

puted that the accused in the present case was not charged with an offence under section 19(i) of the Indian Arms Act, and in respect of the offence charged, namely, under section 19(f) Indian Arms Act, the proceedings have been instituted without the requisite previous sanction with the result that the proceedings at the trial must be considered to be illegal and without jurisdiction. Without a binding precedent I would feel disinclined, as at present advised, to hold that these proceedings can legally form the basis of a conviction for an offence under section 19(i), Indian Arms Act, for which the accused was never legally tried. Except for a bald assertion the learned counsel for the State too has not been able to offer any convincing argument in support of his submission.

And finally, we have to bear in mind that the matter has come up before us on an acquittal appeal and the offence more or less lies in Ram Chand having retained with himself a gun belonging to his deceased father, of which he (the deceased) had a proper licence during his life-time. On these facts the offence can hardly be considered to be very serious, and I would feel disinclined to interfere on acquittal appeal.

For the reasons given above this appeal fails and is hereby dismissed. The fate of the other two appeals, it is conceded, depends on the decision of this appeal. In the result those two appeals also fail and are hereby dismissed.

D. FALSHAW, C.J.—I agree.

D. Falshaw, C.J.

K.S.K.

APPELLATE CIVIL

Before Harbans Singh, J.

SOHAN SINGH AND OTHERS,—Appellants.

versus

SADHU SINGH AND OTHERS,—Respondents.

Execution First Appeal No, 271 of 1960,

Hindu Law—Widow's estate—Unsecured debts for legal necessity incurred by widow—Whether binding on the

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estate of her husband after her death—Widow's estate—Meaning of.

Held, that the debt incurred by the widow for a legal necessity will be a charge on the estate of her husband, in which she held widow's estate, in the hand of the reversioners after death even if she had not secured the debt by creating a charge on that property during her lifetime. If the creditor had filed a suit during the lifetime of the widow and had obtained a decree he could have recovered the same out of the estate in her hands for the simple reason that the debt was incurred for legal necessity and that merely because the creditor did not have time enough to bring the suit and have the decree executed before she died should not make any difference.

Held, that "widow's estate" is certainly not a life tenancy. The widow can alienate the property, create a charge over it for legal necessity and even if no such charge is created, the property which was in her hand as widow's estate, can be made liable even after her death, for the recovery of loans incurred by her for legal necessity. It is, therefore, clear that the property inherited by her, over which she had a widow's estate can in some respects be treated as her estate liable for the payment of the debts incurred by her. The real tests are first whether the loan was incurred for legal necessity, secondly, whether the intention of the widow was to bind the estate of her husband, and thirdly, whether the creditor brought the suit treating the debt as binding on the widow's estate.

Execution First Appeal from the order of Shri Ram Gopal Kohli, Senior Subordinate Judge, Hoshiarpur, dated the 25th June, 1956, accepting the objection petition in part and releasing one-half share of the attached land from attachment and dismissing the objection with regard to the other half share and the trees standing on the land and further ordering that if the objector deposits in Court Rs. 352-8-0, on account of the price of half of the trees on or before the 10th July, 1956, the objection petition would stand accepted with regard to $\frac{1}{2}$ share of the land along with $\frac{1}{2}$ share of the trees.

H. S. GUJRAL AND DALIP SINGH, ADVOCATES, for the Appellants.

SHAMAIR CHAND AND PARKASH CHAND, ADVOCATES, for the Respondents.

JUDGMENT.

HARBANS SINGH, J.—The facts giving rise to this appeal may briefly be stated. There were two brothers Darshan Singh and Dhanna Singh. Darshan Singh died while serving in the Army, and during the course of litigation to which Mst. Udham Kaur, widow of Darshan Singh, was not made a party, Dhana Singh, entered into a compromise by which he gave away all his rights in the entire property to Puran Singh and others. Udham Kaur then brought a suit in the year 1950, Civil Suit No. 200/527, claiming that she was the owner of one-half of the property and sought a declaration and the consequential relief of possession in respect thereof. With regard to the other half she claimed possession of the same by pre-emption on payment of one-half of Rs. 11,000. The trial Court held that one-half of the property belonged to Darshan Singh and with regard to this granted a decree for possession without payment of any money. With regard to the remaining one-half it was held the consideration was indivisible and that she was entitled to obtain possession of that other one-half on payment of full amount of Rs. 11,000. This she did and thus she got the possession of the entire property.

