

1910.

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schedule, that is a sufficient acknowledgment under section 19 of the Indian Limitation Act, to extend the period of limitation.

I may observe in passing, that in England time would not run against an Insolvent after the vesting order, for the reason that all his assets thereupon vest in the Official Assignee as trustee for the creditors. But there does not appear to be anything in our Statute of Limitation, to stop time running once it had begun to run, for any such reason.

K. McL. K.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1911.
April 3.

HUSSEINKHAN SARDARKHAN (ORIGINAL DEFENDANT), APPELLANT,
v. GULAB KHATUM, WIFE OF HUSSEINKHAN SARDARKHAN
(ORIGINAL PLAINTIFF), RESPONDENT.*

Mahomedan law—Dower—Prompt dower—Payment of—Restitution of conjugal rights—Consummation of marriage—Suit for prompt dower not premature before consummation.

Under Mahomedan law, the Court may hold that the whole of the dower is exigible, in cases where no specific amount of the dower has been declared exigible and there has been no evidence of what is customary.

Fatma v. Sadruddin(1), followed.

Prompt dower (*i. e.*, *muajjal*) is payable immediately on the marriage taking place, and it must be paid on demand. It is only by payment of the prompt dower that the husband is entitled to consummate the marriage or enforce his conjugal rights. Therefore the right to restitution, so far from being a condition precedent to the payment of prompt dower, arises only after the dower has been paid.

Ranee Khejoorunissa v. Ranee Ryeesunissa(2), followed.

SECOND appeal from the decision of G. D. Madgavkar, District Judge of Surat, confirming the decree passed by N. R. Majmunder, Joint Subordinate Judge at Surat.

* Second Appeal No. 135 of 1910.

(1) (1865) 2 Bom, H. C. R. 291.

(2) (1870) 13 W. R. 371 (Civ.).

Suit to recover the amount of dower.

1911.

The plaintiff sued her husband (the defendant) to recover from him the sum of Rs. 593 being the unpaid portion of the dower. At the time the parties were married the amount of the dower was fixed at Rs. 750, out of which the plaintiff received Rs. 157 in the shape of ornaments. The marriage register was silent as to whether the dower was prompt or deferred. The defendant set up a custom that dower could not be demanded before divorce or death of the husband, but failed to prove it. The defendant contended that the marriage had not been consummated; and that the plaintiff's suit for the recovery of her dower was, therefore, premature.

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The Subordinate Judge held that the whole of the dower was payable on demand; that there was no consummation but that the plaintiff was notwithstanding entitled to recover the unpaid dower. This decree was on appeal confirmed by the lower appellate Court. The defendant appealed to the High Court.

Manubhai Nanabhai, for the appellant (defendant):—The lower Court has erred in presuming the whole amount of the dower to be prompt. See *Fatma v. Sadruddin*⁽¹⁾; *Muriam-oon-nissa Begum v. Imdadee Begum*⁽²⁾; *Taufik-un-nissa v. Ghulam Kambar*⁽³⁾; *Eidan v. Mazhar Husain*⁽⁴⁾; *Zakeri Begum v. Sakina Begum*⁽⁵⁾; Sircar's Mahomedan Law, Vol. I, p. 351.

The suit is premature, there having been no consummation of marriage. See *Abdul Kadir v. Salima*⁽⁶⁾; MacNaghten, Pr. 20; case xxxi, A, 3, case xxxv; Ameer Ali, Vol. II, pp. 363, 365, 484, 485 (3rd Edn.); Abdur Rahman, Art. 81; Baillie, pp. 91, 96, 101.

L. A. Shah, for the respondent (plaintiff):—The suit is not premature, for prompt dower can be demanded immediately after marriage. See MacNaghten, Pr. 7; *ib.* 22; Wilson, sections 40, 41 (2nd Edn.). The right is in no way dependent upon

(1) (1865) 2 Bom. H. C. R. 291.

(4) (1877) 1 All. 483.

(2) (1848) 3 S. D. A. (N. W. P.) 185.

(5) (1892) 19 Cal. 689.

(3) (1877) 1 All. 506.

(6) (1886) 8 All. 149.

