

*Privy Council Appeal No. 49 of 1937*

*Allahabad Appeal No. 34 of 1935.*

Lachhmeshwar Sahai - - - - - *Appellant*

v.

Musammat Moti Rani Kunwar - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 28TH MARCH, 1939

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*Present at the Hearing :*

LORD MACMILLAN.  
LORD ROMER.  
SIR GEORGE RANKIN.

[DELIVERED BY SIR GEORGE RANKIN]

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Narbadeshwar Sahai, a Hindu governed by the Mitakshara, died on the 28th August, 1926. He had been married three times and had a son by each wife. His eldest son was Ram Nandan, his second son was Lachhmeshwar, the plaintiff-appellant: his third son Sumeshwar was born in 1924. The defendant-respondent Musammat Moti Rani Kunwar was his third wife and was the mother of Sumeshwar.

The suit out of which this appeal arises was brought by Lachhmeshwar against his step-mother in the Court of the Subordinate Judge of Bareilly on 22nd May, 1931. It was a suit for the enforcement by sale of two mortgages dated 18th September, 1926, and 20th September, 1929.

The deed of 18th September, 1926, was executed by the respondent within a month of her husband's death. It was for Rs.5,000, of which only Rs.545 was advanced at the time, the balance being set-off against four sums of Rs.2,565, Rs.1,292, Rs.448 and Rs.150. The last-mentioned sum (Rs.150) was not in fact advanced and no claim is made in respect of it. The sums of Rs.1,292 and Rs.448 were described as due for principal and interest on two promissory notes and a bond executed by Narbadeshwar. The sum of Rs.2,565 was described as due on the basis of a mortgage deed dated 23rd December, 1925. For this sum a suit had been brought by the present appellant against Narbadeshwar and his wife and after his death in August, 1926, the suit was by consent dismissed on 30th November upon the widow executing the mortgage of 18th September, 1926.

The second of the mortgages now sought to be enforced was dated 20th September, 1929, and was for Rs.4,000 borrowed by the respondent to pay her husband's debts.

The properties mortgaged by the two deeds of 18th September, 1926 and 20th September, 1929, were different zemindari properties, but the respondent had derived title to them in the same way—viz., under a deed of partition dated 20th January, 1925, which had been embodied in a compromise decree dated 27th March, 1925. The first question which arises upon this appeal is whether the respondent's interest under this compromise was a transferable interest.

In 1921 Ram Nandan, the eldest son, had brought a partition suit and by the decree dated 9th August, 1922, his 4-annas share had been separated; his father and brother being also held entitled each to a 4-annas share and the respondent being given a 4-annas share for her life as was her right upon a partition between her husband and sons. The appellant, the second son, brought a similar suit in 1923 for 4 annas out of the remaining 12 annas. After the birth of the third son, Sumeshwar, in 1924, the whole matter of the family property was referred to arbitration and the partition deed of 20th January, 1925, was entered into by Narbadeshwar, his wife and his three sons (together with Ram Nandan's wife, who claimed certain rights by transfer from her husband). The effect of the deed was that the respondent relinquished the 4-annas share which she had obtained under the decree of 9th August, 1922; that to Narbadeshwar and each of his three sons a 4-annas share was allotted in severalty; and that the respondent was given an interest after her husband's death in the 4-annas share which her husband took under this arrangement. The passage in the deed runs as follows:—

“ I, Bahuria Moti Rani Kunwar, party No. 4, have relinquished my claim in respect of my 4 anna share mentioned in the decree, dated the 9th of August, 1922, in which I have a life-interest, but we, Babu Narbadeshwar Sahai, Babu Lachhmeshwar Sahai, Babu Ram Nandan Sahai and Dulhin Sarjug Debi, covenant that after the death of me, Babu Narbadeshwar Sahai, my 4 anna share shall remain in possession and occupation of Bahuria Moti Rani Kunwar, party No. 4 up to her life-time with life-interest, that up to her life-time Bahuria Moti Rani Kunwar shall have a right to appropriate the profits therefrom after paying the Government revenue and the other Government dues, without a power of making a mortgage or other transfers, that if Bahuria Moti Rani Kunwar dies before the death of me, Babu Narbadeshwar Sahai, then I, Babu Narbadeshwar Sahai, shall, as usual remain the owner in possession of that 4 anna share, that after the death of me, Babu Narbadeshwar Sahai, Babu Ram Nandan Sahai, Babu Lachhmeshwar Sahai and Babu Sumeshwar Sahai shall have a right in my 4 anna share in equal shares, i.e., to the extent of one *suls* each, that if in future any other son is born to Bahuria Moti Rani Kunwar, he will have a right in the 4 anna share of Babu Narbadeshwar Sahai and if no other son is born then after the death of Babu Narbadeshwar Sahai, Babu Ram Nandan Sahai, Babu Lachhmeshwar Sahai and Babu Sumeshwar Sahai shall have a right in equal shares in the share of Babu Narbadeshwar Sahai in accordance with the above condition.”

