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son to do so: nor would the adoptive father have taken the son in adoption except on the condition agreed to. The adoption, of course, cannot be set aside, and to set aside the condition which was coupled with the adoption, while maintaining the adoption, would require the justification of strong grounds of legal necessity or public policy.

In the present case the condition as to the property is a reasonable one, and such as the Courts should uphold. I would, therefore, answer the question referred to us in the affirmative.

DAVIES, J.—I concur.

RUSSELL, J.—I concur.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Offg. Chief Justice, and Mr. Justice Boddam.

1904. February 29. March 1.

SAKYAHANI INGLE RAO SAHIB (PLAINTIFF), APPELLANT,

v.

BHAVANI BOZI SAHIB AND OTHERS (DEFENDANTS), RESPONDENTS.*

Abatement of appeal—Practice—Personal right to sue—Suit dismissed—Appeal by plaintiff—Decease pending appeal—Abatement.

A suit was brought by a plaintiff who claimed to be the sister's son of a deceased, and as such the nearest reversioner, to set aside alienations made by the widow. The suit was dismissed on the ground that plaintiff had failed to establish the legitimacy of his mother, and the plaintiff appealed. While the appeal was pending, the plaintiff died. His son thereupon applied by petition to carry on the appeal, and his petition was allowed without notice being issued to the other parties. At the hearing of the appeal it was objected that the alleged right on which the suit was based was personal to the plaintiff, even assuming that he was the reversioner, and that such right having ceased with plaintiff's death, the appeal abated:

Held, that the right to sue in the case was a personal right and ceased with the death of the plaintiff, and the appeal abated.

ABATEMENT of appeal. Plaintiff in the suit had instituted it, as the sister's son of the late Rajah Ekojee, the deceased husband of first defendant, and as such, next reversioner, to set aside

* Appeal No. 116 of 1901, presented against the decree of P. S. Gurumurti Ayyar, Subordinate Judge of Kumbakonam, in Original Suit No. 5 of 1899. (Civil Miscellaneous Petition No. 734 of 1903.)

certain alienations made by the first defendant. The Subordinate Judge dismissed the suit, holding that plaintiff had failed to establish the legitimacy of his mother. Plaintiff appealed, but died while the appeal was pending. His son applied by petition to carry on the appeal, alleging that he was the next reversioner. The petition was allowed without notice being given to the other parties to the suit. The question raised and decided was whether the appeal abated with the death of the plaintiff.

P. R. Sundara Ayyar and *K. Ramachandra Ayyar* for appellant.

V. Krishnaswami Ayyar and *S. Srinivasa Ayyar* for respondents.

JUDGMENT.—In this case the plaintiff, alleging himself to be the sister's son of Ekojee, the deceased husband of the first defendant, and the nearest reversioner, sued to set aside certain alienations made by first defendant. The Subordinate Judge, being of opinion that the plaintiff had failed to establish the legitimacy of his mother, dismissed the suit. The plaintiff appealed and, pending the appeal, died. His son, petitioner in Civil Miscellaneous Petitioner No. 996 of 1902, asserting that he is the next reversioner, applied to carry on the appeal, and his petition was allowed, without notice to the opposite party by the Registrar.

On behalf of the first respondent (first defendant), the widow, a preliminary objection has been taken to the effect that the alleged right on which the suit was based was personal to the plaintiff, even assuming that he was the reversioner and that such right having ceased with the plaintiff's death, the appeal abates. On behalf of the petitioner it was urged that a suit by a presumptive reversioner, if he is the sole presumptive reversioner, or by all the presumptive reversioners, is one in which such plaintiff or plaintiffs represent the whole body of possible reversioners, and consequently the right of suit must be taken to survive to those who are presumptive reversioners at the death of the deceased plaintiff and the petitioner was therefore entitled to prosecute the appeal.

The weight of authority, in our opinion, is clearly in favour of the contention on behalf of the first respondent. So far as the opinions expressed by the Judicial Committee are concerned, the observations of their Lordships in *Isri Dut Koer* v. *Mussumut Hansbutti Koerain*(1) and in *Mussumnat Chand Kour* v. *Partab Singh*(2) cited for the respondent are clearly to the effect that

(1) L.R., 10 I.A., 150 at p. 157. (2) L.R., 15 I.A., 156.

