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APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, Mr. Justice Benson and Mr. Justice Russell.

SUBRAMANIAN CHETTI AND OTHERS (DEFENDANTS NOS. 1 TO 8), APPELLANTS,

v.

ARUNACHELAM CHETTI AND OTHERS (PLAINTIFFS NOS. 2 AND 3), RESPONDENTS NOS. 1 TO 4.*

1904. January 27, 28, 29. February 2, 16.

Hindu Law—Savings or property purchased out of savings by widow out of money awarded to her by decree as maintenance—Sridhanam—Devolution on daughter and on daughter's daughters.

K, a Hindu widow, purchased property with money received by her under a decree awarding maintenance made payable to her out of the revenues of a zamindari. She never had any right to or possession of her husband's estate, which was always in the hands of other persons who were entitled thereto. K died leaving a daughter M her surviving, who subsequently also died leaving three daughters. The three daughters of M sold the property to plaintiffs, who brought this suit for a declaration that they were entitled to certain shares in the property and for delivery of the same. For the defence it was contended that the property in question was not the sridhanam of K, that K had taken only a limited and qualified interest therein, and that on K's death it devolved on her husband's lineal male descendants and that, in consequence, the sale to plaintiffs conferred on them no title to the property:

Held, that the property was K's sridhanam, and, consequently, M was, on her death, heir to it. There is no necessary connection between the limited nature of the estate which a widow takes in her husband's property and the interest accruing to her in the income derived by her as such limited owner.

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* Appeal No. 155 of 1900, presented against the decree of M.R.Ry. T. Varada Rao, Subordinate Judge of Madura (East), in Original Suit No. 66 of 1898.

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That which becomes vested in her in her own right and which she can dispose of at pleasure is her own property, not limited but absolute, exclusive and separate, in every sense of the term, and devolves as such. As, in the present state of the law, the income is completely dissociated from the corpus, there is no presumption that savings or purchases with savings effected by a widow are increments to the corpus of the husband's estate and pass together with it.

Akkanna v. *Venkayya*, (I.L.R., 25 Mad., 351), approved; *Saodamini Dasi* v. *The Administrator-General of Bengal*, (L.R., 20 I.A., 12), followed; *Isri Dut Koer* v. *Mussumat Hansbutti Koerain*, (L.R., 10 I.A., 150), distinguished; *Sorolah Dossee* v. *Bhoobun Mohun Neoghy*, (I.L.R., 15 Calc., 292), *Beni Parshad* v. *Puranchand*, (I.L.R., 23 Calc., 262), *Chhiddu* v. *Naubat*, (I.L.R., 24 All., 67), and *Sheo Shankar Lal* v. *Debi Sahai*, (I.L.R., 25 All., 468), commented on.

Held also, that as a daughter's daughter is entitled to take (in preference to a daughter's son), the sridhanam of the grandmother, K's sridhanam, passed, on the death of her daughter M, to M's daughters, who took only a limited and qualified estate.

SUIT for a declaration that plaintiffs were entitled to certain property, and for possession. The facts are sufficiently set out in the judgments.

Sir *V. Bhashyam Ayyangar*, Hon. Mr. *C. Sankaran Nair*, and *S. Srinivasa Ayyangar* for first to third and fifth to eighth appellants.

V. Krishnaswami Ayyar, *P. R. Sundara Ayyar*, *K. Srinivasa Ayyangar*, and *A. Nilakanta Ayyar* for respondents.

JUDGMENT—Sir S. SUBRAHMANIA AYYAR, OFFG. C.J.—The property in dispute in this appeal preferred by the defendants in the case, consists of ten shares and one share respectively in the inam villages of Karuvi Kanmoi and Silambathan in the Zamindari of Sivaganga, the holders of the shares being in the enjoyment of their interest by receipt of the melvaram or the rent in kind payable by the cultivators and ryots of the villages. The shares in question were originally acquired by Kunjara Nachiar, a widow of a former Zamindar of Ramnad. She died, possessed of them, in July 1881, leaving her surviving a daughter Mangaleswari Nachiar, who herself died in November 1886, leaving three daughters, Rani Nachiar, Kulandai Nachiar and Velu Nachiar, and a son Vijiasami Tevar.

