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and should, I think, do so now, despite of his finding on the question of jurisdiction, which was an irrelevant and immaterial finding upon an application under section 311. Several cases were cited to us at the hearing, two of which, *Sukhdeo Rai* v. *Sheo Ghulam* (1) and *Banke Lal* v. *Muhammad Husain Khan* (2) are quite on all fours with the present case. But in those cases the point of "substantial injury," on which so much stress is laid by the Lords of the Privy Council in the cases cited already in this judgment, does not seem to have been brought to the attention of the learned Judges who decided those two cases, and that is a matter which very much impairs the authority of those cases.

For the reasons given above I would reverse the order under appeal setting aside the sale of Rampur, and I would direct that the sale of that village on July 20th, 1894, be confirmed. I would allow appellants their costs in this Court and in the Court below.

BLAIR J.—I agree.

Appeal decreed.

PRIVY COUNCIL.

P.C. 1895 *November 14th December 7th.*

JIWAN SINGH (DEFENDANT-APPELLANT) *v.* MISRI LAL (PLAINTIFF-RESPONDENT).*

[On appeal from the High Court at Allahabad.]

Hindu law—Hindu widow—Sale by a Hindu widow—Whether the reversioner consented that she should sell the whole inheritance, or only her life-estate.

The sale by a Hindu widow of a share in village lands, of which share her husband had been proprietor, having taken place without justifying necessity, could extend no further than to transfer her interest as a widow, for life, unless the consent of the reversionary heir had been given to her selling the whole inheritance. The appellant's case was that this consent had been given. The evidence of its having been given was the fact that this heir having been appointed the widow's mukhtar for the purpose, had executed, on her behalf, a sale-deed containing words to the effect that the vendee had become (as the English translation on the record expressed it) "absolute" owner of the share sold.

This heir, however, received no consideration to induce him to relinquish the reversionary title; and, on the death of the widow, his descendant claimed the inheritance against the vendee's son, then in possession.

Present:—Lords HOBHOUSE, MACNAGHTEN and MORRIS, and SIR R. COUCH.

(1) I. L. R., 4 All., 382. (2) Weekly Notes, 1887, p. 32.

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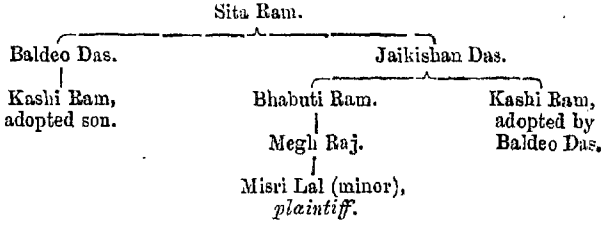
Held, that it had not been made so clear that the conveyance transferred the whole estate of inheritance as to cause it to follow that the reversionary heir, when shown to have consented to the transfer by the widow, must be taken to have consented to a transfer by her of the whole estate of inheritance.

Therefore, the judgment of the appellate court below, that the transfer extended only to the widow's life-estate, must be maintained.

APPEAL from a decree (20th May 1892) of the High Court, reversing a decree (7th December 1890) of the Subordinate Judge of Aligarh.

The respondent, a minor under the guardianship of his step-mother, Musammat Lachmin, was the plaintiff in this suit (7th February 1890) for proprietary possession of the inheritance, with mesne profits of a one-third share of the twenty biswas of mauza Begpur Kanjaula in the Koel tahsíl of the Aligarh district. This had belonged to Kashi Ram, who died before 1863, and who had an ancestor common to him and to the plaintiff, from which ancestor the latter was fourth in descent.

The plaintiff's position is explained by the following genealogical table :—



The question was whether the estate of inheritance in the one-third share had been validly sold in 1863 by the widow of the deceased proprietor, Kashi Ram, or only her own estate for life therein had been transferred. This ultimately depended on whether the consent of the nearest reversionary heir of Kashi Ram, when the sale took place, had been given to the sale of the greater, or only of the less, estate.

The plaint alleged that the one-third share had been purchased by Kashi Ram, on whose death, Gomti, his widow, having inherited for her widow's estate, sold it to Kewal Singh, father of the defendant; a sale deed, dated the 7th September 1863, being executed.

