APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

1880 July 6.

NOFERDOSS ROY, AND OTHERS (PLAINTIFFS) *v.* MODHU SOONDARI BURMONIA AND ANOTHER (DEFENDANTS).*

Hindu Widow—Surrender of Life-Estate—Heirs in Reversion.

The surrender of her estate by a Hindu widow, or mother, to persons who at that time are unquestionably the heirs by Hindu law of the person from whom she has inherited it, vests in those persons the inheritance which they would take if she at that time were to die.

Shama Soonduree v. *Surut Chunder Dutt* (1) and *Gunga Pershad Kur* v. *Shumbhoo Nath Burmon* (2) followed.

THIS was a suit for the recovery of possession of land. The plaintiffs claimed as the next reversionary heirs of one Mul Chaud Mahata, and stated that their cause of action arose on the 29th of April 1876, upon the death of one Lukhmimoni, the mother of Mul Chand Mahata. It appeared that the land in suit had been the property of one Jugomohun Mahata, a common ancestor of the parties. Jugomohun died on the 26th November 1841, leaving him surviving two widows, Lukhmimoni and Khudummoni. Lukhmimoni had one son, Mul Chand, who died in 1847, and two daughter's sons, Noferdoss and Surjo Naraiu, the plaintiffs in the present suit. Khudummoni had two sons, Dwarka Nath, who died on the 7th September 1863, and Kedar Nath, who died on the 18th of August 1871. After the death of Mul Chand disputes occurred between Lukhmimoni and the sons of Khudummoni, respecting the division of Jugomohun's estate; and on the 13th of August 1858, she executed a deed, which recited that, being unable to manage her property, she, in full possession of her senses, relinquished all her rights in the properties, which were in her possession, to Dwarka Nath and Kedar Nath. The deed also recited

* Appeal from Original Decree, No. 112 of 1878, against the decree of Baboo Monee Lal Chatterjee, Subordinate Judge of Moorshedabad, dated the 31st December 1877.

(1) 8 W. R., 500. (2) 22 W. R., 393.

that the two latter had given to Lukhmimoni for her maintenance two-thirds of a mehal, called Belhati, which at that time was in their possession. It was to have this act declared a nullity as against the plaintiffs that the present suit was brought. The plaintiffs also claimed the custody of an idol, and of the ornaments belonging thereto. It was proved in evidence that Lukhmimoni had never sought to impugn the surrender in her lifetime, but had recognized its validity on various occasions. The lower Court dismissed the suit with costs. The plaintiffs appealed to the High Court.

Mr. *J. D. Bell*, Baboo *Mohesh Chunder Chowdhry*, Baboo *Mohiny Mohun Roy*, and Baboo *Gurudas Banerjee* for the appellants.

Mr. *J. D. Bell*.—The main questions on this appeal are (i) did Lukhmimoni relinquish her rights, and (ii), if so, is that sufficient to defeat the plaintiffs' rights. The evidence at most shows that all the widow wanted to do was to leave the management of the property in the hands of Dwarka Nath and Kedar Nath, not to surrender her life-estate. The evidence is insufficient to show that the widow intended to change the line of succession. The defendants must show that this lady being a *purdanasheen* had independent advice when she signed the deed: *Tacoordin Tewarry* v. *Nawab Syed Ali Hossein Khan* (1). [JACKSON, J.—Does the question of *purdanasheen* arise here? This is not a case of enforcing her acts against herself. She acquiesced in this deed for the eighteen years she afterwards lived.] Even, supposing the widow intended to change the course of succession, she could not do it. Under Hindu law, succession only takes place on the demise or retirement from the world of the former owner: Dayabhaga, Ch. I, paras. 4, 5. So, here, Dwarka Nath or Kedar Nath could not succeed as heirs on the execution of the deed, as the succession would only open out on the death or retirement of the widow, and at that time the plaintiffs were the nearest heirs. The widow cannot alienate so as to affect the estate after her death (unless in cases of neces-

(1) L. R., 1 I. A., 192; S. C., 13 B. L. R., 427.

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sity) without the consent of all the heirs in reversion. The consent of the nearest heirs is not sufficient: *Ameena Khatoon* v. *Radhabinode Misser* (1), *Mussamut Radha* v. *Mussamut Kour* (2), *Rujoneekant Mitter* v. *Premchand Bose* (3); Mayne's Hindu Law, sec. 547. [JACKSON, J.—A surrender by a widow to those who are entitled is looked upon in the Hindu law as meritorious. Here, by the act of the widow, the then immediate heirship of Dwarka Nath and Kedar Nath took effect. It is not a question of alienation, but a question of surrender—a question of restoring the property to its natural channel.] The other side will rely on *Sreemutty Jadomoney Dabee* v. *Sarodaperşad Mookerjee* (4), *Shama Soonduree* v. *Surut Chunder Dutt* (5), *Lalla Kundee Lal* v. *Lalla Kallu Pershad* (6), *Gunga Pershad Kur* v. *Shumbhoo Nath Burmon* (7), *Rajbollobh Sen* v. *Omesh Chundro Rooj* (8). The reason of the decision in Boulnois is, that the plaintiff claimed through the surrenderee; the marginal note is too broad. That case does not decide that all the heirs must not join. The contrary has been lately held by Morris and Prinsep, JJ., in Special Appeal No. 1197 of 1878. [JACKSON, J.—That is a very different case, and comes within the principle of the note referred to by Sir James Colvile in the case in Boulnois.] In *Lalla Kundee Lal* v. *Lalla Kallu Pershad* (6), it was merely decided that where there are three heirs, and they accepted the surrender, no one of them can upset the arrangement, because another has died before the widow. The case in *Gunga Pershad Kur* v. *Shumbhoo Nath Burmon* (7) is certainly against the view I contend for. [Baboo *Unnoda Persad Banerjee*.—That decision has been affirmed on appeal.] As regards Belhati, that clearly does not pass to the defendants. The widow only surrendered the property of which she was then in possession, but at that time Dwarka Nath and Kedar Nath were in possession of Belhati. We are also entitled to worship the idol and to the custody of the consecrated articles.

