1892

DEOKI PRASAD v. INAIT-ULLAH.

in the case of *Mazhurool Huq* v. *Puhraj Dikaey Mohapattur* (1). The next observation I have to make is that these views were accepted by their Lordships of the Privy Council in this very case of *Sheik Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu* (2), and that that case, far from supporting the appeal, seems to me to be opposed to it. For these reasons I agree with all that has fallen from the learned Chief Justice and also in the decree which he has made.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

1892
March 3.

DULI SINGH (PLAINTIFF) *v.* SUNDAR SINGH (DEFENDANT).*

Hindu law—Hindu widow—Gift.

The widow of a separated Hindu being in possession, as such widow, of property left by her husband, executed a deed of gift of such property in favor of her daughter's son, her daughter being also a party to the deed. Subsequently to the execution of this deed of gift the executant's daughter gave birth to another son :—*held* that the deed in question could not affect more than the life interests of the executant and her daughter, and could not operate to prevent the succession (as to a moiety of the property) opening up in favor of the subsequently-born son on the death of the survivor of the two ladies. *Ramphal Rai* v. *Tula Kuari* (3) referred to.

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

Mr. D. *Banerji* and Maulvi *Ghulam Mujtaba*, for the appellant.

Mr. *Roshan Lal* and Pandit *Sundar Lal*, for the respondent.

STRAIGHT, J.—One Bhimjit was the admitted owner of the property to which the suit relates, and he occupied the position of a separated Hindu in possession of separate estate. He was married to one Hira Kuar, who, upon his death in 1850, survived him. By Hira Kuar he had one daughter, Musammat Rukmin, who was married to a man of the name of Fateh Singh. By Fateh Singh she had two sons, Kharak Singh, who is a *pro formâ* defendant in the present litigation, and Duli Singh, who is the plaintiff. Hira

* First appeal No. 36 of 1891 from an order of Babu Ganga Saran, Subordinate Judge of Agra, dated the 11th October 1890.

(1) 13 W. R. 235. (2) L. R. 17 I. A. 28.
(3) I. L. R. 6 All. 116.

1892

DULI SINGH v. SUNDAR SINGH.

Kuar died in the year 1877. Rukmin and Fateh Singh both died in the year 1882. Hira Kuar during her life-time made a deed of gift of the property now in suit with other properties in favor of her grandson Kharak Singh. This was in the year 1872, and possession was given and mutation of names recorded, a reservation being made in the deed of gift in favor of the donor to the effect that an allowance of Rs. 100 *per annum* was to be paid to her by the donee. At the time when the deed of gift was assented to by Musammat Rukmin Kharak Singh was the immediate reversioner. It is also a material fact that at the time of the deed of gift Duli Singh, the present plaintiff, had not come into existence. At some time prior to his death Fateh Singh, professing to act as the guardian of his minor son, Kharak Singh, made a charge in favor of the defendant Sundar Singh in respect of the property in suit, together with another share in it which we are not concerned with in the present litigation. Subsequently the defendant Sundar Singh obtained a decree in respect of his charge and put it into execution against half the property as representing the interest of Kharak Singh, and he brought it to sale and there is an end of that. Now he has attached the other half of the property as the property of his judgment-debtor and he sought to bring it to sale. Duli Singh, the plaintiff, objected to the sale; his objection was disallowed, and consequently he has had to bring the present suit to have his right in this particular property declared. It is therefore obvious that the whole title of the defendant-respondent rests upon the question of what by the transaction of 1872 Kharak Singh, his judgment-debtor, had acquired. The case for the plaintiff is that as the grandson of Bhimjit, his right to succession in the property of Bhimjit did not arise or open up until the death of his mother in 1882, and that no assent given by his mother to the transaction of the gift of 1872 could affect his right or destroy his title to succeed to his share in the estate on the death of his mother. The first Court decreed the plaintiff's claim, holding in effect that the estate of the widow and the estate of the reversioner, Musammat Rukmin, who assented to her making the gift, being of a limited nature, they between them could not do more than affect their own limited

interests to the extent of anticipating the succession of Kharak Singh before the time he would otherwise have been entitled to it. I have considered this view of the matter which has been supplemented by the able argument of Mr. *Banerji* in support of the appeal, and it certainly appears to me to be in harmony with the view expressed by the Full Bench of this Court in *Rampkal Rai* v. *Tula Kuari* (1). Mr. *Sundar Lal* has contended that the estate of a Hindu widow in possession is not of such a limited character as is contended for, and that for certain recognized purposes sanctioned by the Hindu law she may make a perfectly good and valid absolute alienation of her deceased husband's estate. I do not propose here to repeat what I said in the Full Bench ruling as to the nature of a Hindu widow's estate, nor in this case does any question arise of an alienation made by her of the kind ordinarily contemplated. I am not now going to decide what would be the position of a stranger third party in whose favor an alienation had been made. I am dealing solely and purely with the case in which two persons having a limited interest in property in the nature more or less of a life interest, one taking by succession after the other, have joined together to allow the party entitled when both of them are dead to succeed to the estate to obtain immediate possession. I think, under circumstances such as these, that the only proper view to adopt and the only view consistent with the Hindu law is, that they have relinquished their several rights to life possession of the property. Then, under such circumstances, can it be said that their action was of such a character as to defeat the title of the plaintiff in the present suit which accrued to him at the date of his mother Musammat Rukmin's demise? So far as Musammat Rukmin was concerned, she could not be heard as against her son, Kharak Singh, to deny his right to possession as against her. But that right would only subsist so long as she remained alive, and with her death the succession, in my opinion, opened up and Duli Singh plaintiff's right as grandson of Bhimjit came into existence, and, in my opinion, had not been destroyed or in any way affected

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

1892

DULI SINGH v. SUNDAR SINGH.

by the deed of gift of 1872. I see nothing in this view which is inconsistent with the remarks made by their Lordships of the Privy Council in *Raj Lukhee Dabea v. Gokool Chunder Chowdhry* (1), nor, so far as I am aware, is this rule other than consistent with the doctrines of the Hindu law. I accordingly think that the issues which the learned Judge remanded were immaterial, and that it was unimportant to consider whether Duli Singh was alive at the date of his grandmother Hira Kuar's death or not. It seems to me sufficient for the purpose of ascertaining his right that he was alive at the date of his mother's death in 1882, when the succession opened up which had been suspended during the life-time, first of the widow and then of Musammat Rukmin. Under these circumstances I allow the appeal and reverse the order of the learned Judge, remanding the case under s. 562 of the Code of Civil Procedure. I direct the learned Judge to restore the appeal to his file of pending appeals and to determine the other issues, if any, arising before him, taking such action under s. 566 of the Code as may appear to him necessary upon the basis of my preceding remarks that Duli Singh is entitled to maintain the action. The costs hitherto incurred will be costs in the cause.

TYRRELL, J.—I entirely concur in the view of law as laid down by my brother Straight and with the order that he has made in this appeal, and I am the more ready to adopt this view because it will be in harmony with the decree of this Court in another case, not between the same parties it is true, but by which Kharak Singh's interest in his grandfather's estate was judicially limited to a moiety thereof, upon the ground that his brother, Duli Singh, was presumably entitled to the other half of the estate.

Cause remanded.

(1) 13 Moo. I. A. 210.