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the maintenance of a suit under section 39 it is not necessary that the injury should be an injury to the title in any other sense. It appears therefore to us that this suit is unobjectionable in point of law, and that the Courts below were both in error. The case having thus been wrongly decided upon the preliminary point, we allow this appeal, and setting aside the decrees of both the Courts below, remand the case under section 562 of the Code of Civil Procedure in the Court of first instance for trial upon the merits. The appellant will have his costs of this appeal: other costs will follow the event.

Appeal decreed and cause remanded.

P. C. 1904 *February* 12, 25.

PRIVY COUNCIL.

JAIPAL KUNWAR AND ANOTHER (DEFENDANTS) *v.* INDAR BAHADUR SINGH (PLAINTIFF).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Declaratory decree, suit for—Cause of action to reversionary heir—Execution of will by Hindu widow as talukdar—Act No. I of 1869 *(Oudh Estates Act) section* 22, *clause* (7)*—Adverse title set up as defence to suit for declaratory decree—Discretion of Court.*

The execution of a will by a limited owner, such as a Hindu widow, affords, as a general rule, no sufficient reason for granting a declaratory decree. But where such a decree had been granted by the lower Courts in a suit the defence to which made it clear that the defendants relied upon an alleged title in the widow inconsistent with any present or future rights of the plaintiff or any other reversionary heir, and the defendants had besides no legitimate interest in the appeal except in respect of costs which had been incurred only by the course taken by them throughout the case, the Judicial Committee, always slow to reverse the decisions of Courts below made in the deliberate exercise of a discretion entrusted to them by law, declined to interfere with the decree on appeal.

APPEAL from a judgment and decree (31st July 1899) of the Court of the Judicial Commissioner of Oudh which affirmed a decree (12th October 1898) of the Subordinate Judge of Bahraich by which the respondent's suit was decreed.

The suit related to the taluqa of Mustafabad in the district of Bahraich in Oudh of which the second summary settlement,

Present:—Lord DAVEY, Lord ROBERTSON and SIR ARTHUR WILSON.

after the annexation of that province, was made with one Indarjit Singh, whose name was subsequently entered in lists 1 and 2 prepared in accordance with section 8 of Act No. I of 1869. Indarjit Singh died on the 4th of June 1877 leaving three widows, Jaipal Kunwar, Mahadei Kunwar, and Jagrup Kunwar. The succession to the taluqa was governed by section 22 of Act No. I of 1869, and there being no heirs mentioned in clauses 1 to 6 of that section, Jaipal Kunwar, as being the first married wife of Indarjit Singh, succeeded under clause 7 to the whole taluqa for her life-time, and on the 18th of July 1877 her name was entered in the Collector's registers as proprietor.

Mahadei Kunwar died on the 3rd of November 1888 and Jagrup Kunwar on the 2nd of April 1895. Jaipal Kunwar on the 25th of December 1896 executed a will (which was afterwards duly registered) by which she appointed Ram Lal Singh, her sister's son, as her successor to the taluqa and all other property in her possession. Thereupon on the 17th of July 1897 the plaintiff, Indar Bahadur Singh, claiming to be the next reversioner on the death of Jaipal, instituted the present suit against Jaipal Kunwar and Ram Lal Singh. In the plaint he alleged that Jaipal Kunwar had only a life interest in the taluqa and had no power to make a will; that the execution of the will had given him a cause of action, and he claimed the following relief:—"A decree declaring the will to be null and void and executed without any authority, and that defendant No. 1 has legally no right to transfer the estate."

The defence was that no suit would lie for a declaration as prayed for, or for a declaration that the plaintiff was the next heir; and it was denied that he was the next reversionary heir to the taluqa on the death of Jaipal Kunwar. It was also alleged that Jaipal Kunwar was not in possession of the taluqa merely as a Hindu widow, but that she had an absolute estate in it by virtue of an oral will made by her husband Indarjit Singh.