The plaintiffs claim the shares as vendees through persons whose alleged title is ultimately based on a sale by the three daughters of Mangaleswari, dated the 1st January 1894. The defendants claim the property also as vendees but through parties whose alleged title rests on a Court sale held in September 1889

in execution of a decree passed against Mangaleswari's son Vijiasami Tevar. Two contentions were raised on behalf of the defendants, and one of them was that the shares in question were not Kunjara's sridhanam, that she took therein only a limited and qualified interest and that on her death they devolved on her husband's lineal male descendants, that is to say, the then Raja of Ramnad and his brother who were the sons of Kunjara's husband's adopted son's adopted son, and consequently that the transaction relied on by the plaintiffs conferred on them no title whatsoever to the property.

The question of fact with reference to which this contention has to be decided is beyond doubt, it being established by all the evidence in the case that the property was purchased by Kunjara with money received by her under a decree awarding maintenance made payable to her out of the revenues of the Zamindari of Ramnad.

In support of the above contention the argument most strongly urged was that the present case was analogous to that of property purchased by a Hindu widow out of the savings from incomes of the estate inherited by her from her husband. No doubt property so purchased passes to the husband's heirs where the widow has made it an increment to her husband's estate; but where the widow making the purchase has, while not annexing it to her husband's estate, left it undisposed of, whether the descent thereof is to be to her husband's heirs or to her own, is a question which can hardly be treated as settled.

If the principle of law applicable to the case were that enunciated by Jimutavahana with reference to the interest taken by a widow succeeding to her husband, there can, of course, be no question as to what the conclusion should be. That principle, as pointed out by Mitter, J., in *Kery Kolitany* v. *Moneeram Kolita*(1) was, in effect, that the widow took in trust, as it were, for the spiritual welfare of her husband, and that accordingly so far as her own personal purposes were concerned, her control over the income derived therefrom was limited to such abstemious use as befitted the ascetic life to be led by her in her bereaved condition the corpus as well as the unspent income, without reference to the form which the latter stood saved, constituting but one inheritance,

(1) 13 B.L.R., 1.

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which, on her death, reverted to her husband's heirs. But even in the country of its birth this view, though emphatically relied on as the living law by Mitter, J., in the case referred to, has, so far as the widow's power of disposing at her pleasure of all the income derived by her during her limited ownership is concerned, been completely abandoned. Nevertheless it would seem that the spirit of the doctrine has not altogether ceased to exercise a subtle and unconscious influence on judicial opinion with reference to some of the matters connected with such income. And I take it, it is this that must account for the dicta to be found in the decisions in Bengal or those following them to the effect that until the contrary is shown, savings or purchases with savings effected by a widow should presumably be treated as increments to the corpus of the husband's estate and to pass together with it.

It is impossible to see how, consistently with the present state of the law, which in truth completely dissociates the income from the corpus in such cases, the presumption referred to could be supported. Now that it has definitively been established that the widow is entitled to use her entire net income at her pleasure or give away the whole or any part thereof as she chooses *inter vivos* or by testament, and that, with reference to the exercise of such right, it is immaterial whether the income is formed into a fund or kept invested in this or that form, how could it be supposed that *primâ facie* it merges in the estate merely because she has not actually disposed of it.

The true foundation of a presumption is either some policy or general conformity with fact (compare Thayer's 'Preliminary Treatise on Evidence,' page 314), but neither of these can possibly be invoked in favour of that supposition. For it cannot be said that the merging of the unalienated portion of the income of a widow with the estate out of which she derived it is required by any policy with reference to the community concerned. As to conformity with fact, who can doubt that if the wishes and intentions of widows in the class of cases under consideration have any relevancy in the matter they would in ninety-nine out of a hundred cases be found to be against a merger; such persons being of course naturally desirous that the income and the acquisitions made therewith should to the last remain within their power and pass on their death to their own heirs, especially the issue of their body.

