

APPELLATE CIVIL.

Before Nasim Ali and Henderson J.J.

1938.

April, 5, 6, 7, 8,
11.

HARENDRA NATH MUKHERJI

v.

HARI PADA MUKHERJI.*

Hindu Law—Widow—Alienation by widow of immovable property inherited from her husband—Reversioner—Consent of reversioner to alienation without legal necessity—Subsequent claim by reversioner to set aside alienation.

In order to validate the alienation of immovable property inherited by a Hindu widow from her deceased husband, mere consent by the reversioners is not sufficient under the Hindu law, unless there is legal necessity for the alienation.

The expression "they (the husband's kin) have full power" in the text of Nârad does not mean that their consent would validate the alienation even if there was no legal necessity.

Rangasami Gounden v. Nachiappa Gounden (1) relied on.

In certain circumstances where the necessity is not proved *aliunde* by the alienee, the consent only affords a presumptive proof of legal necessity which is rebuttable.

Hari Kishen Bhagat v. Kashi Pershad Singh (2) referred to.

The recitals in the deed of transfer cannot be relied upon for the purpose of proving necessity.

Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri (3) referred to.

The reversioner who gives his consent to alienation by the widow on a misrepresentation of circumstances, which are relied upon as forming legal necessity, is not precluded under the Hindu law from recovering possession of the property from the alienee, and his claim is not barred by estoppel.

The principle of ratification or election does not apply to the case where, at the time of giving his consent, the reversioner was not aware of the real facts as to the legal necessity and so was not aware of his right to avoid the alienation.

*Appeals from Original Decrees, Nos. 190 and 222 of 1934, with Cross-objection, against the decrees of Upendra Chandra Ghosh, Third Additional District Judge of 24-Parganas, dated July 25, 1934.

(1) (1918) I. L. R. 42 Mad. 523 ; (2) (1914) I. L. R. 42 Cal. 876 ;
L. R. 46 I.A. 72. L. R. 42 I. A. 64.

(3) (1916) I. L. R. 44 Cal. 186 ; L. R. 43 I. A. 249.

APPEAL FROM ORIGINAL DECREE by the plaintiff in F.A. 190 of 1934 and the defendant in F.A. 222 of 1934 and cross-objection by some of the respondents.

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The facts of the case are sufficiently stated in the judgment.

Sarat Chandra Basak and *Nanda Gopal Banerjee* for appellants in F.A. 190 of 1934. The onus of proving that the properties in suit were sold by the widow with the free consent of the reversioners for legal necessity is on Hari Pada Mukherji, the purchaser. There is no sufficient evidence to prove that there was legal necessity or that one of the three reversioners, viz., Amarendra, gave his consent in any form. On the other hand the evidence clearly shows that the consent of the other two, viz., Harendra and Hari Har, was obtained by the widow by misrepresentation and not upon an intelligent understanding of the nature of the dealings by the widow, and this is not enough to bind the reversioners. *Hari Kishen Bhagat v. Kashi Pershad Singh* (1). Even if the reversioners gave their free consent, it would not bind the reversioners in the absence of legal necessity. The consent given by Harendra and Hari Har would only give rise to a rebuttable presumption as to the existence of legal necessity. *Rangasami Gounden v. Nachiappa Gounden* (2). But in this case the consent was obtained by misrepresentation of a necessity which did not exist and has not been proved by evidence to have existed. The recitals in the deeds of transfer cannot be relied upon to prove legal necessity. *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri* (3). In any event, the consent given by the reversioners alone will not preclude them from claiming possession of the properties and the doctrines of estoppel, election and ratification have no application, as, at the time of the consent, the

(1) (1914) I. L. R. 42 Cal. 876; (2) (1918) I. L. R. 42 Mad. 523;
 L. R. 42 I. A. 64. L. R. 46 I. A. 72.
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reversioners had no vested interest in the properties, but only the right of succession after the widow.

