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Bepin likewise has not been mentioned by any of the villagers, yet the evidence can have no doubt of his guilt." It is true that the Sessions Judge at the close of his charge said: "If you feel yourselves able to rely implicitly on the statements made by Kunju and Bepin, you should convict them notwithstanding the absence of further corroboration;" but it is impossible to say how far the observations previously made and just quoted, did not have such effect on the minds of the jury, as to determine their verdict independently of all other considerations.

Under such circumstances we think that they also should be retried.

New trial ordered.

PRIVY COUNCIL.

P. C.* 1884 *March* 13, 14.

ABDUL RAZZAK (DEFENDANT) *v.* AMIR HAIDAR (PLAINTIFF.)

[On appeal from the Court of the Judicial Commissioner of Oudh.]

"Oudh Estates' Act," I of 1869, *s.* 13—*Compulsory registration of will devising taluq—Deposit of will distinct from registration under Act VIII of* 1871.

A will devising a taluq to a sister's son of a taluqdar, in the lifetime of the taluqdar's brother, is not excepted from the necessity of being registered under s. 13 of the Oudh Estates' Act, I of 1869, such sister's son not being one of those who, in the event of the taluqdar's having died intestate, would have succeeded to an interest in his estate, within the meaning of the exceptions made in s. 13, sub-s. 1, of that Act.

It may be doubted whether the mere title to maintenance would be such an "interest" as would come within the meaning of the exceptions.

The deposit of a will under part IX of Act VIII of 1871 does not amount to the registration required by the above section of Act I of 1869.

APPEAL from a decree of the Judicial Commissioner of Oudh (22nd March 1882), modifying a decree of the District Judge of Lucknow (2nd September 1881.)

This appeal related to the effect of a will made by the taluqdar of a taluq entered in the lists 1 and 3, prepared under the Oudh Estates' Act, I of 1869. The question was whether a bequest of a taluq in a will, not registered in conformity with

* Present: LORD BLACKBURN, SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH and SIR A. HOBHOUSE.

s. 13 of that Act, came within the exceptions specified in that section, and could operate to give to a sister's son a title superior to the claim by inheritance of a brother of the deceased taluqdar.

The will was made by Mussumat Kutub-un-nissa, widow of Jahangir, who had succeeded her husband as taluqdar of Gauria in the Lucknow district. She died in 1879, leaving a "whole" brother, Amir Haidar, the respondent. Abdul Razzak, the appellant, was the son of a deceased sister of Kutub-un-nissa.

After Kutub-un-nissa's death he obtained an order for "dakhil-kharij," or mutation into his name in the settlement record, of taluq Gauria, producing a will purporting to have been executed by his aunt, Kutub-un-nissa, dated 30th April 1874, whereby she confirmed a gift, previously made to her niece, the appellant's sister, of a village belonging to the taluq, and appointed the appellant to be her successor as taluqdar. Dividing the whole of her lands into four parts, she gave by the will to the appellant one part, and of the remainder half to him, and half to the respondent, to whom she bequeathed also the whole of her moveable property.

The respondent Amir Haidar then brought the present suit, stating that he was entitled to the whole of the property which had belonged to Kutub-un-nissa, and was also entitled to succeed to the taluq under s. 22, clause 6 of Act I of 1869. Kutub-un-nissa had, it was alleged, died intestate, as the will was void, because, from extreme old age, she was incapable of making one. Also the disputed will had not been drawn up, executed, and registered in the way in which such an important instrument, especially one in favor of her "karinda," and trusted agent, should have been drawn up, executed and registered.

At the hearing, before the District Judge of Lucknow, it appeared that the alleged will was deposited as the will of Kutub-un-nissa, in accordance with the provisions of part IX of the Indian Registration Act VIII of 1871 as to the deposit of wills; and that the Registrar, acting under the 43rd section of that Act, had made and signed the following note upon the envelope enclosing it: "Will on the part of Kutub-un-nissa, Taluqdar and Zemindar of Gauria Kalan, situate in pergunnah and tahsil Mohan Lall Ganj, District Lucknow."