In order to fight this litigation and *inter alia* to deposit the sum of Rs. 11,000 she had borrowed certain sums of money from Ram Lal who happened to be her sister's husband. She executed pronotes in respect of these various amounts. There were consolidation proceedings and she was assessed to pay compensation towards the price of the trees on the new land allotted to her and for this and other consolidation expense it is stated that she borrowed another Rs. 1,600 against a fourth pronote. Soon after this she died. Ram Lal then brought a suit impleading *inter alia* Dhanna Singh and others as legal representatives of Mst. Udham Kaur and sought to recover the principal sum advanced by him against these pronotes plus interest.

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Dhanna Singh resisted the suit and *inter alia* pleaded that in fact the pre-emption suit had been filed by him *benami* in the name of Udham Kaur and that the entire expenses were incurred by him. This plea was negatived and the Court held that it was Mst. Udham Kaur who had brought the suit for pre-emption and had incurred the expenses. It was held that in the earlier suit Dhanna Singh had even challenged the status of Mst. Udham Kaur as the widow of his brother Darshan Singh and that it was unbelievable that he had given her such a big amount without any writing from her. As a result of these findings a decree was passed for a sum of Rs. 18,000 against "the estate of Udham Kaur in the hands of defendants Nos. 1 to 6" which included Dhanna Singh. In execution of this decree the entire land once possessed by Mst. Udham Kaur was attached. Dhanna Singh filed objections claiming the release of the land on the allegation that the land in lieu of which the attached land was allotted to Mst. Udham Kaur was not the personal property of the deceased and had been acquired by her by inheritance from her husband. The decree-holder pleaded in reply that the land had been acquired by the deceased by pre-emption and was thus her personal property. The only issue which was contested was "Does the land in dispute belong to Mst. Udham Kaur in her personal capacity"? One-half of land which was acquired by Mst. Udham Kaur by pre-emption was held to belong to her and there is no dispute about that. One of the arguments put forward on behalf of the decree-holder was that the sum for which the decree had been obtained by the decree-holder was got by the deceased for necessary purposes and was a charge on the land. Without discussing this argument the executing Court held that it found no substance in this contention. With regard to the trees it was held that the value of the trees on her original land was only Rs. 13-8-0 and the value of the trees standing on the land which had been allotted to her after consolidation was Rs. 705. Consequently it was held that the trees also belonged to the deceased and were liable to be proceeded against. It was,

however, observed by the learned Subordinate Judge as follows:—

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“If the judgment-debtors pay one-half of this sum they acquire ownership of one-half of the trees on the land. Dhanna objector agrees to pay this sum and thus acquire one-half share of the trees.”

In view of this, objections were accepted to the extent of releasing one-half of the land and objections regarding the remaining one-half of the land and all the trees standing on the entire land were rejected. It was provided that if the objector deposited in Court Rs. 352-8-0 on account of the price of one-half of the trees on or before the 10th July, 1956, the objection petition would stand accepted with regard to one-half share of the land along with one-half share of the trees. This judgment was delivered on the 25th of June, 1956 and on the 5th of November, 1956, Shrimati Amar Kaur, claiming herself to be the *Mukhtiar-e-am* of her husband Ram Lal filed an appeal in this Court, E.F.A. No. 174 of 1956. It, however, transpired that Ram Lal who had been residing in Africa for the last several years had died there on the 27th of October, 1956, i.e., 8 or 9 days before the date of the filing of the appeal. On getting intimation about this demise Amar Kaur obtained power of attorney from Sohan Singh, the only son of the deceased decree-holder who was also in Africa, and on the 25th of January, 1957, applied for substitution of Sohan Singh and herself as the legal representatives of the deceased Ram Lal. This application was allowed subject to all just exceptions, but at the time of the hearing of the appeal the learned Single Judge on 19th of March, 1958, dismissed the appeal as having been filed on behalf of a dead person. A Letters Patent Appeal No. 307 of 1958 was filed against this order on the 29th of July, 1958, which was admitted on the 1st of August, 1958. On the 28th of July, 1960, however, the Letters Patent Bench while discussing the conflicting views of the various High Courts on the point whether in the circumstances like the

