

Bai Devkore Vs. Sanmukh Ram

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Court : Mumbai

Decided On : Jun-18-1888

Reported in : (1889)ILR13Bom101

Judge : Charles Sargent, C.J. and; Nanabhai Haridas, J.

Appellant : Bai Devkore

Respondent : Sanmukh Ram

Judgement :

Nanabhai Haridas, J.

1. The suit in this case was brought by one Sanmukhram Narsidas against Bai Devkore, his, elder brother Kasandas Narsidass' widow, to eject her from the ground-floor of the family dwelling house, where she had lived during her husband's life-time and since his death in 1879. He based his claim on a deed of settlement made by his father in 1879, and failing that, on his general right of inheritance, his father having died in 1883. He offered her a separate house to live in, in a different part of the town.

2. The defendant denied all knowledge of the deed of settlement; and rested her defence on two wills made by her father-in-law; in 1873 and 1879 respectively, and, failing them, on her right as ' a Hindu widow to live in the family dwelling-house during her life-time. She also pleaded limitation; but no issue was raised,

and. we may take it the plea was afterwards abandoned.

3. The deed of settlement as well as the two wills were held proved by the Subordinate Judge, but he considered them to be invalid--a decision in which the lower appellate Court has concurred with him. Neither the plaintiff nor the defendant has questioned before us the correctness of this decision. We have, therefore, to deter, mine the case irrespective of those documents.

4. The Subordinate Judge awarded the claim on a ground not made by either party, viz., the ground of inconvenience. He also awarded her maintenance, which she had not claimed. On appeal, the Assistant Judge disallowed the maintenance, leaving her at liberty to claim it in a separate suit, and confirmed the decree in other respects. The defendant has appealed to us against this decision and we are called upon to decide whether, under the circumstances mentioned above, the lower Courts were right in allowing the claim. We may mention here that the plaintiff died pending the suit, and is now represented by his widow. But it makes no difference in the case, for the widow stands in no better position than the plaintiff did.

5. The general rule of Hindu law, that a co-parcener's widow is entitled to reside in the family dwelling house, is well settled in this Presidency; see *Prankoonwur v. Devkoonwur* 1 Bor 364, *Kumla-Buhoo v. Muneeshunkar* 2 Bor 687 ; *Parvati v. Kisansing* I.L.R. 6 Bom. 567 ; *Dalsukhram v. Lallubhai* I.L.R. 7 Bom. 282 and *West and Buhler*, 252, 734. The same rule appears to prevail also in *Bengal Mangala Devi v. Dinanath Bose* 4 B.L.R. P.C.J. 72 and *Allahabad Gauri v. Chandramani* I.L.R. All. 262 and *Talemand Singh v. Rukmina* I.L.R. 3 All. 353 . Unless, therefore, any special circumstances, creating an exception to such rule can, be made out, the defendant is entitled to succeed. The Subordinate Judge admits the rule, but gets rid of it in this way: The family house in this case,' he says, 'is not sufficiently large and convenient to accommodate two families. I have myself visited it, and I think that the ground-floor of it is not only small and inconvenient, hut is also unhealthy. If the defendant insists upon, retaining it, she does so not for any tangible advantage but simply out of respect for her own opinion. But be that as it might, it would in my opinion, be extremely inconvenient to both parties in

their present state of disagreement to lodge the defendant in the house in dispute,' This view is concurred in by the Assistant Judge.

6. This mode of dealing with the case calls for one or two remarks from us. The plaintiff does not at all rest his case on the ground of the house being too small and inconvenient. The defendant does not complain that the ground-floor in her occupation is either inconvenient or unhealthy. On the contrary she is perfectly satisfied with it and implores to be allowed to continue' undisturbed where she is. The lower Courts were, therefore, wrong in making this point for the plaintiff. Besides, the family is now admittedly reduced to the two surviving widows. If the house was considered large and commodious enough for the wants of the family when it consisted of at least three more members, their husbands and father-in-law--it does not appear when the mother in-law died--it is difficult to understand how it has become less so now. As to the ground floor being unhealthy, opinions may differ. The defendant, who is the only person affected by it, evidently prefers that to any other locality; and she is not to be deprived of her residence merely because the Subordinate Judge entertains a different opinion as to its healthiness. As regards the last observation by the Subordinate Judge, we cannot allow it to go forth as good law that any 'disagreement' between two widows of a family can justify the eviction of one of them from the family residence. We are not shown any authority to support, such a proposition. Besides, it would always enable one of them, by picking up a quarrel, to eject the other; and occasions for doing so are by no means rare even in a well-governed family. It may also be noticed that the defendant (appellant) is the senior widow; and according to Hindu notions, the respondent, who is junior in rank, is bound, morally at all events, to respect and obey her.

7. We must, therefore reverse the decrees of both the lower Courts, and reject the claim, with costs throughout.