

1876  
August 21.

## APPELLATE CIVIL.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*)

NAND KUMAR AND OTHERS (DEFENDANTS) *v.* RADHA KUARI (PLAINTIFF).\*

*Res Judicata—Hindu Widow—Reversioner.*

On her husband's death, a Hindu widow obtained possession of his estate as his heir, and, in a suit against her for possession thereof by certain persons claiming to succeed to the estate as rightful heirs, a decree was obtained by them. Held that such decree was a bar to a new suit against those persons by the daughter claiming the estate in succession to the widow, the decree having been fairly and properly obtained against the widow (1).

This was a suit in which the plaintiff claimed possession of certain shares in certain villages as heir, in succession to her mother, to the estate of her deceased father, Lachmi Narain, under Hindu law. The plaintiff's father died leaving a widow named Ananda, the plaintiff's mother, who at his death obtained possession of his estate as his heir. The defendants in this suit sued her, as the rightful heirs of Lachmi Narain, for possession thereof. She pleaded that the property was the separate and self-acquired property of her husband, and that she was therefore entitled to succeed to it. It was held proved in that suit that the property was the joint and undivided property of the defendants in this suit and Lachmi Narain, and the defendants in this suit obtained a decree establishing their right and title to the property.

In the present suit the plaintiff averred that the property was the separate property of Lachmi Narain, and the decree in the former suit was obtained by collusion and fraud on the part of her mother and the defendants. The defendants urged that the decree in the former suit against her mother was a bar to the present suit by the plaintiff. The Court of first instance overruled this plea, and gave the plaintiff a decree.

On appeal by the defendants to the High Court it was again contended that the plaintiff was bound by the decree in the former suit.

*Lala Lalta Parshad*, for the appellants.

\* Regular Appeal No. 26 of 1876, against a decree of the Subordinate Judge of Gorakhpur, dated the 1st February, 1875.

(1) Adverse possession against a Hindu female heir, which would bar her right of suit if she were alive, will equally bar that of the reversioner—*Nobin*

*Chunder Chuckerbutty v. Guru Persad Doss*, B. L. R., Sup. Vol. 1008; S. C., 9 W. R. 505.

The *Senior Government Pleader* (Lala Juala Parshad) and Munshi Sukh Ram, for the respondent.

The judgment of the Court, so far as it related to the above contention, was as follows :—

We are of opinion that the objection is a valid one and disposes of the plaintiff's claim. A Hindu widow succeeding to her husband's estate as heir represents the estate fully, and reversioners claiming to succeed after her are bound by decrees relating to her husband's estate obtained against her without fraud or collusion,—*Katana Natchiar v. The Rajah of Shivagunga* (1); *Ganga Jali v. Ram Sukal* (2); *Bansi Kuari v. Sunjhari Kuari* (3); *Suga Kunari v. Ramagrah Dubay* (4); *Nobin Chunder Chuckerbutty v. Guru Persad Doss* (5); *Amirtolal Bose v. Rajoneekant Mitter* (6).

There is no reason to believe that the decree against Musammat Ananda was obtained by collusion or fraud, and we must therefore consider that it has finally disposed of the plaintiff's claim. We allow the appeal and dismiss the suit with costs.

## APPELLATE CIVIL.

1876  
August 22.

(Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.)

ALI MUHAMMAD (DEFENDANT) v. TAJ MUHAMMAD (PLAINTIFF).\*

*Muhammadan Law—Pre-emption—Act VI of 1871, s. 24.*

The right of pre-emption being a right, weak in its nature, where such right is claimed under Muhammadan law, it should not be enforced except upon strict compliance with all the formalities which are prescribed by that law (7).

\* Special Appeal, No. 661 of 1876, against a decree of the Judge of Allahabad, dated the 5th April, 1876, reversing a decree of the Munsif, dated the 8th September, 1875.

(1) 9 Moore's Ind. App. 604.

(2) S. A., No. 355 of 1875, decided the 26th August, 1875.

(3) R. A., No. 16 of 1875, decided the 19th August, 1875.

(4) R. A., No. 72 of 1875, decided the 21st April, 1876.

(5) B. L. R., Sup. Vol. 1008; S. C., 9 W. R. 505.

(6) 15 B. L. R. 10.

(7) See the following cases,—*Kareem-oodeen v. Moazzooddeen Khan*, H. C. G., N.-W. P., 1866, p. 184; *Zholam Hoossein v. Abdul Kadir*, H. C. B., N.-W. P., 1873, p. 11; *Bhawanee Dutt v. Lohhoo Singh*, W. R., 1864, p. 61; *Hosseinee*

*Khanum v. Lallan*, W. R., 1864, p. 117; *Issur Chunder Shaha v. Mirza Nisar Hossein*, W. R., 1864, p. 351; *Mona Singh v. Mosral Singh*, 5 W. R. 203; *Ruzecooddeen v. Zeenut Bibee*, 8 W. R., 463; *Jhotee Singh v. Komal Roy*, 10 W. R., 119; *Nurhase Singh v. Luchmee Narain*, 11 W. R., 307; *Prokus Singh v. Joyeswar Singh*, 2 B. L. R., A. C. 12; *Jadu Singh v. Rajkumar*, 4 B. L. R., A. C. 171; S. C., 13 W. R. 177; *Cham-roo Pusban v. Puhlwan Roy*, 16 W. R. 3; *Nabee. Buksh v. Kaloo Lushker*, 22 W. R., 4; *Elahee Buksh v. Bibee Mohan*, 25 W. R., 9.