Amarendra Nath Bose, Gour Mohan Dutt, Santosh Kumar Basu, Prokash Chandra Pakrashi and Hemendra Nath Chatterji, with them *Sharat Chandra Roy Chowdhury*, for the respondents in F.A. 190 of 1934. So far as Amarendra is concerned, there is no estoppel, but Harendra and Hari Har are estopped from claiming the property from the alienee, because he purchased the properties relying on the fact of legal necessity being mentioned in Harendra's and Hari Har's letters of consent and attestation of the document by Harendra. Harendra must be taken further to have elected to ratify the alienations by attesting the documents and writing the letter Ex. C₁ to the widow conveying his consent after the execution of the *kabálás*. If there was no legal necessity, the alienations by the widow were not void, but only voidable and Harendra had the option either to repudiate or ratify them and by his said actions he did ratify them. I rely on *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* (1). Both Harendra and Hari Har are, therefore, debarred from claiming the properties from the defendant alienee.

Amarendra Nath Bose, Gour Mohan Dutt and Gopendra Krishna Banerjee for the appellant in F.A. 222 of 1934.

Sharat Chandra Roy Chowdhury, Nanda Gopal Banerjee, Santosh Kumar Basu, Prokash Chandra Pakrashi and Hemendra Nath Chatterji for the respondents in F.A. 222 of 1934.

Cur. adv. vult.

NASIM ALI J. One Khagendra Nath Mukherji, a Hindu, governed by the *Dâyabhâga* School of Hindu law, was the owner of premises Nos. 3 and 12, Mal Road, Dum Dum, which are the subject-matter of dispute in these two appeals. He was also the owner

(1) (1907) I. L. R. 34 Cal. 329; L. R. 34 I. A. 87.

of certain other properties. He died leaving him surviving a widow Bidhu Mukhi Debi, who will be referred to as "the widow" and a daughter Hem Lata Debi. Hem Lata died during the life time of her mother, leaving three daughters, Nantu Bala, Abir Bala and Amiya Bala. Nantu Bala was married to one Hari Pada Mukherji (herein called "defendant"). Harendra Nath Mukherji, Hari Har Mukherji, and Amarendra Nath Mukherji are the three grandsons (son's sons) of the brother of Khagendra. They are the reversionary heirs of Khagendra and will be hereafter referred to as the reversioners. On April 16, 1921, the widow executed a *kabâlâ* (Ex. 1) in favour of Hari Pada, purporting to sell premises No. 3, Mal Road, to him for a consideration of Rs. 7,000. On April 25, 1921, the widow executed another *kabâlâ* (Ex. 1-a) in favour of Hari Pada purporting to sell premises No. 12, Mal Road, for a consideration of Rs. 5,000.

On March 1, 1930, Hari Har and Amarendra instituted a suit in the Court of the Subordinate Judge of 24-Parganâs for a declaration that the said two *kabâlâs* were not binding on them impleading the widow, Hari Pada and Harendra as defendants in the suit. They alleged *inter alia*: (a) that the monthly income of the estate left by Khagendra was at least Rs. 500 and that after meeting all the necessary expenses of the widow there was always a sufficient surplus; (b) that Harendra was their step-brother and that they were on bad terms with him; (c) that Harendra on account of this bad feeling induced the widow to sell the disputed properties; (d) that the necessities mentioned in the two *kabâlâs* for the sale of the disputed properties were fictitious; (e) that before the sale of premises No. 12, Mal Road, the widow in collusion with Harendra secured the signature of Hari Har on a letter full of false statements; (f) that at that time the widow informed Hari Har that, out of the sale proceeds of premises No. 12, only Rs. 1,000 would be paid towards the satisfaction of a debt and the balance would be

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invested in G. P. Notes; (g) that the widow at that time did not disclose that she was going to sell the premises No. 3, Mal Road also; (h) that there was no legal necessity for sale of the two houses.

The widow filed a written statement on April 24, 1930. Her defence was that she was not induced by Harendra to sell the properties. She also alleged that Hari Pada on account of his misunderstanding with his father was driven out by him from the ancestral dwelling house and as he had no other place of residence, he came to reside with her in her house at 10, Hem Chandra Street, Kidderpore, and that he had been living there with his family permanently from 1917 as member of her family and that he was looking after her estate as her agent. She further stated that Hari Pada induced her to execute the said two *kabâlâs* by making certain false representations and that the consideration money mentioned in the two *kabâlâs* did not pass at all.

