

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mahomed Riasat Ali v. Mussummat Hasin Banu, from the Court of the Judicial Commissioner of Oudh, Lucknow; delivered 22nd July 1893.*

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Present:

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

*[Delivered by Sir Richard Couch.]*

The plaintiff in the suit and present respondent is the widow of Mosheraf Ali, who died on the 24th November 1880, leaving besides his widow a brother Saiyid Riasat Ali and two sisters. The amended plaint filed on the 24th September 1884, alleged that the plaintiff according to the custom and the entries made in the settlement wajibularz was entitled to succession and to inherit the entire property left by her deceased husband, and alternatively that according to Mahomedan law she was entitled to inherit one-fourth of his property. It then alleged that on the 28th November 1880 the defendant Riasat Ali took possession of the entire property left by Mosheraf Ali, and prayed for a declaration of the right of inheritance and for possession of the immoveable property with mesne profits, or any other relief which the Court might deem proper to grant.

On the 27th October 1884 the plaintiff filed a list of the property claimed, both immoveable and moveable. The wajibularz referred to in

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the plaint was of a village, in form of a joint zemindari tenure, of which Mosheraf Ali had a half share. It contains in paragraph 4, relating to right of transfer and inheritance, the following statement. "A daughter, or her issue, does not get any share. If the deceased co-sharer have no male issue, but a female issue only, then indeed in that case the female issue can get a share. If all the wives be childless, they shall for their life time remain in possession of the deceased's inheritance in equal shares, with proprietary power." The allegation that the plaintiff was entitled to inherit the entire property left by her deceased husband was denied by the defendant's written statement.

The plaintiff had on the 7th May 1881 brought a suit against the defendant, in which she claimed Rs. 30,000 for dower. On the 1st August 1882 a decree for Rs. 166 was made in that suit by the Judicial Commissioner in an appeal by the plaintiff from the order of the District Judge who had dismissed the suit. The Defendant in his written statement alleged that the plaintiff had in that suit relinquished the claim for inheritance, and that the present suit was barred by Section 43 Act 14 of 1882.

The proceedings of the District Judges before whom the case came may be briefly noticed. The first, Mr. Blennerhassett, made an order which was cancelled by his successor, Colonel Newbery, who framed additional issues and then dismissed the suit on the ground that it was barred by Section 43 of Act 14 of 1882, and also as to the moveable property that it was barred by the law of limitation, applying to it Art. 49 in the schedule to Act 15 of 1877.

The Judicial Commissioner on appeal reversed this dismissal and remanded the case for trial on other issues which had not been decided. He held that the suit was not barred by Section 43,

and that Art. 123 and not Art. 49 applied. Thereupon Colonel Newbery made a decree that the defendant should deliver to the plaintiff possession of the immovable property, specifying it, and should pay to the plaintiff Rs. 14,725. 8. 9 as detailed, that is—"Moveables to value of Rs. 764. 12—Cash Rs. 8,910. 3. 3—Deposit money Rs. 1,300—Mesne profits Rs. 3,750. 9. 6."

The defendant appealed from this decree to the Judicial Commissioner, and the plaintiff filed objections to it. On this appeal the Judicial Commissioner made a decree, declaring the plaintiff to possess a life interest in the immovable property of her late husband, viz. in the half of Saleh Nagar and in the other immovable property decreed to her by the District Judge, and ordering that possession should be given to her of the moveables to the value of Rs. 764. 12 as decreed by the Lower Court, of the cash Rs. 8,910. 3. 3, and deposit money Rs. 1,300. Mesne profits were also allowed by the decree, amounting, after deductions on account of dower and funeral expenses, to Rs. 3,643. 9. 6.

The first objection taken in the present appeal is that the suit is wholly barred under Sections 42 and 43 of the Civil Procedure Code of 1882 by the decree in the dower suit. Section 42 is clearly not applicable. The suit for dower was properly framed. Section 43 says "Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action . . . If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished." The dower suit did include the whole of the claim in respect of the cause of action in the suit, viz. the right to dower and the non-payment of it. No portion of that

claim was either relinquished or omitted. It cannot be said that the claim of the plaintiff as heir of her husband to the whole of his property was a portion of her claim to dower. The causes of action in the dower suit and in the present suit are distinct, and it was pointed out by this Committee in the case of *Rajah of Pittapur v. Sri Rajah Venkata Mahipati Surya* (L. R. 12 I. A. 119) that the corresponding section in Act 8 of 1859 does not say that every suit shall include every cause of action or every claim which the party has, but every suit shall include the whole of the claim arising out of the cause of action, meaning the cause of action for which the suit is brought. The finding of the District Judge on this issue was rightly reversed by the Judicial Commissioner.

The next objection was that the claim to cash and moveables was rightly held by the first Court to be barred by limitation. Their Lordships do not agree with either the Judicial Commissioner or the District Judge as to the Article in the schedule to the Limitation Act which is applicable. This is not a suit for a distributive share of property (Art. 123), nor a suit for specific moveable property wrongfully taken (Art. 49). This latter Article does not appear to be applicable to a suit to establish a right to inherit the property of a deceased person. Art. 120 provides a period of limitation of six years for a suit for which no period of limitation is provided elsewhere in the schedule. Their Lordships think this Article should be applied, unless it is clear that the suit is within some other Article, which in their opinion it is not, and consequently the suit as regards the moveable property is not barred.

Another objection was that mesne profits are given for Saleh Nagar for four years, and Art. 109 limits them to three years from

when they are received. It was agreed that on this account Rs. 700 should be deducted from the balance of Rs. 3,643. 9. 6, and the decree of the Judicial Commissioner should be amended by making that deduction. Lastly it was objected that the decree of the Judicial Commissioner was erroneous in not including the moveable property in the declaration that the plaintiff had a life interest, as the custom stated in the *wajibularz* applied to moveable property as well as to immoveables. This is so, and the decree should be amended by making the declaration apply also to the moveables and the cash and deposit money. Their Lordships will humbly advise Her Majesty to order the decree of the Judicial Commissioner to be amended accordingly. The parties will bear their own costs of this appeal.

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