Nor could it be supposed that, as a matter of abstract reasoning, there is any necessary connection between the limited nature of the estate which a widow takes in her husband's property and the interest accruing to her in the income derived by her as such limited owner. In the absence of any clear provision of Hindu law, defining the character of her interest in the income, it must, on general grounds, be held that what becomes vested in her in her own right and what she can dispose of at pleasure is her own property, not limited but absolute, exclusive and separate in every sense and devolving as such.

Should the precise question which has been just discussed arise for determination in this Court, this would be the conclusion to be arrived at on principle, and it would be come to unhampered by the dicta expressive of what is but a lingering fragment of the notion engendered by Jimutavahana's doctrine already mentioned; these dicta being moreover in direct conflict with the recent case of *Akkanna* v. *Venkayya*(1), where this Court held that as an acquirer of property presumably intends to retain dominion over it, a Hindu widow acquiring property with funds at her absolute disposal derived from her husband's estate should not be presumed to have intended to part with her power of disposition for the benefit of her reversionary heirs.

As to the *obiter dictum* in *Isri Dut Koer* v. *Mussumut Hansbutti Koerain*(2) on which much stress was laid in the argument on behalf of the defendants, that is more than counterbalanced by the actual decision of their Lordships in the much later case of *Saodamini Dasi* v. *The Administrator-General of Bengal*(3), where it was held that the income which accrued from the husband's estate after his death for about eight years, and which amounted to about two lakhs of rupees and was paid to her by the executor of the husband's will as property undisposed of by the will, was her "absolute" property.

Be this as it may, obviously there is no true analogy between that relied on and the present case, inasmuch as the very basis for the theory of merger, increment or accretion, and the consequent reverter is entirely wanting here, Kunjara not having had any right to or possession of her husband's estate, which, as already

(1) I.L.R., 25 Mad., 351. (2) L.R., 10 I.A., 150.
(3) L.R., 20 I.A., 12 at p. 24.

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stated, was all the time in the hands of other persons entitled thereto. To extend to such a case the theory referred to would be to create a baseless fiction which is also purposeless, it being impossible to suggest that, in the view of the Hindu law, there is some higher end to be attained by making acquisitions such as those in question devolve on heirs of the husband instead of on the heirs of the woman herself. One can understand the corpus of the husband's estate being given to a female without the intention of diverting its eventual devolution from his family, the object being effected intelligibly enough by making the estate of such a taker a limited one. Where, however, what is given is current income not for mere use and return but for actual consumption, it would be almost absurd to talk of an intention that there should be any reverter, it being now thoroughly well established that what may not have been consumed may be disposed of by the female as she likes. In such circumstances, whether as a matter of common sense or of legal principle, but one view is possible, viz., that money so received is the absolute property of the woman descendible as such to her own heirs.

Nor is there any doubt that this alone is consistent with the highest Hindu authorities, including even Jimutavahana. Now from the standpoint of Vignaveswara, the paramount authority of the Benares as well as of the Southern School, all property coming to be owned by a woman devolves on her own heirs without any reference to the mode of its acquisition by her, the doctrine of reverter being entirely unrecognized by him. This, in substance, was what was meant when he laid down that he was using the term "sridhanam" in a non-technical sense, that is to say, not only property obtained by a female by way of gift in the specific circumstances referred to by writers using the term in a technical sense, but all other property howsoever acquired was comprehended in that term as understood by him. The comment he made on the term "adyam" (etc.) in the text of Yagnavalkya was by reference to a phrase expressive in the Hindu law of the general and recognized modes of acquiring property otherwise than by gift. No doubt it is now settled that, notwithstanding Vignaneswara's authority, property inherited by a female from a male or a female would not pass to her own heirs, that is to say, the woman so inheriting takes a limited and qualified estate with reverter annexed to it. But this is no reason for going further and

holding that property vesting in a woman otherwise than by inheritance is also subject to such a devolution after her death. Suppose, for instance, a woman comes upon a treasure trove and becomes entitled to it with reference to the provisions of, say, the Indian Treasure Trove Act (Act VI of 1878) would it be possible to contend that according to Vignaneswara it is not properly obtained by her by "finding" and does not descend to her heirs?