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But the alienation extended to no greater estate than for Gomti's life; and on her death, the inheritance devolved upon the plaintiff.

The defence was that a transfer of the whole estate of inheritance was made in 1863 by the widow, with the consent of the next reversionary heir, Jaikishan Das; who had executed the deed on behalf of the widow, under a mukhtarnamah from her, empowering him for that purpose. He had also registered the deed; which, as he was aware, conveyed the absolute title. Issues raised the questions of Jaikishan's having given his consent to the sale, and to what quantity of estate.

The Subordinate Judge was of opinion that the defence was established. The material part of his judgment was as follows:—

"The evidence of Kishan Lal, agent of the firm of Durga "Shankar and Lalji Mal, shows that Rs. 1,100 out of the considera- "tion of the sale was paid to the vendors, and Rs. 400 having been "paid to them by Jaikishan, the sale was thus made for considera- "tion. The result of the evidence therefore is that Jaikishan Das, "who was then the Musammat's nearest and the only living rever- "sioner, admitted the validity of the sale which was effected through "his agency, and I find on this issue for the defendant.

"The evidence adduced by the defendant has also proved that "Megh Raj, the plaintiff's father, by the course of the conduct he "took after Gomti's death, admitted the validity of her act in "effecting a sale of this property. It appears that Musammat "Gomti had sued Ranchhore Das, his alleged adopted son, for her "late husband's estate, and on the 28th June 1871, that suit was com- "promised, whereby, with the exception of a house and two bonds "for Rs. 13,525, which were made over to Gomti, and Rs. 10,000 "worth of debts, which were allotted to Ranchhore Das, the whole "of Kashi Ram's property, which included the consideration "money of this sale, was conveyed by a charitable gift to Gosain "Parsotam Das. Megh Raj, the plaintiff's father, did not only "not object to this compromise, but, after Gomti's death, sued, and

"obtained a decree upon one of the bonds that had been allotted "to her, as her heir, and his plaint in that suit admits the com- "promise.

"The sale to the defendant being therefore for consideration, "and having been effected through the agency and with the con- "sent of Jaikishan Das, the plaintiff's grandfather, and the "plaintiff's father having by his conduct also admitted it, the "plaintiff could not now say that it was confined merely to the "vendor's life-interest, or that it did not transfer an absolute title "to the vendee. The rule of law laid down by the Privy Council "in *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry* (1) is that "in order to make valid the sale by a Hindu widow of her husband's "property, the consent of such of her husband's kindred, who are "likely to be affected by the transaction, is necessary; and that "there should be such a concurrence of the members of the family "as would suffice to raise a presumption that the transaction was a "fair one and justified by the Hindu law. Such consent may be "proved, not only by signature or attestation of the deed, but by "presence at, or knowledge of, the transaction followed by acqui- "escence, expressed or implied. All these elements are present in "this case; for, at the time the sale was made, the plaintiff had not "been born, and Jaikishan Das, his grandfather, who was the only "person in the family likely to be affected by the transaction, not "only attested it at the time, but also expressedly by his conduct "acknowledged its validity afterwards, at the time the plaintiff to "the present suit had not been born, and his grandfather's consent "being sufficient, it could not now be questioned by him, and not "only the plaintiff's grandfather, but his father also acknowledged "the validity of the sale by the proceedings he took on Gomti's "death."

Accordingly, a decree was made dismissing the suit.

The High Court (TYRRELL and KNOX, J.J.) reversed this. They held, although the plaint, the issues, and the respondent's memorandum of appeal assumed to the contrary, that "there is

(1) 13 Moo. I. A., 209.

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"not a word in the sale-deed which is inconsistent with the "transfer being limited to the life-interest of the widow vendor. "There is no expression such as is usually employed to intimate "that an absolute title was conveyed. The price paid, Rs. 1,500, "the revenue of the share being Rs. 238, would point to the con- "clusion that it was the widow's life-interest only that was con- "veyed. Rs. 1,500 would hardly represent five years' purchase of "the property."

