

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Sankaran Nair.

SINGAM SETTI SANJIVI KONDAYA AND OTHERS

(DEFENDANTS Nos. 2, 3 to 5), APPELLANTS),

1907.
October
10, 30.

v.

DRAUPADI BAYAMMA *alias* VENKAMMA

(SECOND PLAINTIFF), RESPONDENT.*

Hindu Law, Reversioner - When sale by limited owner for purposes binding on the reversion, sale not to be set aside unless purchase money refunded - Right of presumptive reversioner to set aside such sale - Widow not trustee for reversioners.

Where a Hindu widow with a limited interest in property, sells the property under circumstances which render the purchase money binding on the reversion, the actual reversioner after her death, or the presumptive reversioner during her lifetime, cannot have the sale set aside without refunding the purchase money.

Obiter, a suit to set aside such sale will be liable to be dismissed if the plaint does not contain an offer to refund.

Where a presumptive reversioner sues to set aside such a sale during the lifetime of the widow without offering to refund the purchase money, it is not competent to the Court to pass a decree that upon the widow's death, the sale should be set aside on the person then entitled to the reversion refunding the purchase money.

Phool Chand Lall v. Raghubans Suhayee (9 W. R., 109), followed.

A widow is not a trustee for the reversioner, and, in the absence of other ways of paying off debts binding on the property, is not bound to raise money on her personal security to discharge such debts, neither is she bound to mortgage the property for that purpose if such a course would be more prejudicial to her than a sale.

Suit to establish plaintiffs' reversionary right to the plaint properties and to declare the alienations made by first defendant invalid beyond her lifetime.

The plaintiffs were the daughters and the first defendant was the widow of the last male owner.

The facts are sufficiently stated in the judgment.

The Munsif passed a decree declaring that the alienations made by the first defendant to the other defendants were invalid

* Second Appeal No. 575 of 1905, presented against the decree of A. C. Dutt, Esq., District Judge of Cuddapah, in appeal Suit No. 38 of 1904, presented against the decree of M. N. Ry. A. Narayana Pantulu, District Munsif of Cuddapah, in Original Suit No. 602 of 1903.

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beyond her lifetime, and that at her death the then existing reversioners would be entitled to recover the lands from the defendants on payment of the sum of Rs. 540 which was found to be a binding debt.

An appeal to the District Court was dismissed with costs.

The second and other defendants appealed to the High Court. Dr. S. Swaminadhan for appellants.

C. Ramachandra Rau Sahib for respondent.

JUDGMENT.—The plaintiffs as the reversionary heirs of their father brought this suit against the first defendant, his widow, and the other defendants who are alienees claiming under her, to set aside the sale in their favour by the first defendant on the grounds that there was no necessity for such sale, and that these lands of the value of Rs. 1,500 were sold for Rs. 540.

Out of this sum of Rs. 540, the second defendant who had attached the properties in execution of his decree for Rs. 340 which he had obtained against the first defendant, as representative of her husband, was paid his decree debt; the first defendant also discharged a debt of Rs. 180 incurred for the funeral ceremonies of her husband, and the remaining portion of the purchase money was paid in discharge of another debt also found to be binding on the reversioners. It is thus proved that the sale was effected for the purpose of discharging debts binding on the reversion and the purchase money has been applied in payment of those debts. It is also found that the property sold for Rs. 540 was worth about Rs. 1,000.

On these findings the Court of First Instance passed a decree declaring "that the alienations made by the first defendant in favour of the other defendants are not valid after her lifetime and that the plaintiffs or the then existing reversioner will be entitled to recover the lands from the defendants on payment to them of Rs. 540 which is found to be a binding debt." This decree has been confirmed by the District Judge. This is an appeal from that decree. We are of opinion that this decree cannot be sustained. The attaching creditor could have forced a sale. There is no finding by the lower Courts, and there is no evidence to show that these debts could have been paid off by the widow—otherwise than by a sale of this property; she is not bound to mortgage any portion of her husband's estate if that would be more prejudicial to her than a sale, by reducing her