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The District Judge held that the plaintiff had failed to prove that the execution of the will had been obtained by fraud, or that Kutub-un-nissa was at that time incapable of making a will. He held also that it was not open to the plaintiff to raise the question as to the requirement, or sufficiency, of registration, with regard to s. 13 of Act I of 1869. He further decided that the plaintiff was not entitled to succeed to the taluqdari under clause 6, s. 22 of the Oudh Estates' Act, I of 1869; but that he was entitled to the bequests under the will, the defendant being entitled to succeed as taluqdar under the will. As to the property, not governed by the Oudh Estates' Act, given by the will to the defendant, the Judge held that by the Mahomedan law, which was applicable to that part of Kutub-un-nissa's estate, she could only will away from her heir one-third, so that the plaintiff was entitled to two-thirds of the property other than the taluq. Both parties having appealed, the decision of the Judicial Commissioner was as follows:—

"The defendant-respondent is the nephew (sister's son) of Mussumat Kutub-un-nissa, and, if that lady died intestate, the plaintiff-appellant, as brother, would succeed to the estate (clause (6), s. 22, Act I of 1869). It was therefore for the nephew, defendant-respondent, to prove that he held under a valid will.

"Section 13, Act I of 1869, requires that unless the will of a taluqdar be in favor of certain persons therein specified, it must be registered within one month from the date of its execution. The will of the late Mussumat Kutub-un-nissa was deposited with the Registrar in a sealed envelope, but was not otherwise registered during her lifetime.

"It has been urged in appeal that as this alleged defect was not in issue before the Court of first instance it should not be noticed on appeal. This I overruled, as it appeared to me that before giving a decree on a will, the Court was bound to satisfy itself that the will was a valid one.

"It was then urged that the law did not require the will to be registered, and lastly that it was sufficiently registered.

"With regard to the first point it was argued that had the defendant-respondent been a minor, when the taluqdar died, he would have been entitled to maintenance under part VIII of Act I of

1869, and therefore he is a person, who under the provisions of the Act would have succeeded to an interest in the estate, if the taluqdar had died intestate. Had this not been the meaning of s. 13 of the Act, the words 'could have succeeded' and 'had died' would not have been used. It is not clear why these words were used. The meaning would have been clear had the sentence run 'a person who under the provisions of this Act, or under the ordinary law to which persons of the donor's or testator's tribe and religion are subject, would succeed to such estate or to a portion thereof, or to an interest therein, if such taluqdar or grantee, heir or legatee, died intestate.'

"It appears to me that in construing s. 13, Act I of 1869, the Court must ascertain whether the claimant is one who would have succeeded to the estate or portion thereof, or to an interest therein, if the taluqdar had died intestate. Taken in this light, the defendant-respondent would not come under the exception, for had Mussumat Kutub-un-nissa died intestate, he, not being a minor when she died, would have inherited nothing. The counsel's argument is ingenious, but, if it were allowed, the grandmother or brother of a deceased taluqdar might succeed against the son on the strength of an unregistered will, because she or he would have succeeded to an interest in the estate had the taluqdar died intestate before he married. This cannot be the meaning of the Act, and I find against the contention of the defendant-respondent that the will of Mussumat Kutub-un-nissa in favor of her nephew was required by law to be registered.

"As regards registration it is explained in s. 2, Act I of 1869, that 'registered means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh.' The will of Mussumat Kutub-un-nissa was simply deposited under the provisions of part IX, Act VIII of 1871. The special rules for the deposit of wills were not the rules relating to the registration of assurances. To have made the registration valid there should have been registration under part VIII of the Act. I must find against the defendant-respondent that the will was not registered as required by Act I of 1869.

"The effect of this is that the will under which the defendant-

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respondent claims to hold the property is declared invalid as far as the taluq is concerned and plaintiff-appellant is entitled to a decree as heir.

"As regards the moveable property, plaintiff's claim is dismissed. It was clearly the deceased's intention to leave that to her nephew, and as it is not effected by Act I of 1869, the will, as far as it is concerned, will hold good.

"Plaintiff-appellant is decreed the real property left by the late Mussumat Kutub-un-nissa, taluqdar of Gauria, with mesne profits from the date of institution of suit, namely, 18th March 1881. No interest is allowed. The rest of the plaintiff's claim is dismissed.

"The costs of this suit will be paid out of the estate, and the Court executing the decree may deduct the amount of defendant-respondent's costs in both Courts from the amount to be paid by the defendant-respondent to the plaintiff-appellant, on account of mesne profits."

The defendant appealed.

Mr. *J. G. W. Sykes* and Mr. *J. Duthi* appeared for the appellant.

Mr. *R. V. Doyne* for the respondent.

