

1915
 SHEIKH
 GALIM
 v.
 SADARJAN
 BIBI.

Court to award, he may be given an opportunity to make the necessary amendments in his plaint and the suit may then be proceeded with. Otherwise the plaint should be returned to him,

G. S.

APPELLATE CIVIL.

Before Fletcher and Teunon JJ.

1915
 March 23.

JOGENDRA CHANDRA BANERJEE

v.

PHANI BHUSHAN MOOKERJEE.*

Hindu Law—Stridhan—Inheritance—Female heirs.

Stridhan inherited by female heirs does not become the latter's stridhan. The female heirs take only a Hindu woman's estate in the property.

Sheo Shankar Lal v. Debi Sahai (1), *Prankissen Laha v. Noyanmoney Dassee* (2) and *Huri Doyal Singh Sarmana v. Grish Chunder Mukerjee* (3) referred to.

SECOND APPEAL by Jogendra Chandra Banerjee, the defendant No. 3.

This was a suit for establishment of title to the disputed lands and for confirmation of possession thereto. One Khantamani Debi was the original plaintiff in the case. She was the daughter of one Manikmani Debi, who possessed the disputed property as her stridhan. The plaintiff claimed the property as

* Appeal from Appellate Decree, No. 2911 of 1911, against the decree of Asutosh Banerjee, Subordinate Judge of Burdwan, dated July 27, 1911, modifying the decree of Gopeswar Banerjee, Munsif of Katwa, dated March 22, 1910.

(1) (1903) I. L. R. 25 All. 468 ; (2) (1879) I. L. R. 5 Calc. 222.
 L. R. 30 I. A. 202. (3) (1890) I. L. R. 17 Calc. 911.

her stridhan by inheritance from her mother. The disputed property was purchased by the defendant No. 3 in execution of a mortgage decree obtained by the defendant No. 1 against the defendant No. 2, the son of the plaintiff. During the pendency of the suit, the original plaintiff died, and after her death her grandsons by two of her sons were substituted in her place on the basis of a deed of gift executed in their favour by the original plaintiff before her death. The donees, the grandsons of the plaintiff, were not added as parties to the suit after the execution of the deed of gift.

The defendant No. 1 appeared and denied the title of the original plaintiff amongst other things. The defendant No. 2 did not appear though served with summons. The defendant No. 3 contested the suit on the grounds that Khantamani was not the owner of the property, but the defendant No. 2 was, as heir of his maternal uncle, the brother of Khantamani, and that the plaintiffs were not entitled to be substituted in her place.

The defendant No. 1 afterwards came to terms with the plaintiffs; and the substituted plaintiff No. 2 gave up his claim. This plaintiff was also the guardian of the plaintiff No. 3, his brother, who was a minor. He was not allowed to give up the claim of the minor brother.

The Court of first instance decreed the suit as against the defendant No. 1 in terms of the compromise filed by him, *ex parte* against the defendant No. 2, and on contest against the defendant No. 3 who was held liable for the whole cost of the suit. The title of the plaintiffs Nos. 1 and 3 was declared to the extent of 12 annās and their possession was confirmed, the sale was set aside, and the defendant No. 3 was held entitled to get back his money if it was in deposit.

1915
 JOGENDRA
 CHANDRA
 BANERJEE
 v.
 PHANI
 BHUSHAN
 MOOKERJEE.

1915
 JOGENDRA
 CHANDRA
 BANERJEE
 v.
 PHANI
 BHUSHAN
 MOOKERJEE.

The defendant No. 3 appealed. The decree was modified only as regards the costs in the suit and appeal.

Thereupon, the defendant No. 3 again filed this second appeal.