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adjudications in suits by reversioners to set aside alienations by a qualified proprietor will not bind reversioners who are not actual parties to the litigation. The decision of the Allahabad High Court in *Chhiddu Singh* v. *Durga Dei*(1) is a direct ruling upon the point. The reasoning in the Full Bench case of *Bhagwanta* v. *Sukhi*(2) and in *Gannamaneedi Audilakshmi* v. *Gannamaneedi Venkatramayya*(3) is also to the same effect. The decision in *Ayyadorai Pillai* v. *Solai Ammal*(4) would however seem to be not quite reconcilable with the second appeal just referred to, but even there, suits for setting aside alienations are treated as cases in which a reversioner, such as a daughter, would not be entitled to represent remoter reversioners. Now, as to the contention on behalf of the petitioner, it is to be observed that the learned vakil does not go so far as to argue that, whenever a reversioner sues and there is an adjudication, such adjudication would be binding upon every other reversioner. He limits the supposed representative character of the suits only to those instituted by the sole presumptive reversioner or all the presumptive reversioners. Now, if there is any reason for holding that suits for setting aside alienations are to be treated as representative suits at all, why should there be such a limitation? The principle of finality of litigation, which alone could be the foundation of the rule, would apply equally to suits by remote reversioners when once they are allowed to institute and carry on such suits.

There is no analogy between the case of widows and other qualified female holders entitled to present possession of property and the case of reversioners, presumptive or otherwise, whose rights are absolutely contingent. The vested right to the estate and possession in the case of the former renders it necessary and proper to invest them with the right to bind those who may come in succession to them by any adjudication duly made in litigation to which they were parties. Having regard to the peculiar position of reversioners who possess no more than a contingent right, there would not be enough warrant to treat any one reversioner as having sufficient interest to bind others who do not join in the litigation, and there is absolutely no authority to support the ingenious distinction put forward on behalf of the petitioner.

(1) I.L.R., 22 All., 382.
(2) I.L.R., 22 All., 33.
(3) S.A. No. 746 of 1901 (unreported).
(4) I.L.R., 24 Mad., 405.

Stress was laid upon the form of the declaration granted in such cases according to the decisions in *Shurut Chunder Sein* v. *Muthooranath Pudatick*(1), *Brojo Kishoree Dassee* v. *Sreenath Bose*(2) and other similar cases. That form of declaration seems to have been adopted to prevent any supposition that the declaration in any way affected the right of the alienee during the lifetime of the alienor to what was transferred in circumstances not rendering the alienation valid beyond the lifetime of the alienor. Even if it were otherwise, those cases cannot, in the face of the later authorities above referred to, be understood as being sufficient to support the view contended for. Illustration E to section 42 of the Specific Relief Act, to which our attention was drawn, must of course be read with section 43, and when so read points to the same conclusion.

We must therefore hold that the right to sue in the case was a personal right and ceased with the death of the plaintiff. The appeal abates and the respondents are entitled to their costs out of the estate of the deceased. The Civil Miscellaneous Petition No. 734 of 1903 asking to have the name of the petitioner in Civil Miscellaneous Petition No. 996 of 1902 removed and to declare that the appeal has abated, is allowed.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Boddam.

VEDANAYAGA MUDALIAR (PLAINTIFF), APPELLANT,

v.

VEDAMMAL (DEFENDANT), RESPONDENT.*

1904. March 16, 30, 31. April 6, 12.

Hindu Law—Succession to property of deceased—Death caused by murder—Participation in crime by next heir—Effect on right of succession—Specific Relief Act I of 1877, s. 42—Failure to claim consequent relief—Property in custodia legis*—Plaintiff being the custodian.*

Plaintiff sought for a declaration of his right to property without asking that the property should be delivered to him. The property had belonged to S deceased. Prior to the death of S, who was a minor, proceedings had been

(1) 7 W.R., (C.R.), 303. (2) 9 W.R., (C.R.), 463.

* Appeal No. 88 of 1902, presented against the decree of B. Cammaran Nair, Additional Subordinate Judge of Tinnevelly, in Original Suit No. 10 of 1901.