point is that the plaintiff had no interest, and consequently cannot maintain his action; and in my opinion this appeal must be allowed, and the judgment of the first Court affirmed with costs.

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BRODHURST, J.—I am of the same opinion.

Appeal allowed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Brodhurst.

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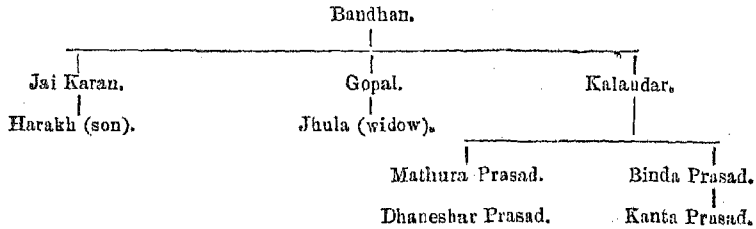
JHULA AND ANOTHER (DEFENDANTS) *v.* KANTA PRASAD AND ANOTHER (PLAINTIFFS).*

Hindu Law—Hindu widow—Alienation—Suit by reversioner to set aside alienation—Nearest reversioner—Collusion.

The only person who can maintain a suit to have an alienation by the widow of a childless Hindu declared inoperative beyond the widow's own life interest is the nearest reversioner who, if he survived the widow, would inherit; unless it is shown or found that he refused without sufficient cause to sue, or precluded himself by his own act from suing, or colluded with the widow, in which case only can the more remote reversioners maintain such a suit. *Rani Anund Koer* v. *The Court of Wards* (1) and *Raghunath* v. *Thakuri* (2), referred to. *Ramphal Rai* v. *Tula Kuari* (3) and *Madan Mohan* v. *Furan Mal* (4) distinguished.

The parties to this suit were related in a manner which may be represented thus:—



On the 29th January, 1885, Jhula, the widow of Gopal, a childless Hindu, between whom and the other members of his family a partition had been effected, executed a deed of gift of certain moveable and immoveable property left by her husband, and in her possession as his widow, in favour of Harakh. The present suit was brought by Kanta Prasad and Dhaneshar Prasad as reversioners for a declaration that the gift was inoperative, so far as concerned their interest in the property, on the ground that the donor, as a Hindu

* Second Appeal, No. 521 of 1886, from a decree of W. J. Martin, Esq., District Judge of Mirzapur, dated the 8th February, 1886, modifying a decree of Babu Ishri Prasad, Subordinate Judge of Mirzapur, dated the 3rd September, 1885.

(1) L. R., 8 I. A. 14.
(2) I. L. R., 4 All. 16.
(3) I. L. R., 6 All. 116.
(4) I. L. R., 6 All. 238.

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widow, had no power to alienate the estate, or to deal with more than her own life interest therein. The defendants Jhula and Harakh, pleaded that the plaintiffs were not competent to maintain the suit in the lifetime of Jai Karan, the nearest reversionary heir, who was the nearest reversionary heir, and who was not a party to the suit.

The Court of first instance allowed the claim in part, on grounds which it stated as follows :—"It is evident that Jai Karan the father of the defendant No. 2 is in collusion with the Mussamát, and he did not object to the deed of gift. Under these circumstances, according to *Ramphal Rai* v. *Tula Kuari* (1), the plaintiffs, who are reversioners, are entitled to claim the cancellation of the deed of gift. The point to be considered is, to what extent should the deed be cancelled, and in respect of what property? The deed conveys immoveable property, such as zamindari rights, and also moveable property, such as bullocks and buffaloes. After a careful consideration of the merits of the case, and the precedents, and the Hindu Law, I am of opinion that the deed of gift cannot be cancelled so far as it relates to the moveable property, which the Mussamát had every right to deal with. As regards the immoveable property, the Mussamát could alienate only her life interest in it, and so the transferee would remain in possession of the immoveable property during the life-time of the Mussamát. At her death the property will be inherited by the rightful heirs who may then be in existence. In support of this view, I refer to *Madan Mohan* v. *Puran Mal* (2)."

The Court passed the following decree :—"That the deed of gift, so far as it purports to convey an absolute right to the two annas eight pies zamindari, be declared void. The donor's life-interest only has passed to the vendee, without any prejudice to the reversionary rights and interests which the defendants might prove. The claim with regard to the moveable property is dismissed. As a part of the claim is decreed and a part of it is dismissed, each party will bear his own costs."

