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But in *Radha Gobind's* case there was reason for acting upon that principle, and it appears indeed to have been the first case, amongst all those to which our attention has been called during the argument, in which it became necessary for their Lordships to resort to that principle. It will be found that in the generality of cases of this kind, the parties as a rule can and do produce more or less direct evidence of possession, and when they do so, the Court naturally and properly acts upon that evidence without resorting to any principle of presumption.

For these reasons I hope, as I stated in the first instance, that the difference which exists in this case between my learned brothers and myself will prove to be one rather of principle than of practice.

APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.

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ANUND CHUNDRA MUNDUL AND ANOTHER (DEFENDANTS) *v.* NILMONY JOURDAR (PLAINTIFF).*

Hindu Law—Inheritance—Descent of lands purchased by widow out of income of life-estate.

Land purchased by a Hindu widow with money derived from the income of her life-estate passes, when undisposed of by her, to the heirs of her husband as an increment to the estate, and not to her heirs as property over which she had absolute control.

Baboo *Mohiny Mohun Roy* for the appellants.

Baboo *Shoshee Bhusun Dutt* for the respondent.

THE facts of this case sufficiently appear from the judgment delivered by

MACPHERSON, J.—The question raised in this appeal is, whether land purchased by a Hindu widow with money derived from the income of her life-estate, passes, when undisposed of by her, to

* Appeal from Appellate Decree No. 2003 of 1881, against the decree of Baboo Upendro Chunder Mullick, Subordinate Judge of Jessore, dated the 27th June 1881, affirming the decree of Baboo Behari Lall Mukerjee, Munsiff of Jhineeda, dated the 14th February 1881.

the heirs of her husband as an increment to the estate, or to her heirs as her own property over which she had absolute control.

It arises in this way : Gourmoni, a widow of one of three brothers, inherited her husband's one-third share of the family property. Being dispossessed by the other two brothers, she obtained against them decrees both for possession and for mesne profits, and in execution of the latter brought to sale and herself purchased their two-third share of the same property. Both Courts have found, and the fact is not now disputed, that this was an acquisition made out of the income of the property, in which she held a widow's life-estate, the purchase money representing the usufruct of which she had been wrongfully deprived. Gourmoni was, however, under the necessity of borrowing money to carry on the litigation alluded to, and the lenders, who are the first two defendants in the case, obtained against her a decree for the amount lent. This they executed after her death, not against the heirs of her husband, but against those who were her heirs and who would take the property if it was her own, by attachment and sale of the two-third share which Gourmoni had bought, and they became themselves the purchasers. The plaintiff claims as purchaser prior to the last execution sale, from two of the three reversionary heirs, all of whom are parties to the suit. The contest, therefore, is between him as representing the reversioners, the undoubted owners of the one-third share which Gourmoni took as widow of her husband, and the first two defendants claiming under their purchase at the execution sale subsequent to the death of Gourmoni. It may be, as appellants' pleader contends, that the law is unsettled as to the power of a Hindu widow to alienate, beyond her own life interest, immovable property purchased by her from the income of her life-estate; but it is unnecessary to determine this, as no question of any such alienation here arises. The point was discussed, though not decided, in the case of *Hunsbutti Kerain* v. *Ishri Dutt Koer* (1). It may be noted that though both the learned Judges, before whom that case came, entertained doubt as to the particular question before them, they seemed to have no doubt that such property, when undisposed of by the widow,

(1) I. L. R., 5 Calc., 512.

