

APPELLATE CIVIL.

Before Jack and Mitter J.J.

1932

Dec. 1, 7, 8.

SUSHEELASUNDAREE DASEE

v.

BISHNUPADA DE.*

Sale—Setting aside sale—Hindu reversioner—Interest, nature of—Spes successionis—Contingent reversionary heir—Bengal Tenancy Act (VIII of 1885), ss. 174, 170, cl. (3)—Bengal Tenancy (Amendment) Act (Beng. IV of 1928).

The words “any person whose interests are affected by the sale” now used [after the amendment effected by Bengal Act IV of 1928 in section 170, cl. (3) of the Bengal Tenancy Act] are undoubtedly of much wider import than the original words “any person, having in the tenure or holding any interest voidable on the sale”.

Sukhamayee Biswas v. Monoranjan Chaudhury (1) explained and distinguished as relating to *stridhan*.

Mohendra Nath Nanda v. Baidya Nath Tripathi (2) explained and distinguished.

Though the interest of the next reversioner is a mere contingent interest, still it is an interest which has to be recognised.

Anrit Narayan Singh v. Gaya Singh (3) referred to.

The word “interest” used in section 174 of the Bengal Tenancy Act is wide enough to include not only a proprietary or possessory interest but also the contingent interest of a reversioner.

If property is sold in execution of a decree for rent against a limited owner, a possible reversioner has a right to protect the property, in the reversion of which he may have a possible interest, if the immediate reversioner does not save the property from sale.

Such an application may be maintained by a contingent reversionary heir, when the presumptive reversionary heirs, who would succeed if the widow were to die at this moment, do not care to preserve the estate.

Where the next reversioners have waived their right to preserve the estate by making the deposit and have thereby concurred in the sale by their conduct, the remote reversioner can take steps to protect the estate.

Anand Kunwar v. Court of Wards (4) and *Fateh Singh v. Jagannath Bakhsh Singh* (5) referred to.

*Appeal from Appellate Order, No. 498 of 1931, against the order of E. S. Simpson, District Judge of Khulna, dated July 3, 1931, affirming the order of Malatinath Basu, Second Munsif of Satkhira, dated July 16, 1930.

(1) (1925) 89 Ind. Cas. 827.

(2) (1921) 26 C. W. N. 167.

(3) (1917) I. L. R. 45 Calc. 590 ;
L. R. 45 I. A. 35.

(4) (1880) I. L. R. 6 Calc. 764 ;
L. R. 8 I. A. 14.

(5) (1924) I. L. R. 47 All. 158 ;
L. R. 52 I. A. 100.

APPEAL FROM APPELLATE ORDER by the auction-purchaser.

1932

*Susheelasundaree**Dasee*

v.

Bishnupada De.

The facts of the case and relevant portions of arguments of counsel advanced at the hearing of the appeal appear fully in the judgment.

Kshirodenarayan Bhuiya for the appellant.

Shreeshchandra Datta for the respondent.

MITTER J. This is an appeal from the order of the learned District Judge of Khulna, dated the 3rd July, 1931, affirming the order of the Munsif at Satkhira, dated the 16th July, 1930.

The circumstances, which led to this litigation, may be briefly stated thus: It appears that there was a tenure, which belonged originally to one Annadaprasad Sadhukhan. That tenure was sold in execution of a decree for rent held under the Bengal Tenancy Act. Sarada and Annada were two uterine brothers, and Khagendra and Bhupendra were the step-brothers of Sarada and Annada. Durlabhmani, against whom the rent decree was passed, was the widow of Annada, who is now dead. In the rent execution case an application was made under section 174 of the Bengal Tenancy Act, as now amended, for the setting aside of the sale by one Bishnupada, who claims to be the nephew of Annada, that is, his brother's son. An objection was raised by the auction-purchaser, Susheelasundaree, who is the appellant before us, that the application under section 174 did not lie, as Bishnupada was not a person, whose interests were affected by the sale within the meaning of section 174 of the Bengal Tenancy Act, as amended by Bengal Act IV of 1928. It was stated by the Munsif, who dealt with the matter in the first instance, that it was admitted that Bishnupada was the reversioner and the Munsif, accordingly, set aside the sale, the conditions for setting aside of the sale having been fulfilled by him.