From this decree the plaintiffs appealed to the District Judge of Mirzapur, on the ground that the Court was in error in holding the deed of gift to be valid in regard to the moveable property which it purported to convey. The defendants filed objections to the decree

(1) I. L. R., 6 All. 116. (2) I. L. R., 6 All. 288.

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under s. 561 of the Civil Procedure Code, to the effect that the Court was in error in holding that the plaintiffs were competent to maintain the suit in the life-time of the nearest reversioner Jai Karan, and that there was no proof of collusion between Jai Karan and the donor.

The District Judge gave judgment to the following effect:—"In my opinion the Full Bench ruling quoted by the Subordinate Judge—*Rampkal Rai* v. *Tula Kuari* (1) permits any reversioners to set aside an alienation effected by a Hindu widow beyond her life estate. The other objection of the defendants-respondents, that Jai Karan the next reversioner was not in collusion with the donor does not affect the facts. Accordingly, I dismiss the defendants' objections. As regards the plaintiffs' ground of appeal, the question is whether a Hindu widow has a larger disposing power over moveable property than she has over immoveable property. Mayne (*Hindu Law and Usage*, ed. 1883, s. 553 says: 'It is now finally settled, as regards cases governed by the law of Bengal and Benares that there is no difference, and that the same restrictions apply in each case.' In accordance with this opinion, I find that the deed of gift should be set aside *in toto*, as well in respect of moveable as in respect of immoveable property, so far as it exceeds the life interest of the donor defendant-respondent No. 1, and that the plaintiffs-appellants are entitled to all their costs from both defendants. Accordingly I extend the decree of the Subordinate Judge so as to set aside the deed of gift entirely so far as it exceeds the life interest of the donor Mussamát Jhula, defendant-respondent No. 1. The defendants-respondents will pay their own costs in both Courts, and pay all the plaintiffs-appellants' costs in both Courts."

The defendants appealed to the High Court.

The Hon. *T. Conlan* and the Hon. Pandit *Ajudhia Nath*, for the appellants.

Mr. *Abdul Majid*, for the respondents.

EDGE, C. J.—In this action the plaintiffs sue for a declaration that a deed of gift made by the widow of one Gopal, their paternal grand-uncle, in favour of a nephew of Gopal should be declared not to be binding upon their interest in the property. It appears that

(1) I. L. R., 6 All. 116.

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the donee Harakh is the son of one Jai Karan, a brother of Gopal, who was alive at the commencement of the action, and is still alive, and who was not made a party to the action. The Judge in the first Court held that Jai Karan colluded with the widow, and decreed the relief asked for in the action. On appeal, the Judge of Mirzapur, putting, in my opinion, a wrong interpretation upon the Full Bench ruling in the case of *Ramphal Rai* v. *Tula Kuari* (1) came to the conclusion that it was not necessary to consider whether Jai Karan was in fact in collusion with the widow, and decided in favour of the plaintiffs without considering the question whether Jai Karan was in collusion or not. It appears to me that, inasmuch as Jai Karan was the presumptive heir, as I may say, of this property—at any rate the nearest person who, if he survived the widow, would inherit—he was the person to bring this action, unless it was shown or found that he refused without sufficient cause to sue, or had precluded himself by his own act from suing, or had colluded with the widow; and, unless that was shown, the present plaintiffs, who were not the nearest heirs, could not maintain this action. I think that proposition of law is fully supported by the Full Bench ruling to which I have referred, and by the judgment of the Privy Council in the case of *Rani Anund Koer* v. *The Court of Wards* (2), and by the judgment of this Court in the case of *Raghunath* v. *Thakuri* (3). Mr. *Abdul Majid* has referred to another case as an authority in his favour—*Madan Mohan* v. *Puran Mal* (4). It appears to me that that case does not support the contention of Mr. *Abdul Majid* at all. That was an action brought by the donee to establish his right. In that case, as appears from the report, the widow had made a gift with the consent of the next presumptive heir. I think it was very rightly held in that case that the defendant, who disputed the gift, was entitled to do so under the circumstances of the case. I am of opinion that this case must be remanded in order that the Judge may find on the issues which are material in the case, and to which I have referred. Ten days will be allowed for objections.

BRODHURST, J.—I concur in the order of remand proposed by the learned Chief Justice.

Cause remanded.

(1) I. L. R., 6 All. 116
(2) L. R., 8 I. A. 14.
(3) I. L. R., 4 All. 16.
(4) I. L. R., 6 All. 288.