obligee undoubtedly intended the money to be raised by means of a bond, that did not authorize Mir Hadi Hossein to pledge the obligee's immoveable property. The probability is, that unless the immoveable property had been pledged, the money could not have been obtained. We think, therefore, that the Court below has rightly found the bond to be genuine and duly authorized; and we also think that it has awarded a reasonable sum by way of interest. The interest payable under the bond itself was 15 per cent.; and the interest which the Judge has given to the plaintiff from the time when the bond became payable is 12 per cent., which, he says, is the customary rate in that part of the country.

The appeal must, therefore, be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Birch and Mr. Justice Mitter.

JUSSODA KOOER (PLAINTIFF) *v.* LALLAH NETTYA LALL (DEFENDANT).*

1879 *March* 25.

Certificate—Guardianship—Mithila Law.

Under Mithila law the mother of a minor is entitled to a certificate of guardianship in preference to the father.

Messrs. *Twidale* and *M. L. Sandel* for the appellant.

Baboo *Mutty Lall Mookerjee* for the respondent.

THIS was an application for a certificate of guardianship under Act XXVII of 1860 by one Mussamut Jussoda as the natural mother of one Maugniram, a minor, and for a certificate to collect the debts due to the estate of Guru Prosadh and his widow Gonesh Bati, who adopted Maugniram. The application was opposed by Lallah Nettya Lall, the next-of-kin to Guru

* Appeal from Original Order, No. 13 of 1879, against the order of J. M. Lowis, Esq., Judge of Bhagulpore, dated the 28th December 1878.

1879

JUSSODA KOOER v. LALLAH NETTYA LALL.

Prosadh, on the ground that even if Gonesh Bati did adopt Maugniram, her doing so would not, according to Mithila law, make Maugniram the heir of her deceased husband, and he asserted his right to collect the debt as next-of-kin to Guru Prosadh. The Judge of the Court below refused to grant a certificate. Mussamut Jussoda appealed to the High Court.

BIRCH, J. (MITTER, J., concurring). — In this case the Judge states that he is unable to grant a certificate, inasmuch as the witness called by Mussamut Jussoda admits that the father of the minor is alive, and, therefore, in the Judge's opinion, it would be unadvisable to grant a certificate of guardianship to the mother. The Judge appears to have overlooked the fact that this case is governed by the Mithila law, and that, under that law, the mother is the person to whom the certificate should be granted in preference to the father. The Judge's order must be reversed, and he must be directed to grant a certificate to Jussoda as guardian of the person of the minor and as manager of the minor's property. The appeal is allowed with costs.

Appeal allowed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

1878 *July* 26.

RAJ BULLUBH SEN AND OTHERS (DEFENDANTS) *v.* OOMESH CHUNDER ROOZ (PLAINTIFF).*

Hindu Law—Reversioner—Conveyance by a Hindu Widow with the consent of the next Reversioner.

A grant by a Hindu widow, with the sanction and concurrence of the next reversioner, is valid, and creates a title which cannot be impeached on the death of the widow by the person who, but for such grant, would be entitled as heir of her husband.

THIS was a suit brought by the plaintiff for a declaration of his right in, and for partition of, certain properties mentioned in

* Appeal from Appellate Decree, No. 528 of 1878, against the decree of Baboo Nobin Chunder Gangooly, Subordinate Judge of Beerbhoom, dated the 27th December 1877, modifying the decree of Baboo Kanty Chunder Bhadoory, Munsif of Bonepore, dated the 29th March 1877.

the plaint. The plaintiff's case was, that an eight-anna share in the said properties had belonged to one Dwarkanath Sen, who died without issue, at some time previous to 1263 (1856), leaving a widow, Pearimonee Dossee, who died in 1279 (1872); that this Pearimonee Dossee had, by a deed of gift made in 1263 (1856), conveyed to him, the plaintiff, with the sanction of one Bessessur Sen, the first cousin and then nearest living reversionary heir of her late husband, the eight-anna share which had been her husband's, and which she was then enjoying as his widow; that he had accordingly entered upon and enjoyed such eight-anna share till the death of his donor Pearimonee Dossee in 1279 (1872), when his right had been disputed and denied by the defendants, who, Bessessur Sen having died in 1277 (1870), claimed to be the heirs of Dwarkanath Sen, and, as such, to be entitled to sole possession upon the death of his widow, Pearimonee Dossee.