An appeal was taken to the court of the District Judge, who by his order, dated the 4th May, 1931,

1932

Susheelasundaree
Dasee
 v.
Bishnupada De.
 Mitter J.

sent back the case to the Munsif for the purpose of enabling him to record evidence in respect of the assertion that Bishnupada was the reversionary heir, it being stated before the learned judge that the Munsif had fallen into an error in holding that it was admitted before him that Bishnupada was the reversionary heir of the judgment-debtor, Durlabhmani. The case went back to the Munsif, who came to the conclusion that Bishnupada was the next reversioner, he being the brother's son of Durlabhmani's husband, whereas the two step-brothers of Durlabhmani's husband were not the preferential heirs under the *Dâyabhâga* school of Hindu law. The Munsif apparently relied upon the decision of Mr. Justice Greaves in the case of *Sukhamayee Biswas v. Monoranjan Chaudhury* (1) and on a statement in Mr. Golapchandra Sarkar Shastri's *Hindu Law*, 6th Edition, 1927, pages 519 and 520.

The learned District Judge, after considering the finding of the Munsif, also came to the conclusion that Bishnupada was the next reversionary heir and he consequently dismissed the appeal and set aside the sale.

Against the concurrent decisions of the courts below the present appeal has been brought and a preliminary objection has been taken to the hearing of the appeal on the ground that only one appeal is allowed, under the provisions of section 174, clause (5) as amended by the Act of 1928 and no Second Appeal lies. It is not necessary to decide this question in the view that we take of the merits of the appeal.

It has been contended on behalf of the appellant that the Munsif was clearly in error in coming to the conclusion that Bishnupada was the preferential heir. This contention seems to us to be right. It appears that the Munsif was misled by the decision of Greaves and Cuming JJ. in the case of *Sukhamayee Biswas* just referred to; because that was a case of

(1) (1925) 89 Ind. Cas. 827.

stridhan property and the question arose regarding succession to such property and this fact was overlooked and has misled also the editor of Golapchandra Sarkar's book on Hindu Law, where he had put the step-brother as coming not only after a brother's son but also after the sister's son in the line of succession under the *Dâyabhâga* school. The text of the *Dâyabhâga* on this point is as follows:—

In the absence of her mother there is the right of *uterine* brother only; in the absence of *uterine* brothers the step-brothers of the same caste will inherit.

This shows that, according to Jeemutabâhana, in the absence of the brothers, the step-brother comes in the next line of succession to the brothers' property. That that is the correct view appears from the opinion of Mr. Mayne and of Mr. Rajkumar Sarbadhikari as given in his well-known treatise on Hindu Law of Inheritance, page 363, 2nd revised edition (1922). In *Sheo Soondary v. Pirthee Singh* (1), the Privy Council held that the half brother comes immediately after the brothers of whole blood just as the son of a whole brother succeeds before the son of a step-brother. The Munsif and the learned Judge were, therefore, wrong in coming to the conclusion that the present respondent was the next reversioner to the estate of Durlabhmani's husband. But, although the courts below have fallen into this error, it appears to us that Bishnupada, who is the next presumptive reversioner after the step-brothers, is a person, whose interests are affected by the sale within the meaning of section 174 of the Bengal Tenancy Act.

It has been contended, in view of a decision of this Court in the case of *Mohendra Nath Nanda v. Baidya Nath Tripathi* (2), that a reversioner to a Hindu widow's estate, who is entitled to the estate on the death of the widow, did not have "any interest" in the tenure or holding "voidable on the sale" within the meaning of section 170, clause (3) of the Bengal

1932

Susheelasundaree
Dasee
 v.
Bishnupada De.
 Mitter J.

(1) (1877) L. R. 4 I. A. 147.

(2) (1921) 26 C. W. N. 167.

1932
Susheelasundaree
Dasee
 v.
Bishmupada De.
 Mitter J.

Tenancy Act, as it stood before its amendment by Bengal Act IV of 1928. It is sufficient, for our present purposes, to say that the learned Chief Justice, Sir Lancelot Sanderson, and Mr. Justice Chotzner were dealing in that case with the provisions of the statute, where the words used were to the effect that the person, whose interest was voidable on the sale, was entitled to come in and apply. The words now used after the amendment are "any person whose interests are affected by the "sale" and the words are undoubtedly of much wider import.