Upon this provision the questions which arise are: whether the respondent took a life interest in her husband's share after his death; whether the condition prohibiting her from making a mortgage or other transfer is bad under section 10 of the Transfer of Property Act, 1882; or whether she took "an interest in property restricted in its enjoyment to the owner personally" within clause (d) of section 6 of that statute? These questions are not discussed in the judgment of the trial Judge, who gave the appellant a mortgage decree for the full amount of his claim (30th July, 1932). The High Court (13th August, 1935), held that the interest taken by the respondent under the deed of 20th January, 1925, was not transferable, as it was of the nature described in clause (d) of section 6.

The language of the partition deed is by no means clear, but their Lordships take the same view of its effect as did the learned Judges of the High Court. They do not regard the deed as conferring in the first place a life interest upon the respondent and then coupling this with a repugnant condition which prohibits alienation absolutely. The reference to "life interest" is noticed by the High Court, who say that it is more literally translated "right for life," but there is a good deal in the language of the deed which tells against the construction for which the appellant contends. Their Lordships notice that the parties other than the respondent are said to "covenant," that her husband's share is to "remain" in her occupation and possession, that the reference to her "life interest" is followed by words which give her a "right to appropriate the profits," but deny her the "power of making a mortgage or other transfers." Inartificial language may be construed in the light of the circumstances and given a meaning applicable to the subject-matter. The respondent in order to enable her son Sumeshwar to be given equal treatment with his brothers was giving up the share which the Hindu law sets aside for the mother. What was she getting in its place? Their Lordships think the intention was to give her for her maintenance a personal right to appropriate the net profits of her husband's share after his death. There is no evidence to show that such profits would exceed a reasonable maintenance for the respondent having regard to the circumstances and the social standing of her husband's family, and though the word "maintenance" is not used, the object of such a provision for a Hindu widow is sufficiently plain. Their Lordships consider that the High Court rightly refused to regard the mortgage deeds sued upon as conferring any right against the properties comprised therein.

The High Court gave the appellant a money decree for the sum of Rs.4,000 referred to in the mortgage deed of 20th September, 1929, and for Rs.545 paid at the time of registration of the deed of 18th September, 1926, with interest at 13 annas per cent. per mensem or  $9\frac{3}{4}$  per cent. per annum. They were not satisfied that the respondent could be held to her promise to pay the other sums included in the mortgage of 18th September, 1926, and they considered that

the rate of interest (24 per cent. per annum) stipulated by the mortgage deeds was excessive and within the provisions of section 3 of the Usurious Loans Act, 1918. Their Lordships see no reason to interfere with the High Court's direction as to interest. The sums of Rs.1,292 and Rs.448, amounting to Rs.1,740 (mentioned in the mortgage deed of 18th September, 1926), were not sums which the respondent was liable to pay, and the sum of Rs.2,565 is a matter as to which her liability was disputed in the action brought by the appellant in 1926 (No. 44 of 1926) and has not been proved in the present suit. As the respondent was a *purdanashin* lady who entered into the mortgage deeds in suit under a mistaken view of the nature of the interest which she had been given by the partition deed of 20th January, 1925, the High Court were not prepared to hold her liable for any sums which she did not herself receive from the appellant. They were not satisfied that the assumption by her of liability for her husband's debts was made with full knowledge of the true position, though they agree that no fraud was practised upon her and that she knew that she was mortgaging her interest for her husband's debts. Their Lordships are unable to say on the evidence in this case that the High Court's view was unreasonable or that they were wrong in not holding the respondent liable in a larger sum.

They will humbly advise His Majesty that this appeal should be dismissed. The appellant will pay the respondent's costs.

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In the Privy Council

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LACHHMESHWAR SAHAI

*v.*

MUSAMMAT MOTI RANI KUNWAR

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DELIVERED BY SIR GEORGE KANKIN

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