It appeared that the entire properties in dispute had originally belonged to one Ramkrishno Sen, who died leaving two sons, Hurreeprosad Sen and Biprochurn Sen. Hurreeprosad died, leaving a son, Dwarkanath Sen, who died, as already mentioned, at some time previous to 1263 (1856), without issue, leaving a widow, Pearimonee Dossee, from whom the plaintiff claimed. Biprochurn died, leaving four sons, of whom one only, Bessessur Sen, who died in 1277 (1870), was alive in 1263 (1856), the date of the gift to the plaintiff. Of the six defendants, four were sons of Bessessur Sen, and the other two were included in the suit as representing two other sons of Biprochurn.

The defendants contended, that their rights as heirs of Dwarkanath Sen could not be affected or concluded by any act of Bessessur Sen, as it is not till the death of a widow that any one individual can be said to be the reversionary heir of her husband. When Pearimonee died, Bessessur Sen was already dead, and they claimed not through, or as the heirs of, Bessessur Sen, but in their own right as the heirs of Dwarkanath Sen, and their right had its origin immediately upon the death of Pearimonee, and not before. Both the lower Courts gave decrees in favor of the plaintiff.

1878

RAJ BULLUBH SEN v. OOMESH CHUNDER ROOZ.

The defendants appealed to the High Court on the following grounds:—

1*st.*—That a gift by a widow without necessity, and not for purposes expressly sanctioned by Hindu law, is invalid, even if made with the consent of the only then living reversionary heir of her husband.

2*nd.*—That upon the admitted facts of the case the plaintiff's rights were based upon a gift by a tenant for life, and expired on the death of such tenant for life.

Baboo *Taruch Nath Sen* for the appellants.—The decision of the lower Court cannot be supported. It is a principle of Hindu law, that when the estate of a Hindu passes upon his death, not to a male heir, who would take the whole estate absolutely, but into the hands of a female (whether she be his widow, his mother, or his daughter), the estate which she takes is not an absolute estate, which she can dispose of at her own discretion, but a limited one. It is true that it is not so narrowly limited as that of a tenant for life under English law; but it has certain distinctly defined limits, which, by carefully considering the provisions of the Hindu law of inheritance, can, without difficulty, be ascertained. I submit that, as the law now stands, she takes the whole beneficial interest in the estate for her life, and differs only from an English tenant for life in this, that she is also sole trustee for the ultimate reversioner, that is, for the person or persons, whoever they may be, who, not at the time of her husband's death, but at the time of her death, shall happen to be the next heir or heirs of her husband.—*Laxmi Narayan Singh* v. *Tulsi Narayan Singh* (1). There is indeed authority for saying that the estate of a Hindu female, taking from her husband or father, is a more limited one than she is now supposed to possess, and that her right is simply one of personal enjoyment during her lifetime without any power of alienation, even of her own interest, during her life.—*Mohun Lal Khan* v. *Ranee Siroomunnee* (2). In that case, the lady having executed a deed, having the effect

(1) 5 Sel. Rep., 282. (2) 2 Sel. Rep., 32.

1878

RAJ BULLUBH SEN v. OOMESH CHUNDER ROOZ.

of alienating ancestral property, with the consent of the nearest reversioner, but not of *all* the possible heirs of her husband, and having afterwards brought a suit to set aside her own act as invalid for the want of the consent of *all* the possible heirs,—it was held that, notwithstanding the consent of the reversioners, the deed was null and void for want of the consent of *all* the heirs, and that nothing passed under it.

Since that decision, however, it has frequently been held, that a Hindu widow can freely deal with her own life estate, and the appellant does not now dispute that proposition. But as to the reversionary rights of which she is trustee, and which, together with her life estate, make up the whole estate, she is in a very different position; she cannot alienate, except for what are, in the eye of the law, necessary purposes for the benefit of the estate, or religious purposes sanctioned by Hindu law. The estate cannot be sold for her personal debts, but only for debts, either ancestral or incurred for the preservation of the family property. It is a plausible error to assume that the mere consent of the next heir can give validity to what is itself invalid. All it can do is to bind the persons who give the consent and those who claim through them. The case of *Colly Chund Dutt* v. *Moore* (1) will be relied upon by the defendant; but it does not bear out the proposition that the consent of the nearest heir validates an alienation by the widow. In that case, the nearest reversioner conveyed all his reversionary rights to the widow, who, thereupon, assumed that the whole estate was in her, and conveyed it to the defendant. Upon the death of the reversioner (but the report does not show whether the widow was or was not then still living) his sons brought a suit to set aside his conveyance to the widow; and the suit failed, not because they might not, on the death of the widow, have been entitled as the next heirs of the husband, but because in that particular suit they claimed as the heirs of their father, and were, therefore, bound by his act. The validity of an alienation by a widow depends upon its necessity, and the consent of the next heir is of value not as validating the alienation, but as very strong, perhaps, the