Issues on all these points were raised and decided by the Subordinate Judge in favour of the plaintiff. He held that Jaipal Kunwar was competent to devise the taluqa by will; that the execution of the will gave a good cause of action; that

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the plaintiff was the next reversionary heir; and that the Court was justified in exercising its discretion in granting a declaration of the invalidity of the will under section 42 of the Specific Relief Act (I of 1877). The Subordinate Judge therefore made a decree declaring that the will was null and void.

The Court of the Judicial Commissioner on appeal affirmed this decree. That Court hold that the plaintiff was the next reversioner and that the Subordinate Judge had properly exercised his discretion in giving him a declaratory decree. After referring to the case of *Behary Lall Mohurwar* v. *Madho Lall Shiv Gyawal* (1), and quoting an extract from the judgment of the Court at page 232 of the report of that case, the judgment of the Judicial Commissioner proceeded as follows:—

"Those principles seem to me to govern this case. If on the death of the Thakurain the will is set up by Rampal Singh it will no doubt be as easy for the respondent to establish the invalidity of the will then as it is now, provided he establishes his alleged relationship with Indarjit Singh, for the Thakurain is not competent to make a devise of the taluqa. But before he could establish the invalidity of the will, it would be necessary for him to prove his alleged relationship with Indarjit Singh. There can be no doubt that it is more easy for him to prove that relationship now than it would be, if the will is set up at some remote period of time. The witnesses whom he has now called he may not be able to call then. Documents on which he has now relied may then be not forthcoming. Lapse of time is therefore of itself likely to render the respondent when his rights become vested, less able to meet the will, and clear away the cloud which the devise of the property may throw over his title than he is at the present time.

"In *Pirthi Pal Kunwar* v. *Guman Kunwar* (2) their Lordships of the Privy Council refer to the following remarks made by them in another case—'It is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or not, and in every case the Court must exercise a sound judgment as to whether it is reasonable or not under the circumstances of the case to grant the relief prayed for.' In granting such a decree therefore regard must be had to all the circumstances of the case. In *Pirthi Pal Kunwar's* case the circumstances are not the same as in this case. In that case the plaintiff was in possession of the property, and the ground of suit was that after her death the person alleging himself to have been adopted might obtain the property unless the adoption was set aside. The circumstances in the case decided by the Bombay High

(1) (1874) 13 B. L. R. 222 (232).

(2) (1890) L. R. 17 I. A., 107; I. L. R., 17 Calc., 933.

Court [*Maganlal Purushottam* v. *Govindlal Nagindas* (1)] are also different. In that case the title of the plaintiff under the award was not disputed. In the present case the appellants denied the alleged relationship between the respondent and Indarjit Singh. The evidence to prove that relationship which is now forthcoming, may not be forthcoming at the death of the Thakurain. It was not admitted in the Court below that the Thakurain was not competent to make the will. The parties went to trial on that point. The mere fact that a will cannot take effect until the death of the person making it and may be revoked before the death of such person, does not appear to be of itself sufficient ground for refusing a declaratory decree, for the person making it may not revoke it, and it may be set up on the death of such person.

"I am therefore of opinion that the Subordinate Judge did not unsoundly exercise his discretion in giving the respondent a declaratory decree."

On this appeal, which was heard *ex parte*,

Mr. *DeGruyther* for the appellants contended that the mere execution by Jaipal Kunwar of a will devising property in which she had only a life estate was not a sufficient reason for making a declaratory decree. As to what gave a right to a declaratory decree reference was made to the former Civil Procedure Code (Act VIII of 1859) section 15; the Specific Relief Act (Act No. I of 1877), section 42; *Kathama Natchiar* v. *Dorasingha Tever* (2); *Greevan Singh* v. *Wahari Lal Singh* (3) and *Maganlal Purushottam* v. *Govindlal Nagindas* (4). When a suit for a declaratory decree was brought the discretion of the Court had to be exercised as to whether such a decree might be properly granted or not: *Pirthi Pal Kunwar* v. *Guman Kunwar* (5) was cited. In the present case, even presuming the plaintiff to be the next reversionary heir the declaration claimed was unreasonable and unnecessary. A suit could not be brought to establish a presumptive title only. The present suit might well have been delayed until the will came into operation on the death of Jaipal Kunwar. But it was submitted that the evidence had not established that the plaintiff was the next reversionary heir, and he had, therefore, no right to bring the suit. *Bhai Narindar Bahadur Singh* v. *Achal Ram* (6) and *Anand Koer* v. *Court of Wards* (7) were referred to.