The defence of Hari Pada, the purchaser, to the suit in substance is as follows:—

Premises Nos. 3 and 12, Mal Road, and the widow's dwelling house at 10, Hem Chandra Street were in a very dilapidated condition for want of repairs for a long time. The cantonment authorities at Dum Dum passed orders to the effect that unless the two houses were properly repaired they would be demolished. The two houses at Dum Dum remained vacant for the most part of the year and the taxes and other dues in the cantonment had to be paid regularly. Income from the said two houses, after meeting all the expenses, was not more than Rs. 3,000 or Rs. 4,000 per year. The widow, therefore, was compelled to have the two houses at Dum Dum as well as the residential house at Kidderpore repaired by a contractor named Ganesh Chandra Chatterji. The bills of this contractor amounted to Rs. 10,040. Before these repairs, the widow had premises No. 3, Mal Road repaired to some extent by another contractor named Upendra Nath Sen. His bill not

having been paid, a suit was brought by him against the widow and a decree for Rs. 2,250 was obtained by him against the widow. He threatened to attach the dwelling house at Kidderpore in execution of this decree. The income of the properties left by her husband being insufficient to pay off these debts the reversioners advised her to sell the disputed properties. The reversioners were aware of the existence of the legal necessity and gave their consent to the sale of these two houses out of their own free will. The defendant was induced by their consent and conduct to purchase the two houses in dispute for valuable consideration.

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In that suit Harendra filed a written statement denying the allegations made against him by the plaintiffs in that suit. He supported the other allegations of the plaintiffs.

On April 27, 1932, Bidhu Mukhi died during the pendency of this suit.

Hari Har and Amarendra, thereafter, converted this declaratory suit into a suit for possession of two-third share of the disputed properties and for mesne profits.

On December 23, 1932, Harendra raised another suit in the Court of the Subordinate Judge of Alipore impleading the purchaser and the other two reversioners as defendants for possession of one-third share of the disputed properties and for mesne profits. He attacked the two deeds of sale on the same grounds as the plaintiffs in the other suit. The defence of the purchaser in this suit is the same as in the other suit.

The two suits were heard together and were disposed of by the same judgment. The learned Subordinate Judge found: (1) that Harendra gave his consent to the sale of the two properties in suit out of his own free will; (2) that Amarendra did not at all give his consent to the sale of these two houses; (3) that Hari Har did not give his consent to the

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transfer of premises No. 3, Mal Road; (4) that he gave his consent to the transfer of premises No. 12, Mal Road on condition that Rs. 1,000 only out of the sale-proceeds would be spent for the satisfaction of the widow's debt and the balance would be invested in G. P. Notes for the benefit of the reversioners, but this condition was not fulfilled; (5) that the purchaser did not pay the consideration money for the *kabálás* as mentioned therein. He, accordingly, passed a decree for possession of the two-third share of the two disputed houses in favour of Hari Har and Amarendra but dismissed Harendra's suit. Hence these two appeals—one by Harendra (F.A. 190/34) and the other by the purchaser (F.A. 222/34). Hari Har and Amarendra have filed cross-objections.

The points for determination in these two appeals are :—

(1) whether the reversioners gave their consent to the sale of the two houses in dispute; if so, whether they are thereby precluded under the Hindu law from recovering possession to the disputed houses from the defendant;

(2) whether there was legal necessity for the alienation of the two houses in suit;

(3) whether the claim of the reversioners is barred by estoppel or the doctrine of election or ratification.

The case of the defendant is that all the three reversioners gave their consent to the alienation of the two houses in dispute by the widow.

In order to prove the consent of Harendra, the defendant proved two letters written by Harendra, one (Ex. C) before the alienation and the other (Ex. C-1) after the alienation. He also relied on the attestation of the two deeds of sale by Harendra.

It is an admitted fact that Harendra wrote Exs. C and C-1 and attested the two *kabálás* Exts. 1 and 1(a).

By Ex. C, Harendra gave his consent to the sale of 12, Mal Road, and agreed to attest the sale deed (Ex. 1) in respect thereof. By Ex. C-1 he confirmed Ex. C and gave his consent to the sale of 3, Mal Road also and intimated to the widow that he would also attest the *kabálá*, Ex. 1(a), relating to that house, although Ex. 1(a) had already been executed.