(1) S. D. A., 1856, p. 596.
(2) W. R., 1864, p. 148.
(3) Marshall, 241; on appeal, L. R., 2 I. A., 113; S. C., 15 B. L. R., 10.
(4) Boulnois, 120.
(5) 8 W. R., 500.
(6) 22 W. R., 307.
(7) 22 W. R., 393.
(8) 3 C. L. R., 384.

Baboo *Unnoda Persad Banerjee*, Baboo *Sreenath Doss*, Baboo *Rash Behary Ghose*, and Baboo *Bungsheedhur Sen* for the respondents.

The judgment of the Court (JACKSON and TOTTENHAM, JJ.) was delivered by

JACKSON, J.—There are two principal questions raised on the appeal of the plaintiffs in the present suit. One of them relates to an issue of fact; the other to a question of law. The plaintiffs contend that the Court below has come to an erroneous conclusion as to the circumstances under which a deed called a willnama, which was afterwards in substance affirmed by a document called an ikrarnama, was executed by Lukhmimoni Dossee, the widow of Jugomohun, who as mother inherited from her infant son Mul Chand. (His Lordship then considered the evidence as to the execution of these documents, *and continued*).

The next question is as to the effect of the willnama and its validity. On that part of the case, I think it sufficient for us to refer to decided cases in our own Court in which this very point has been raised. These cases appear to me to be absolutely deciding the question so far as we are concerned. One is the case of *Shama Soonduree* v. *Surut Chunder Datt* (1), in which the judgment was delivered by myself, but in which I had the assistance and concurrence of my lamented colleague, Mr. Justice Dwarka Nath Mitter. In a case turning upon a most important point of Hindu law, I need hardly say that it is the assent of Mr. Justice Dwarka Nath Mitter which gives its chief value to that judgment. Then, in addition, we have a quite recent case—*Gunga Pershad Kur* v. *Shumbhoo Nath Burmon* (2) decided by Mr. Justice Romesh Chunder Mitter. In both these cases it is held, that a surrender by a Hindu widow or mother (for the two cases I think are not distinguishable) to persons who at that time are unquestionably the heirs by Hindu law of the person from whom she has inherited, vests in those persons the inheritance which they

(1) 8 W. R., 500. (2) 22 W. R., 393.

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would take if she at that time were to die. This is a conclusion which, to my mind, is so desirable, and it seems to me so consistent with the general principles of the Hindu law, and with the state of Hindu society, that I should not be inclined to come to any other conclusion unless necessity for it were very strongly made out. That being so, I think the decision of the Court below upon this main part of the case was quite correct, and that the appeal of the plaintiffs on this point should be dismissed.

Appeal dismissed.

Before Mr. Justice Morris and Mr. Justice Prinsep.

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BEERCHUNDER MANIKYA (DECREE-HOLDER) *v.* MAYMANA BIBEE AND OTHERS (JUDGMENT-DEBTORS).*

Transfer of Decree—Jurisdiction of Court executing such Decree—Code of Civil Procedure (Act X of 1877), s. 239—Beng. Act VIII of 1869, s. 66.

Where a Court in one district transfers a decree for execution to a Court situate in another district, it is beyond the jurisdiction of the Court executing the decree to question the correctness or propriety of the order under which the decree was sent to such Court for execution.

Where, in the opinion of the Court, sufficient cause has been shewn against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by s. 239 of the Code of Civil Procedure.

The *Advocate-General* (the Hon. *G. C. Paul*) for the appellant.

The respondent was not represented.

THE facts of this case sufficiently appear from the judgment of the Court (MORRIS and PRINSEP, JJ.), which was delivered by

MORRIS, J.—In this case the decree was transferred for execution from the Court of the Munsif of Ramroygram, Zilla Tippera, to the Court of the Munsif of Begumgunge in Zilla Noakhally. The decree-holder applied to the Mun-

* Appeal from Order, No. 243 of 1879, against the order of J. R. Hallet Esq., Judge of Noakhally, dated the 10th September 1879, reversing an order of Baboo Akhoy Coomar Bose, Munsif of Begumgunge, dated the 5th July 1879.