matter was referred to the members of the caste, who decided that within a certain fixed time the plaintiff should provide a girl for the son of defendant No. 2, and that

\* Second Appeal No. 514 of 1890.

(1) 7 B. 282.

(2) P.J. (1886) p. 252.

(3) 12 M. 260.

(4) 2 B. 494 (511, 514, 520).

(5) 1 A. 262.

(6) 3 A. 353.

(7) 8 B.L.R. 225.