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[After dealing with the evidence on this point the judgment proceeded as follows] :—

I, therefore, hold that Harendra gave his consent to the sale of premises No. 12, Mal Road, believing in the representation of the widow that there were certain debts due from her which she could not pay off from her own income. Amarendra gave no consent and Hari Har's consent to the sale of premises No. 12 was obtained on the representation that there was legal necessity to the extent of Rs. 1,000 only.

In *Hari Kishen Bhagat v. Kashi Pershad Singh* (1) their Lordships of the Judicial Committee observed :—

When a stringent equity, to use Lord Hobhouse's expression in the course of the argument in *Jiwan Singh v Misri Lal* (2) arising out of an alleged consent by the reversioners is sought to be enforced against them, such consent must be established by positive evidence that upon an intelligent understanding of the nature of the dealings they concurred in binding their interest; and that such consent should not be inferred from ambiguous acts or be supported by dubious oral testimony.

The next question for consideration is whether, under the Hindu law, the consent of the reversioners to the alienation by the widow precludes them from challenging the alienations.

The only text on the subject is the text of Nârad, which is in these terms :—

When the husband is deceased, the husband's kin are the guardians of his sonless wife: in the *disposal* and care of the property, as well as in (the matter of) maintenance, they have full power. But, if the husband's family be extinct, or contain no male, or be helpless, or there be no *sapinda* of his, then the kin of her own parents are the guardians of the widow.

(1) (1914) I. L. R. 42 Cal. 876 (886); (2) (1895) I. L. R. 18 All. 146.
 L. R. 42 I. A. 64 (70). L. R. 23 I. A. 1.

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Golap Chandra Sarkar Sastri's Hindu Law, 7th Ed., p. 803.

The expression "husband's kin" in this text has been judicially interpreted to mean "all those who are 'likely to be interested in disputing the transaction'": See *Rajlaxhi Debia v. Gakul Chandra Chowdhry* (1) and *Rangasami Gownden v. Nachiappa Gownden* (2).

Ordinarily the consent of the whole body of persons constituting the next reversion should be obtained, though there may be cases in which special circumstances may render the strict enforcement of this rule impossible. *Bajrangi Singh v. Manokarnika Bakhsh Singh* (3).

The next question is what is the meaning of the expression "they have full power" in Nârâd's text? Does it mean that their consent would validate the alienation even if there be no legal necessity?

In *Rangasami's* case (*supra*) Lord Dunedin observed :—

The consent of the reversioner was looked on as affording evidence that the alienation was under circumstances which rendered it lawful and valid.

But if the matter be considered on principle it seems clear that this must be the true view. For first if mere consent as such of the reversioner could validate alienation, then the rule as to total surrender would be an idle rule. And secondly mere consent could only validate on the theory that the reversioner together with the widow represented the whole estate. But that is impossible unless the reversioner has a vested interest, whereas it is settled that he has only a *spes successionis*.

I am, therefore, of opinion that mere consent by the reversioners does not validate the alienation by the widow under the Hindu law.

The next point for consideration is whether there was legal necessity for the alienation of the disputed properties.

It is settled law that to be valid as against the reversioners or to affect their reversionary right, an alienation effected by Hindu widow can be supported only by proof *abunde* that such alienation was made for valid and legal necessity and onus of establishing such necessity rests heavily on the person who claims the benefit of the transaction with a Hindu

(1) (1869) 3 B. L. R. (P. C.) 57 (63); (2) (1918) I. L. R. 42 Mad. 523 (534)
 13 M. I. A. 209 (228). L. R. 46 I. A. 72 (82).
 (3) (1907) I. L. R. 30 All. 1 (21); L. R. 35 I. A. 1 (16).

widow: *Hari Kishen Bhagat v. Kashi Pershad Singh (supra)*. If, however, the necessity is not proved *aliunde* and the alienee does not prove enquiry on his part or honest belief in the necessity, the consent of the reversioners affords a presumptive proof, which, if not rebutted by contrary proof, will validate the transaction: *Rangasami Gounden v. Nachiappa Gounden (supra)*.

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The value of the consent, however, is to be measured by reference to all the circumstances of the case: *Vinayak Vithal Bhanje v. Govind Venkatesh Kulkarni (1)*.

In the present case defendant relies on the consent of the reversioners as well as on other evidence to support the alienations in his favour on the ground of legal necessity.