They found no word in the sale deed that was inconsistent with the transfer being limited to the life-interest of the widow, vendor. There was no expression, such as is usually employed, to intimate that an absolute title was conveyed. They continued thus:—"The Subordinate Judge found that the transfer was "made by Gomti without any such necessity, or other cause, as "would justify her in alienating more than her own life-interest "in her husband's estate. He found that she alienated it be- "cause she could not manage it. If, then, the plaintiff is not "bound by the acquiescence of his great-grandfather, and thus "estopped from bringing this action, his claim is maintainable. "The Court below found, on this issue, that the sale was made "with the consent and acquiescence of Jaikishan Das, plain- "tiff's great-grandfather, who is found to have actively nego- "tiated the sale, and procured the execution and registration "of the sale deed. It is found that he was subsequently a party "to a deed whereby the buyer hypothecated this property as "security for some money which he borrowed." The judg- "ment further on, was as follows: "Now the Subordinate Judge "was obviously wrong in stating that Jaikishan Das in 1863 "was the only living reversioner in respect of the estate of Kashi "Ram. It is proved, and it is not questioned, that in 1863 "Jaikishan Das had a son, who was then the father of Megh Raj, "who was born in 1863, and survived till May 1881. This Megh "Raj was the father of the plaintiff-appellant. It is obvious then "that the transfer was not validated by the consent of all the "persons having a right of expectancy in regard to Kashi Ram's

"estate on the 17th of September 1863, and that the single member "of the family, who helped and assisted in the making of the "transfer, is not shown by a tittle of evidence to have consented "to any transfer beyond the life-interest of the widows. But it "was further argued that the plaintiff's father Megh Raj, by his "actions, put the plaintiff out of Court. The Subordinate Judge "found that the transfer, in 1873, by Musammat Gomti, was a "valid one. The evidence relied on to support this position is "derived from five documents which are printed in the first book "of the respondent. One, No. 26 of the record, is a bond in which "Kewal Ram, the vendee of Musammat Gomti, under a deed, "dated 17th September 1873, raised Rs. 400 on the security of a "one-third zemindari property in Begpur Kanjaula, owned and "possessed by him. Now there is nothing in this deed to identify "the one-third of the village hypothecated with the one-third "purchased by the obligor in 1863. On the contrary, it is "described as 'one-third zemindari property owned and possessed "by him,' whereas in another bond he speaks of the one-third "zemindari property as 'purchased' by him. But conceding "that the one-third zemindari property hypothecated in this "bond was the one-third purchased from the widow Musammat "Gomti, it does not appear that it was anything beyond her life-"interest that was pledged. It would be ample security for the "Rs. 400 so raised. The next deed mentioned is No. 24, and is "dated the 17th of September 1863, by which, after the sale, "Kewal Ram borrowed Rs. 400 on the security of one-third share "of Musammat Gomti from Jaikishan Das, great-grandfather of "the appellant. Here again there is nothing to show that Kewal "Ram had acquired, or professed to have acquired, more than the "life-interest of the vendors in the village. The same remarks "apply to the documents numbered 25 and 27 in the record. The "Subordinate Judge of Aligarh based one further argument "against the plaintiff upon document No. 31 of the record, which "is a petition of plaint by Megh Raj, father of the appellant, in "which he refers to a controversy and a compromise between

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"Musammat Gomti and a stranger called Ranchhore Das, about "some portion of Kashi Ram's estate which did not include and "had no reference to the property now in suit. Having consi- "dered all the evidence which has been brought to our notice, "we find no justification for the conclusion arrived at by the Court "below, and we are somewhat surprised at the finding, first, that "in 1863 Jaikishan Das was the only living reversioner of Kashi "Ram, which is a glaring mistake of fact; and secondly, that "Jaikishan Das, and after his death his grandson Megh Raj, acted "in such a way as to be estopped or as to estop the plaintiff from "asserting that Musammat Gomti in 1863 did not convey under "the sale deed of 17th September 1863, anything more than her "life-interest in Kashi Ram's estate.

"The result of the foregoing considerations is that the plain- "tiff's claim must be decreed, and allowing the appeal, we decree "the claim of Misri Lal, minor, with costs of this Court and of "the Court below. The question as to mesne profits will be settled "in the execution of the decree."