Take again the case of a landed estate held by her under a claim of absolute title as against the true owner sufficient to give her a prescriptive title, would not that be property vesting in her in the language if Vignaneswara be "seizure" and, as such, likewise descending to her heirs, it having been held in similar circumstances that even under the Bengal Law such property would be sridhanam (*Mohin Chundar Sanyal* v. *Kashi Kant Sanyal*(1)).

Now turning to Jimutavahana, no doubt he employed the term sridhanam in the technical sense but the text he adopted for determining whether or not a particular acquisition came under that category was the extent of the power of disposition possessed by the female over it. If the acquisition was at her absolute disposal the property, according to Jimutavahana, was her sridhanam.

It was after considering both the theories thus propounded by these two leading authorities that the Judicial Committee in *Brij Indar Bahadur Singh* v. *Rani Janki Koer*(2) guarding against inherited property being taken to come within the scope of the ruling held that the estate of a deceased Hindu which had been forfeited to Government and by it granted after his death to his widow with full power of alienation become her sridhanam.

Still more to the point is the text of Dewala "Her subsistence, her ornaments, her perquisites and her gains are the separate property of a woman." This is quoted and relied on in the Digests of the Bengal, Benares and Southern Schools such as the Daya Bhaga (chapter IV, section I, verse 15), the Viramitrodaya (chapter V, part I, section 7), the Madhaviya (Burnell's 'Translation,' page 46) and the Saraswati Vilasa (Foulke's 'Translation,' section 276, p. 57). Compare also the Smriti Chandrika, chapter IX,

(1) 2 Calc., W.N., 161.

(2) L.R., 5 I.A., 1.

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section 1, placita 6 to 10. This text is certainly not to be confined, as suggested on behalf of the defendants, to gifts for maintenance made out of affection, for, as pointed out by Dr. Jolly ('Hindu Law of Partition Inheritance and Adoption,' page 236), the Sanskrit term Vritti (subsistence) in the text has been understood by commentators to include what is given by the heirs, and in *Manilal Rewadat* v. *Bai Rewa*(1) arrears of maintenance recovered by a wife under a decree against her husband were held to be sridhanam, though Aparibhashika sridhanam with reference to the distinctions peculiar to the Mayukha. See also with reference to maintenance generally (*Mussamut Doorga Koonwar* v. *Mussamut Tejoo Koonwar*(2), *Guru Prasad Roy* v. *Nafar Das Roy*(3) and *Court of Wards* v. *Raja Mohessur Roy*(4)) cited for the plaintiffs. There is, lastly, the decision of this Court with reference to the very property now in dispute in a suit between Vijiasami and Mangaleswari where Kindersley and Muthusami Aiyar, JJ., held that the property was the sridhanam of Kunjara (exhibit 4). As to *Sorolah Dossee* v. *Bhoobun Mohun Neoghy*(5) and *Beni Parshad* v. *Puranchand*(6) which relate to the share taken by a mother in a partition between the sons and which were also relied on for the defendants, they are in conflict with *Chhiddu* v. *Naubat*(7) dealing with the same question. Considering that the right of a mother to a share in a partition between the sons is not enforced in this Presidency, the question whether the view of the Calcutta High Court or the Allahabad High Court is correct, in so far as this Court is concerned, is of no practical importance. Nevertheless it is to be observed that the decision in Allahabad does not rest on the general Mitakshara definition of sridhanam but upon a specific text occurring in an earlier part of the work—a text not referred to and considered in the later Calcutta case which was governed by the Benares Law. However this may be, and even assuming the Calcutta view on the point to be correct, the present case must be held to stand on a completely different footing as, unlike in the case of the mother's share, the question here is as to what is not a part of the corpus itself. It thus follows that the property in dispute

(1) I.L.R., 17 Bom., 758.
(2) 5 Suth. W.R., Mis., 53.
(3) 3 B.L.R., 121 ; S.C., 11 Suth. W.R., 497.
(4) 16 Suth. W.R., 76.
(5) I.L.R., 15 Calc., 292.
(6) I.L.R., 23 Calc., 262.
(7) I.L.R., 24 All., 67.

was Kunjara's sridhanam, and that, consequently, on her death Mangaleswari was the heir.

