

more must we think be shown than that the daughter who is of age is still permitted to reside in the appellant's house. We must therefore allow the appeal and order the release from attachment of the appellant's property. No costs will be allowed to either party to this appeal either in the Court below or in this Court.

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PRASAD.

*Appeal allowed.*

## APPELLATE CIVIL.

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November 19.

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

PRAG DAS (PLAINTIFF) v. HARI KISHN AND ANOTHER (DEFENDANTS).\*

*Hindu Law—Hindu Widow—Forfeiture—Reversioner.*

A Hindu widow does not forfeit her interest in her deceased husband's separate estate merely by divesting herself of such interest. Such an act does not entitle the person claiming to be the next reversioner to sue for possession of the estate, or for a declaration of his right as such reversioner to succeed to the estate after the widow's death.

THIS was a suit for possession of a moiety of the separate estate of one Lalji, deceased, brought by one of the two next reversioners, against the widow of Lalji and the other reversioner. The facts of the case are sufficiently stated in the judgment of the High Court to which the plaintiff appealed against the decree of the Court of first instance dismissing his suit.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji) and Munshi Hanuman Prasad, for the appellant.

Pandit Ajudhia Nath and Munshi Sukh Ram, for the respondents.

The judgment of the High Court was delivered by

OLDFIELD, J.—Ram Din, who died in 1872, left three sons surviving him, Lalji, Prag Das, and Hari Kishn. The first died in September, 1874, leaving a childless widow, Gopal Dai. The subject of this suit is the property left by Lalji. The plaintiff, Prag Das, sues his surviving brother Hari Kishn and Gopal Dai, the widow, to establish his right and to recover possession of half Lalji's property, on the averment that the three brothers held separate

\* Regular Appeal, No. 48 of 1877, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Mirzapur, dated the 8th December, 1876.

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property, and that the widow had colluded with Hari Kishn and allowed him to take possession in his own right of all the property of the deceased by which act she had forfeited her interest. Hari Kishn pleaded that he is the heir of the deceased as deceased and he had lived in union. He allows that a partition had taken place at their father's death, but it was only plaintiff's share which was divided off, and the widow supports him in his allegation that he and deceased had lived in union, and avers that no alteration has taken place in the nature of the possession exercised on the property since Lalji's death, and adds that Hari Kishn's son was considered to be his heir by deceased, but she makes no specific mention of any title as heir by adoption to deceased. The Subordinate Judge found that the deceased held a separate estate and that in consequence his widow, Gopal Dai, is his heir, and that no act has been shown on her part to divest her of the estate and give plaintiff, the reversioner, immediate possession. It appears that at the death of Lalji there were disputes as to the succession, and Hari Kishn obtained mutation of names of the whole estate in his favour and possession also, but the Subordinate Judge seems to think that he had only formal possession, that there has been nothing done by the widow injurious to his reversionary interest, and that this is not the time to decide on any right in future to which the plaintiff may become entitled and he dismisses the suit.

The pleas in appeal on the plaintiff's part amount to this, that on the facts proved the plaintiff is entitled to a decree for the whole claim, and at any rate that his reversionary right in the property should have been protected by giving him a declaration of it, and by restraining the defendant from dealing with the property in a manner injurious to the plaintiff's title.

The respondents have filed objections under s. 348 to the finding that the deceased held a separate estate. It will be convenient first to dispose of their objections, and on this point we agree with the Subordinate Judge. There is ample evidence that the shares of all three brothers were separated from each other after their father's death. The evidence alluded to by the Subordinate Judge appears to us conclusive on the point. There are admissions by the brothers of division, proceedings such as mutation of names in the revenue records only consistent with the fact that such division

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had taken place, and separate bankers' accounts, and separate dealings with the property, all pointing to a division of Lalji's estate from both his brothers. On the other side all that the respondents' evidence necessarily shows is commensality between Lalji and Hari Kishn; while some of their witnesses admit ignorance as to their monetary transactions. There is no doubt that there was a partition effected at Ram Din's death, and there is no evidence of any re-union, nor indeed is re-union alleged.

With reference to the plaintiff's appeal, looking to the facts and allegations of the respondents, it seems clear that Hari Kishn asserted his own title as heir of Lalji, and that he was supported in doing so by the widow, who recognised him as the heir, and that he has obtained possession of the estate; and it does not appear that this is a mere formal possession but one which has given him the exercise of all the rights of an owner. Anything short of this is opposed to the allegations of the widow, who distinctly states in her written statement that Hari Kishn is in undivided possession of all the property in the same manner as he was in conjunction with her husband, and that there has been no change or alteration whatever since her husband's death; all this amounts to a possession as owner and one that would count adversely to the widow.

However, accepting such to be the case, the act of the widow divesting herself of her interest in the estate in favour of Hari Kishn will not operate as a forfeiture, so as to bring in the reversionary heirs. Hari Kishn's possession cannot on this ground be interfered with while she lives, and no other ground for interference has been alleged or made out, and therefore the claim fails and has been properly dismissed, for it is one asking for a declaration of a present right and possession in the property, nor can the Court declare that plaintiff will have a right of succession after the widow's death, but we may say that any reversionary rights which he may hereafter succeed in establishing are not affected by the widow's divesting herself of her interest in Hari Kishn's favour. We affirm the decree of the lower Court and dismiss the appeal. Each party will pay their own costs of this appeal.

*Appeal dismissed.*