

WHITE, C.J.,
 AND
 KRISHNA-
 SWAMI
 AYYAR, J.
 ———
 MINAKSHI
 AMMAL
 v.
 VISWANATHA
 AYYAR.

daughter's son. But so far as any intermediate estate is concerned that is, the estate undisposed of by the will, it will pass under the law of intestacy to the daughters and not to the husband. It may be that, so far as the husband is concerned, if he dies first, his life-estate will pass to the widow; but it passes not under the terms of the will but under the law of intestacy. But, so far as I have been able to understand the authorities, it is only in cases where a benefit is received by a mutual testament under the terms thereof that he or she can be said to be precluded from revoking the will. I come therefore to the conclusion that the will is really superseded by the gift which the testatrix has made. The gift deals with properties which are dealt with by the will and if all the properties dealt with by the will are disposed of by this gift, there is no property left upon which the will could operate. The second appeal must, therefore, be allowed, the decree of the District Judge reversed and that of the District Munsif restored. The plaintiff must pay the costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Abdur Rahim.

1909.
 December 17.

CHIDAMBARA REDDIAR (FIRST PLAINTIFF), APPELLANT,

v.

NALLAMMAL AND OTHERS (SECOND PLAINTIFF AND SIXTH TO EIGHTH DEFENDANTS), RESPONDENTS NOS. 1 TO 3, 5.*

Hindu Law — Reversioner, suit by.—Suit by next male reversioner maintainable without proof of collusion of nearer female reversioner.

The rule that suits to set aside alienations by a female heir having a limited interest should be brought by the next reversioner and that a remote reversioner cannot sue without showing collusion between the female heir and the next reversioner, does not apply where the next reversioner is a female and the suit is brought by the nearest male reversioner.

Where a widow having daughters makes an alienation, the nearest male reversioner may sue without proving collusion between the widow and daughter.

SECOND APPEAL against the decree of E. L. Thornton, District Judge of Trichinopoly, in Appeal Suit No. 120 of 1906, presented

* Second Appeal No. 1409 of 1907.

against the decree of T. Srinivasa Aiyangar, District Munsif of Kulitalai, in Original Suit No. 1076 of 1903.

T. V. Seshagiri Ayyar for appellant.

P. S. Parthasarathi Ayyangar and *N. Rajayopalachuriam* for first and seventh respondents.

BENSON
AND
ABDUR
RAHIM, JJ.

CHIDAMBARA
REDDIAR
v.
NALLAMMAL.

JUDGMENT.—The plaintiff and defendants Nos. 3 to 5 who did not join in the suit, are the nearest male reversioners of the deceased owner of the land in dispute. The first defendant is a widow, and the second defendant is a daughter, by another wife, of the deceased. The District Judge has held that the plaintiff cannot maintain the suit to set aside alienations by the widow because the second defendant is entitled to succeed after the widow's death in preference to the plaintiff and there was no collusion between the first and second defendants. He relies on the decision in *Rani Anand Kumuar and another v. The Court of Wards on behalf of Chandra Shekhar, a minor*(1), but in that case the plaintiff was not the nearest male reversioner. The principle of that case has no application where the nearer heir is a female and as such is entitled only to a limited estate.

This is distinctly laid down in the decision of this Court in *Raghupati v. Tirumalai*(2), and also in *Abinash Chandra Muzumdar v. Harinath Shaha*(3), (see also Mayne's "Hindu Law," paragraph 646, 7th edition). The respondent's vakil endeavours to support the District Judge's decision by reference to the case of *Chiruvolu Punnamma v. Chiruvolu Perrazu and another*(4), but we do not think it has any application to the facts of this case.

The District Judge has not gone into the merits. We therefore set aside the decree of the District Judge and remand the appeal to him for disposal according to law.

Costs will abide the result.

(1) (1881) I.L.R., 6 Calc., 764.

(2) (1892) I.L.R., 15 Mad., 422.

(3) (1905) I.L.R., 32 Calc., 62, at p. 65.

(4) (1906) I.L.R., 29 Mad., 390.