The principal points in the argument for the appellant were: *First*, that the plaintiff's case not having been put forward in the Court of first instance, on the ground that the will had not been registered in conformity with s. 13 of Act I of 1869, the Judge of the Original Court had rightly declined to dispose of the suit on that ground. No issue had been fixed as to that question, and as to non-registration, although that subject had generally been referred to, it had not been raised as a defence, with regard to the requirements of the special law above mentioned. The alteration, after evidence adduced, of the main questions raised between the parties was not permissible in a case like the present. Reference was made to *Govind Ramchandra Gokhle* v. *Shek Ahmed* (1) in which case the judgment referred to Marshall's reports, p. 71; *Mussumat Sabitra Monee* v. *Muddhosoodun Singh* (2)

(1) 5 Bom. H. C. Rep., 133 (a. c. j.).
(2) Marshall Rep., 519.

was to the same effect; and in *Burjore* v. *Bhagana* (1) the parties had been held to the issues on which the trial had taken place.

It was also argued that the requirement in s. 13 of Act I of 1869, of registration within one month, did not mean registration actually completed; there being several processes preceding the admission of a document to registration; and presentation for registration might, under some circumstances, be a sufficient compliance with the terms of the section. It had been so here. In connection with this reference was made to *Mohammed Ewaz* v. *Birj Lall* (2). In addition to the above it was contended that the relations between Kutub-un-nissa and Abdul Razzak brought him within the contemplation of paragraph 4 of s. 22 of Act I of 1869, the evidence showing that she had treated him in all respects as her son.

Counsel for the respondent was not called upon.

Their Lordships' judgment was delivered by

SIR R. P. COLLIER.—In this case Mussumat Kutub-un-nissa was the taluqdar of an estate called Gauria, under a sunnud granted to her by the Government of India. She died in 1879, having made a will on the 30th of April 1874. The present suit is brought by her heir-at-law, her brother, who claims what he is entitled to of her estate as heir. The defendent is a nephew of hers, a sister's son; and he sets up the will, under the provisions of which he was entitled to the taluqa and the greater part of her property. The plaintiff denied the execution of the will: he imputed fraud, he denied the capacity of the testatrix, and in other ways impugned the will. It is not necessary to dwell upon these issues, which both Courts have found against him, and which have not been argued again by his counsel here. A further question was raised which certainly had been alluded to, if not mentioned as distinctly as it might have been in the plaint, that the will had not been properly registered under the Oudh Estates' Act, 1869. The Subordinate Judge declined to entertain this question, because it was raised at a late stage, when apparently the evidence had been finished, and because on the settlement of issues it had not been suggested on either side that an issue should be raised on this point; and he found the will to be established. Thereupon

(1) I. L. R. 10 Calc., 557. (2) L. R., 4 I. A., 167.

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an appeal was brought by the plaintiff to the Judicial Commissioner. The Judicial Commissioner agreed with the Subordinate Judge as to the factum and validity of the will, except so far as it was not registered; but he came to the conclusion that it had not been properly registered under the provisions of s. 13 of the Oudh Estates' Act. That is the question before their Lordships. Many other questions were raised in the ingenious argument of Mr. *Sykes*; but inasmuch as the greater part of them have been disposed of in the course of the argument, their Lordships do not think it necessary further to advert to them.

The 13th section is to this effect: "No taluqdar or grantee shall have power to give or bequeath his estate or any portion thereof, or any interest therein, to any person not being either (1) a person, who under the provisions of this Act, or under the ordinary law to which persons of the donor's or testator's tribe and religion are subject, would have succeeded to such estate or to a portion thereof, or to an interest therein, if such taluqdar or grantee had died intestate." Sub-section 2 follows, which is not material to the present case, and then come the words: "Except by an instrument of gift or a will executed and attested, not less than three months before the death of the donor or testator, in manner hereinafter provided in the case of a gift or will, as the case may be, and registered within one month from the date of its execution." There is an interpretation clause, which says "registered means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh." The two questions, then, which arise are these: In the first place, was it necessary that this will should be registered? In the second place, was it registered?