Mr. *Herbert Cowell*, for the appellant, argued that the whole estate of inheritance had been validly transferred to the appellant's father, the widow's alienation being supported by a consent, sufficiently given by Jaikishan Das, the latter having been in 1863 the nearest reversionary heir to Kashi Ram. Having given his consent, evidenced by the part he had taken in reference to the transaction, and the sale deed, Jaikishan was estopped from disputing the widow's title to transfer the whole estate; and his grandson Megh Raj, and his great-grandson, the plaintiff, were, as they made title through him, bound by the same estoppel. Evidence, however, had been given showing that Megh Raj had himself acted as admitting the validity of the sale of the whole estate of inheritance. Disputes having arisen between Gomti and her adopted son, Ranchhore Das, it was agreed by way of compromise that each should take specific portions of Kashi Ram's estate, and that the residue should be given to the family *guru*, Parsotam Lalji. A deed of gift was executed by Ranchhore in pursuance of this arrangement, and to

this Megh Raj assented; he had filed a plaint in the Aligarh Court, in 1880, reciting that deed, and making title, as Kashi Ram's reversionary heir, only to that portion of Kashi Ram's estate which had come to Gomti under this compromise. Jaikishan's consent was shown by his execution of the deed of 1863, as mukhtar for the widow, his registration of it, and his receipt, on her behalf, of the purchase money. He must be taken to have consented to the terms of the deed transferring the absolute estate. [LORD HOBHOUSE. The question is not so much what is the legal construction of the sale, deed, as it is this question—of what estate did Jaikishan consent to the transfer?] He consented to the express terms of the deed, which were that the purchaser should become absolute owner. The correctness of the judgment of the High Court, as to there being no expression to that effect, is disputed. Jaikishan, subsequently, was party to a mortgage from the purchaser of the estate that had been transferred; and there is evidence of conduct, both on his part and on that of Megh Raj, showing that they regarded the transfer as having been of the estate of inheritance, and not merely a transfer of the widow's own interest.

The respondent did not appear. Afterwards, on the 7th December, their Lordships' judgment was delivered by SIR R. COUCH:—

The property in question in this appeal formerly belonged to one Sita Ram, who died leaving two sons, Baldeo Das and Jaikishan Das. Baldeo Das the elder died leaving a widow, Musammat Nabbo, and an adopted son, Kashi Ram. The latter died without children, leaving a widow, Gomti, who thereupon took by inheritance the estate of a widow under the Hindu law. Nabbo, who took nothing, died in 1878, and Gomti died on the 8th of March 1880. Jaikishan Das had two sons, Bhabuti Ram and Kashi Ram, who was adopted by Baldeo Das. Bhabuti Ram, who survived his father, died in the lifetime of Gomti, leaving a son, Megh Raj, who survived Gomti and died on the 22nd of May 1881, leaving a son the respondent, Misri Lal. Consequently on the death of Gomti Megh Raj became entitled as heir of Kashi Ram to possession of

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the property which consisted of one-third of a mauza called Begpur Kanjaula, pargana Koel.

On the 7th of February 1890 Misri Lal, then a minor, by his guardian brought a suit against the appellant Jiwan Singh, who was in possession of the property, to recover possession of it and mesne profits.

The defence in the written statement was that after the death of Kashi Ram Jaikishan Das sold the property to Kewal Ram for Rs. 1,500 and a deed of sale in respect of it was executed by Jaikishan Das on behalf of Nabbo and Gomti under his supervision and registered by his special power of attorney, dated 17th September 1863; that Gomti adopted one Ranchhore Das as her son with the consent of Jaikishan Das; that the adopted son became the possessor of the property and money left by Kashi Ram; that a dispute arose between Gomti and Ranchhore Das which was compromised by part of the property left by Kashi Ram being taken by Gomti, part by Ranchhore Das and the remainder being presented to Sri Maharaj Parsotam Dasji; and that after the death of Gomti Megh Raj brought a suit on a bond which was given to Gomti under the compromise and did not claim the property in the possession of Ranchhore Das and Gosain Parsotam Das. There was no proof of the adoption and no evidence of any legal necessity for the sale. The defence must rest upon the effect of the deed of sale and the conduct of Jaikishan with regard to it. The deed admitted in evidence for the plaintiff purported to be made by Nabbo and Gomti and to sell one-third share of the village Begpur Kanjaula, with all the rights and interests pertaining thereto for Rs. 1,500; it stated that the vendors "put the vendee in possession of the "share sold instead of us like ourselves"; and that "the vendee "has become an absolute owner of the share sold from the date of "sale." It was signed as follows:—"Musammat Gomti, lambar-"dár, wife and Musammat Nabbo, pattidár, mother of Kashi Ram, "heirs of Kashi Ram, by the pen of Jaikishan Das, *sarbarakar* "and mukhtar." It is dated the 17th of September 1863, and there was a power of attorney of the same date from Nabbo and Gomti