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passes on her death not as stridhan to her heirs, but to the heirs of her husband as an increment to the parent estate. And whatever her power of alienation may be, it seems clear that such is the law as regards the succession to property of which she made no disposition, the presumption being, in the absence of proof of intention to sever it from the bulk of the estate and appropriate it to herself, that she intended it to be an accretion to her husband's property and it would pass as such. This was the principle followed by the Privy Council in the case of *Gonda Koer* v. *Kooer Oodey Singh* (1). That was, it is true, a case governed by the Mitakshara law, but there seems, in this respect, no ground for distinction between the Mitakshara and the Dayabhaga. The case of *Chundrabulee Debia* v. *Brody* (2) (a Bengal case) is also a direct authority on the point. It was there held that savings made by a widow, while enjoying the widow's estate, and undisposed of by her, would form part of the estate and go with it to the next heirs of her deceased husband. In that case the holder of a decree against a Hindu widow attempted after her death to take out execution for certain mesne profits which had been decreed to her, and which represented the usufruct of her estate. He was opposed by the heirs of her husband, and it was held that he could not execute unless he showed that the debt for which he held a decree was contracted by the widow for legal necessity and for the benefit of the estate—a question which in that stage of the case (*viz.*, in the course of execution proceedings) could not be decided. That decision was followed in the case of *Chowdry Bholanath Thakoor* v. *Bhagabutti Deyi* (3), to which the Mitakshara law was applicable, but this having been reversed by the Privy Council (*Bhagabutti Deyi* v. *Chowdry Bholanath Thakoor*) (4), is no authority. The remarks, however, of their Lordships in that case tend to show that, if the widow had taken, as supposed by this Court, a widow's estate, and not, as they held, a life-estate under a family settlement with power to appropriate the profits, the decision as to the succession to the property

(1) 14 B. L. R., 159.
(2) 9 W. R., 584.
(3) 7 B. L. R., 93 : 15 W. R., 63.
(4) L. R., 2 I. A., 256.

acquired by the widow out of the savings of the husband's estate would not have been wrong.

The only authority cited as supporting a contrary view is the case of *Soorjeemoney Dossee* v. *Dinobundhoo Mullick* (1), where a widow was declared *absolutely entitled in her own right* to all such interest and accumulations as since the death of her deceased husband had arisen from the one-fifth part of certain accumulations which she had before been declared entitled to hold and enjoy as a Hindu widow in the manner prescribed by Hindu law. There, however, no question was raised as to the succession to the property on the widow's death, and the reversionary heirs of the husband were no parties to the case. On that, among other grounds, the Privy Council refused to treat that case as an authority in the case which I have before quoted of *Gonda Koer* v. *Kooer Oodey Singh* (2). Another ground certainly was that the case of *Soorjeemoney Dossee* v. *Dinobundhoo Mullick* (1), was governed by law current in Bengal, while the Mitakshara law applied to the other case, but as I have already said no distinction has, in this respect, been pointed out in the law applicable to the two schools.

It has been broadly contended, that as the widow had in her life-time absolute control over the income of her husband's estate, that income and whatever property she acquired with it was her stridhan or separate property, and must devolve as such. It is open to doubt whether such property is, properly speaking, stridhan at all, but on the principle already enunciated it could only become so, or at least be regarded as her property, when she had shown an intention to appropriate it to herself and to sever it from her husband's estate. This answer therefore is sufficient, that whatever disposing power she may have had over such property, (and this it is not necessary in the present case to decide) she made no disposition and showed no intention of treating it as her separate property; the presumption therefore already alluded to arises, that she intended it to be an accretion to her husband's property, and it would pass as such to his heirs.

(1) 9 Moore's I. A., 123. (2) 14 B. L. R., 159.

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As, therefore, the plaintiff represents the reversioners, and the appellants by their purchase acquired no title, I would dismiss the appeal with costs.

GARTH, C.J.—I quite agree that this appeal must be dismissed. The case may seem a very hard one upon the defendants Nos. 1 and 2. They appear to have advanced their money to Gourmoni in good faith for the protection and recovery of her share of the property, and they might fairly look to that property for the payment of their advances.

And if they had taken the proper course, I think they might have done so. After obtaining a decree against *Gourmoni* they might either, if they had used due diligence, have enforced it by execution during her life, or they might have proceeded against the property in the hands of the reversionary heirs after her death.

But for some unaccountable reason, they chose to execute their decree, and to sell the property in execution, as belonging to Gourmoni's sisters, who had nothing whatever to do with it.

They therefore took nothing by their purchase under that execution, and they must, in this suit at least, take the consequences of their ill-advised proceedings.

It is possible that they may still have a remedy against the property in the hands of the reversionary heirs, if they are not barred by limitation; but in this suit they must fail.

The appeal is dismissed with costs.

Appeal dismissed.