1887

CHANDRA PRODHAN v. GOPI MOHUN SHAHA.

but we are inclined to take the view expressed in *Kalyanbhai Dipchand* v. *Ghanshamlal Jadunathji* (1), and to hold that this application is a continuation of the previous application of the 19th May, 1885. Execution of the decree was suspended on the action of the judgment-debtor, and, although the law does not permit us to deduct the period during which it was so suspended in calculating the period allowed by the law of limitation, we think that we may properly take the application of the 3rd February, 1886, as an application to the Court of execution to withdraw the order passed on the 20th June, 1885, which suspended the execution in consequence of the objection of the judgment-debtor.

The appeal is therefore dismissed with costs (2).

K. M. C. *Appeal dismissed.*

PRIVY COUNCIL.

P. C.*
1887
February 10.

SHEOLOCHUN SINGH (DEFENDANT) *v.* SAHEB SINGH (PLAINTIFF.)

[On appeal from the High Court at Calcutta.]

Hindu Law—Inheritance—Inheritance to property purchased by Hindu widow out of the income of her estate.

When a widow, not spending the income of her widow's estate in the property which belonged to her husband when living, has invested such savings in property held by her without making any distinction between the original estate and the after-purchases, the *primâ facie* presumption is that it has been her intention to keep the estate one and entire, and that the after-purchases are an increment to the original estate.

The authority upon this matter is found in *Isridut Koer* v. *Hansbutti Koerain* (3), where a widow having made no distinction between the original estate and the after-purchases, the latter were held inalienable by her for any purpose not justifying alienation of the former.

* *Present:* LORD WATSON, LORD FITZGERALD, LORD HOBHOUSE, SIR B. PEACOCK, and SIR R. COUCH.

(1) I. L. R., 5 Bom., 29.

(2) This case was followed in *Chandra Kant Bannerjee* v. *Surji Kanto Rai Chowdhury*, under the Tenancy Act; appeal from Order 419 of 1886 decided by PRINSEP and BEVERLEY, JJ., on the 4th February, 1887.

(3) I. L. R., 10 Calc., 324; L. R., 10 Ind. Ap., 150.

1887

SHEOLOCHUN SINGH v. SAHEB SINGH.

APPEAL from a decree (14th September, 1883) of the High Court, in part affirming, and in part reversing, a decree (31st December, 1881) of the Subordinate Judge of Shahabad.

The question raised by this appeal was whether a gift by a Hindu widow, although ineffectual to confer a title, after her death, in properties which had belonged to her husband, might effectually transfer property which, after his death, she and a co-widow, left by the same husband, had purchased out of the savings of the income of the joint estate held by them as widows.

The property, whence the income was derived, belonged to the estate of Sheodyal Singh, who died without issue in 1826, leaving two widows, Pranpiari Koer and Rekaba Koer. The widows remained in joint possession of his estate till the death of Pranpiari Koer in 1871, Rekaba continuing in sole possession, for her widow's estate, till the 19th October, 1875, when by deed of gift she gave to the defendant-appellant the entire movable and immovable properties which had belonged to her husband, together with those purchased by her, and her co-widow Pranpiari, out of their savings.

The purport of the deed of gift, or *atanama*, executed by Rekaba on the 19th October, 1875, was that she and Pranpiari, desiring to carry out their husband's wishes as to the establishment of "more *thakurbaris*" and "*shivalas*," with other religious objects, and in accordance with the advice of members of their husband's family, had placed Sheolochun Singh as sole manager of the estates; also that Rekaba, the surviving widow, being now sixty years of age, desired to make, and by that deed did make, "for the preservation of the *riasut*, and the name of her husband, for the *seba puja* of Sri Thakur, and for her husband's *sradh*," a gift of the entire immovable and movable properties, household furniture and other valuables left by Sheodyal Singh, together with what had been acquired by the widows, to Sheolochun Singh from generation to generation.

Saheb Singh, son of Jit Singh, claiming as *gotraja sapinda* of the late Sheodyal Singh, and one of his three nearest kinsmen, objected to mutation of names in the Collectorate records in regard to the interests in land which had belonged to Sheodyal;

and on the death of Rekaba on 2nd February, 1880, Saheb Singh brought the present suit against Sheolochun Singh, claiming a declaration that the deed of gift of 19th October, 1875, was void, as having been executed by a widow without authority, also claiming a one-third share of the property, with partition against the two other near relations of the late Sheodyal Singh, both of whom he joined as defendants; and claiming mesne profits.

Among the defences limitation was alleged, also the competence of the gift, it having been virtually for the spiritual benefit of a deceased husband. But the defence material to this report was the allegation that the widows had during their lives acquired certain of the mouzahs, specified in the schedule annexed to the plaint, with their own money, and that Rekaba was competent to alienate the property so acquired.