The first question depends upon whether the devisee came under the description of persons in the first sub-section of clause 13—" a person, who under the provisions of this Act, or under the ordinary law, would have succeeded to such estate or to a portion thereof, or to an interest therein, if such taluqdar or grantee had died intestate." The only plausible argument adduced on the part of the appellant on this sub-section was that the appellant would have been entitled to maintenance,

which, if not an "estate or a portion thereof," was "an interest therein," and therefore that a devise to him need not be registered. Their Lordships are far from affirming that a mere title to maintenance would be such an "interest therein" as would come within this clause; but it is not necessary to decide this question, because the section which, if at all, confers this right to maintenance—s. 26—(taken in conjunction with s. 24), speaks of "nephews of the deceased, being fatherless minors," and it is not shown that this appellant was a minor either at the time of the death of the testatrix or at the execution of the will. It is scarcely necessary to observe that under s. 22, which regulates the succession to taluqs, his claim cannot be supported. There appears no pretence for speaking of him as an adopted son under the fifth clause; and none of the other clauses have been contended to be applicable to him.

This being so, it follows that the will is one which, in order to be valid so far as to pass the taluq, requires registration; and then we come to the question whether it has been registered in accordance with the Act.

The interpretation clause before referred to leads to the inquiry what were the rules relating to the registration of assurances for the time being in force in Oudh. They are to be found in Act VIII of 1871. It is to be observed with reference to that Act that it contains a very distinct set of provisions with respect to what is called depositing wills and registering them. Section 27 is in these terms: "A will may at any time be presented for registration," that is one thing,—"or deposited in manner hereinafter provided," which is another thing. When we proceed with the Act we find that part VIII relates to presenting for registration wills and authorities to adopt. Section 40 is in these terms: "The testator, or any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration." Section 41 runs thus: "A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document." Part IX refers to the deposit of wills, and s. 42 says: "Any

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testator may, either personally or by duly authorised agent, deposit with any Registrar the will in a sealed cover superscribed with the name of the depositor and the nature of the document." Section 43 says: "On receiving such sealed cover, the Registrar, if satisfied that the depositor is the testator or his duly authorised agent, shall transcribe in his register book No. 5, the superscription on such sealed cover, and note in the Register and on the sealed cover the year, month, day, and hour of such presentation and receipt, together with the name of the depositor and the name of each of the persons testifying to the identity of such depositor, and the inscription, so far as it is legible, on the seal of the cover. The Registrar shall then place and retain the said cover in his fire-proof box." Section 44 says: "If the depositor of any such sealed cover wishes to withdraw it, he may apply to the Registrar with whom it has been so deposited for the delivery of the cover; and the Registrar, if satisfied as to het identity of the depositor with the applicant, shall deliver the cover accordingly." And then, after the death of the testator, there is a provision for its being opened and registered. So it appears that by the deposit of a will no information is given to anybody who may search the register as to its contents, and the testator can at any time during his lifetime withdraw it in the sealed envelope in which it was deposited; whereas, with respect to the registration, in the ordinary and proper sense of the word, of wills and other documents, there are provisions which would enable persons who searched the register to ascertain the contents of those documents.

It appears, therefore, to their Lordships that the will was not registered in accordance with the provisions of s. 13 of the Oudh Taluqdars' Act. That being so, they are of opinion that the judgment of the Commissioner was right, that the will had no operation as far as the taluq was concerned; but as far as the personal property was concerned it had an operation, inasmuch as so much of it did not require to be registered; and he gave the defendant the benefit of its operation in that respect.

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Under the circumstances their Lordships will humbly advise Her Majesty that the judgment appealed against should be affirmed. The appellant must pay the costs of the appeal.

Appeal affirmed.

Solicitor for the appellant: Mr. *W. Battle.*

Solicitors for the respondent: Messrs. *Barrow and Rogers.*

JUGUL KISHORE (PLAINTIFF) *v.* JOTENDRO MOHUN TAGORE AND OTHERS (DEFENDANTS).

P. C. 1884 *March* 12, 13.

[On appeal from the High Court at Fort William in Bengal.]

Test of what passes under execution sale of Hindu widow's estate.

Although a Hindu widow has, for some purposes, only a partial or qualified right, title, and interest in the estate which was her husband's, yet for other purposes she represents an absolute interest therein.

The question, whether on the sale of the right, title, and interest of the widow in execution of a decree, the whole interest, or inheritance in the family estate does, or does not, pass, depends on the nature of the suit in which the execution of the decree takes place. If the suit is a personal claim against the widow, then merely the widow's limited estate is sold.

If, on the other hand, the suit is against the widow in respect of the family estate, or upon a cause not merely personal against her, then the whole of the inheritance passes by the execution sale. The judgment which the decree has followed, may be examined in order to determine which of these two results attends the execution sale of the widow's right, title, and interest.

