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present I do not think it could. The true owner can always protect himself, either by taking care to establish the relation of landlord and tenant between himself and the person he puts in possession, or by insisting on periodic acknowledgments of his title under s. 19 of the Act.

It follows from what I have said, that, in my opinion, art. 144 has no application to this case.

On both grounds, therefore,—first, that the plaintiffs have failed to prove their case; secondly, that, if they had, their claim would be barred by limitation,—I think the suit must be dismissed with costs on scale No. 2.

Attorneys for the plaintiffs: Messrs. *Carruthers* and *Jennings*.

Attorneys for the defendants: Messrs. *Beeby* and *Rutter*.

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

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KOONJBEHARI DHUR (DEFENDANT) *v.* PREMCHAND DUTT (PLAINTIFF).*

Hindu Widow—Devise of Immoveable Property—Life-Interest—Heritable Interest—Hindu Wills Act.

Under a gift of moveable and immoveable property by a Hindu to his wife, the wife takes only a life-estate in the immoveable property, and has no power of alienation over it, while her dominion over the moveable property is absolute.

A Hindu wife takes by the will of her husband no more absolute right over the property bequeathed than she would take over such property if conferred upon her by gift during the lifetime of her husband, and whether in respect of a gift or a will, it is necessary for the husband to give her in express terms a heritable right or power of alienation.

THIS was a suit to enforce a lien on certain property, which had been mortgaged to the plaintiff by one Thakomoney Dassee,

* Appeal from Appellate Decree, No. 522 of 1879, against the decree of H. Beverley, Esq., Additional Judge of the 24-Pergunnas, dated the 25th January 1879, reversing the decree of Baboo Kristo Mohun Mookerjee, Additional Subordinate Judge of that district, dated the 29th January 1878.

on the 4th of March 1867. Thakomoney, who died before the institution of this suit, had received the property under the will of her deceased husband, and the question was, as to the extent of the interest which passed to her. The will, which was executed before the passing of the Hindu Wills Act (1), directed that certain money should go to the widow, who at the same time was prohibited from withdrawing it from the business in which it was invested, and directed that the immoveable property should be divided between his wife and his daughter's sons in certain specified shares, and gave his wife a power to adopt a son. The Court of first instance held that the widow took only a life-interest in the immoveable property; but this decision was reversed on appeal. The defendant then appealed to the High Court.

Baboo *Mohiny Mohun Roy* and Baboo *Ashootosh Dhur* for the appellant.

Baboo *Gurudas Banerjee* and Baboo *Saroda Churn Mitter* for the respondent.

Baboo *Mohiny Mohun Roy* for the appellant.—The judgment of the Court below is wrong. The true rule is laid down, as follows, in the Tagore Law Lectures for 1878, p. 333: "Over property obtained by a woman by gift from her husband, her power is not absolute. During coverture she has no right to alienate such property; and even after the death of her husband, her right becomes absolute over only so much of the property as consists of moveables." The same rule applies to a will: *Jatindra Mohun Tagore* v. *Ganendra Mohun Tagore* (2). The case of *Taruck Nath Sircar* v. *Prosonno Coomar Ghose* (3) shows how this will should be construed. The clause giving the power to adopt shows that the gift was limited: *Sreemutty Soorjeemony Dossee* v. *Denobundoo Mullick* (4).

Baboo *Gurudas Banerjee* for the respondent.—The testator here used apt words to give a life-estate only in the personalty,

(1) Act XXI of 1870.

(2) L.R., I.A., Sup. Vol., 47; S.C., 9 B. L. R., 377.

(3) 19 W. R., 48.

(4) 6 Moore's I. A., 526, 550.

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but there is no such limitation in the devise of the real estate. In respect to the latter, the words of gift to the widow and to the sons are the same, and must be construed in the same way. [JACKSON, J.—Suppose a man gave two properties to *A* and *B* in the same terms, and by a special law *B* is rendered incapable of alienating, then, though the words would be construed in the same way, the effect would be different.] That is a very different case; the widow is not incapable of alienating. No doubt, as a rule, in gifts *inter vivos*, the wife has not an absolute estate; that rule does not apply to a will; the cases cited on the other side leave the point open. If the widow takes no more than her ordinary widow's estate in the immoveable property, what was the use of making a will at all? She would receive as much without it.

