Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.

1896
December 9.

JANKI (DEFENDANT) *v.* BHAIRON AND ANOTHER (PLAINTIFFS).*

Hindu law—Interpretation of document—Will—Intention of testator—Devise to wife—Widow's estate—Stridhan.

One Debi Din, a separated sonless Hindu, made a will in favour of his wife of which the material clause was as follows:—"After my death the said Musammat * * * is to be the person in possession and ownership in place of me, the executant, of all the bequeathed property aforesaid by right of this will." Debi Din died leaving a widow and a daughter who was married to one Janki. The widow obtained possession of the property dealt with by the will on the death of Debi Din. The daughter died in the life-time of the widow, who thereupon made a will leaving the property which had come to her from Debi Din to Janki. On the death of the widow certain persons alleging themselves to be the nearest reversioners to Debi Din claimed the property.

Held that, on the wording of the will and having regard to the surrounding circumstances of the case, the testator having no near male heirs, and the plaintiffs, if reversioners at all, being remote reversioners, the intention of the testator, Debi Din, was to leave the property in question to his widow as her *stridhan*, to descend to her heirs. *Koonjbehari Dhur* v. *Premchand Dutt* (1) dissented from, *Moulvie Mahomed Shumsool Hooda* v. *Shewuk Ram* (2) and *Hirabai* v. *Lakshmibai* (3) distinguished

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

Pandit *Moti Lal*, for the appellant.

Pandit *Baldeo Ram Dave*, for the respondent.

EDGE, C.J. and BURKITT, J.—Debi Din made a will by which he bequeathed all his property to Musammat Lachminia. She was his wife. By this will he said:—"After my death the said Musammat is to be the person in possession and ownership in place of me, the executant, of all the bequeathed property aforesaid by right of this will." We need not refer to the rest of the will. Debi Din died. He was sonless, but he left his widow and a daughter surviving him. The daughter was married to Janki, the defendant in this case. She had no sons by Janki; but she had daughters, who are still living. The

* First Appeal No. 78 of 1896, from an order of J. Denman, Esq., District Judge of Allahabad, dated 3rd July 1896.

(1) I. L. R., 5 Calc., 684. (2) L. R., 2 I. A., 7.
(3) I. L. R., 11 Bom., 573.

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daughter died in her mother's life-time, and thereupon Lachminia made a will in favor of Janki. After the death of Lachminia, the plaintiffs, claiming to be reversioners of Debi Din, brought the present suit against Janki claiming to have him ejected and to get possession of the property. There is no doubt that Debi Din was a separated Hindu. There is equally no doubt that he had no male relation of near kinship. These plaintiffs, if they were related to him at all, and were reversioners, were distant. The first Court held that the property passed under the will to Lachminia as her *stridhan* and that on her death her heirs became entitled to it, and consequently dismissed the plaintiffs' suit, the plaintiffs not being heirs to Lachminia. The Court of first appeal construed the will as a gift to Lachminia of nothing more than she would have taken if her husband Debi Din had died without a will, and, setting aside the order of the first Court, made an order of remand under section 562 of the Code of Civil Procedure. From that order of remand this appeal has been brought.

It is contended on behalf of the respondents that, the will not containing any words to show that Debi Din intended that Lachminia should take an estate of inheritance which she could alienate of her own free will, the will gave her nothing beyond what she would have taken had there been no will. In support of that view Mr. *Baldeo Ram* has cited to us several cases, amongst them the case of *Kunjbehari Dhur* v. *Premchand Dutt* (1). It appears to us that if the learned Judges in that case intended their view of the law to be of general application, it would be impossible for a husband ever to make a gift of immovable property to his wife which would become her *stridhan*, unless he gave her the power of alienation, which we do not conceive to be a correct view of the Hindu law on this subject.

Another case to which Mr. *Baldeo Ram* referred to us was *Moulvie Mohamed Shumsool Hooda* v. *Shewuk Ram* (2). In that case their Lordships of the Privy Council had not to decide the point before us, and indeed did not decide it. Another case

(1) I. L. R., 5 Calc., 684. (2) L. R., 2 I. A., 7.

cited to us was *Hira Bai* v. *Lakshmi Bai* (1). It is obvious from that case that the point before the Judges was really whether the gift was one of an estate of inheritance which could be alienated, or merely the gift of a Hindu widow's life estate. In the case before us it is obvious that Debi Din did not intend to confer upon his wife a power of alienation. Neither would he in law have intended to confer upon her a power of alienation if he had expressly given this property to her as her *stridhan* without adding a power to alienate. The result would have been that she could not have alienated. That may be gathered from page 762 of Mayne's Hindu Law and Usage (5th edition).

The question which we have to decide is—what was his intention? Did he intend that this property should be her *stridhan*, with the result as a matter of law that upon her death it would go to her heirs, or did he intend merely to give her that interest in the property which she would have had if he had died without making a will at all? No doubt cases do arise in which, owing to the disputes as to the property or as to the legal position of an alleged adopted son or of a widow whose husband claimed to be separate, wills are made, which, if the husband was separate or the alleged adopted son was really an adopted son, would be unnecessary. In every case, first the language of the will, and then the surrounding circumstances have to be looked at, in case the language is doubtful. Now in this case the language which was used in the will was consistent with a gift of *stridhan* or with the mere formality of making a gift of a life interest which would have devolved upon Lachminia, whether the will was made or not. There are no circumstances shown to have been existing at or before the date of the will which suggest that, if Debi Din had died without a will, Musammat Lachminia's right to enjoy the property as a Hindu widow for her life would have been challenged by anyone. Consequently there was no reason for Debi Din making a will to be used in a dispute which no one suggests was likely to arise. It was reasonable under the circumstances, even from a

(1) I. L. R., 11 Bom., 573.

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Hindu point of view, there being no near kinsmen, and but the plaintiffs, who were doubtful reversioners, that Debi Din should make such a will, the effect of which would be to secure his property to his own descendants, though in the female line, and to secure it, as he probably hoped, without any objections being raised by questionable reversioners. The wisdom of his making a will is apparent from the present suit; for here are people coming forward to claim as reversioners as to whose position as reversioners there may be some doubt. In our opinion Debi Din intended to confer upon his wife after his death an estate larger than, and possessing incidents different from those appertaining to, the estate which Lachminia would have taken as his widow if Debi Din had died intestate. We hold that he did confer upon her an estate which was more extensive than that which she would have had simply as a Hindu widow, and consequently that the estate conferred upon her became her *stridhan*, and that the plaintiffs, whether they are Debi Din's reversioners or not, have no title. We allow the appeal, and set aside the decree below and the order of remand, and restore and affirm the decree of the first Court with costs.

Appeal decreed.

1896

December 12.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.

BHAGWATI PRASAD (DECREE-HOLDER) *v.* JAMNA PRASAD (RESPONDENT).*

Civil Procedure Code, section 583—*Execution of decree—Restitution of an advantage obtained by virtue of a decree subsequently reversed on appeal.*

The holder of a decree of the High Court for costs assigned his rights under that decree. The assignee caused his name to be brought on to the record as transferee in place of the decree-holder, and he, and after him his legal representative, executed the decree against the judgment-debtor. The decree was appealed to the Privy Council, but the assignee was not a party to the record in that Court. The Privy Council reversed the decree. Thereupon the successful plaintiff applied under section 583 of the Code of Civil Procedure to obtain restitution from the representative of the assignee of the amount realized in execu-

* First Appeal No. 236 of 1895, from an order of Pandit Rai Indar Narain, Subordinate Judge of Gorakhpur, dated the 16th November 1895.