All the reversioners, however, did not give their consent to the alienation in favour of the defendant. Harendra no doubt gave his consent. But he did so as he was informed by the widow that she was involved in debts. The evidence in this case shows that he had great regard and esteem for the widow.

Although Harendra gave his consent, he could not induce Hari Har and Amarendra to give their consent.

Hari Har gave his consent to the sale of one of the houses as he was told by the widow that there was legal necessity to the extent of Rs. 1,000 only.

Amarendra did not give his consent at all.

This is the nature of the consent of the reversioners in the present case.

I will now proceed to deal with the other evidence relating to legal necessity.

In the two deeds of sale, Exts. 1 and 1(a), the legal necessities mentioned are:—

(a) A decree obtained by one Upendra Nath Sen against the widow for Rs. 2,250.

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(b) A debt of Rs. 10,040 due to a contractor Ganesh Chandra Chatterji on the widow.

There is no dispute that Upendra Sen obtained a decree for Rs. 2,250 against the widow.

* * * * *

It is also stated in this document, Ex. 1(a), that the widow was compelled to have the said houses repaired by the contractor Ganesh Chandra, that she became indebted to that contractor for Rs. 10,040 and that she was unable to pay off this debt from the income of her properties.

The recitals in a deed of transfer cannot by themselves be relied upon for the purpose of proving the facts contained therein. If such facts are admitted, the right of reversioner would always be defeated by insertion of carefully prepared details: *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri* (1).

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I, therefore, hold that the houses at Dum Dum were not in a dilapidated condition as alleged by the defendant and that there was no necessity for extensive repairs of the residential house at that time.

* * * * *

My conclusion is that the defendant in fact paid nothing to the widow, that the widow was not at all indebted to the contractor Ganesh and that she did not pay anything to him. The bills and the endorsements on them and the letter of demand are all fictitious and were brought into existence to support the false recitals in the deeds of sale.

I, therefore, hold that there was no legal necessity for the sale of the two disputed houses by the widow.

The next point for consideration is whether the claim of the reversioners is barred by estoppel or the doctrine of election or ratification.

Mr. Bose appearing on behalf of the defendant conceded that the bar of estoppel or the doctrine of

election or ratification has no application so far as the claim of Amarendra is concerned.

So far as Hari Har is concerned the contention of Mr. Bose is that Hari Har's claim to premises No. 12, Mal Road is barred by estoppel, as the widow represented to the defendant that Hari Har had given his consent to the sale of this house and that relying on this representation the defendant purchased this house.

From the evidence of Amarendra it appears that the letter containing the consent of Hari Har was written some time in March, 1921. It does not appear from the evidence that this letter was actually shown by the widow to the defendant. There is also no reliable evidence to show that the letter was written by Hari Har to the widow before March 18, 1921, when the defendant is alleged to have paid Rs. 10,000 to the widow. The defendant paid no money to the widow for the purchase of the disputed houses. The question of any alteration in his position does not therefore arise. The debts mentioned in the *kabāla* are fictitious. The defendant was living with the widow and was looking after her affairs. He was, therefore, aware of the real states of affairs.

Hari Har's claim is, therefore, not barred by estoppel. It was conceded by Mr. Bose that there was no ratification by Hari Har.

So far as Harendra is concerned, the contention of the defendant is that he was estopped from challenging the sale of premises No. 3, Mal Road, on account of his representation in the letter, Ex. C.

The representation contained in Ex. C amounted to this that the widow had informed Harendra that she was involved in debts. There is no reliable evidence to show that this representation induced the defendant to purchase this property excepting his own oral testimony. If he was really induced to purchase the property on account of the representations contained in Ex. C, one would naturally expect

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that this letter on which so much reliance is now being placed by the defendant would be entered in the schedule of documents. Further, as the defendant was aware of the fact that there was no legal necessity and did not pay any consideration for the sale, Harendra's claim cannot be held to be barred by estoppel.

The next contention of Mr. Bose is that if there were no legal necessity, the alienations were not void but voidable and Harendra had the option either to ratify it or to repudiate it and as Harendra attested both the documents and wrote Ex. C(1) to the widow after the execution of the two *kabâlâs*, it must be taken that he elected to satisfy the alienations.

