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a tenant, and is one on which the latter might make an application under s. 10. It does not affect the question that the plaintiff as landlord may not be able to make an application under s. 10, for the dispute or matter is none the less one contemplated by s. 95, which deals with the character of the dispute between the parties suing, and has for its object to leave to the Revenue Courts the determination of all disputes between landlord and tenant as to the nature and class of the tenant's tenure.

Were it otherwise, we should have applications made by a tenant in the Revenue Court under s. 10 and decided by that Court, and the same questions re-opened on the part of the landlord in the Civil Court. In the present case, indeed, we find that the plaintiff's lessee put into force against the defendant, in the Revenue Court, the provisions of s. 36 of the Rent Act, but without success, and that the defendant has obtained a decision from the Revenue Court in respect of the nature and class of his tenure.

The appeal is dismissed with costs.

Appeal dismissed.

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MAY 15.

Before Mr. Justice Mahmood and Mr. Justice Duthoit.

RAM PIYARI (DEFENDANT) *v.* MULCHAND (PLAINTIFF).*

Hindu Law—Mitakshara—Hindu widow—Estate inherited by two Hindu widows from deceased husband—Alienation by one widow.

When their Lordships of the Privy Council have seen fit to place a definite construction upon any point of Hindu Law, the High Court is bound by such construction until such time as their Lordships may think fit to vary the same.

According to the Mitakshara Law, the estate which two Hindu widows take by inheritance from their deceased husband is not several, but joint. The senior of two such Hindu widows is not a manager of such estate, and competent, for purposes of legal necessity, to alienate it, without the consent of the other. *Bhugvandeen Doobey* v. *Myna Baee* (1) and *Gajapathi Nilamani* v. *Gajapathi Radhamini* (2) referred to.

THE facts of this case and of S. A. No. 1756 (cross-appeals) are sufficiently stated for the purposes of this report, in the judgment of Duthoit, J.

Mr. *A. H. S. Reid* and Shah *Asad Ali*, for the appellant.

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* Second Appeal No. 1709 of 1883, from a decree of Maulvi Mahmud Bakhsh, Subordinate Judge of Mainpuri, dated the 12th September, 1883, modifying a decree of Shaikh Sakhawat Ali, Munsif of Etah, dated the 9th July, 1883.

(1) 11 Moo. I. A. 487. (2) I. L. R., 1 Mad. 290.

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The *Senior Government Pleader* (Lala *Juala Prasad*) and Munshi *Hanuman Prasad*, for the respondent.

The Court (MAHMOOD and DUTHOIT, JJ.) delivered the following judgment:—

DUTHOIT, J.—This appeal and appeal No. 1756 are cross-appeals from a single decree of the Subordinate Judge of Mainpuri. They may be conveniently disposed of together.

The facts, so far as our present purpose is concerned, may be thus stated:—Badridayal was the owner of a house in *kasbeh* Patiali. He died in March, 1881, leaving two widows, Chandan Kuar (senior) and Ram Piyari (junior), and a daughter by Chandan Kuar. On the death of Badridayal his estate passed to his widows, between whom there has been no partition. On the 29th November, 1882, Chandan Kuar sold the house in *kasbeh* Patiali to Mulchand for Rs. 200. The house is described in the deed of sale as part of the estate left by Badridayal, and now the sole and exclusive property of the vendor; and the reason for the sale is stated to be the need of money to defray the expenses of the marriage of Badridayal's daughter—a pious duty.

Mulchand did not succeed in obtaining delivery of the property so purchased by him, and he therefore, on the 28th May, 1883, sued his vendor and others for possession of it. He did not implead Musammat Ram Piyari, but she was made a defendant at her own request, and, as the cause now stands, she and Mulchand are the only parties to it.

The lower appellate Court has found that the alleged necessity for the sale did not in fact exist; that each of the widows was entitled to a moiety of the house; that the sale by Musammat Chandan Kuar was to that extent effectual, but that, as regards Musammat Ram Piyari's moiety, the sale was void and of no effect. It has therefore decreed the plaintiff's claim as regards one-half of the house, and has dismissed it as regards the other half.

Both Mulchand and Ram Piyari have appealed.

It is contended on behalf of Musammat Piyari (appeal No. 1709) that the estate of Badridayal's widow was a single joint estate, with an inherent right of survivorship to the surviving widow;

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that, consequently, as Ram Piyari was not a party to the alienation, and in no way consented to it, the deed of sale was void, and of no effect, and could not be effectual even had circumstances of necessity existed, which, however, did not exist, and have been found not to have existed; and that the entire claim of the plaintiff should therefore have been dismissed.

On behalf of Mulchand, plaintiff (appeal No. 1756), it is contended that the entire claim of the plaintiff should have been decreed. The argument of the learned pleader for the defendant is based upon two propositions, *viz.*:—

(*a*) That the law enunciated by their Lordships of the Privy Council as to the nature of the estate which two Hindu widows take by inheritance from their deceased husband, is at variance with the law as stated in the text, and that, upon a true view of the Mitakshara Law, that estate is not joint, but several, and that the house in dispute was the sole property of the vendor Musammat Chandan Kuar.