The other contention on behalf of the defendants was as to the devolution of the property on Mangaleswari's death, taking her to have been the rightful heir. It was urged that, having regard to the actual termination before the Judicial Committee of the litigation in the recent case of *Sheo Shankar Lal* v. *Debi Sahai*(1) it necessarily followed that in the present case the heir entitled to take after Mangaleswari was Vijiasami and not Rani Nachiar, Kulandai Nachiar and Velu Nachiar. The argument was this: In that case the question was whether on the death of Jagarnath, the daughter of Jagarnath, the original owner, the property which was the sridhanam of Jadunath devolved on the sons of Jagarnath or on her daughter; the Subordinate Judge of Gorucknpore had held that the sons were the heirs; on appeal the High Court had held that the daughter was the heir, the Judicial Committee having reversed the decree of the High Court and restored that of the Subordinate Judge, it must necessarily be understood that, in their Lordship's view, the sons and not the daughter were the rightful heirs, though according to the Mitakshara and other authorities it would be otherwise.

The explanation suggested on behalf of the plaintiffs was that though according to the *ratio decidendi* of the decision a plea of *jus tertii* founded on the right of the grand daughter might, on behalf of the respondents before their Lordships, have been successfully suggested, no such plea was actually raised, the respondents not having appeared before their Lordships, that consequently the turn which the case took in fact, whatever be its effect as between the parties to that litigation, could not possibly touch the specific conclusions of law distinctly arrived at and fully and clearly expressed in the judgment of their Lordships. This explanation seems to be amply supported both with reference to the circumstances in which the matter decided by their Lordships came to be presented before them and also with reference to the contents themselves of their judgment. Now as to the former, it is apparent from the record of the case to which our attention was drawn on behalf of the plaintiffs that the issue which involved the question eventually decided by their Lordships was raised at

(1) I.L.R., 25 All., 468.

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a very late stage of the case before the Subordinate Judge and was framed upon a petition presented on behalf of the defendants in the case, who, for some reason or other, relied on the title of the grand daughter as *jus tertii* with reference only to the view that the property in dispute was sridhaman in the hands of Jagarnath. It was on a plea thus circumscribed and limited that the Subordinate Judge held that it failed. On the appeal to the High Court also the case on behalf of the defendants (appellants there) was presented exactly in the same way, and that Court having come to the conclusion that the property was sridhanam in Jagarnath's hands, the plea of *jus tertii* as above stated, was upheld. On the further appeal by the plaintiffs before the Judicial Committee the appellants alone having appeared and argued, but one short point was presented to their Lordships as that which called for decision, viz., the question of sridhanam or no sridhanam in the hands of Jagarnath, and this being decided in the way in which their Lordships decided it, it was assumed that there was an end of the case as is obvious from the fact that their Lordships after giving final expression to the conclusion that the property was not the sridhanam of Jagarnath add "and this is sufficient to dispose of the present case."

Passing now to the judgment itself, it having been held that Jadunath's property was not sridhanam in the hands of Jagarnath and that the descent was no longer to be traced from her their Lordships, approving of and following the cases *Vijiarangam* v. *Lakshuman*(1), *Manilal Rewadat* v. *Bai Rewa*(2) and *Virasangappa Shetti* v. *Rudrappa Shetti*(3) decided in this country and cited by them in *Sheo Shankar Lal* v. *Debi Sahai*(4) adopted as they had to do the rule of reverter, that is to say, they held that on the death of a female inheriting sridhanam succession was to be traced again as from the last full owner and that the property devolved on that person who, at the death of the qualified owner, was the heir to the sridhanam of the full owner. This is patent not only from the direct reference in their Lordships' judgment to those cases, but also from a significant passage which occurs in *Sheo Partab Bahadur Singh* v. *The Allahabad Bank*(5), in which a cognate point

(1) 8 Bom. H.C.R.O.C.J., 244 at p. 272.
(2) I.L.R., 17 Bom., 758 at p. 761.
(3) I.L.R., 19 Mad., 110 at p. 118.
(4) I.L.R., 25 All., 468 at p. 473.
(5) I.L.R., 25 All., 476.