Baboo *Mohiny Mohun Roy* in reply.—It does not follow that, because the will was made, the notion was, to give the widow a full estate; for without the will the estate would vest in the son on adoption, whereas, with the will she gets a full life-estate. Again it has been contended that, because a restriction is placed on the gift of the moveable property, and not on that of the immoveable, the latter gift is absolute. But in fact that goes to show that the wife is not to have an absolute estate at all, for the husband, who must be presumed to know the law, placed a restriction on the gift of moveables, but did not do so on the gift of immoveables, as that was done by the law itself.

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

JACKSON, J.—We are unable to give the effect to this will which has been given by the lower Appellate Court. The Additional Judge seems to consider that there was nothing to limit or affect the language of the instrument except what he calls the adoption clause. He appears to have left entirely out of sight the common rule of Hindu law, which is that, in respect of gifts by a husband to his wife, she takes immoveables only for her life, and has no power of alienation, while her dominion over moveable property is absolute. This rule is stated in a recent

work, the Tagore Law Lectures for 1878, of which the author, Dr. Gurudas Banerjee, is the vakeel for the respondent. We understand it to be a rule of law, well established in this Court, that a Hindu wife takes, by a will of her husband, no more absolute right over the property bequeathed, than she would take over such property, if conferred upon her by gift during the life-time of her husband; and that, whether in respect of a gift or a will, it would be necessary for the husband to give her in express terms a heritable right or power of alienation. In the present case the will contains nothing of the sort. It is the will of a Hindu father of a family of respectable position in life, and a man of business. He must be taken to have been well aware of the rules of Hindu law in this particular, and even if, as is clear from the terms of this instrument, he was not a person accustomed to the preparation of legal papers, yet the words necessary to give full interest are very simple and familiar to every one, and there could be no difficulty whatever in his introducing such words in the will. Dr. Banerjee suggested, that the reason arising out of the condition of the Hindu society, which prevents a Hindu wife from taking an absolute interest in the property given by her husband, does not apply in the case of a will, because that reason, he understands to be, that the husband, notwithstanding the gift, in fact reserves to himself a control over the property given. It appears to me that, supposing that to be the reason, it must be founded upon some consideration of the infirmity of the wife, and not of any intention on the part of the donor, to resume the property at his own convenience; and if that be the explanation of it, there can be no reason why such control should not be reserved to the male heir of the husband as well as to himself. In fact, the rule is as I have stated, and so far as we know, I am not aware of any qualification such as is contended for by Dr. Banerjee. Another argument is, that by this instrument the property is given to other persons besides the wife, and in respect of all, the same expression "দিব" (1) is used, and ought to be construed in the same manner. Now it seems to me that the general rule of construction is not violated if we suppose that the property

(1) "Deebo," *anglice* "will give."

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given in each case, passes to the recipient, qualified by the capacity in each case, to take under gift or will, and it differs in the case of a wife from that of other takers. There is not, moreover, any emphatic declaration on the part of the husband to give the property absolutely to his wife. On the contrary, it seems to me that there is internal evidence of his intention that it should not be absolutely given. In the first place, because he gives her power to adopt a son, and if the property was absolutely given to the wife, very little remained to the son to enjoy. Secondly, because as to the moveable property given, he expressly restrains her from exercising absolute control over it. He says, that the money which was declared to be her share was not to be taken from the business in which it was invested, but she was merely to enjoy the interest or the profits of it. When he makes this direction or restriction in regard to moveable property, we may well assume that the enjoyment of the immoveable property was left her subject to the restrictions imposed by the ordinary rule of Hindu law. I think, therefore, that the Judge was wrong in holding that she became absolutely entitled to this property, and was competent to mortgage or alienate. The judgment of the lower Appellate Court, therefore, must be set aside, and that of the Subordinate Judge restored with costs.

Appeal allowed.

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

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RUSSICKLOLL MUDDUCK *v.* LOKENATH KURMOKAR.

Landlord and Tenant—Contracts between Hindus in Calcutta—Buildings by Lessee—21 Geo. III, c. 70, s. 17—Contract Act (IX of 1872), s. 1.

A tenancy created by express contract between Hindus in Calcutta, is within the words "matters of contract and dealing between party and party" in 21 Geo. III, c. 70, s. 17, and the right of the parties and the incidents of the tenancy must be governed by Hindu law.