It has been argued on behalf of the appellant that the reversioner has only got a *spes successionis* or a chance or possibility of succession, which cannot be regarded as an interest in the reversion. This is an entirely erroneous view to submit to the court. It may not be an interest *in presenti* in the property, which the female owner holds for her life. It may be that, until the estate vests in him on her death, he has nothing to assign or to relinquish or even transmit to his heirs. See *Amrit Narayan Singh v. Gaya Singh* (1). It has been pointed out in the decisions of the Judicial Committee that the estate, which a Hindu widow inherits from her husband, is an estate of inheritance to herself and to the heirs of her husband. It is not right to say that the widow's estate is mere life estate as is understood in English law. See *Moniram Kolita v. Keri Kolitani* (2). It is not known till the female owners' death as to who will be the actual reversioner. It may be that the two step-brothers might not survive the widow. The interest of the next reversioner is a mere contingent interest; but still it is an interest which has to be recognized.

It is sought to be argued that a mere chance of succession is not an interest within the meaning of section 174, which must be restricted to a present proprietary interest. We are unable to see why that

(1) (1917) I. L. R. 45 Calc. 590 ;
 L. R. 45 I. A. 35.

(2) (1880) I. L. R. 5 Calc. 776 ;
 L. R. 7 I. A. 115.

restricted interpretation should be put on the language of the statute, which runs as follows: "any "person whose *interests* are affected by the sale" may come in under section 174. The word "interest" is wide enough to include not only a proprietary or possessory interest but also the contingent interest of a reversioner.

It is next argued that, in any event, having regard to the circumstances that now exist, Bishnupada is not the immediate reversioner and he has no right to come in. There can be no gainsaying the fact that he has an interest in the preservation of the estate, which would pass out of him, if he at any time happens to be the reversioner. If the property is now sold in execution of a decree for rent against a limited owner, a possible reversioner has a right to protect the property, in the reversion of which he may have a possible interest, if the immediate reversioner does not save the property from sale.

We are of opinion, that this application may be maintained by a contingent reversionary heir as the presumptive reversionary heirs, *i.e.*, the step-brothers, who would succeed if the widow were to die at this moment, do not care to preserve the estate. This view finds indirect support from two decisions of their Lordships of the Judicial Committee of the Privy Council: *Anand Kunwar v. Court of Wards* (1) and *Fateh Singh v. Jagannath Bakhsh Singh* (2). In the latter case it was held that a suit for a declaration, that a gift by Hindu widow is void as against the reversionary heirs of the husband, is *prima facie* competent only to the nearest prospective reversioner and that, if a more distant relation claims to sue, he can only maintain the suit by showing that the nearer reversioner has colluded with the widow or for some similar reason. Those reasons were indicated in the earlier judgment as follows:—If the nearest reversionary heir refuses without sufficient cause to institute proceedings, or if he has precluded himself

1932

*Susheelasundaree**Dasee*

v.

*Bishnupada De.**Mitter J.*

(1) (1880) I. L. R. 6 Calc. 764 ;
L. R. 8 I. A. 14.

(2) (1924) I. L. R. 47 All. 158 ;
L. R. 52 I. A. 100.

1932
Susheelasundares
Dasee
v.
Bishnupada De.
Mitter J.

by his own act or conduct from suing, or if he concurred in the act alleged to be wrongful. Here the next reversioners have waived their right to preserve the estate by making the deposit and have thereby concurred in the sale by their conduct, and I don't see why the remote reversioner should not take steps to protect the estate. We affirm the decision of the courts below, although we differ from them on the question that Bishnupada is the immediate reversioner; we think that Bishnupada, although not the immediate reversioner, has sufficient interest to make the application under section 174 of the Bengal Tenancy Act. On this ground we affirm the decisions of the courts below and this appeal is, accordingly, dismissed. There will be no order as to costs in this appeal.

It is not necessary to make any order on the application made in the alternative.

JACK J. I agree.

Appeal dismissed.

G. S.