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of judgments have no application to suits and proceedings under the Bent Act. The Assistant Collector was therefore wrong in reviewing his judgment and in modifying the decree which he made on the 29th of May 1893. The plaintiffs ought to have sought their remedy by appeal. We set aside the decrees below and restore the decree of the Assistant Collector, dated the 29th of May 1893. The appellant will get the costs incurred by him here and in the Courts below subsequent to the 29th of May 1893.

Appeal decreed.

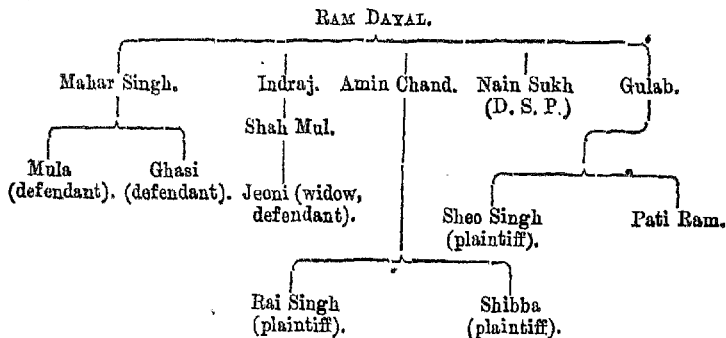
Before Mr. Justice Banerji and Mr. Justice Aikman.

SHEO SINGH AND OTHERS (PLAINTIFFS) v. JEONI AND OTHERS
(DEFENDANTS).*

Act No. XV of 1877 (Indian Limitation Act), Sch. ii, Art. 125—Limitation—Alienation—Decree in a collusive suit against a Hindu widow.

Held that the action of a Hindu widow in causing a collusive suit to be brought against her and confessing judgment therein whereby the plaintiff in that suit got a decree for possession of property of which the widow was in possession holding a Hindu widow's estate, amounted to an "alienation" of such property within the meaning of article 125 of the second schedule of Act No. XV of 1877.

THIS was a suit for a declaration that an alienation made by a Hindu widow of property which had been of her husband in his lifetime would not affect the interests of the plaintiffs as reversioners. The relationship of the parties *inter se* is shown by the subjoined genealogical table:—



* Second Appeal No. 506 of 1895 from a decree of H. Bateman, Esq., District Judge of Saharanpur, dated the 1st February, 1895, confirming a decree of Manvi Sháh Ahmad-ullah, Subordinate Judge of Saharanpur, dated the 16th April 1894.

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Shah Mul died in 1872, and his widow Jeoni took possession of his estate. Jeoni married Ghasi according to the *karao* form. Mahar Singh instituted a suit in respect of the entire estate of Shah Mul against Jeoni. That suit was compromised on the 12th of March 1883, and on the basis of that compromise a decree was passed in favour of Mahar Singh. On the death of Mahar Singh the present suit was brought by some of the other members of the family of Ram Dayal against Mula, Ghasi and Musammat Jeoni on the ground that the suit which ended in the compromise of the 12th of March 1883 was a collusive suit brought with the intention of injuring the plaintiffs. The Court of first instance (Subordinate Judge of Saharanpur) dismissed the suit as barred by limitation, holding that article 120 of the second schedule of the Indian Limitation Act applied. The plaintiffs appealed. The lower appellate Court (District Judge of Saharanpur) dismissed the appeal, with reference to the case of *Chhaganram Astikram v. Bai Motigavri* (1).

The plaintiffs thereupon appealed to the High Court.

Pandit *Moti Lal*, for the appellants.

Pandit *Sundar Lal*, for the respondents.

