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merely a nominal one in collusion with Chajmal Das, mortgagee, who was still in possession. The findings therefore indicate no such transfer of mortgagee's rights by subrogation or otherwise as would entitle the appellant Shib Lal to any modification of the lower Court's decree, and since Chajmal Das was no party to this litigation, and the other two defendants Sri Ram and Ram Prasad have not joined in this appeal, the case requires no further discussion, their rights not being involved in this appeal.

I dismiss the appeal with costs.

BRODHURST, J.—I concur in dismissing the appeal with costs.

Appeal dismissed.

1888 *November* 29.

Before Mr. Justice Straight and Mr. Justice Mahmood.

BHUPAL RAM (DEFENDANT) v. LACHMA KUAR AND OTHERS (PLAINTIFFS.)*

Hindu Law—Hindu widow—Alienation by widow to her married daughter—Reversioner—Declaratory suit—Act I of 1877 *(Specific Relief Act)*, s. 42.

The effect of a gift by a Hindu widow of her deceased husband's estate to her daughter, is merely to accelerate the latter's succession and put her by anticipation in possession of her life-estate, and therefore affords no cause of action to a reversioner to maintain a declaratory suit impeaching the gift.

Per MAHMOOD, J., that in the exercise of the discretion allowed to the Court by s. 42 of the Specific Relief Act, a declaratory decree should be refused to the plaintiff in such a case, where the donee was a married woman and capable of bearing a son who would be the next reversioner to the full ownership of the estate of the doner's deceased husband.

Indar Kuar v. *Lalta Prasad Singh* (1) and *Udhar Singh* v. *Ranee Koonwur* (2) referred to.

THE facts of this case are stated in the judgment of Straight, J.

The Hon. *T. Conlan* and Pandit *Ratan Chand* for the appellant.

Maulvi *Abdul Majid*, The Hon. Pandit *Ajudhia Nath*, and Mir *Zahur Husain*, for the respondents.

STRAIGHT, J.—This appeal relates to a declaratory suit brought by the plaintiff-appellant before us, in the Court of the Subordinate

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*First Appeal No. 29 of 1887 from a decree of Maulvi Mirza Abid Ali Khan, Subordinate Judge of Sháhjahánpur, dated the 10th November, 1886.

(1) I. L. R. 4 All. 532. (2) 1 Agra, 234.

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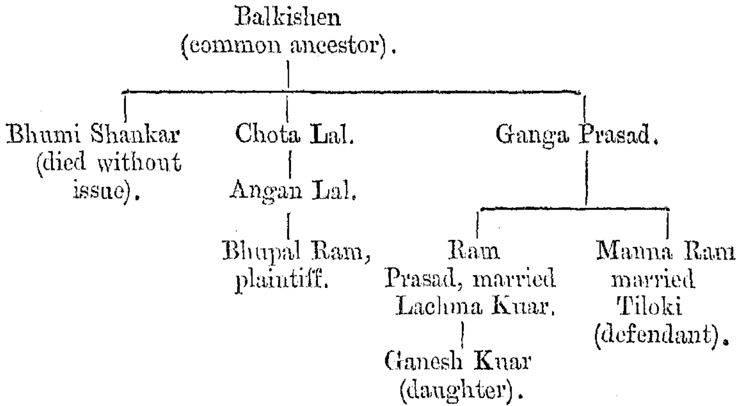
Judge of Sahárampur, on the 10th April, 1886. In order to make the grounds upon which I am about to dispose of this appeal intelligible, it will be convenient here to state a genealogical tree :—



From the above genealogical tree it will be seen that Balkishen had three sons, of whom Bhumi Shankar died without issue. Ganga Prasad had two sons, of whom Manna Ram predeceased Ram Prasad, leaving behind him a widow named Tiloki Kuar. Ram Prasad, therefore succeeded to the property of Manna Ram, and when he died he left a widow named Lachma Kuar and a daughter Ganesh Kuar. The ground on which the plaintiff comes into Court is that, upon the 20th April, 1883, Lachma Kuar, the widow of Ram Prasad, and Tiloki Kuar, the widow of Manna Ram, joined together in executing a deed-of-gift in respect of certain property which had belonged to Ram Prasad and Manna Ram. It is not necessary for the purpose of disposing of this appeal to enter into the question of fact, which arose in the case in the Court below, or to discuss the grounds upon which the learned Subordinate Judge dismissed the plaintiff's suit. It is enough for the purposes of this judgment to deal with the two questions which have been raised here to-day as an answer to the appeal preferred by the plaintiff, the answer being upon grounds of law and law only :—First, that in the presence of Ganesh Kuar, the plaintiff, even admitting him to be the son of Angan Lal, had no *locus standi* to maintain the suit; and, secondly that, looking to the nature of the transaction of gift and the position of the donee,