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consummation of marriages. See *Abdul Kadir v. Salima*⁽¹⁾; *Kunki v. Moidin*⁽²⁾; *Hamidunnessa Bibi v. Zohiruddin Sheikh*⁽³⁾; *Bai Hansa v. Abdalla*⁽⁴⁾; *Abdul v. Husseni*⁽⁵⁾.

Manubhai, in reply, cited MacNaghten, Pr. 7, 22, 20; Baillie, pp. 13, 91, 96, 101; Abdur Rahman, Arts. 74, 81; Sircar, Vol. I, pp. 363, 484; Ameer Ali, Vol. II, p. 473 (3rd Edn.); and *Hosseinooddeen v. Tajunnissa*⁽⁶⁾.

CHANDAVARKAR, J.:—Two points of law have been argued in this second appeal. First, it is contended that the District Judge is wrong in holding the whole amount of the dower to be prompt and the decision of this Court in *Fatma v. Sadrudin*⁽⁷⁾ is relied upon by the appellant's pleader in support of the contention. There it was held that, where no specific amount of dower had been declared exigible, and there was no evidence of what was customary, it was not an error in law for the Court of facts to hold one-third only of the whole amount to be exigible during the life of the husband, the remaining two-thirds being payable on his death. The decision in question lays down no inelastic principle of law, but merely points out what, in the circumstances of the case, was an equitable rule to follow. The learned Judge is, therefore, right in holding upon the facts of the present case that the whole is exigible.

Next, it is urged that in the case of prompt dower, the right of the wife is dependent upon, and does not arise until after, consummation of the marriage. According to Mahomedan law, marriage is a civil contract and dower is a necessary result of it, being a part of the consideration for her agreement to become her husband's wife by consummating the marriage: *Masthan Sahib v. Assan Bivi Ammal*⁽⁸⁾. Consummation is not a consideration for the marriage contract but is performance of the contract. Prompt dower (*muajjal*, as it is called) is payable immediately on the marriage taking place, and it must be paid on demand. If it were payable on consummation, the authorities on Mahomedan

(1) (1886) 8 All. 149.

(2) (1888) 11 Mad. 327.

(3) (1890) 17 Cal. 670.

(4) (1905) 30 Bom. 122.

(5) (1904) 6 Bom. L. R. 728.

(6) (1864) W. R. (Gap. No.) 199.

(7) (1865) 2 Bom. H. C. R. 291.

(8) (1900) 23 Mad. 371.

law would have said so instead of using the word "demand." And this is in accordance with *Kunhi v. Moidin*⁽¹⁾, where it is said:—"The Muhammadan matrimonial contract involves separate and independent contracts by the husband and wife. The wife is by contract bound to submit herself to her husband and he is bound to pay the prompt or other dower according to the contract, or if no sum agreed on, according to the provision of the law. Each has a separate remedy against the other for non-performance of the contract." In *Ranee Khejoorunissa v. Ranee Ryeesunissa*⁽²⁾, it was held that, under Mahomedan law, it is only by payment of the prompt dower that the husband is entitled to consummate the marriage or enforce his conjugal rights and that "unless delay is stipulated for and agreed to, it should be paid at the time of the marriage." It follows that the right to restitution, so far from being a condition precedent to the payment of prompt dower, arises only after the dower has been paid.

The decree must, therefore, be confirmed with costs.

Decree confirmed.

R. R.

(1) (1888) 11 Mad. 327.

(2) (1870) 13 W. R. 371 (Civ.).

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

KASHIBAI, WIDOW OF GANESH (ORIGINAL OPPONENT 2), APPELLANT,
v. MORESHVAR RAGHUNATH, A MINOR, BY HIS GUARDIAN MOTHER
SITABAI (ORIGINAL PETITIONER), RESPONDENT.*

1911.

April 10.

*Hindu Law—Mitakshara—Inheritance—Paternal uncle's grandson—
Paternal uncle's widow.*

Among Hindus in the Bombay Presidency governed by the law of the Mitakshara, a paternal uncle's grandson is to be preferred as an heir to a paternal uncle's widow.

* Appeal No. 158 of 1910.

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