

of the institution of his suit, to the present hour, had a credit in any Court for Rs. 200, and that he has, therefore, failed to fulfil the condition essential to his possession of the vendee's estate under the decree in the suit. I fail to see how his profession of willingness now, to complete the payment long after the expiry of the decretal period, can alter his position for the better in this respect.

Under these circumstances, I think the Courts below were wrong, but as my brother Straight's decree is decisive of the appeal to the contrary, it is unnecessary to formulate the order which, from my point of view, should have been made in the case.

Appeal dismissed.

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

RAMADHIN AND ANOTHER (PLAINTIFFS) v. MATHURA SINGH AND OTHERS
(DEFENDANTS)*

Hindu Law—Hindu widow—Gift by Hindu widow of her own interest and that of consenting reversioner.

A Hindu widow in possession can, with the consent of a reversioner, make a valid gift which will operate so far as the interest of the widow and that of the consenting reversioner are concerned. *Rany Srimuty Dibeak v. Rany Koond Luta* (1) *Kooer Goolab Singh v. Rao Kurun Singh*, (2) *Sia Dasi v. Gur Sahai* (3) and *Raj Bullabh Sen v. Oomesh Chunder Roos*, (4) referred to.

Ramphal Rai v. Tula Kuari (5) distinguished.

One Lachman Singh died some years ago leaving a widow Dharm Kuar, and a daughter, Piari Kuar. He was possessed of an eight-anna share in mauza Kharsa and some houses and gardens. On his death his widow inherited the same, and her name was recorded in respect thereof. On 25th March, 1879, she executed a deed of gift of the property in favor of one Himmut Singh, a son of her daughter, Piari Kuar. It was stated in the deed that the gift was made with the consent of Piari Kuar. Dharm Kuar died in September, 1879, leaving her daughter and two sons by her, viz., the said Himmut Singh and Bhawani Singh.

* First Appeal, No. 110 of 1886, from a decree of Munshi Kulwant Prasad, Subordinate Judge of Cawnpore, dated the 10th February, 1886.

(1) 4 Moo. I. A. 292. (3) I. L. R., 3 All., 362.
(2) 14 Moo. I. A. 176. (4) I. L. R., 5 Cal., 44.
(5) I. L. R., 6 All., 116.

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By a sale deed dated 26th June, 1879, Himmut Singh conveyed half of the eight-annas share in the mauza to the plaintiffs in consideration of Rupees 7,700. Soon after this Himmut Singh died, and he could not therefore get the sale deed registered.

After his death the plaintiffs applied to the Revenue Court for entry of their names in respect of the four-anna share conveyed to them, but on the objection of the minor son of Himmut Singh the application was refused. Plaintiffs thereupon instituted this suit for possession of the said four annas with mesne profits, against Mathura Singh, the minor son of Himmut Singh, Piari Kuar, and Bhawani Singh, brother of Himmut Singh.

Mathura Singh contended that Dharm Kuar was not competent to make the gift, and on the death of Dharm Kuar the entire estate devolved on Piari Kuar, and the sale deed executed by Himmut Singh became void on the death of Dharm Kuar.

Piari Kuar also contested the suit on the above grounds, but she had in a previous suit admitted that the gift by her mother was made with her consent.

The Subordinate Judge holding that property inherited by a Hindu widow cannot be alienated by her, and relying on *Rampal Rai v. Tula Kuar* (1) dismissed the suit. Plaintiff appealed and defendants contended that the only interest that passed under the gift was the life-interest of the widow, and that the consent by the daughter to the gift by her mother would not affect her interest. It was further contended that there could be no gift by the daughter of her reversionary interest.

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

Babu Jogindro Nath Chaudhri, for the respondents.

EDGE, C. J., and TYRRELL, J.—This is an action for possession of a four annas share and for mesne profits.