Ganesh Kuar, no cause of action had accrued to the plaintiff to entitle him to come into Court and maintain this declaratory suit. Upon the first question, as to the *locus standi* of the plaintiff, had any contest taken place in regard to that, it might possibly have brought two rulings of my brother Mahmood and myself, one reported at page 428, and the other at page 431 of the Indian Law Reports, 6 Allahabad, *Madari* v. *Malki*, and *Balgobind* v. *Ram Kumar*, into conflict. But fortunately that conflict is avoided, and it becomes unnecessary for us jointly to consider the correctness or otherwise of our respective rulings, because Pandit *Ajudhia Nath*, who represents the respondents here, says that he does not question the *locus standi* of the plaintiff to come into Court and maintain his action. In other words, he is willing to concede that, by the united action of Lachma Kuar and Tiloki Kuar, the plaintiff, as the next reversioner, was entitled to pray for the declaratory relief which he has sought by this suit. Consequently the first contention need not be further dealt with, and it is only necessary for me to consider the second argument addressed to us on behalf of the respondents, namely, that the plaintiff had no cause of action upon which he was entitled to maintain such a suit as that which he has now brought. It is to be observed from the genealogical tree above given that the donee, under this deed-of-gift from Tiloki and Lachma Kuar, was the daughter of Lachma Kuar. It is clear that the whole of the property which had belonged to Manna Ram had passed into the hand of Ram Prasad, the father of the girl Ganesh Kuar, and that in the ordinary course of succession after the death of Ram Prasad, his widow Lachma Kuar will first take the life-estate, and upon her decease the daughter will take the life-estate, subject of course to any son being born to her. The effect, therefore, of the transaction of gift, which took place upon the 28th April, 1883, is nothing more nor less than to use the words of my brother Mahmood, in the case of *Indar Kuar* v. *Lalta Prasad Singh* (1) "to accelerate her succession to the property and to entitle her to immediate succession." In other words, all the effect that this deed-of-gift had, was to put Musammat Lachma Kuar out of possession of her life-estate and to

(1) I. L. R. 4. All. 532.

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put Ganesh Kuar, her daughter, by anticipation into possession of her life-estate. There is another authority for this view of the matter in *Udhar Singh* v. *Ranee Koonwur* (1), where it was held by Chief Justice Sir Walter Morgan and Mr. Justice Pearson, that a reversioner has no present ground of action to set aside a transfer made by a widow in favour of her daughter, as his reversionary right was not prejudiced thereby. This is also a distinct authority for holding that no cause of action accrued to this plaintiff to come into Court and ask for a decree such as that which he sought in the present suit. Under these circumstances and upon these grounds, without entering the merits of the learned Subordinate Judge's decision, I am of into opinion that this appeal should be, and it is, dismissed with costs.

MAHMOOD, J.—I am of the same opinion, and as my learned brother has pointed out that in the two cases, *Madari* v. *Malki* (2) and *Balgobind* v. *Ram Kumar* (3), the views which my learned brother and I gave expression to are somewhat in conflict, it is unnecessary to explain that conflict, or to arrive at any definite conclusion so far as the question of *locus standi* is concerned, because as the learned Pandit has conceded, in either case, the fact that Ganesh Kuar is the donee from Lachma Kuar, would prevent any such plea being raised against the present plaintiff-appellant as that of absence of *locus standi*, if his allegation of the relationship with the deceased Ram Prasad is to be accepted. I must not, therefore, be understood to lay down any rule in this case on that point.

The next thing I wish to say is, that this is admittedly a declaratory suit, and, therefore, a suit governed by the provisions of s. 42 of the Specific Relief Act (I of 1877). That enactment, and that clause in itself, contains the quintessence of the rule of equity governing such matters and guiding the practice of the Courts of Chancery in England. The words of that section are clear, and it only affirms the practice of the English Court of Chancery when it says that a declaratory relief is not a matter of right, and is in the discretion of the Court. Here the lower Court, although it has

(1) 1 Agra, 234. (2) I. L. R. 6 All. 428.
(3) I. L. R. 6 All. 431.

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passed its judgment upon matters of evidence, has practically come to the conclusion that the plaintiff should not be allowed to have declaratory relief. I am afraid that the Court was wrong in thinking that there was a cause of action entitling the plaintiff to maintain such a suit. My opinion is that, if for no other reason, the solitary reason that this lady, Ganesh Kuar (who is admittedly living and a married daughter of the last full proprietor), is the donee, and that she is a married woman, her husband being still living, would be enough to require that a proper exercise of discretionary powers should not include a decree such as the plaintiff demanded. Therefore the conclusion of the judgment of the Court below is just the result which my learned brother Straight has arrived at, though by a different process of reasoning. It is the same as that at which I have also arrived, for the reason that the donee, Ganesh Kuar, is a married woman, and having the possibility of bearing a son, who would be the next reversioner to the full ownerhip of the estate of Ram Prasad. I agree in the judgment and the decree which my learned brother has made.

Appeal dismissed.

1888
November 30.

Before Mr. Justice Straight and Mr. Justice Mahmood.

KUAR DAT PRASAD SINGH (DEFENDANT) *v.* NAHAR SINGH AND OTHERS (PLAINTIFFS).*

Pre-emption—Wajib-ul-arz—Partition of village into separate mahâls—New wajib-ul-arz for each mahâl.

Cases where, after the division of a village area into separate mahâls for which no new *wajib-ul-arz* is drawn up, the old *wajib-ul-arz* for the whole area has been held to apply generally to the new mahâls, and such division has been held not to affect covenants existing between the co-sharers under such *wajib-ul-arz*, distinguished from cases where a new *wajib-ul-arz* has after the division been drawn up for each mahâl. *Gokal Singh* v. *Mannu Lal* (1) and *Jai Ram* v. *Mahabir Rai* (2) referred to.

THE facts of this case are stated in the judgment of Straight, J.

The Hon. *T. Conlan*, Mr. *G. E. A. Ross*, and The Hon. Pandit *Ajudhia Nath*, for the appellant.

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* First Appeal No. 33 of 1887, from a decree of Babu Abinash Chandar Banerji, Subordinate Judge of Aligarh, dated the 6th December, 1886.

(1) I. L. R., 7 All. 772. (2) I. L. R., 7 All. 720.