Sohan Singh present one legal representative could be substituted or not held the view that such a substitution and others v. Sadhu Singh cannot be allowed because the appeal having been filed in the name of a dead person was a nullity. This case is reported as *Amar Kaur and others v. Sadhu Singh and others* (1). After obtaining another certified copy of the judgment of the trial Court which was with Amar Kaur, the present appeal was filed on the 3rd of August, 1960, on behalf of Sohan Singh and Amar Kaur. An application explaining the facts as detailed above was also given supported by an affidavit.

The first objection taken on behalf of the respondents is that this appeal is hopelessly barred by time. One thing is, however, clear that the appeal was originally filed without the knowledge of the death of Ram Lal. The subsequent steps taken on behalf of Sohan Singh and Amar Kaur cannot also be said to be without any reasonable cause. There was obviously such a conflict of authorities that the matter was taken to a Division Bench and the decision laying the law authoritatively, so far as this Court is concerned, was given in this case for the first time. I am, therefore, of the opinion that the entire period up to the 28th of July, 1960, should be excluded under section 5 on the analogy of the provisions of section 14 of the Limitation Act. The period between the 28th of July, and the 3rd of August, 1960, is so small that it is just reasonable to enable a counsel to take necessary steps to file an appeal. One further objection is that at the time of the filing of this appeal the judgment of the executing Court was stamped with a court-fee of Rs. 2.50 nP. while the rules require it to be stamped with Rs. 2.65 nP. The explanation for this, as is clear from the affidavit filed by the counsel, is that his clerk apparently being a new man, failed to notice the deficiency. The deficiency was made up within the time of one week which was allowed by the office. In these circumstances, therefore, I feel that it is a fit case in which the period of limitation should be extended and I order accordingly.

(1) 1960 P.L.R. 776.

This now brings us to two important questions that arise in the case. The first point raised by the learned counsel for the appellants was that the original suit which was brought by Udham Kaur was an absolute necessity for preservation of the estate of her husband. As stated above, Dhanna Singh had transferred the entire land to the other party for a sum of Rs. 11,000. He even denied the status of Udham Kaur as the widow of his brother. She had, therefore, to bring a suit to establish her status as a widow and consequently her claim to the estate of her deceased husband. In the same suit she also claimed to pre-empt the one-half share of the land belonging to Dhanna Singh. It was vehemently urged, therefore, that apart from Rs. 11,000 which were required as a deposit towards the price of the land pre-empted, the other expenses of the entire suit were in the nature of legal necessity which she had to incur in any case for the purposes of preserving the estate of her husband which is now being inherited by that very Dhanna Singh and which is now sought to be released from liability to pay the debt which was incurred from the purposes of preserving the estate. It is clear that it was open to the widow to create a specific charge over the property for the loan taken by her for filing the suit particularly so far as the expenses could be attributable to the suit seeking the possession of one-half share of the property belonging to her husband. Such a charge would have been a valid charge having been created for legal necessity. The question is, if such a debt is incurred and it remains as an unsecured debt, has the creditor any remedy to recover the amount from the estate which once belonged to her husband and which goes to the reversioners after the demise of the widow? With regard to these matters there is a conflict of authorities between Allahabad and Madras High Courts, on one side and Calcutta, Bombay and Nagpur High Courts on the other. In *Dhondo Yeshvant Kulkarni v. Misrilal Surajmal* (2), a Full Bench of the Bombay High Court presided over by Beaumont,

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(2) A.I.R. 1936 Bom. 59.