The opinion of the Subordinate Judge on the question of limitation, and his findings of fact, were in favor of the plaintiff; but he gave no decision on the last point, as he was of opinion that, whether the mouzahs in question were purchased out of income or out of the widows' savings, Rekaba was entitled to make the transfer, which she had made, of all but the land which had been in the possession of Sheodyal; also, as to the movable property, he was under the impression that Rekaba had, in her lifetime, complete power to dispose of it. Accordingly he made a decree in favor of the plaintiff for so much of his claim as comprised the one-third of the land that had belonged to Sheodyal, dismissing the claim as to all that had been purchased by the widows and as to the movable property.

On the defendant's appeal from this decree so much of it as related to the properties purchased after the death of Sheodyal to the movables, and to mesne profits, was objected to by the plaintiff under s. 561 of the Code of Civil Procedure.

The High Court (MITTER and WILKINSON, JJ.) dismissed the appeal and allowed the objections. They concurred with the lower Court that the suit was not barred by limitation, and as to certain findings of fact. But finding that all the properties purchased after Sheodyal's death had been acquired out of the income of property which had been his, they held that, if the

1887

SHEOLOCHUN SINGH v. SAHEB SINGH.

after-purchased property had been treated as an increment to the estate of the deceased husband by his widows, the latter had no power to alienate it except on the ground of necessity. On this point they referred to *Isridut Koer* v. *Hansbutti Koerain* (1), and found that the after-purchases had been so dealt with by the widows. They allowed mesne profits to the plaintiff, and also, referring to the judgment in *Bhugwandeen Doobey* v. *Maina Baee* (2), corrected the Subordinate Judge's impression as to the power of the widow over movables. The plaintiff accordingly obtained a decree for a one-third share of the land, including the after-purchases, and of the movables, also for mesne profits.

The judgment of the High Court was as follows:—

"As regards the objections taken by the plaintiff-respondent to the decree of the lower Court, it seems to us that there is no reason why he should not get a decree for mesne profits from the date of the death of Rekaba Koer to the date of delivery of possession. We accordingly direct that in that respect the decree of the lower Court be modified, and it be declared that the plaintiff is entitled to recover the said mesne profits, and that the amount thereof will be determined in execution of the decree.

"As regards the movable property the lower Court has disallowed the claim on the ground that, according to Mitakshara law, a Hindu widow is entitled to alienate it; but in this respect he has fallen into an error.

"It was decided by the Judicial Committee in the case of *Bhugwandeen Doobey* v. *Maina Baee* (2), that a Hindu widow under the Mitakshara law has no power to alienate the estate inherited from her husband to the prejudice of his heirs, whether such estate consists of movable or immovable property. Therefore the decision of the lower Court on this point also will be set aside. The learned pleader, who appeared for the appellant, admits that there is no question as to the value of the movable property claimed in the plaint. We accordingly declare that the plaintiff will be entitled to recover Rs. 1,128-5-4 pie

(1) I. L. R., 10 Calc., 324; L. R., 10 Ind. Ap., 150.

(2) 11 Moore's I. A., 487.

as the value of the one-third share of the movable property of Sheodyal Singh.

"Then there remains the question whether Mussamut Rekaba Koer under the Hindu law was competent to alienate the properties purchased after the death of Sheodyal. With reference to this matter the parties joined issue upon a question of fact, *viz.*, whether or not these properties were acquired after the death of Sheodyal out of the proceeds of his property. But it was admitted by the learned pleader for the appellant that upon the evidence there is no doubt that the properties in question were acquired out of the proceeds of Sheodyal's estate. That being so, the question between the parties is reduced to one of law, *viz.*, whether these properties, which were acquired by the widows of Sheodyal out of the proceeds of his immovable property, could be alienated by the said widows without any such necessity as would justify the alienation by a Hindu widow under the Hindu law.

"A very recent decision of the Judicial Committee upon this point has lately come out to this country. It was passed on the appeal of *Isridut Koer* v. *Hansbutti Koerain* (1), and the judgment was delivered on the 11th July last. The effect of this decision is shortly this: If it be proved that a particular property acquired out of the income of the husband's estate has been added as an accretion to that estate, a Hindu widow has no power to alienate it unless there be any necessity which justifies the alienation; but, if the acquisition be of such a character that it may be reasonably held to be a portion of the income of the husband's estate still held in suspense in the hands of the widow, she has full disposing power over it as she has over any other income of that estate. This being the principle settled by the latest decision of the Judicial Committee of the Privy Council, we see no difficulty in determining the question raised before us. Upon the evidence before us there is not the slightest doubt that the properties in question were dealt with by the widows as accretions to their husband's estate. They were treated in the deed of gift precisely in the same way as the admitted properties of Sheodyal were treated. Acting, therefore, upon the

(1) I. L. R., 10 Calc., 324; L. R., 10 Ind. Ap., 150.