The principle in *Baijun Doobey* v. *Brij Bhookun Lall Awasti* (1) referred to and applied.

CONSOLIDATED appeals against four decrees of the High Court (29th April 1881) (2), founded on one judgment delivered on appeals preferred by the appellant against two decrees of the Subordinate Judge of Nuddea (12th September 1879), and two cross appeals.

This consolidated appeal raised the question, whether by the sale, in execution of a decree, of the right, title, and interest of a widow in the estate which had belonged to her husband, the

* *Present*: LORD BLACKBURN, SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

(1) I. L. R., 1 Calc., 133; L. R., 2 I. A., 275.

(2) I. L. R., 7 Calc., 357.

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whole inheritance passed to the purchaser, or only the widow's interest for her life.

It arose out of the decisions in two suits brought to obtain possession of shares in zemindari lands, Dehi Hatishala and Dehi Kagoj Pakhuria, numbered 243 and 118, respectively, in the taozi of the Nuddea Collectorate, which belonged to Norendrochandra Rai and on his death passed to his widow Sarodamoyi.

The above were shares in the zemindari lands formerly held as joint family estate by the six sons of Nilkanto Rai, who died at the beginning of this century; and whose eldest son, Bhoirabkant Rai, was kurta, or manager, of the family estate till 1815, when he died, leaving his daughter named Umamoyi. One of his five brothers, Nidhiram, survived him, and left one son, Norendrochandra Rai; as to whose widow, Sarodamoyi, arose the present question, *viz.*, whether she represented the family estate of inheritance, or her own interest only.

In 1855 Umamoyi brought a suit against all the representatives of her father's brothers, including Sarodamoyi, claiming for herself and her son the inheritance in a sixth share of the property which had belonged to Bhoirabchandra Rai. For the defence a gift and a partition were set up, both of which, in the end, were found inoperative by the Sadr Court; and on the 31st December 1859, Umamoyi obtained, as next heir, a decree for possession of the property claimed against all the defendants, including Sarodamoyi, together with an order for mesne profits and costs. The judgment of the Sadr Court explains the state of things in the family (1).

Umamoyi, on the 15th December 1866, brought to sale in execution of the decree in her favor, all the property of the judgment-debtors, and purchased it herself. Among these were the right, title, and interest of Sarodamoyi in the estate of her deceased husband, Norendrochandra Rai, *viz.*, 243 and 118, above mentioned.

Umamoyi made a gift of the property, so purchased by her, to her son, Gaur Mohun Rai, who sold it to the respondent, the Maharaja Jotendro Mohun Tagore.

(1) S. D. A. Rep., 1859, p. 1659.

Sarodamoyi died in 1869, and on her death her deceased husband's brother, Behari Lal, became entitled, as heir, to whatever remained of the estate, if anything remained, after the transfers above mentioned. Behari Lal's estate had been attached, before that date, by one Raghobchandra Banerji, who held a decree against him; and in 1870, after the death of Sarodamoyi, this decree-holder, in execution, sold Behari Lal's interest in 243 and 118. These interests were purchased by the respondents, Rambaksh and Ramdhone, Chetlanghis; and afterwards, in 1878, sold to the appellant Jugul Kishore, who in the same year filed the two suits, out of which this appeal arose, claiming the estates so numbered. In each suit there were three sets of defendants, including the present respondents.

The plaintiff claimed possession of the property on the ground that, at the sale in execution against Sarodamoyi, Umamoyi merely purchased the life interest of a Hindu widow, and not an estate of inheritance; and that, on the death of Sarodamoyi, the title of the Maharajah who had purchased this limited interest only became extinguished. For the defence it was alleged that the suit of Umamoyi was brought against Sarodamoyi and the co-sharers in the family estate, and that the mesne profits and costs, in respect whereof execution was sued out, were not the personal debts of Sarodamoyi, but were debts incurred in protecting the interests of all those who had any interest in the family estate, as well as her own rights. So that, by the sale on execution, the purchaser acquired no mere life estate terminable on the death of Sarodamoyi, but the estate of inheritance absolutely.

In the Court of first instance it was held that the decree made against Sarodamoyi was made in a suit in which she was only personally liable, and that the estate, in which she had only a life interest, did not pass by the sale in execution of decree, as an estate of inheritance.

