

allow it now will require a fresh trial on facts, and we are therefore of opinion that the plea should be excluded from consideration.

KRISHNA
PATTAR
v.
LAKSHMI.

In the result we must hold that the bar by limitation is a proper plea in the case with regard to the profits claimed. It is not necessary to decide whether the 3 years' rule or the 6 years' rule applies to it, as in either case the plaintiff fails as the finding by the Subordinate Judge that profits for the last 9 years have been accounted for has not been displaced by the District Judge and we have not been addressed any argument about it.

In the result, the decree of the lower appellate Court must be reversed and the decree of the first Court restored with appellants' costs here and in the Court below to be paid by the plaintiff.

N.R.

APPELLATE CIVIL.

*Before Mr. Justice Spencer and Mr. Justice
Kumaraswami Sastri.*

GATTINENI PEDA GOPAYYA AND 2 OTHERS (CLAIMANTS),
APPELLANTS,

1921,
November 16.

v.

THE DEPUTY COLLECTOR OF TENALI (REFERRING
OFFICER), RESPONDENT.*

Land Acquisition Act (I of 1894), secs. 3, 9, 18, 24 (1) and 25—Applicant—Person interested—Hindu widow—Claimant before acquiring officer—Surrender by widow to reversioner after award—Application by reversioner for reference to Civil Court—Claim by reversioner for larger amount of compensation than amount claimed by widow—Legal representative—Estoppel—Competency of Court to award larger amount—Purpose of acquisition—Element in valuation.

* Appeal No. 284 of 1920.

GOPAYYA
v.
DEPUTY
COLLECTOR,
TENALI.

A reversioner to the estate of a Hindu widow who preferred a claim after notice under section 9 of the Land Acquisition Act, and surrendered her estate to the former after an award was passed by the acquiring officer, is a person interested in the compensation and is competent to be an applicant under section 18 of the Act.

Under section 25 of the a Act, claimant is estopped from getting more compensation from the Judge than what he claimed before the acquiring officer, and on the same principle his legal representatives would likewise be bound ; but a reversioner to the estate of a Hindu widow is not her legal representative and is not bound by her acts on any principle of estoppel ; consequently the Judge is not bound to limit his award, on the application of the reversioner, to the amount claimed by the widow before the acquiring officer.

The purpose for which land has been acquired is an element for consideration in estimating its value, though under section 24(1) of the Act the Court is precluded from taking into consideration the increase of its value *likely to arise* from the use to which it will be put.

APPEAL against the award of F. A. COLERIDGE, District Judge, Guntūr, in Original Petition No. 35 of 1918.

At the time of acquisition of the lands in question under the Land Acquisition Act, the property belonged to a Hindu widow Durgamma, and she filed a claim petition, dated 31st July 1917, before the acquiring officer (Special Deputy Collector of Tenali), and prayed therein that she might be awarded Rs. 1,400 per acre for the extent of lands taken from her. The Deputy Collector passed an award on the 11th August 1917, granting compensation at the rate of Rs. 1,200 an acre. The appellants, who were the reversioners to the estate owned by Durgamma as a Hindu widow, obtained a surrender of her estate in their favour on 5th October 1917, and subsequently filed a petition under section 18 of the Land Acquisition Act, objecting to the amount awarded by the officer and asking for a reference to the District Court for determination of the amount of compensation. They claimed compensation at Rs. 2-8-0 a

square yard for the lands taken up. The District Judge, held that the reversioners were not entitled to claim more compensation than had been claimed by the widow before the acquiring officer, and awarded at the rate of Rs. 1,400 an acre, although he was of opinion that the lands were so valuable as to deserve a larger amount of compensation. The reversioners, who were the applicants before the Judge, preferred this Appeal.

V. Viswantha Sastri for appellants.—The widow did not act bona fide on behalf of the estate in the land acquisition proceedings. The reversioners do not claim from the widow : they are not her legal representatives. Section 25 of the Land Acquisition Act is no bar to their getting the proper amount of compensation due for the lands. The lands were acquired for extension of house-sites in the village.

