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quite aware that the interest to the date of payment was 21 per cent., and he desired to alter the terms after the date expired. The Subordinate Judge allowed 21 per cent. to date of institution of the suit and 6 per cent. afterwards. This was an equitable judgment, and I would affirm it on that ground, did I not also hold that, under the terms of the contract, the plaintiff was entitled to charge 21 per cent. after the date of payment of the bond had expired. I would decree the appeal, and modify the judgment of the lower appellate Court so as to restore the decree of the Subordinate Judge with costs.

Appeal allowed.

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APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spinkie.

BAIJNATH (DEFENDANT) v. MAHABIR AND ANOTHER (PLAINTIFFS).*

Hindu Law—Inheritance—Succession of Daughters—Reversioners.

So long as a daughter not disqualified, or in whom a right of inheritance has once vested, survives, a daughter's son acquires no right by inheritance in his maternal grandfather's estate. *Amirtal Dose v. Ragonceekant Mitter* (1) followed.

Where, therefore, *R* died leaving issue two daughters, *B* and *P*, and *P* died shortly after *R* leaving sons, and while *B* was alive her sons and the sons of *P* sued, as the heirs of *R*, to set aside a mortgage of his real estate made by *B* as the guardian of her minor sons, and by *A*, the father of *P*'s sons, as their father and guardian, such suit was held not to be maintainable.

THIS was a suit for the possession of certain immoveable property, being the estate of one Ram Jiawan, deceased. Ram Jiawan left issue two daughters, Bataxi Kuar and Phulra Kuar. Phulra Kuar died shortly after her father leaving issue two sons, Rang Bahadur and Mahabir. Subsequently to her death Bataxi Kuar, as the guardian of her minor sons, Kaulesar, Deo Narain, and Rup Narain, and Arjan Rai, as the father and guardian of Rang Bahadur and Mahabir, minors, joined in a conditional mortgage of the property to Baijnath. Baijnath obtained possession of the property by foreclosure of this mortgage. The present suit was

* Second Appeal, No. 1066 of 1877, from a decree of Maulvi Zain-ul Abidin, Subordinate Judge of Gházipur, dated the 31st July, 1877, affirming a decree of Munsif Kishor Lal, Munsif of Rasra, dated the 3rd May, 1877.

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brought against him by the sons of Batasi Kuar, who was alive, and by the sons of Phulra Kuar, jointly, to set aside the mortgage and recover possession of the property. The plaintiffs claimed as the heirs of Ram Jiawan. The Court of first instance dismissed the suit in so far as the sons of Batasi Kuar were concerned, on the ground that they had no right in the estate of their maternal grandfather while their mother was alive, but gave the sons of Phulra Kuar a decree in respect of a moiety of the property. On appeal by the defendant the lower appellate Court affirmed this decree.

The defendant, on second appeal to the High Court, contended that the whole suit should have been dismissed, inasmuch as under Hindu law the sons of Phulra Kuar had no right in their maternal grandfather's estate while their mother's sister, Batasi Kuar, was alive.

Munshi *Hanuman Frasad* and *Shah Asad Ali*, for the appellant.

Lala Lalta Prasad, for the respondents.

The Court delivered the following

JUDGMENT.—The decision of the lower appellate Court appears to be open to the objection taken by the special appellant. It has been held by the Judicial Committee of the Privy Council in the case of *Amirtolal Bose v. Rajoneekant Mitter* (1) that a daughter's son is not entitled by Hindu law to succeed as heir to his maternal grandfather's estate, so long as any daughter not disqualified, or in whom a right of inheritance has once vested, survives. This precedent applies to the present case in which Batasi Kuar, on the death of her sister, became the sole owner of their father's property. Batasi Kuar still survives; therefore neither the Munsif nor the Subordinate Judge should have decreed the claim of the plaintiffs with respect to the share of Phulra Kuar, the second daughter. The Court below should have dismissed the claim of the plaintiffs *in toto* and should not have decreed it with respect to Phulra Kuar's share. We accordingly decree the appeal and modify the decision of the Court below so as to dismiss this portion of the claim.

Appeal allowed.

(1) L. E. 2 Ind. App. 113; S. C., 15 B. L. R., 10; 28 W. R. 214.