to Jaikishan authorising him to execute the deed and get it registered, which he did. Gomti only had an estate in the property, Nabbo had none. If the effect of the deed was to pass only the estate which Gomti had as widow, Misri Lal would be entitled to recover possession. Upon the evidence in the suit the question appears to their Lordships to be:—Was it so clear that more than Gomti's beneficial estate in the property—the estate which she might have sold if there had been a legal necessity for it—passed by the deed, that Jaikishan Das must be taken to have consented to its passing? The Subordinate Judge who dismissed the suit does not appear to have considered this question. He seems to have assumed that this estate would pass. When the case came before the High Court on appeal, the two learned Judges were of opinion that only the estate of the widow passed by the deed. In the judgment they say,—"There is not a word in the "sale deed which is inconsistent with the transfer being limited to "the life-interest of the widow-vendors. There is no expression "such as is usually employed, to intimate that an absolute title was "conveyed. * * * * * The single member "of the family, who helped and assisted in the making of the "transfer, is not shown by a tittle of evidence to have consented to "any transfer beyond the life-interest of the widows." This view of the transaction is supported by the fact that there is no evidence that Jaikishan Das received any part of the Rs. 1,500 or was in any way benefited by, or had any inducement to concur in, a sale which would destroy his right as the apparent reversionary heir. Their Lordships do not think it is necessary for them to give any opinion upon the construction of the deed. The opinion of the High Court which has been quoted is conclusive that it cannot be so clear that the whole estate passed by the deed that Jaikishan Das must be taken to have consented to its passing. The answer to the other part of the defence is that Jaikishan Das was no party to the compromise in June 1871, and that Megh Raj's claiming on the death of Gomti the share of the property which she took under it is not inconsistent with the claim in this

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suit, but the contrary. It was necessary for the appellant to displace the title by inheritance of Misri Lal by satisfactory proof that the whole estate and not only the estate of Gomti as widow was sold to Kewal Ram. He has failed to do this, and their Lordships will humbly advise Her Majesty to affirm the decree of the High Court in favour of the respondent and dismiss the appeal.

Appeal dismissed.

Solicitors for the appellant:
Messrs. T. L. Wilson and Co.

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November 27.

APPELLATE CIVIL.

Before Mr. Justice Knox and Mr. Justice Blair.

R. WALL AND ANOTHER (APPLICANTS) *v.* J. E. HOWARD AND ANOTHER (OPPOSITE PARTIES).

Act No. VI of 1882 (*Indian Companies Act*) *section* 214—*Company—Civil Procedure Code, section* 368—*Parties—Substitution of representatives of deceased respondent.*

R. W. and others, contributories to a Company which had gone into liquidation, filed an application under section 214 of Act No. VI of 1882, directed against certain officers of the Company. That application, after certain issues had been framed and partially tried, was dismissed, and an order was also made giving costs against the applicants. The applicants appealed to the High Court against the order of dismissal. Pending this appeal one of the opposite parties died, and it was sought to put his legal representatives upon the record of the appeal as respondents. *Held*, that in view of explanation II to section 214 of the Indian Companies Act, 1882, the legal representatives of the said deceased respondent could not be brought upon the record, either in respect of the relief prayed for in the original application or in respect of the order making costs payable by the applicants, as that order could not be separated from the dismissal of the application.

ON the 14th of March 1894 an application was presented by the present applicants and others to the Court of the District Judge of Allahabad, purporting to be made under sections 214 and 162 of the Indian Companies Act, 1882, and praying that an inquiry might be made into certain alleged misfeasance on the part of some of the officers of the Agra Savings Bank, which was then in process of liquidation under the supervision of the Court. That application was received by the Court and certain issues were framed. The