Government Pleader (C. Madhavan Nayar) for respondent.—The reversioners have no right to come in and object to the amount awarded in the land acquisition proceedings, where the estate was fully and bona fide represented by the widow who held an estate in possession: see *Lachmeswar Singh v. Chairman, Darbhanga Municipality*(1). Though the widow cannot alienate in favour of the Government, she can hand over possession under the Land Acquisition Act as in the above case.

The Court delivered the following JUDGMENT :

The acquiring officer awarded compensation at the rate of Rs. 1,200 an acre. The widow Durgamma to whom the northern part of survey No. 575 belonged at the time claimed at the rate of Rs. 1,400 an acre. After she had surrendered the estate to her husband's reversioners they claimed Rs. 2-8-0 a square yard, but the District Judge held that he was precluded by section

GOPAYYA
DEPUTY
COLLECTOR,
TENALI.

(1) (1888) I.L.R., 18 Cal., 99 (P.C.).

GOPAYYA
 v.
 DEPUTY
 COLLECTOR,
 TENALI.

25 (1) of Act I of 1894 from awarding a higher amount than that claimed by the widow. In Appeal, the reversioners ask to be compensated at the rate of Rs. 1-8-0 a square yard.

Upon the question of law we are of opinion that section 25 was designed with the purpose of holding claimants to their own bargains and of preventing demands being increased at every stage from the Collector to the High Court. The word "applicant" in this section, is used to describe the person who puts in a written application under section 18 for having his objection to the Collector's award referred for determination by a Civil Court. He is not necessarily identical with the person who makes a claim after notice under section 9. All that section 18 requires is that he should be a person interested who has not accepted the award, and a "person interested" is defined in section 3 as including every person claiming an interest in the compensation to be made on account of the acquisition. Under section 25 claimants are estopped from getting more from the Judge than what they claimed before the Collector, and on the same principle their legal representatives would no doubt be bound. But although a widow represents her deceased husband's estate for certain purposes and has limited powers of disposal over it, the reversioners are not her legal representatives nor are they bound by her acts on any principle of estoppel. The Judge, therefore, should not have considered his award as limited to the amount claimed before the acquiring officer.

On the question of fact, which is what is the market rate which the plots acquired would fetch at a fair computation, we are of opinion that 8 annas a square yard which is the rate awarded by the District Judge is too low. This land, though hitherto used for wet

cultivation, is surrounded on all sides by lands which have been built upon and it will be suitable for building sites as soon as the level has been raised. In fact the purpose for which it has been acquired is the extension of the village site and this is an element for consideration in estimating its value, though under section 24 (1) the Court is precluded from taking into consideration the increase of its value likely to arise from the use to which it will be put.

GOPAYYA
v.
DEPUTY
COLLECTOR,
TENALI.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Ramesam.

CHUNDURU PUNNAYYAH AND OTHERS (DEFENDANTS),
APPELLANTS,

1921,
December 5.

v.

RAJAM VIRANNA AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

Minor—Guardian ad litem—Ex parte decree against minor—Suit to set aside ex parte decree—Gross negligence of guardian in not defending suit, whether sufficient ground apart from fraud or collusion—Remedy by petition for review or petition to set aside ex parte decree and remedy by suit, when available—Hindu Law—Mortgage by guardian for lending money to another to carry on trade not being ancestral trade on behalf of minor—Validity of mortgage—Duty of guardian to plead invalidity of such mortgage.

A person, who had been impleaded as a minor defendant represented by a guardian ad litem in a suit in which a decree was passed ex parte against him, can institute a suit to set aside the decree on the ground of *gross negligence*, apart from fraud or collusion, of the guardian ad litem in not defending the suit properly on his behalf.

* Appeal No. 314 of 1919.