

1895.
October 30.

HADJIAR v. HENDRICK APPU *et al.*

D. C., Colombo, 5,559.

Marriage in community—Widow's right to mortgage the common estate for paying husband's debt—Liability of estate for such debt.

A widow married in community of property can create a valid mortgage upon the common estate for paying her husband's debt, and the debt so contracted is not her own, but is chargeable upon the common estate.

THE facts of the case appear in the judgment of his Lordship the Chief Justice.

Van Langenberg, for appellant, cited during the course of the argument *Edirmanesingha's* case, *Vanderstraaten's Reports*, p. 264 ; 5 *S. C. C.* 70, 162 ; 3 *Lorenz*, 235 ; *Wendt*, 343 ; 1 *Burge*, 308.

Dornhorst (with *Tirunāvukarasu*), for respondent.

30th October, 1895. BONSER, C.J.—

In this case the plaintiffs claim certain lands, and they make out their title in this way.

The lands belonged to one Allis, who died indebted. His widow who was married in community, after his death mortgaged certain of the properties for the purpose of satisfying the debt. Subsequently the mortgagee having put his bond in suit wished to enforce his judgment for a sum which, with interest and costs, amounted to Rs. 400. The widow, who was unable to pay this money, found a friend, who said he could obtain a purchaser for the lands, and introduced her to the first plaintiff, who bought the property for Rs. 400.

The defendant alleges that he is a nephew of Allis, and that as Allis died intestate and without issue he was therefore one of Allis's heirs, and was entitled to a share in these lands. He contended that the widow had no right to mortgage the property to pay the husband's debts, and that as she had mortgaged these properties the mortgage debt was her own. I am of opinion that the debt was not her own debt, but was properly contracted by her to pay her husband's debts.

Then the defendant raised a claim to one particular portion of the land called Kahatagahawatta, which he said was given to him by Allis, and of which he said he had been in possession for more than ten years uninterruptedly. Under these circumstances, he contended that he had acquired a title by prescriptive possession.

It appeared, however, that Allis had his residing house on Kahata-gahawatta and resided there until his death, and it is therefore clear that of that part of the property the defendant was not in exclusive possession. The learned District Judge was not satisfied with the evidence of possession adduced by the defendant, and I do not see how I can say that he was wrong. Therefore, this appeal must be dismissed.

At the same time the defendant may have some right to this land either as planter or as having made improvements on it, and he can hereafter, after he has been evicted, prosecute his claim in this respect, if he is so advised.

WITHERS, J.—I agree.

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