Babu Risheéndranath Sarkar (with him *Babu Baikuntha Nath Mitra* for *Dr. Dwarkanath Mitra*), for the appellant. The suit is not maintainable by the substituted plaintiffs. They cannot claim the property either as heirs of the original plaintiff or by the deed of gift. If the plaintiff had got an absolute estate, the property would devolve on her son, the defendant No. 2, on her death. If she had a widow's estate, she had no power of alienation. I contend the original plaintiff had only a widow's estate: see *Golap Chandra Sastri's Hindu Law* (4th Ed.), p. 421, *Mayne's Hindu Law* (8th Ed.), p. 937, *Trevelyan's Hindu Law*, p. 448, and *Prankissen Laha v. Noyanmoney Dasse* (1), *Huri Doyal Singh Sarmana v. Grish Chunder Mukerjee* (2), *Sheo Shankar Lal v. Debi Sahai* (3) and *Sheo Partab Bahadur Singh v. The Allahabad Bank* (4).

The deed of gift, moreover, is void, because there was no acceptance on the part of the donees during the lifetime of the donor: *Transfer of Property Act*, s. 122. I say there was no acceptance, because if there were, why did they not make any effort to be added as a party after the execution of the deed of gift? They were only substituted as heirs after her death.

The property, therefore, devolved on the defendant No. 2 after the death of the original plaintiff, and the appellant acquired title by estoppel.

(1) (1879) I. L. R. 5 Calc. 222.

(3) (1903) I. L. R. 25 All. 468 ;

(2) (1890) I. L. R. 17 Calc. 911.

L. R. 30 I. A. 202.

(4) (1903) I. L. R. 25 All. 476 ; L. R. 30 I. A. 209.

Babu Hemendra Nath Sen, for the respondents. The defendant No. 3 has purchased the property in execution of a decree against a person who had no interest in the disputed property. The appellant, who is the defendant No. 3, has therefore got no title whatever to the property and cannot contest the suit.

Babu Risheendranath Sarkar, in reply. A remand is not only unnecessary, but will not be proper.

Cur. adv. vult.

1915
 JOGENDRA
 CHANDRA
 BANERJEE
 v.
 PHANI
 BHUSHAN
 MOOKERJEE.

FLETCHER J. This is an appeal by the defendant No. 3 against the judgment of the learned Subordinate Judge of Burdwan modifying the decision of the Munsif. The suit was brought by the original plaintiff, Khantamoni Debi, for declaration of title to the property in suit.

The defendant No. 2 was the son of the original plaintiff. The defendant No. 1 was a mortgagee under him and the defendant No. 3 was the purchaser in execution of the property under a decree founded on the mortgage in favour of the defendant No. 1.

The allegations in the plaint alleged that the property formed the stridhan of Manikmani and passed on her death to her two daughters, the 2nd daughter's share reverting on her death to the original plaintiff, her sister. This is the title set up in the plaint and on which the present suit must stand or fall. No case was set up in the plaint nor was any issue framed as to whether or not the original plaintiff had obtained a title to the property by adverse possession. The original plaintiff, some time before her death, executed a deed of gift in favour of her grandsons the present plaintiffs, the son and nephews of the defendant No. 2. The only question, therefore, that arises on the pleadings and issues, is assuming as the lower Appellate Court has found that the property was the stridhan of Manikmani,

1915
 JOGENDRA
 CHANDRA
 BANERJEE
 v.
 PHANI
 BHUSHAN
 MOOKERJEE.
 FLETCHER J.

whether the plaintiffs are entitled to succeed in the present suit. The law is not open to doubt that stridhan inherited by female heirs does not become the latter's stridhan. The female heirs take only a Hindu woman's estate in the property. This was decided finally in the case of *Sheo Shankar Lal v. Debi Sahai* (1). The same view had been expressed in this Court in the cases of *Prankrissen Laha v. Noyanmoney Dasse* (2) and *Huri Doyal Singh Sarmana v. Grish Chunder Mukerjee* (3). In the present case, the present plaintiffs can only succeed if the original plaintiff took an absolute interest in the property. This the original plaintiff had not and the substituted plaintiffs cannot maintain this suit. In my opinion the judgment appealed against ought to be reversed and the plaintiffs' suit dismissed. The plaintiffs respondents must pay to the appellant his costs in this Court and in the Courts below.

TEUNON J. I agree.

S. M.

Appeal allowed.

(1) (1903) I. L. R. 25 All. 468 ;
 I. R. 30 I. A. 202.

(2) (1879) I. L. R. 5 Calc. 222.
 (3) (1890) I. L. R. 17 Calc. 911.