

Haidari Begam Vs. Gular Bano

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Court : Allahabad

Decided On : Mar-27-1914

Reported in : 25Ind.Cas.395

Judge : Tudball, J.

Appellant : Haidari Begam

Respondent : Gular Bano

Judgement :

Tudball, J.

1. This is a reference by the Taxing Officer. The defendant-appellant is the widow of a deceased Muhammadan Saiyed Qurban Husain. The plaintiff-respondent is the own sister of the deceased. She brought a suit to obtain possession of certain property and a declaration that the defendant had no title thereto. She added that if she were held liable for payment of any dower-debt due to the defendant, she was ready to pay the same. In the Court below the defendant-appellant denied the plaintiff's title to the property and further contended that her own dower-debt amounted to Rs. 80,000 and that she was entitled to remain in possession of the entire property, at least until her own-debt had been satisfied. The Court of first instance decreed the plaintiff's suit. It did not go into the question of the amount of the defendant's dower, being of opinion that the plaintiff was entitled to recover possession even if the dower-debt remained unpaid. The defendant-appellant has

now preferred this appeal paying a Court fee equal in amount to that paid by the plaintiff in the lower Court. She raises the same pleas and the question before me is whether she is liable to pay Court-fee on the sum of Rs. 80,000, which she claims as the amount of her dower-debt. The question is, what is the value or amount of the subject-matter in dispute in this appeal? It is suggested that it is not only the property in dispute but also the dower-debt claimed by the appellant. It is perfectly true that it is open to this Court to grant a decree to the plaintiff conditional on payment of whatever may be found due to the defendant as her dower-debt. But even in that case it will not be a decree which the defendant-appellant would be able to put into execution, so as to enable her to recover her debt. It would be merely an attachment of a condition to the decree for possession. Of course, it may also be that the Court might dismiss the claim of the plaintiff in toto or it might uphold the decree of the Court below. In any view it seems to me impossible to hold that the amount or value of the subject-matter of this appeal is anything more than the value of the property which the plaintiff is seeking to recover and possession of which the defendant is seeking to retain. - The same considerations do not operate in this instance as would operate if the plaintiff had appealed against a decree for possession conditional on payment of a large sum. I am, therefore, of opinion that the Court-fee already paid is sufficient.