(1) 1 Fulton, 73.

1878

RAJ BULLUBH SEN v. OOMESH CHUNDER ROOZ.

strongest evidence of its necessity. But it loses all its value, if it is based upon self-interest and a desire to defraud the person to whom, in the natural course of events, the estate would come. Take the possible case of a man leaving a young widow, a brother of advanced years, who has only daughters, and nephews, the sons of a deceased brother. In this case, the nearest living reversioner would be the one surviving brother. If he died in the lifetime of the widow, the whole estate would devolve on the nephews; if, on the other hand, he survived the widow, it would go to his daughters. Now, if the law be as it has been laid down in the Courts below, the immediate reversioner has it in his power, with the connivance of the widow, to make his or his daughters' contingent interest a certain or vested one at the expense of those to whom the estate would pass otherwise in the ordinary course.

The case of *Jadomoney Dabee* v. *Saroda Prosono Mookerjee* (1) will also be relied upon by the other side. But the Judges, who decided that case, carefully distinguished it from the case of a gift to a stranger, and the case is in itself an instance of a gift by a widow to the nearest reversioner, being a mere contrivance to give to him power which, by Hindu law, he does not possess. In that case, a widow conveyed her husband's estate to his surviving brother, and thereby enabled him to make a will to the detriment of his sons.

The case of *Gunga Pershad Kur* v. *Shumbhoo Nath Burmun* (2) went still further, and permitted a widow and daughter to give up their rights to the daughter's sons, an arrangement purely for their own benefit, and to the detriment of those who would be entitled to the estate, if the daughter's sons died in the lifetime of their mother. I admit, if the case last referred to, was correctly decided, then this appeal must be dismissed; but I submit that it was not correctly decided, and that, that ruling ought not to be followed, but the point be referred, if necessary, for the decision of a Full Bench.

Baboo *Nil Madub Sen* for the respondent.—I do not think the Court need trouble itself with considering what was

(1) 1 Boulnois, 120. (2) 22 W. R., 393.

1878

RAJ BULLUBH SEN v. OOMESH CHUNDER ROOZ.

the Hindu law as to the powers of a widow before 1850 when the case of *Jadomoney Dabee* v. *Saroda Prosono Mookerjee* (1) was decided. Up to that time there may have been various opinions as to the power of a widow to alienate with the concurrence of the next heirs. Till that time, doubtless, the powers of a widow were very limited, but since then the steady inclination of the Courts has been to extend the powers of the widow, and to relieve her from the trammels imposed upon her in a less enlightened age. If the Courts are to be guided only by ancient precedents, much might be said in favor of *suttee*. But *suttee* has long past away: and so the unfair restrictions upon widows, invented only for the benefit of those for whose benefit *suttee* was invented, are also disappearing.

JACKSON, J. (TOTTENHAM, J., concurring).—It appears to me that the judgment of the lower Appellate Court is right upon the point raised.

I would hold the defendants to be concluded, not upon the ground that they are bound by the act or consent of the father, through whom, they say, they do not claim, but upon this ground, that the act of the widow, sanctioned by the concurrence of the then next heir and reversioner, was in itself a valid ground.

This, so far as I know, is the rule usually acted upon by the Courts in Bengal, and although in the case of *Gunga Pershad Kur* v. *Shumbhoo Nath Burmun* (2) reference is made to some conflict of opinion upon the subject, I am not aware there is such authority opposed to the view which I take as to oblige us to refer this question to a decision of a Full Bench.

I would, therefore, dismiss this appeal with costs.

Appeal dismissed.

(1) 1 Boulnois, 120.

(2) 22 W. R., 393.