

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Hayward.

1911.

July 18.

GANPAT VALAD DHAKU TELI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. TULSIRAM UKHA DHANGAR AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Widow—Alienation—Legal necessity—Performance of pilgrimage—Betrothal of daughter.

Under Hindu law, the expenses incurred by a Hindu widow in performing pilgrimage or in the betrothal of her daughter constitute legal necessity.

As regards pilgrimage, the question in every case must be whether it was for the spiritual benefit of her husband, in the performance of her duty to his soul, and whether the expenses incurred are reasonable or were made honestly, having regard to the estate, the status of the family, and other considerations which it is customary for Hindus to take into account in accordance with their religious beliefs and usages.

APPEAL from the decree passed by H. S. Phadnis, District Judge of Khandesh, amending the decree passed by M. N. Choksi, Joint Subordinate Judge at Dhulia.

Suit for declaration.

Three brothers Ganpat, Tanaji (plaintiffs) and Vithu lived together. They separated in 1897. Vithu lived with his wife Umi (defendant No. 1) and had a daughter by her. He died in 1902. After his death, Umi contracted certain debts for performing the betrothal expenses of her daughter and making a pilgrimage. To pay off these debts she sold the property which she inherited from her husband to Tukaram (defendant No. 2) for Rs. 700. The daughter died some time before the sale. A month after the sale Umi contracted a remarriage. The plaintiffs, the brothers of Vithu, filed this suit to recover possession of the property, alleging that Umi's alienation did not bind them. The defendants contended *inter alia* that the sale was effected for a necessary purpose and binding on the plaintiffs. The Court of first instance decided against the defendant's contention and decreed the plaintiff's claim. On appeal the District Judge held that out of the consideration for the sale deed, Rs. 145 represented old debts,

* Second Appeal No. 648 of 1909.

Rs. 50 were spent by Umi in making a pilgrimage to Pandharpur and Rs. 217 were spent in the betrothal expenses of her daughter. The learned Judge therefore held the sale was justified to the extent of Rs. 412; and that the plaintiffs could regain possession of the property from defendant No. 2 by paying Rs. 412 to him.

The plaintiff appealed.

C. A. Rele for the appellant.

N. M. Patvardhan for the respondent.

The following cases were referred to:—*Huro Mohun Audhikaree v. Sreemutty*⁽¹⁾ and *Rama v. Ranga*⁽²⁾.

CHANDAVARKAR, J.:—The sale impeached in this case was by a Hindu widow of property which she had inherited from her husband. It was effected partly for the purpose of paying off several debts, which the widow had incurred in the interests of the property, and partly for the expenses of a pilgrimage by her to Pandharpur and of her daughter's betrothal ceremony. No objection is raised to the sale, so far as its consideration consisting in the payment of debts is concerned. What is urged is that the expenses of the pilgrimage and of the betrothal are not within the definition of legal necessity required by Hindu law to render a sale by a widow valid and binding upon the reversioners.

As to the pilgrimage, we must bear in mind the position of a Hindu widow with reference to the estate she inherits from her husband and the duties she owes to his soul. As observed by the Judicial Committee of the Privy Council in *The Collector of Masulipatam v. Cavalry Vencata Narrainapah*⁽³⁾, a Hindu widow has to lead the life of ascetic privation, and hence the law gives her a power of disposition for religious purposes, which is denied to her for other purposes. That is to say, "for religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which

1911.

GANPAT
VALAD
DHAKU
v.
TULSIRAM.

(1) (1864) 1 W. R. 252 (Civ. Rul.).

(2) (1885) 8 Mad. 552.

(3) (1861) 8 Moo. J. A. 529 at p. 551.

1911.

GANPAT
VALAD
DHAKU
v.
TULSIRAM.

she possesses for purely worldly purposes." Accordingly, in that case, the expenses of a pilgrimage to Gya for the performance of the husband's *shraddha* there were allowed as fulfilling the conditions of legal necessity.

Vijnaneshwara points out in the *Mitakshara* that "the succession of a chaste widow" to her husband as heir "is expressly declared" by the text: "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share." (*The Mit.*, Ch. II, Sec. I., pl. 18.) Pilgrimages are generally made by a widow with a view to present her husband's funeral oblations at the sacred place visited and to ensure for his soul the special merit arising from such presentation. In every case the question must be whether the pilgrimage was for the spiritual benefit of her husband, in the performance of her duty to his soul, and whether the expenses incurred are reasonable and were made honestly, having regard to the estate, the *status* of the family, and other considerations which it is customary for Hindus to take into account in accordance with their religious beliefs and usages. "A widow, like a manager of the family, must be allowed a reasonable latitude in the exercise of her powers, provided, as Mr. Justice West says in *Chinnaji Govind Godbole v. Dinkar Dhondev Godbole*⁽¹⁾, she acts fairly to her expectant heirs": *Venkaji Shridhar v. Vishnu Babaji Beri*⁽²⁾.

In the present case, the pilgrimage was to Pandharpur, and the expenses incurred were Rs. 100, of which the District Judge has allowed Rs. 50 only as having been reasonably necessary. That is a question of fact, binding on us in second appeal.

As to the betrothal, it was, as found by the Court below, in accordance with a custom of the caste to which the parties belong, and the widow was well within her power in incurring the charges.

The decree is confirmed with costs.

Decree confirmed.

R. R.

(1) (1886) 11 Bom. 320.

(2) (1893) 18 Bom. 534 at p. 536.