was raised and which was decided on the same day as *Sheo Shankar Lal* v. *Debi Sahai*(1) judgment in both being delivered by his Lordship Sir Arthur Wilson. Now the property to which the dispute in the latter case related had formed part of the subject of litigation in *Brij Indar Bahadur Singh* v. *Rani Janki Koer*(2) referred to in a previous part of this judgment. As already stated it was held to be the sridhanam of the widow to whom the Government had made the grant, one Kablas Kunwari. In the litigation which arose after the death of Janki, the daughter of Kublas Kunwari, and which also came before the Judicial Committee, it had been observed (*Jagdish Bahadur* v. *Sheo Partab Singh*(3)). "It is not disputed that the succession must be to the heirs of her (Janki's) father." After quoting this passage his Lordship, Sir Arthur Wilson, adds a comment by way of explanation "presumably as the sridhanam heir of her mother" (*Sheo Partab Bahadur Singh* v. *The Allahabad Bank*(4)), a comment which decisively points to the conclusion that in *Sheo Shankar Lal* v. *Debi Sahai*(1) their Lordships unquestionably took the view that the succession to Jadunath's sridhanam property on Jagarath's death was to heirs of Jadunath's sridhanam and to none else. No doubt their Lordships refer to W. H. Macnaghten's view on the question discussed. But it is obvious that the learned author's view on the point was relied on only to the extent that sridhanam inherited by a female was in her hands also not sridhanam and not with reference to the further proposition stated by him to the effect that in regard to the devolution of the property on her death she was to be a stock of descent. That this latter proposition was rejected by their Lordships is not merely a matter of inference from its being inconsistent with the rule of reverter accepted by them, but is clear from the fact that in *Huri Doyal Singh Sarmana* v. *Grish Chunder Mukerjee*(5) referred to and approved of by their Lordships it is pointed out that Macnaghten was in error in treating a female taking sridhanam by inheritance as the stock of descent with reference to the devolution of the property on her death, and the observations of Mitter, J., to the same effect in a previous case are quoted *in extenso* in the part of the report cited by their Lordships. There can, therefore, be no

(1) I.L.R., 25 All., 468 at p. 473.
(2) L.R., 5 I.A., 1.
(3) L.R., 28 I.A., 106.
(4) I.L.R., 25 All., 476.
(5) I.L.R., 17 Calc., 911.

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doubt that no line of heirs different from that laid down by the recognized authorities with reference to the descent of sridhanam property in cases like the present was, or was intended to be laid down by their Lordships in *Sheo Shankar Lal* v. *Debi Sahai*(1) and as, according to those authorities (Mitakshara, chapter II, section XI, p. 9); the Smiriti Chandrika, chapter IX, section III, p. 22; the Madhaiya Burnell's 'Translation,' p. 43, and the Saraswati Vilasa (Foulke's 'Translation,' section 300, p. 60), a daughter's daughter is entitled to take in preference to a daughter's son the sridhanam of their grandmother it follows that on Mangaleswari's death the shares in dispute as Kunjara's sridhanam did not pass to Vijiasami but to Rani Nachiar, Kulandai Nachiar and Velu Nachiar who, of course, took only a limited and qualified estate.

The plaintiffs therefore, as claiming through them, are entitled to recover possession, it being clear that this suit is in time inasmuch as, apart from article 141 of the Indian Limitation Act, it is satisfactorily shown that on Kunjara's death Mangaleswari took and held possession during her life. She asserted her possession in exhibit XXIII, the power of attorney which she executed shortly after Kunjara's death in regard to some steps she wanted to take as against Vijiasami in reference to certain of her mother's properties said to have been in his charge in consequence of his having acted as the manager of Kunjara during her life time in the suit brought by Vijiasami himself claiming the shares under the alleged will of Kunjara, he apparently treated himself as out of possession, having admitted, as he did, that for one year the produce of the property had been taken away, and claimed mesne profits, an issue in respect of which was framed in the case (exhibit H_2). There is no doubt a conflict in the oral evidence on this question of possession, but the circumstances just adverted to render that adduced in favour of Mangaleswari's possession more entitled to weight. For all these reasons the appeal must be held to fail and accordingly I would dismiss it with costs.

BENSON, J.—I concur.

RUSSELL, J.—I concur.

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(1) I.L.R., 25 All., 468 at p. 473.