On appeal to the High Court (GARTH, C.J., and MCDONELL, J.) that judgment was reversed. It was held that the nature of the suit, and of the decree against Sarodamoyi, must be regarded in order that it might be seen whether, under the sale, her own life interest only, or the whole inheritance, passed

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to the purchasor. This depended on whether the suit was brought upon a cause of action personal to her, or upon one which affected the whole inheritance. That test being applied it appeared that Umamoyi's object had been not merely to proceed against Sarodamoyi personally, but to obtain possession of her father's share by inheritance in the ancestral property of which she had been deprived under colour of the alleged gift. In the defence of that suit the heirs after Sarodamoyi were as much interested as she was. Accordingly the whole inheritance was sold in execution. The judgments are printed in the report of the appeal, *Jotendro Mohun Tagore* v. *Jugol Kishore* (1).

On this appeal—

Mr. *R. V. Doyne* and Mr. *J. T. Woodroffe* appeared for the appellant.

Mr. *T. H. Cowie, Q.C.*, and Mr. *J. D. Mayne* for the respondent.

For the appellant it was argued that the decree against Sarodamoyi for mesne profits and costs, in execution whereof the sale of the 15th December 1866 had taken place, had proceeded upon a cause of suit which accrued to the decree-holder after the death of Norendrochandra Rai. The debt established against Sarodamoyi for mesne profits and costs was, therefore, a personal liability. Even on the assumption that the respondents' case could rest upon the state of things anterior to the decree, the facts had not established legal necessity for the alienation of the family estate by the widow. In the latter way alone could the right of the heir be affected by a sale of the widow's right, title, and interest. The presumption that arose upon such a sale was, that the widow's estate alone was sold; and the evidence to establish affirmatively that the family inheritance had passed at the execution sale was insufficient.

Reference was made to *Baijun Doobey* v. *Brij Bhookun Lal Awasti* (2); *Kistomoyee Dossee* v. *Prosunno Narain Choudry* (3);

(1) I. L. R., 7 Calc., 357.
(2) I. L. R., 1 Calc., 133; L. R., 2 I. A., 275.
(3) 6 W. R., 304.

Ishanchunder Mitter v. *Buksh Ali Soudagur* (1); *General Manager of the Durbhunga Raj* v. *Maharaja Coomar Ramaput Singh* (2).

Counsel for the respondents were not called upon.

Their Lordships' judgment was delivered by

SIR B. PEACOCK.—Their Lordships are of opinion that the decision of the High Court is correct, and that it ought to be affirmed.

The suits out of which these appeals arise relate to the share in certain joint family property which belonged to Norendrochandra, deceased.

The defendants claim through a sale in execution of a decree against Sarodamoyi, the widow of Norendro, who had succeeded to his share.

The plaintiff claims under a purchase at a sale after the death of Sarodamoyi of the alleged interest of Behari Lal, as reversionary heir of Norendro in the said share, in execution of a decree against Behari Lal.

The main question in the case is, as stated by the Chief Justice in delivering the judgment of the High Court, "whether, under the sale of the right, title, and interest of Sarodamoyi in her share of the family property, the whole inheritance in that share passed to the purchaser, or only the widow's interest subject to the right of the reversionary heir to succeed to the property at her death." If the whole inheritance passed under the sale in execution of the decree against Sarodamoyi, then the plaintiff is not entitled to succeed. If, on the other hand, the only interest that was sold under that decree was the qualified interest, which is usually called the widow's estate, then the reversionary heir was not bound by it, and the claimants under the purchase at the sale in execution of the decree against him are entitled to succeed.

The suit in which the decree against the widow Sarodamoyi was obtained was brought by Umamoyi, who was the daughter of Bhoirabchandra. She brought a suit against the other members of the joint family to recover the share of the property

(1) Marshall's Rep., 614.

(2) 14 *Moo* I. A., 605.