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C.J., thoroughly discussed the case-law and following the view of the Calcutta High Court held that the debt being incurred by the widow for a legal necessity would be a charge on the estate in the hands of the reversioners. I feel that this is a sound and reasonable view. It is not disputed that if the creditor had filed a suit during the lifetime of the widow and had obtained a decree he could have recovered the same out of the estate in her hands for the simple reason that the debt was incurred for legal necessity and I feel that merely because the creditor did not have time enough to bring the suit and have the decree executed before she died should not make any difference. In the present case the suit was brought against the present respondents in their representative capacity. The form of the suit did not indicate that the same was being brought against the widow in her personal capacity. The learned counsel for the respondents, however, took up the plea that the decree granted in favour of the decree-holder clearly provides that the sum was recoverable out of the estate of Udham Kaur. Though the property that Udham Kaur acquired by pre-emption would be her personal property and, therefore, can be treated as her estate after her demise, it was urged that so far as the land in which she had merely a widow's estate, her interest in the land ceased as soon as she died and that the reversioners got that land not as representatives or heirs of Mst. Udham Kaur but in their capacity as heirs of her deceased husband and consequently that part of the property in the hands of the reversioners cannot be said to be "the estate of Udham Kaur".

On behalf of the learned counsel for the appellants it is, however, urged that the mere use of the words, "the estate of Udham Kaur" would not exclude the property which Mst. Udham Kaur had inherited from her husband over which she had what is known under the Hindu law a "widow's estate." "Widow's estate" is certainly not a life tenancy. She can alienate the land, create a charge over it for legal necessity, and as has already been noticed above, even if no such charge

is created the property which was in her hand as widow's estate, can be made liable even after her death, for the recovery of loans incurred by her for legal necessity. It is, therefore, clear that the property inherited by her, over which she had a widow's estate can in some respects be treated as her estate liable for the payment of the debts incurred by her. I feel, there is force in this argument. The real tests are, first, whether the loan was incurred for legal necessity, secondly, whether the intention of the widow was to bind the estate of her husband, and thirdly, whether the creditor brought the suit treating the debt as binding on the widow's estate. In this connection reference may be made to *Anandrao Vithalrao Marathe v. Annapurnabai Kesheo Rao Marathe* (3), which is a judgment by Vivian Bose, J., as he then was, and the head-note runs thus:

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“When a Hindu widow obtains a loan, she is at liberty to bind herself personally. She is also entitled to bind her husband's estate, when the purpose for which she borrowed was a necessary one. In this respect there is no real distinction in principle between a case where a charge is formally created and another where she executes a bond for the money advanced. Whether in any particular case she intended to do the one or the other must be gathered from all the surrounding circumstances. It is not enough to show that the widow intended to create a liability upon the estate in her hands, and that she was entitled to do so. The creditor also has a part to play. He is entitled to proceed against the widow personally if he wants, and not worry about the estate. Therefore, when he comes to enforce his claim, he must make it clear that he wants to proceed against the estate as well, if that is his intention.”

(3) A.I.R. 1937 Nagpur 299.

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In that case though the plaint was badly drafted the mere fact that the reversioners of the last maleholder were impleaded as defendants was taken to be an indication that the creditor wanted to have the estate liable. At page 301, it was observed as follows :

“..... it is obvious the defendants cannot be made personally liable, and there is no other ground on which they can be sued as Chandrabhagabai’s legal representatives.”

As already noted above the creditor in the present case, had brought a suit impleading not only the brothers of the widow but also the brother of the widow’s husband, viz., Dhanna Singh, as a defendant. The brothers of the widow would be heirs only to the *stridhan* of Mst. Udham Kaur, while Dhanna Singh would be the next reversioner of her husband. The very fact that Dhanna Singh was impleaded clearly shows that the creditor wanted to make the estate, which once belonged to the widow’s husband and which had gone to Dhanna Singh as his reversioner, liable for the debt.

It is, further to be noted that but for the act of the widow the entire estate had been lost to the family. Dhanna Singh had alienated the entire land, i.e., his own share as well as the share of his brother, the deceased husband of Mst. Udham Kaur. Dhanna Singh, admittedly had no right whatever to dispose of the property of his brother in the presence of Mst. Udham Kaur and Mst. Udham Kaur had per force to bring the suit for preservation of the estate, against attachment of which objections are now being pressed by Dhanna Singh. It is only fair that Dhanna Singh, who had inherited the estate that was saved by the action of Mst. Udham Kaur, should pay the debts incurred by Mst. Udham Kaur for the preservation of that estate. In *Karimuddin v. Gobind Krishna Narain*

and another (4), their Lordships of the Privy Council had observed as follows:—

“The preservation of the estate of her husband and the costs of litigation for that purpose were objects which justified a widow in incurring debt and alienating a sufficient amount of the property to discharge it and the general principle of Hindu law that he who takes the estate becomes liable for the debts of the estate was especially applicable in a case like the present, where, but for the debt, the estate would have been lost to the plaintiffs.”

