

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

1893.  
October 25.

NARANA MAIYA (DEFENDANT), APPELLANT,

v.

VASTEVA KARANTA AND ANOTHER (PLAINTIFFS),  
RESPONDENTS.\*

*Widow in possession of her late husband's land—Sale of the land in execution of a personal decree obtained against the widow—Suit by the nephew and reversioner of the deceased husband to recover the land from the purchaser.*

A Hindu widow sued to recover certain land which belonged to her late husband from his brother. The suit was compromised by means of a razinamah, one of the terms of which was that the widow should remain in possession of and enjoy the property, but should not alienate it without the brother's permission. Subsequently a personal decree was obtained against the widow, and the land being sold in execution, was purchased by the defendant in the present suit, in which the first plaintiff was the nephew and reversioner of the deceased husband :

*Held*, that the suit against the widow being on a personal claim, only her limited interest in the property was sold in execution, and that consequently the plaintiff was entitled to the property. *Jugal Kishore v. Jotendra Mohun*(1) distinguished, and the principle in *Baijun Doobey v. Brij Bhookun Lall Awusti*(2) applied.

SECOND APPEAL against the decree of W. C. Holmes, District Judge of South Canara, in appeal suit No. 236 of 1891, reversing the decree of J. P. Fernandez, District Munsif of Kundapur, in original suit No. 152 of 1890.

The District Munsif decreed in favour of the defendant, but the District Judge on appeal by the plaintiffs reversed the decree.

The defendant preferred this appeal.

The facts of the case are stated above sufficiently for the purposes of this report.

*Pattabhirama Ayyar* for appellant.

*Madhava Rau* for respondents.

JUDGMENT.—There is nothing to show that the decree was obtained against the widow Mahalakshmi as the representative of her husband's estate, nor are we referred to any proceedings in that suit showing that the decree was not a personal one simply.

\* Second Appeal No. 213 of 1893.

(1) I.L.R., 10 Calc., 985. (2) I.R., 2 I. A., 275; s.c. I.L.R., 1 Calc., 133.

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In *Jugul Kishore v. Jotendro Mohun Tagore*(1), the decree was passed against the husband. In *Bisto Beharee Sahoy v. Lalla Byjnath Pershad*(2) the husband's property was expressly made liable by the decree. Neither of these cases is, therefore, on all fours with the present one, which is governed by the principle laid down by the Privy Council in *Baijun Doobey v. Brij Bhookun Lall Awusti*(3).

The razinama does not, on its true construction, amount to a gift of an absolute estate to the widow. It merely recognizes the widow's right to possess the property during her life without making alienations.

The dismissal of the claim petition cannot affect the plaintiffs' claim as reversioner, a claim which only became enforceable on the widow's death in 1888. Further, the claim was dismissed without inquiry.

It is finally contended that the debt in question was due from the husband, as is also found by the District Munsif, and that the District Court was wrong in considering this point immaterial.

This was not the case of a voluntary sale by a widow in discharge of her husband's debt, but of a Court-sale in execution of a personal decree obtained against the widow. The Judge is therefore right.

We dismiss the appeal with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar.*

OULA AND OTHERS (COUNTER-PETITIONERS), APPELLANTS,

v.

BEEPATHEE AND ANOTHER (PETITIONERS), RESPONDENTS.\*

*Code of Civil Procedure—Act XIV of 1884, ss. 365, 367—Representation of a deceased plaintiff.*

Section 365 of the Code of Civil Procedure presupposes that the party claiming to represent a deceased plaintiff is his legal representative, but, if the represen-

1899.  
Sept. 15, 18.

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\* Appeal against Orders Nos. 65 and 66 of 1892.

(1) I.L.R., 10 Cal., 985.

(2) 16 W.R., 49.

(3) L.R., 2 I. A., 275; s.c. I.L.R., 15 Cal., 138.