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QUEEN-EMPRESS v. SANGAM LAL.

of this kind arrive at such a conclusion. The Act is one highly penal and one which must be strictly construed.

In the present case, and for the reasons given above, we hold there has not been sufficient proof that exclusive possession and control were with the appellant.

We accordingly admit the appeal, set aside the conviction and sentence passed upon Sangam Lal, find him not guilty of the offence with which he stood charged, and direct that the fine, if paid, be refunded.

APPELLATE CIVIL.

1893.
January 24.

Before Mr. Justice Tyrrell and Mr. Justice Blair.

ISHWAR NARAIN (PLAINTIFF) *v.* JANKI (DEFENDANT).*

Hindu Law—Hindu Widow—Reversioner—Right to sue—Next presumptive reversioner—Intervening woman's estate.

The plaintiff, grandson (daughter's son) of a deceased Hindu, sued during the life-time of his mother to set aside a will made by his mother's father in favour of an idol under the management of his stepmother, the testator's second wife.

Held that, there being no evidence of collusion or connivance, the plaintiff, not being the next reversioner, was not competent to maintain the suit. The fact that his mother's estate, should it ever come into her possession, would be only a limited estate, would not affect the plaintiff's subsisting position in respect of his right to sue. *Madari* v. *Malki* (1) followed; *Balgobind* v. *Ram Kumar* (2) dissented from.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Moti Lal*, for the appellant.

Mr. *C. Dillon* and Munshi *Ram Prasad*, for the respondent.

TYRRELL and BLAIR, JJ. One Mangli died on the 27th of July 1885, leaving a widow, Musammat Janki, who obtained possession of his estate. Mangli had a daughter, Musammat Sheodeli Kuar, who is stepdaughter of Musammat Janki. The plaintiff, appellant

* First Appeal No. 114 of 1890 from a decree of Maulvi Syed Akbar Husain, Subordinate Judge of Cawnpore, dated the 31st March 1890.

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

here, is son of Musammat Sheodeli Kuar. He sued Musammat Janki for a declaration that he is the adopted son and heir of Mangli, entitled to succeed him, and that a will relied on by the defendant, respondent here, is not genuine and was not the will of Mangli. This will purports to have been executed on the 25th of July 1885, two days before Mangli's death, and to give Mangli's estate to an idol under the management of Musammat Janki. The Court below dismissed the suit in all respects, finding (*a*) that the adoption was not proved, and (*b*) that the plaintiff not being reversioner presumptive could not maintain the claim in respect of the will. The question of adoption is not before us. The learned Vakil for the appellant informs us that his client submits to the decree below on this point. But he contends that the appellant is qualified to sue as reversioner, because his mother, though undoubtedly she stands now between him and the reversion of Mangli's estate, would take a Hindu woman's interest only in the estate, and therefore the appellant is the presumptive reversioner *qua* the title absolute to Mangli's estate. In support of this argument we were referred to a judgment of this Court in *Balgobind* v. *Ram Kumar* (1) which favors the appellant's case. But we prefer to adopt the view of the learned Judges in *Madari* v. *Malki* (2) who refused to hold that "in the absence of any proof of collusion or connivance between the defendant (the alienor) and her daughters, the plaintiffs in the presence of the latter (the daughters) would be competent to maintain the suit."

We fail to discern any sound reason for holding that the accident that the interest in the property left by Mangli would in his daughter's hands, if it ever reaches them, be of a less absolute character than it would be in the hands of the appellant, should it ever come to him, can affect the unquestionable fact that at present Mangli's daughter is his next reversioner and that her son, the appellant, is not. We dismiss the appeal with costs.

Appeal dismissed.

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