In *Rangasami Gounden v. Nachiappa Gounden* (1) Lord Dunedin observed :—

An alienation by a widow is not a void contract, it is only voidable. *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* (2). Now in all cases of voidable contracts there is a general equitable doctrine common to all systems that he who has the right to complain must do so when the right of action is properly open to him and he knows the facts. If, therefore, a reversioner, after he became *in titulo* to reduce the estate to possession and knew of the alienation, did something which showed that he treated the alienation as good, he would lose his right of complaint.

Harendra admittedly attested the two documents knowing full well that they were the sale-deeds of the two houses. The attestation of Ex. 1(a) was in pursuance of the consent given by him in the letter Ex. C. Before the attestation of Ex. 1 Harendra did not intimate to the widow in writing that he would attest this *kabâlâ* also. After the attestation of Ex. 1 he wrote Ex. C(1) stating that he would attest. If Harendra's attestation of Exts. 1 and 1(a) be considered in the light of his statement in Exts. C and C(1) there cannot be any doubt that when he attested these two documents he believed the representation of the widow that she was involved in debts to be true. The evidence does not show that at that time he had the least suspicion that the representations were false and that the debts had no

(1) (1918) I. L. R. 42 Mad. 523 (538); (2) (1907) I. L. 34 Cal. 329;
 L. R. 46 I. A. 72 (86). L. R. 34 I. A. 87.

existence. At the time of the attestation or at the time when Harendra wrote Ex. C(1) he was not aware of the real facts and was, therefore, not aware of his right to avoid the alienation. The principle of ratification or election, therefore, is not attracted to the case of Harendra.

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Harendra and Hari Har are, therefore, not precluded from claiming their shares of the disputed houses either on the ground of estoppel or on the principle of election or ratification.

Hari Har and Amarendra have filed cross-objections to the decree of the trial Judge, as the trial Judge did not give them a decree for mesne profits and did not award any costs to them.

The trial Judge has held that they are not entitled to get any decree for mesne profits as they did not adduce any evidence to prove the amount of mesne profits payable to them. The learned advocate appearing on their behalf could not satisfy us that the learned Judge was wrong. No evidence was adduced by the plaintiffs to show what profits the defendant actually received from the disputed houses after the death of the widow. The learned advocate on the authority of a decision of the Madras High Court in the case of *Ramakka v. V. Negasam* (1) contended that the defendant being admittedly in possession of the property, the onus was upon him to show what amount he actually got from the two houses after the death of the widow. In that case it was held that a person who had a special knowledge of certain facts must prove them. Section 106 of the Evidence Act says so. In that case it was also held that if a certain amount was claimed by the plaintiff as mesne profits on the footing that that amount the defendant could get from the property with due diligence, the onus was upon the plaintiff to prove what amount the defendant could have got from the property with due diligence. It is true that the defendant has adduced no evidence to show what amount actually

(1) (1923) I. L. R. 47 Mad. 800.

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he received during the period of his possession. The plaintiffs have also adduced no evidence to show what amount the defendant could have got from the properties. Under the circumstances it is impossible for the Court to determine the amount of mesne profits and the claim for mesne profits must, therefore, fail for want of evidence. The trial Judge was, therefore, right in dismissing the claim for mesne profits. The cross-objections, so far as mesne profits are concerned, are, therefore, dismissed.

As regards the costs the accepted principle is that costs shall follow the events unless the successful party is guilty of misconduct or there is other good cause for depriving him of it. No exceptional circumstances have been pointed out by the trial Judge to justify the refusal of costs to Hari Har and Amarendra. The cross-objections so far as they relate to the costs in the trial Court are, therefore, allowed.

The result, therefore, is that Harendra's appeal (No. 190 of 1934) is allowed. He will get a decree for possession in respect of his one-third share of the premises Nos. 3 and 12, Mal Road, Dum Dum. Hari Har and Amarendra will get a decree for possession of the remaining two-thirds share in these two properties. Their claim for mesne profits is dismissed.

The appeal of the defendant (F.A. 222 of 1934) is dismissed. The cross-objections of Hari Har and Amarendra are allowed in part.

Harendra, Hari Pada and Amarendra will get their costs in the trial Court as well as in this Court.

HENDERSON J. I agree.

*Appeal No. 190 of 1934 allowed;
 Appeal No. 222 of 1934 dismissed.
 Cross-objections allowed in part.*