income to a greater extent, as she does not hold the property for the benefit of the reversioner, nor is she bound to raise money on her personal security. The lower Courts have also decided that the reversioner after the widow's death is entitled to recover possession only on payment of the amount found to be binding. A suit brought by the heir after the widow's death where the plaint contained no offer to pay the money, when it should have contained such offer was dismissed on that ground. See *Mutteeram Kowar Gopaul Sahoo* (1). This view appears to have been accepted by their Lordships of the Privy Council. In a case where the suit was brought to set aside an alienation by a widow of property which was claimed by the plaintiff to be debutter property devoted to an idol, their Lordships after declaring that the widow as the manager of the estate had the same right as or a right analogous, to, that of the manager of an infant heir say: "Their Lordships are still of opinion that the plaintiff could not succeed on this plaint in setting aside the deed; because if part of the money only was required for the repairs of the idol or was represented to have been so required and this was *bonâ fide* believed in by the grantees, the deeds would not be wholly void by reason that some money was raised for another purpose. It would then come to this, that too much of the idol's property may have been granted, that a less quantity of land than that included in the grants would have sufficed to raise the money required for the temples. But that should not be a sufficient ground for setting aside the deeds altogether. The plaintiff in that case should have offered to reimburse the *bonâ fide* purchasers so much of the money as had been legitimately advanced" and they add that the "suit in the present form could not have been sustained."

Even assuming this to be a mere question of pleading, there can, therefore, be no doubt that the right of the heir to set aside the deed and recover possession of the property from the appellants depends upon his refund of at least the purchase money. Whether he is not also bound to pay interest, etc., as decided in *Fhool Chund Lall v. Rughoobuns Suhaye* (2) has not been argued before us. If the sale then can be set aside only on condition of the plaintiffs refunding the purchase money that is held to be binding on the reversion, how can a declaratory decree setting

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(1) 11 B. L. R., p. 416.

(2) 9 W. R., 108 at p. 109.

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aside the sale be passed in favour of the plaintiffs, without also a direction to refund such money ? Ordinarily an expectant reversioner would not pay the money out of his own pocket as he might never be benefited thereby, since the purchaser would notwithstanding such payment, continue in possession till the widow's death as the reversioner would not till then be entitled to possession, and he might not be entitled to it at all in the event of his not surviving the widow. In the case before us there was no offer by the plaintiffs to refund the purchase money nor is such a reversioner entitled to a decree as is passed in this case for the reasons stated by Sir Barnes Peacock in *Phool Chund Lall v. Rughoobuns Suhaye* (1). The learned Chief Justice held that the Court could not properly decree "in the lifetime of the widow that upon her death, the deeds should be set aside upon payment by the persons who should succeed to the estate, of the amount which the widow was entitled to raise inasmuch as it would be contingent upon the will of the persons who might succeed to the inheritance whether they would pay the amount or not; and the purchaser could not properly have been placed by a decree of the Court in a position in which for many years he might remain in a state of uncertainty as to whether or not he could safely expend capital in the improvement of the estate. Such a decree would have been unjust to the purchaser, and it would be contrary to public policy to place an estate in that position in which it could not be known whether the estate could be safely improved or not." This decision was followed in *Sugeeram Begum v. Juddobuns Suhaye* and others (2). The learned Judges of the Allahabad High Court profess to follow the decision above cited in *Gobind Singh v. Baldeo Singh* (3). If that judgment is inconsistent with the decision in *Phool Chund Lall v. Rughoobuns Suhaye* (1) we are unable to follow it. There is no decision of this Court brought to our notice. Though the question was apparently raised in Appeal Suit No. 119 of 1901 the learned Judges have not expressed any opinion on this point.

For the above reasons we reverse the decrees of the Courts below and dismiss the suit with costs throughout.

(1) 9 W. R., 103 at p. 109.

(2) 9 W. R., 284

(3) I. L. R., 25 All., 330.