The case of the plaintiff is that one Dharam Kuar, the Hindu widow of Lachman Singh, on the 25th March, 1879, with the consent of her daughter Peari Kuar, a defendant, made a gift of an eight annas zamindari share to Peari Kuar's son Himmat Singh, and that on the 26th July, 1879, Himmat Singh, having obtained

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

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possession, sold a four annas share of the eight annas to the plaintiff for Rs. 7,700. The plaintiffs applied in 1880 or 1881 for mutation of names. That application was successfully resisted by Himmat Singh's son, Mathura Singh. Mathura Singh was the original defendant in the action. After the commencement of the action, Peari Kuar, Himmat Singh's mother, and Bhawani Singh, a son of Peari Kuar and brother of Himmat Singh, were made defendants. It is here admitted on the arguments that Peari Kuar did in fact consent to the gift which was made by Dharam Kuar, and not only consented to the gift by Dharam Kuar of her life interest but also of the life interest of Peari Kuar. It could not have been contended on the evidence in this case that Peari Kuar did not consent to that extent. We have before us the written statement which was filed by Peari Kuar in the case of Madho Singh and others on 25th July, 1879. That statement, as explained by Peari Kuar's evidence, is conclusive on the point, and corroborates the statement contained in the deed of gift of March, 1879. Dharam Kuar died in September, 1879. On these facts it has been contended that the only interest which passed under the deed of gift to Himmat Singh was the life interest of Dharam Kuar, and that the consent of Peari Kuar to the gift made by her mother would not affect Peari Kuar's interest. It has also been contended that there could be no gift by Peari Kuar of her reversionary interest; as she could not give possession of the property at the time of the gift in 1879. The Subordinate Judge found in favour of the defendant on the ground that Dharam Kuar had no power to make the gift, and that Peari Kuar was not competent to give her consent if in fact she had done so, and he relied in support of that finding in law on the case of *Ramphal Rai v. Tula Kuari* (1). The case there was one in which another reversioner was impeaching a gift made by a Hindu widow in possession with the consent of her then next reversioner. That case would no doubt have a bearing on the present, if it were necessary for us to decide, whether or not the plaintiffs became entitled to more than the life interests of Dharam Kuar and Peari Kuar. In this case we have only to consider whether the plaintiffs were entitled to possession and to the *mesne* profits claimed, and we are invited only to consider

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that question. We have not here to consider who will be the person entitled to the four annas share on the death of Peari Kuar. That is a question which we leave to be decided in a further action when the time comes. We are of opinion that it is quite clear that a Hindu widow in possession can, with the consent of a reversioner, make a valid gift, which will operate so far as the interest of the widow and that of the consenting reversioner, in this case Peari Kuar, are concerned. It appears to us that that is the principle to be found in the judgment in the Privy Council case of *Rany Srimuty Dibeah v. Rany Koond Luta* (1) and in the judgment of the Privy Council in *Kooer Goolab Singh v. Rao Kurun Singh* (2). The judgment of this Court in *Sia Dasi v. Gur Sakai* (3) and the judgment of the Calcutta High Court in *Raj Ballubh Sen v. Oomesh Chunder Roos* (4) support the view of the law which we hold.

There is uncontradicted evidence here that the sale-deed of the 26th July, 1879, was a genuine sale-deed and that the consideration therein mentioned passed. We find as a fact that the sale of 26th July, 1879, was a genuine sale, and that the consideration mentioned in the sale-deed passed.

The plaintiffs are entitled to the possession of the four annas share at least for the life-time of Peari Kuar; they are also entitled to mesne profits as against Mathura Singh, defendant, from the commencement of the suit to the date of our decree. We decree accordingly, and we direct an enquiry under s. 212 of the Code of Civil Procedure to be made by the Subordinate Judge as to the amount of mesne profits and direct him to report to us, when we will make further orders. The appeal so far will be allowed with costs. We make no declaration as to the title of the rights of the parties at the death of Peari Kuar.

Appeal decreed.

(1) 4 Moo., I. A. 292.

(2) 14 Moo., I. A. 176.

(3) I. L. R., 3 All., 362.

(4) I. L. R., 5 Calc., 44.