

Pandit *Sundar Lal*, for the appellant.

Mr. *T. Conlan* and Munshi *Kashi Prasad*, for the respondents.

EDGE, C. J. and MAHMOOD, J.—On the report of the Taxing Officer of this Court the stamp is sufficient. The Court below must try the suit on the merits and decide on the evidence and the law as applicable to it whether or not the plaintiffs are entitled to the declaration they seek. We set aside the decree under appeal, and remand the case under s. 562 of the Code of Civil Procedure to be disposed of according to law. The costs here and hitherto will follow the result.

Cause remanded.

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GOBIND NATH
TIWARI
v.
GAJRAJ MATH
TAURAYAN.

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

KALI DAS (DEFENDANT) v. BIJAI SHANKAR AND ANOTHER (PLAINEIFFS).*

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May 14.

Hindu Law—Adoption by widow to deceased husband.—Deed of adoption, construction of—Powers of adoptive mother.

The widow of a separated Hindu made an adoption to her deceased husband under a power to adopt conferred upon her by her husband's will. The deed by which the adoption, the validity of which was not disputed, was evidenced, contained, amongst others, the following conditions :—“ that during my (*i.e.*, the adoptive mother's) life time I shall be the owner and manager of the estate and that after my death the adopted son should have the same rights and privileges as would have been enjoyed by the natural son of Ishan Chandar Mukarji born of me.”

Held that these words conferred upon the widow an interest and an authority not less than she would have had as the widow of a separated sonless Hindu to whom no adoption had been made, so far as her position as manager was concerned.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri*, for the appellant,

Mr. *T. Conlan* and Pandit *Sundar Lal*, for the respondents.

EDGE, C. J., and TYRRELL, J.—This appeal has been brought by one of the defendants in a suit which was for recovery of money due under notes of hand given by one Musammat Sri Matia Matangini Debia. She was the widow of one Babu Ishan Chandar

* First appeal No. 28 of 1890 from a decree of Pandit Indar Narain, Subordinate Judge of Aligarh, dated the 8th November 1889.

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Mukarji, and after his death she executed, on the 24th February 1878, a deed of adoption which, so far as is material, was as follows :—

“ I, Sri Matia Matangini Debia, widow and heir of Babu Ishan Chandar Mukarji, son of Babu Tarni Charan Mukarji, rais of the city of Koel, do hereby declare that my husband, Babu Ishan Chandar, on account of his being childless, had a desire to adopt some one for the perpetuation of his name and performance of religious ceremonies, and accordingly had it distinctly recorded in the *wajib-ul-arz* of each of his zamindari villages, that he, and after his death his wife, had authority to adopt (a son); that he had selected to adopt Kali Das, son of his own brother Santi Chandar; that the time for performing the ceremonies of adoption had not yet arrived, when he fell ill, and then he executed a will in the Bengali character under his own signature authorising me to adopt, and made it over to me; that in execution of the will of my husband I have also selected the same lad as was chosen by my husband, and have accordingly adopted to-day the abovenamed lad in the presence of the members of the brotherhood, after performing all the ceremonies of adoption according to the custom of the caste, and that for its stability I execute this deed of adoption containing the following conditions :—

“ That during my life time I shall be the owner and manager of the estate, and that after my death the adopted son should have the same rights and privileges as would have been enjoyed by the natural son of Ishan Chandar Mukarji, born of me. I have therefore executed this deed of adoption that it may serve as evidence and be used when needed. Dated 24th February 1878, corresponding with Phagun Badi (Ashtimi) Sambat 1934, Sunday.”

It was signed by her and her signature was witnessed by the natural father of the defendant-appellant. The defendant-appellant was the boy whom she adopted, and is now, we are informed by his counsel, 26 years old. The lady died in February 1888, whilst this suit was pending. The defendant-appellant on the 29th March 1887, filed his written statement, in which, although he

made several charges against the old lady, he alleged that the capacity of the Musammat was that of a manager of a Hindu family; he said she had no right to transfer any property; he alleges that she has incurred unlawfully debts and done acts to his detriment. The Subordinate Judge decreed the plaintiff's claim against the defendant-appellant. On his behalf it has been contended here that the notes of hand in question were given by her in carrying on an Indigo Factory, and that she had no power to incur any debts beyond those for which she alone could be made personally responsible; in other words, that she was the owner of the property and was not in the position of a Hindu widow of a separated sonless Hindu, but in the position of a person who had an estate, for life, and that when it was provided in the deed of the 24th February 1878 that she should be owner and manager of the estate it was intended that she should be manager of the estate on her own behalf only and should not be in the position of the person who in a Hindu family acts and is known as the manager. Reading that deed in its natural sense, we are of opinion that it conferred upon her an interest and an authority not less than she would have had as the widow of a separated sonless Hindu to whom no adoption had been made so far as her position as manager is concerned. The defendant-appellant, by the third paragraph of his written statement, seems to have been of opinion that her capacity as manager was such a capacity as we think was contemplated by the deed. We have been referred to *Chitko Raghunath Rajadiksh v. Janaki* (1) *Ramasami Aiyar v. Venkataramaiyan* (2) as showing that in Bombay and Madras such an arrangement as is represented by the deed of the 24th February 1878, would be held valid, particularly as it is admitted that the defendant-appellant ratified that arrangement after he attained his majority. We have also been referred to *Bepin Behari Bundopadhya v. Broj Nath Mookhopadhya* (3) which shows that the view of their Lordships of the Privy Council in the case above referred to from Madras would

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(1) 11. Bom. H. C. Rep., 199. (2) I. L. R. 2 Mad. 91. s. c., L. E. G. I. A.

196.

(3) I. L. R. 8 Calc. 357.

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be equally applicable to a Bengali, subject to the Hindu law of lower Bengal. It is admitted that the defendant-appellant here is such a Bengali. It appears to us, under the above circumstances that the lady having given those notes of hand for the *bond fide* purpose of carrying on the Indigo Factory, which, as a matter of fact, had existed and had been carried on by her deceased husband in her life time, the defendant-appellant is liable for the amount decreed against him in the court below. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Mahmood.

NOURANG RAI (DECREE-HOLDER) v. LATIF CHAUDHRI AND OTHERS
(JUDGMENT-DEBTORS).*

Execution of decree—Decree to be executed where there has been an appeal.

Where the appellate Court has modified the decree of the Court below, the decree of the appellate Court supersedes entirely that of the Lower Court, and is the only decree which can be executed. *Shohrat Singh v Bridgman* (1); *Gobardhan Das v. Gopal Ram* (2) and *Muhammad Salaiman Khan v. Muhammad Yar Khan* (3) referred to.*

The facts of this case sufficiently appear from the judgment of Mahmood, J.

Munshi *Kashi Prasad*, for the appellant.

The respondent was not represented.

MAHMOOD, J.—On the 29th September 1885, the plaintiff-appellant's claim for possession of certain property together with future *mesne* profits was partly decreed by the first Court. From the decree thus made an appeal was presented only by the plaintiff, and on the 16th December 1885, his appeal was decreed and so much of the decree of the first Court as had been passed against him was modified.

*Second Appeal No. 244 of 1890 from a decree of W. R. Burkitt, Esq., District Judge of Gorakhpur, dated the 5th December 1889, reversing a decree of Pandit Alopi Prasad, Munsif of Basti, dated the 3rd August 1889.

(1) I. L. R. 4 All., 376.

(2) I. L. R. 7 All., 366.

(3) I. L. R. 11 All., 267.

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May 26.