BANERJI and AJKMAN, JJ.—The only question in this appeal is whether article 125 of the second schedule of the Indian Limitation Act governs the case or article 120. The lower Courts have applied the latter article and have held the claim to be barred by limitation. The plaintiff's case was this:—Musammat Jeoni, the widow of one Shah Mul succeeded to the property of Shah Mul on his death and acquired therein a Hindu widow's estate. According to the custom of the caste to which she belonged, she married her husband's first cousin, the defendant Ghasi, who is a son of Mahar Singh. The allegation of the plaintiffs is that in order to transfer the property to her second husband, the device to which she resorted was that she got a suit instituted against herself by Mahar Singh, the father of Ghasi, claiming the property of Shah Mul on the ground that, by reason of her second marriage, she had

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forfeited her right to the estate of Shah Mul, and that she confessed judgment and allowed a decree to be passed in favour of Mahar Singh, which had the effect of transferring the property from her to Mahar Singh. The plaintiffs say that this was an alienation by Jeoni; that it was an alienation which she was incompetent to make, and the plaintiffs bring this suit for a declaration that the alienation is not binding on them and will not affect their rights as reversioners after the death of Jeoni.

The question we have to consider is whether, on the case set up by the plaintiffs, there has been an alienation by the widow within the meaning of article 125 of the second schedule of the Limitation Act. If an alienation has taken place, that article, and not article 120, will apply. It is true that the widow has not by deed transferred the property to Mahar Singh, but it is not necessary that an alienation should be made by her by written document. It is sufficient that she has done an act which has necessarily resulted in the transfer of the estate to the transferee. In this case, if the plaintiff's allegations be true, it was the act of the widow herself, namely, her collusion with Mahar Singh, which initiated the suit brought by the latter. The confession of judgment was the next act done by her, the necessary result of which was the decree made by the Court. The Court had no option but to make a decree in accordance with the confession of judgment filed by her. We have no hesitation in holding that these acts of Jeoni, if established, amounted to an alienation of the property, and therefore if the plaintiffs succeed in establishing the case set up by them their suit would be governed by article 125. The only authority cited for the contrary view is a remark made by Mr. Justice Birdwood in the case of *Chhaganram Astikram v. Bai Motigauri* (1). In that case there was no dispute on the question whether article 125 or 120 applied, and therefore the observations of the learned Judge were no more than *obiter dicta*. Whether Jeoni by her re-marriage lost her rights in her husband's estate is not a question which we are called upon to decide at this stage.

(1) I. L. R., 14 Bom. 512.

If the plaintiffs succeed in showing that she did not, that would be a circumstance to be taken into consideration in determining whether the suit brought by Mahar Singh against Jeoni was a collusive suit or not. The result is that we must set aside the decrees below and remand the case under section 562 of Code of Civil Procedure to the Court of first instance, which we hereby do, with directions to readmit it under its original number in the register and to try it on the merits. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

Before Mr. Justice Banerji and Mr. Justice Aikman.

DIP NARAIN SINGH (DEFENDANT) v. HIRA SINGH AND ANOTHER
(PLAINTIFFS).*

Mortgage—Prior and subsequent mortgages—Redemption—Price to be paid by a subsequent mortgagee redeeming after the mortgaged property has been brought to sale and purchased by the prior mortgagee.

A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the prior mortgagee may have purchased the mortgaged property at an auction sale held in execution of a decree obtained by him without joining the subsequent mortgagee as a party; but such subsequent mortgagee must, if he wishes to redeem, pay to the prior mortgagee the full amount due on his mortgage. *Ganga Pershad Sahu v. The Land Mortgage Bank* (1) and *Dadoba Arjunji v. Damodar Raghunath* (2) referred to. *Baldeo Bharthi v. Hushiar Singh* (3) distinguished.

THE facts of this case are fully stated in the judgment of the Court.

Mr. T. Conlan, Pandit *Sundar Lal* and *Munshi Ram Prasad*, for the appellant.

Munshi Jwala Prasad and *Pandit Madan Mohan Malaviya*, for the respondents.

BANERJI and AIKMAN, JJ.—The facts which gave rise to the suit out of which this appeal has arisen were these:—

On the 6th of January 1883 *Shib Chandra Singh*, *Batak* and *Mahadeo* executed a mortgage of a four annas share of zamindari

* First Appeal No. 58 of 1895 from a decree of Pandit Rai Indar Narain, Subordinate Judge of Mirzapur, dated the 21st March 1895.

(1) I. L. R., 21 Calc., 366.

(2) I. L. R., 16 Bom., 436.

(3) Weekly Notes, 1895, p. 45.

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