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These observations apply with full force to the facts of the present case.

Another point to be noted is that at the trial of the original suit no objection was raised by Dhanna Singh to the effect that the debt incurred was not for legal necessity or that the same was not recoverable from him as the reversioner of Mst. Udham Kaur's husband brother. It was open to him to raise this question and thus defeat the case of the plaintiff (now decree-holder). The only plea taken was that no expenses were in fact, incurred by the widow in connection with the suit filed by Mst. Udham Kaur and that the expenses were entirely incurred by Dhanna Singh. That being the case, it is not now open to Dhanna Singh to plead that the question of legal necessity of the debt should have been put in issue in the execution proceedings and the decree-holder should have established the legal necessity. In fact there can be no manner of doubt about the legal necessity of that part of the debt which was necessary for bringing the suit to preserve her husband's estate.

It was next urged that out of the total decretal amount Rs. 18,000, Rs. 11,000 were deposited in Court to acquire one-half of the land by pre-emption. That property has already been held to

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be the personal property of the widow and at least the burden of the debt together with its interest cannot legally fall on the other half of the property which she had inherited from her husband. I think that is so.

The further objection is that the suit as brought embraced two reliefs, one for declaration in respect of one-half of the property, and the other for possession by pre-emption of the remaining half, and that it is not possible to decide what expenses were incurred for one relief or for the other. I feel that in the circumstances of the present case it is not necessary to go into this question. The suit as such was forced upon the widow due to the action of Dhanna Singh. The only additional expenses that can be attributable to her prayer for relief for possession by pre-emption can be the court-fee payable in respect of that relief. The major portion of the expenses must, therefore, be held to be for legal necessity.

So far as the item of interest of Rs. 900 which has been allowed to the decree-holder is concerned it was urged that the major portion of this interest must necessarily relate to the loan of Rs. 11,000. I think that would be so. Rs. 11,000 were taken for payment of pre-emption money and Rs. 705 towards payment of compensation for trees. These two items together make a total of Rs. 11,705. Adding to it the item of interest the total comes to Rs. 12,605. This figure may be raised to a round figure of Rs. 12,700 to include Rs. 95 towards court-fee paid and other expenses in relation to the relief for pre-emption and other. This is the maximum that can be attributable to one-half of the land which became the personal property of the widow and all the trees that stood on the estate, though it is clear that some of the interest decreed must also relate to the other debt. The balance of the debt was obviously incurred for the purposes of litigation. The balance of Rs. 5,300 is certainly recoverable out of the other half of the property.

In view of the above, I would accept this appeal and modify the order of the lower Court to the extent that the trees on the entire land will be liable for the payment of the decretal amount and even the other half will be liable for the portion of the decree which remains unsatisfied but not exceeding a sum of Rs. 5,300. In the peculiar circumstances of the case, there would be no order as to costs in this Court.
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CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

MANDIR PASHUPATI NATH MAHA DEV,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 1460 of 1961.

Punjab Security of Land Tenures Act (X of 1953)—Section 2(1)—Landowner—Definition of—Temple—Whether a person—Land belonging to temple—Whether can be declared surplus.

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Held, that the 'landowner' in section 2(1) of the Punjab Security of Land Tenures Act, 1953 has been defined as a person and a 'person' will include a temple, unless the context shows otherwise. There is nothing in the Act which given an indication to the contrary. The land of a temple can, therefore, be declared surplus if it exceeds the permissible area.

Petition under Article 226 of the Constitution of India, praying that a Writ of Mandamus, Certiorari or Prohibition or any other appropriate writ, order or direction be issued quashing the order of the Collector, dated 15th December, 1960.

SHAMAIR CHAND, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.