

PRIVY COUNCIL.

P. C. °
1926

June 18.

ANNADA PRASHAD DAS (PLAINTIFF)

v.

AMBICA PRASHAD DAS AND ANOTHER
(DEFENDANTS).*

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Hindu Law—Will—Construction—Widow given right of residence in house for life—Son (reversioner) residing with widow—Son's interest sold in execution—Limitation—Adverse Possession—Limitation Act (IX of 1908) Sch. 1, Art. 144.

A Hindu who died in 1888 provided by his will that his elder wife should "have the right of residence for the term of her natural life" in a specified house. Her son resided there with her continuously from his father's death. Upon a partition in 1898 the house was allotted to the son subject to his mother's right of residence. In 1899 the right, title and interest of the son was sold in execution, but the purchaser did not attempt to take possession for over 12 years. The son claimed that the right of the purchaser was barred by adverse possession :—

Held, that, upon the true construction of the will, the widow had an exclusive right of residence, not merely a Hindu widow's right of residence, and that the son's possession was merely by her license, and not adverse to the purchaser.

Judgment of the High Court affirmed.

APPEAL (No. 182 of 1924) from a decree of the High Court (June 29, 1923) reversing a decree of the Subordinate Judge of the 24-Parganas.

The suit was instituted by the appellant who claimed by his plaint that he had acquired title by adverse possession to certain premises described as the three-storied portion of a house in Ram Kamal Mukerjee Street, Calcutta.

The material facts appear from the judgment of the Judicial Committee.

°Present : VISCOUNT HALDANE, LORD DARLING AND MR. AMEER ALI.

The trial Judge made a decree as prayed. On appeal to the High Court (Mookerjee and Rankin JJ.) the decree was set aside and the suit dismissed upon grounds affirmed by the present judgment.

Kenworthy Brown, for the appellant. The Subordinate Judge rightly construed the will with reference to the Hindu law as to a widow's right of residence. Her right was merely to have suitable apartments in the house specified. The appellant was in possession as of right, subject to his mother's right of residence. His possession was adverse to the purchaser. [Reference was made to *Suriyanarayana Rao Naidu v. Balasubramania Mudali* (1) also to the Indian Limitation Act, 1908, Sch. I, Arts. 137, 138 and 144.]

DeGruyther, K. C., and *E. B. Raikes*, for the first respondent, were not called upon.

The judgment of their Lordships was delivered by VISCOUNT HALDANE. This is an appeal from a decree of the High Court at Calcutta, dated 29th June 1923, which reversed a decree of the Subordinate Judge of the 24-Parganas, dated 2nd February 1921, who dismissed the suit.

The question was whether the appellant had acquired a title to certain property by adverse possession. The property consists of what has been called the three-storied portion of a house in Ram Kamal Mukherjee's Street in Calcutta. The house belonged to one Digambar Das, who died in 1888, leaving a will. The appellant is his eldest son, the first respondent is his younger son, and the second respondent is the appellant's mother.

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The question is, what was the state of the title under the will? The relevant words are these:—

“ My elder wife shall have the right of residence for the term of her natural life in the three-storied portion and my younger wife in the two-storied portion of my house, No. 35, Ram Kama! Mukherjee’s Street. I direct my executor to pay into the hands of the said Shama Churan Bose the sum of 3,000 rupees to complete the unfinished portions of the three-storied portion of my said house No. 35, Ram Kama! Mukherjee’s Street.”

In 1898 there was a partition suit instituted in the High Court by the appellant, in which a decree was passed allotting to him the three-storied portion of the house, subject to the right of residence of his mother during her life. In 1899 the right, title and interest of the appellant in the three-storied portion of the house was sold in execution of a decree and purchased by one Prince Kumar Kader Meerza. The purchase was expressed to be subject to the right of residence of the widow. Before and ever since the sale, the widow has been residing in the three-storied portion of the house, and there has been no attempt to evict her or to enter into occupation by the purchaser. On the 14th September 1917, the purchaser resold to the respondent, the younger half-brother of the appellant. Then the suit was brought, the basis of the claim being that ever since the purchase by Prince Kumar Kader Meerza, the appellant had been in possession of the house adversely to the purchaser and had thus acquired a complete title before the purchase by the respondent, which was more than twelve years later.

The Subordinate Judge thought that all the widow took under the will was a Hindu widow’s right of residence in the part allotted to her and that, therefore, the purchaser had the right to live in the three-storied portion of the house with her, and that, if the appellant lived there, the title of the purchaser

was extinguished before he resold to the respondent; but the High Court took a different view. They said that the question was one simply of the construction of this Hindu will, and the learned Judges, Mookerjee and Rankin JJ. decided that the gift to the widow was for her life and the title of the widow was to occupy the whole of the three-storied portion of the house and that no question arose as to any other right of a widow to have a residence provided for her under the general Hindu Law. What there really is is a gift which indicates the intention of the testator to allow his widow to occupy the whole of the three-storied portion of the house as her exclusive residence. Under the Hindu law, unlike the law of this country, there is no question of splitting up the fee simple and of creating a freehold estate for life. A nearer analogy is the law of Scotland, under which, as under the Indian law, the fee is not permitted to be split up, but a burden is created which confers a full life interest. Here what the learned Judges have held is that as a matter of intention this widow was entitled to reside in the house and reside in it exclusively. That is very definitely stated in the judgment.

In these circumstances their Lordships think that the words of the document are such as to justify the conclusion arrived at by the two Judges in the High Court, and did not justify the conclusion arrived at by the Subordinate Judge. They will, therefore, humbly advise His Majesty that the appeal should be dismissed with costs.

Solicitors for appellant: *Theodore Bell & Co.*

Solicitors for first respondent: *Watkins and Hunter.*

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