

(1926) 11 AHC CK 0060
In the Allahabad High Court

Mt. Kubra Begam and Others

APPELLANT

Vs

Fazal Husain and Others

RESPONDENT

Date of Decision : 22-11-1926

Acts Referred:

Limitation Act, 1963 — Article 103
Limitation Act, 1963 — Article 103
Limitation Act, 1963 — Article 103

Citation : AIR 1927 All 268

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Iqbal Ahmad, J.—This is a defendants appeal and arises of a suit brought by the plaintiff respondent for recovery of Rs. 500 on account of the dower-debt due to Nur Jahan who was arrayed as Defendant No. 1 in the suit. Mt. Nur Jahan was married in or about the year 1908 to Aminuddin and the dower fixed at the time of the marriage was Rs. 500. By a deed, dated the 23rd of February 1909, Aminuddin promised to pay the said sum on demand and mortgaged certain immovable properties as security for the amount. Aminuddin died on the 22nd of April 1919, leaving the defendants to the suit as his heirs. Mt. Nur Jahan transferred all her rights under the deed of 1909 to the present plaintiff on the 31st of October 1919, and the present suit was filed by the plaintiff respondent on the 19th of April 1922.

2. Various pleas were taken in defence, but the only point with which I am concerned in the present appeal is the plea of limitation. The defendants maintained that the document dated the 23rd of February 1909, was a simple mortgage-deed and the amount secured by that deed being payable on demand, the cause of action for the recovery of the same accrued to Mt. Nur Jahan on the date of the execution of the deed and no suit having been brought within six years from the date of the deed, the suit was time barred. The trial Court held

that the suit was barred inasmuch as it was filed more than 12 years after the execution of the deed of 1909. The lower appellate Court held that

the suit is not time-barred although more than 12 years have elapsed from the date of the deed.

3. The plaintiff respondent did not pray for a decree for sale, and all that he claimed was a simple money-decree as against the assets of Aminuddin. It is obvious, therefore, that no question of 12 years rule of limitation arises in this case.

4. But in my opinion, the suit is barred by the six years" rule of limitation. By the deed of 1909 there was an express stipulation by Aminuddin to pay the sum of Rs. 500 on demand and further he hypothecated his immovable property as security for the amount. From the moment of the execution of that deed, the dower-debt ceased to be due as dower and became a mortgage-debt. That being so Article 103 of the First Schedule to the Limitation Act cannot apply to the present suit. If the deed of 1909 had not been registered the suit would have been governed by Article 59 of the Limitation Act, The mere fact that the sum of Rs. 500 secured by the deed of 1909 was not actually lent at the time makes no difference. That amount was admittedly due from the husband at the time of the execution of the deed, and to all intents and purposes the dower ceased to be due as dower and became payable as a loan from the moment of the execution of the deed of 1909. But as the deed, of 1909 is a registered instrument a claim for a simple money-decree would be governed by the six years rule of limitation. In the present case the suit was admittedly tiled long after the expiry of six years from the date of the deed referred to above and as such the suit was time barred.

5. The lower appellate Court, in support of its view has referred to the case of *Ameeroonnissa v. Mooradunnissa* [1854] 6 M.I.A. 211. In my opinion that case is distinguishable from the appeal before me. In that case there was not, as is in the present case, long after the marriage a mortgage-deed executed by the husband securing the payment of the dower debt, but there was a deed of dower executed at the time of the marriage, whereby the husband "settled" upon the wife a dower of Rs. 46,000. By the mere execution of the dower-deed, the dower-debt did not cease to be due as a dower-debt. In the present case, as I have said above, by the execution of the deed of 1909 the dower debt ceased to be due as a dower-debt and there after the rights of the parties were to be governed by the deed of 1909, Their Lordships of the Privy Council in the case noted above had to consider the question of limitation with reference to the construction of the particular settlement that was before their Lordships and, in my opinion, the present case is not governed by that case.

6. It has been argued by Mr. Mushtaq Ahmad that the deed of 1909 "is only a deed of acknowledgment by which the husband simply admitted his liability for the dower due to his wife and that if is not a mortgage-deed. I am unable to agree with this contention. There is a clear stipulation in the deed to pay the

amount of Rs. 500 on demand followed by an express hypothecation of immovable properties and as such the deed was a" mortgage-deed and not a mere acknowledgment of liability.

7. For the reasons given above I hold that the suit was time-barred and ought to have been dismissed. The result is that I allow the appeal, set aside the decree of the;lower appellate Court and restore the decree of the Court of first instance with costs in all Courts.