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which belonged to her father, who in his lifetime was a member of the joint family. Bhoirab having died without parting with his interest, Umamoyi, as his daughter, became entitled to his share of the property; but some of the members of the joint family set up that Bhoirab, before his death, had executed a hibanamah by which he conveyed his share to them. Sarodamoyi and the other members of the joint family, including Behari Lal, were made co-defendants. The record is very defective in many respects. It includes a number of valuations and other documents which are wholly unnecessary for the purposes of this case, and it omits many documents which were very important to be looked at. Sarodamoyi, though made a party to the suit, did not appear. Other members of the family appeared, and set up as a defence to the suit that Bhoirabchandra had conveyed his share by the hibanamah. The first Court dismissed the suit, holding that the hibanamah was a genuine document. Upon appeal to the Sadr Court, that Court held that the hibanamah was not a valid document, or binding upon Umamoyi as the daughter of Bhoirabchandra; and they reversed the decision of the first Court, and decreed that Umamoyi should recover her share of the property, together with mesne profits and the costs of the suit. It was urged in the course of argument that Sarodamoyi never received those mesne profits; but it is unimportant whether she did receive them or not. She was made a party to the suit and did not appear. The other defendants appeared and set up a defence, and it was by reason of that defence that the principal part of the costs in the suit were incurred. Sarodamoyi not having appeared, she was not represented at the trial, but the case was tried *ex parte* against her upon the evidence which was produced by the other members of the family. Upon that defence the Sadr Court gave a decree against all the defendants. If in the execution of that decree Umamoyi had attached and sold the right, title, and interest of all the other members of the family, although one portion of it was represented by the widow, the whole property would have passed to the purchaser. The reversionary interest of Behari would have passed, although the share of Norendro was represented by the widow. If that

would have been the case, if the execution had been against the whole property, why should not it be so when the execution was against only the widow's share of the property? The first Judge held that under the execution against Sarodamoyi the reversionary interest of Behari Lal could not have been sold. He was quite right in that respect, because Behari Lal during the widow's life had no reversionary interest to sell; but it was a strong reason why when the sale was against the widow, who represented her deceased husband's share, the whole interest in the estate should pass under it. It was held in the *Shivagunga case*, that although a widow has for some purposes only a partial interest, she has for other purposes the whole estate vested in her; and that in a suit against the widow in respect of the estate the decision is binding upon the reversionary heir. Their Lordships (1) in that case, say: "Assuming her,"—that is the widow,—"to be entitled to the zemindari at all, the whole estate would for the time be vested in her absolutely for some purposes, though in some respects for a qualified interest."

A difficulty was caused by s. 249 of Act VIII of 1859, which enacted that the proclamation of a sale in execution shall declare "that the sale extends only to the right, title, and interest of the defendant in the property specified therein." In the case of a widow it is necessary that the proclamation shall make that statement. But then there are many cases in which when the right, title, and interest of the widow is sold the whole interest in the estate passes. In other cases the whole interest does not pass. The case depends upon the nature of the suit in which the execution issues. There are many authorities to that effect. It is unnecessary to recapitulate them,—they are referred to by the Chief Justice in his judgment in the High Court. If the suit is simply for a personal claim against the widow, then merely the widow's qualified interest is sold, and the reversionary interest is not bound by it. If, on the other hand, the suit is against the widow in respect of the estate, or for a cause which is not a mere personal cause of action against the widow, then the whole estate passes.

(1) 9 Moo. I. A. 604.

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In many of the cases, although the right, title, and interest of the widow had been sold, the whole interest in the estate was held to have passed and the reversionary heir to be bound by it.

In the case referred to, *Baijun Doobey* v. *Brij Bhookun Lall Awasti* (1) it was held that only the widow's qualified estate passed by the sale in execution. That was a suit brought against a widow for arrears of maintenance. It was stated in the judgment that the maintenance was a charge upon the inheritance; but the Judicial Committee held that the claim against the widow was for a personal debt due by the widow; although the maintenance might be a charge upon the inheritance, still the widow whilst in possession of the estate had received the profits and failed to pay the maintenance. The arrears created a personal claim against the widow, for which she was personally liable. The Judicial Committee held that the suit was to enforce the personal liability of the widow, and consequently that the execution in that suit passed merely the widow's interest.

Their Lordships think that upon the authorities referred to by the Chief Justice, the Court was at liberty to look to the judgment to ascertain what was sold under the right, title, and interest of the widow. Looking to that in the present case, their Lordships are of opinion that not only the widow's right, but the whole interest in the estate passed under the sale in execution of the decree.

Under these circumstances their Lordships will humbly advise Her Majesty to affirm the decrees of the High Court; and the appellant must pay the costs of these appeals.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Sanderson & Holland.*

Solicitors for the respondents: Messrs. *Miller, Smith & Bell.*

(1) L. R., 2 I. A., 275; I. L. R., 1 Calc, 275.