(*b*) That even supposing the nature of the estate which two Hindu widows take by inheritance from their deceased husband to be joint, yet the senior widow is manager of such estate, and is competent for purposes of legal necessity to alienate it, and that such circumstances did in this case exist.

In support of the former of these positions the learned pleader has cited the *Viramitrodaya*, Chapter III, Part i, ss. 2 and 10 (ed., Calcutta, 1879, pp. 132 and 153); Norton's *Leading Cases* (ed., Madras, 1871, p. 509); the *Tagore Law Lectures*, 1879, p. 304; West and Bühler's *Hindu Law*, 3rd ed., pp. 89 and 651; and two decisions of the Courts—one of the Calcutta High Court,—*Judoobunsee Koer* v. *Girblurun Koer* (1)—the other of the Madras High Court,—*H. H. M Jijoyiamba Bayi Saiba* v. *H. H. M. Kamakshi Bayi Saiba* (2).

In support of the latter position he has cited a passage from Mr. Mayne's work on *Hindu Law and Usage* (s. 469, ed. 1878, p. 470), which runs thus:—

"On the same principle of joint tenancy with survivorship, no alienation by one widow can have any validity against the others without their consent, or on established necessity."

(1) 12 W. R. 153. (2) 3 Mad. H. C. Rep. 424.

As regards the former proposition, I observe that, although I cannot deny that it appears to be well founded, yet, I find myself precluded from entertaining it. When their Lordships of the Privy Council have seen fit to place a definite construction upon any point of Hindu Law, this Court is bound by such construction until such time as their Lordships may think fit to vary the same.

As regards the latter proposition, I remark that the only authority which Mr. Mayne has cited in support of the suggestion that, in case of necessity, one of two widows may aliene the property without the consent of the other, is the case of *Bhugwandeen Doobey* v. *Myna Baee* (1) and that, after careful perusal of the judgment of the Lords of the Privy Council in that case, I am unable to find that their Lordships ruled to the effect stated.

In *Bhugwandeen Doobey* v. *Myna Baee* (1) their Lordships stated the law upon the point at issue in the following terms at p. 515 :—

"The estate of two widows who take their husband's property by inheritance is one estate. The right of survivorship is so strong that the survivor takes the whole property to the exclusion of daughters of the deceased widow. They are, therefore, in the strictest sense, co-parceners, and between undivided co-parceners there can be no alienation by one without the consent of the other."

And in *Gajapathi Nilamani* v. *Gajapathi Radhamani* (2) their Lordships remarked :—

"It was held there (*i. e.*, in *Bhugwandeen's Case*) that there was no objection to a transaction which was merely an arrangement for separate possession and enjoyment, leaving the title to each share unaffected, although the widows nevertheless remained co-parceners, with a right of survivorship with them, and there could be no alienation by one without the consent of the other . . . . They think it sufficiently appears in this case (*i. e.*, in the case then before their Lordships) that the state of things contemplated by the *Tanjore Case* exists; that these widows could not go on peaceably in the joint enjoyment of property, and that they have acted as if they had agreed that they

(1) 11 Moo. I. A. 487. (2) I. L. R., 1 Mad., at p. 300.

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are separately to enjoy, in the manner above indicated, their respective shares. Therefore their Lordships, guarding themselves against being supposed to affirm by their order that either widow has power to dispose of one-fourth of the estate allotted to her, or that they have any right to partition in the proper sense of the term, are not disposed to vary the form of the order under which one-fourth of the profits of the estate will go to each widow during their joint lives, their respective rights by survivorship and otherwise remaining unaffected."

It seems to me that these *dicta* of their Lordships of the Privy Council, both of which are expositions of the Mitakshara Law, negative the contentions of the learned pleader for the plaintiff, and support the contentions of the learned counsel for the defendant Ram Piyari.

I would therefore decree the appeal of the defendant Musammat Ram Piyari, and dismiss the appeal and the suit of the plaintiff with all costs in all the Courts.

MAHMOOD, J.—I concur.

Appeal allowed.

1884
August 15.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Brodhurst.

HARJAS (PLAINTIFF) *v.* KANHYA (DEFENDANT) *

Pre-emption—Joint purchase by co-sharers and stranger—Pre-emptor not compelled to pre-empt share purchased by co-sharers.

If a co-sharer associates a stranger with him in the purchase of a share, another co-sharer is entitled to pre-empt the whole of the property sold, but it is not obligatory upon him to impeach the sale, so far as the co-sharer vendee is concerned.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Pandit *Nand Lal*, for the appellant.

Munshi *Sundar Lal* and Babu *Ratan Chand*, for the respondent.

The Court (STRAIGHT, Offg. C. J., and BRODHURST, J.) delivered the following judgment:—

STRAIGHT, Offg. C. J.—On the 22nd June, 1882, Musammat Sujano sold a moiety of her zamíndári share in a village, consist-

* Second Appeal No. 1675 of 1883, from a decree of Rai Bakhtawar Singh, Subordinate Judge of Meerut, dated the 7th September, 1883, affirming a decree of Lala Baij Nath, Munsif of Meerut, dated the 21st July, 1883.