1887

SHEOLOCHUN SINGH v. SAHEB SINGH.

principle laid down by the Judicial Committee of the Privy Council in the case cited above, we are of opinion that the plaintiff's claim in respect of these properties also should be allowed."

On this appeal,—

Mr. *J. H. A. Branson*, for the appellant, argued that, on the principles declared in *Isridut Koer* v. *Hansbutti Koerain* (1), the widow's gift of the property acquired by herself, and her co-widow, out of their savings, should have been supported. The mouzahs which the widows purchased after the death of their husband were recorded separately from the rest of the property forming the estate which had been Sheodyal's. The separate ownership of these mouzahs having been at one time in the widows, they had not extinguished it by devoting the property to a purpose which was their own.

Mr. *T. H. Cowie, Q.C.*, and Mr. *R. V. Doyne*, for the respondent, were not called upon.

Their Lordships' judgment, after Mr. *Branson* had been heard, was given by

SIR R. COUCH.—The suit, which is the subject of this appeal, was brought by the respondent, who claimed as one of the heirs of Sheodyal, who died in 1827, to recover from the appellant a third share of the property which had been left by Sheodyal at his death, and to which his two widows Pranpiari and Rekaba became entitled, and also a third of the properties which had been purchased by the widows with, as he alleged, the income of the property which they inherited. Pranpiari and Rekaba, in the first place, held the properties jointly, and Pranpiari died in 1870, leaving Rekaba surviving her and in possession of the whole of the estate. It appears that on the 19th October, 1875, Rekaba executed a deed of *atanama*, by which she professed to give to the appellant, who was the defendant in the suit, the whole of the property, not only that which came to the widows from Sheodyal, but the properties which had been purchased by them; and it was also alleged that the defendant had been adopted by the widows with the permission of Sheodyal as his son.

Various issues were settled. The defence set up various matters, including the law of limitation, the adoption of the

(1) I. L. R., 10 Calc., 324; L. R., 10 Ind. Ap., 150.

defendant, and the deed of *atanama.* All the issues were found in favor of the plaintiff, the respondent, except that with respect to the question whether the plaintiff was entitled to recover a share of the properties which had been purchased by the widows. The lower Court found that the widows were entitled to alienate that property, and consequently that he was not entitled to it. The High Court, when the case came before it upon appeal, upon this question said that upon the evidence before them there was not the slightest doubt that the properties in question, namely, the purchased properties, were dealt with by the widows as accretions to their husband's estate, and that they were treated in the deed of gift precisely in the same way as the admitted properties of Sheodyal were treated.

Their Lordships have been referred by Mr. Branson to the different parts of the evidence which he considered bore upon the question whether the properties were purchased by the widows out of the income of the descended property, and whether their intention was to keep those properties distinct. Certainly the evidence is not such as would show that the High Court in coming to the conclusion they did were not quite justified by it.

The authority upon this matter is the case of *Isridut Koer* v. *Hansbutti Koerain* (1). At the conclusion of the judgment their Lordships state the matter which has to be looked at in deciding whether the property acquired or purchased by the widows is to descend with the husband's estate or is to be treated as a separate estate. They say: "Neither with respect to this object," namely, to change the succession, "nor apparently in any other way have the widows made any distinction between the original estate and the after-purchases." Where a widow comes into possession of the property of the husband, and receives the income, and does not spend it, but invests it in the purchase of other property, their Lordships think that, *primâ facie,* it is the intention of the widow to keep the estate of the husband as an entire estate, and that the property purchased would, *primâ facie,* be intended to

(1) I. L. R., 10 Calc., 324; L. R., 10 Ind. Ap., 150.

1887

SHEOLOCHUN SINGH v. SAHEB SINGH.

be accretions to that estate. There may be, no doubt, circumstances which would show that the widow had no such intention, that she intended to appropriate the savings in another way. There are circumstances here which would indicate that it was the intention of the widows to keep the estate entire, and that they did not intend that the husband's estate and the subsequently-purchased properties should go in a different line of succession, because their act, in what they did with regard to the defendant, was to make a gift to him of the whole of the property, and professing to do it so as to, what seems to be called, carry out the intentions of Sheodyal and found a *thakurbari,* with which the estate would be connected. The transaction appears to indicate that their intention was not to create separate estates, one to go in one way, and another in another, but to keep the whole as one entire property; and applying what is said in the case of *Isridut Koer* v. *Hansbutti Koerain* (1) to the present case, there do not appear to be circumstances which would show that there was any other intention than that the purchased property should be accretions to the inherited property. The High Court has found that, and their Lordships see no ground for saying that the Court has not come to a proper conclusion from the evidence.

Their Lordships will therefore humbly advise Her Majesty to affirm the decision of the High Court and to dismiss the appeal, and the appellants will pay the costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Watkins & Lattey.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

(1) I. L. R., 10 Calc., 324; L. R., 10 Ind. Ap., 150.