(1) (1891) I. L. R., 15 Bom., 697.
(2) (1875) L. R., 2 I. A., 169: 15 B. L. R. 83.
(3) (1881) I. L. R., 8 Calc., 12.
(4) (1891) I. L. R., 15 Bom., 697.
(5) (1890) L. R., 17 I. A., 107 (108); I. L. R., 17 Calc., 933 (936).
(6) (1893) L. R., 20 I. A., 77: I. L. R., 20 Calc., 649.
(7) (1880) L. R., 8 I. A., 14(22); I. L. R., 6 Calc., 764 (772).

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1904, *February 25th.*—Their Lordships' judgment was delivered by SIR ARTHUR WILSON:—

This is an appeal against a decree of the Court of the Judicial Commissioner of Oudh, which so far as is now material affirmed the decree of the Subordinate Judge of Bahraich. The point raised is a short one. Indarjit Singh died on the 4th of June 1877, possessed of the taluqa of Mustafabad, a taluqa governed by the Oudh Estates Act (I of 1869). He left three widows, and under s. 22 (7) of that Act the first appellant, as the first married of the widows, succeeded to the taluqa; the other widows have since died. On the 25th of December 1896 the first appellant executed a will by which she purported to declare the second appellant, who is her sister's son, as her heir and successor to the estate; and this will was registered on the 2nd of January 1897.

The respondent filed the present suit against the appellants in the Court of the Subordinate Judge of Bahraich. He alleged himself to be the next reversionary heir to the estate, and he set out the pedigree upon which he based his claim to that character. He stated the will of the first appellant, and his contention that it was invalid for the purpose of transferring the estate, and he asked for a declaratory decree to that effect.

The appellants by their joint written statement denied that Indarjit died intestate, and denied that the first appellant was in possession as a Hindu widow. They submitted that the mere execution of a will did not give the respondent a cause of action to obtain a declaratory decree. They traversed in detail the respondent's pedigree. And they alleged that the first appellant was absolute owner of the estate under an oral will of her husband. On all the points thus raised issues were settled. At the trial the evidence was mainly directed to the proof of the respondent's character as next reversionary heir. The Subordinate Judge found the necessary issues in the respondent's favour, and granted a declaratory decree as prayed; and that decree was affirmed on appeal by the Court of the Judicial Commissioner.

In both the Courts in India it was realized that under section 42 of the Specific Relief Act, 1877, a claim to a

declaratory decree is not a matter of right, but that it rests with the judicial discretion of the Courts; both Courts, however, held that in the exercise of their discretion in the present case the decree ought to be made. The only point raised by the present appeal is that the Courts in India exercised their discretion improperly.

Their Lordships would guard against being thought to lay down that the execution of a will by a limited owner, such as a Hindu widow, as a general rule, affords a sufficient reason for granting a declaratory decree. They are not prepared to concur in all the reasoning of the learned Judge in the present case. And if they had been sitting as a Court of first instance they would have felt no little hesitation before making the decree that has been made.

But their Lordships are always slow to reverse the decisions of Courts below made in the deliberate exercise of a discretion entrusted to them by law. And in the present case there are special reasons why they should hesitate before so interfering at the instance of the present appellants. The will of the first appellant, taken by itself, left it open to doubt on what ground she relied in what she was doing. But when the appellants came to file their written statement, and thereby to define their position and put their own interpretation upon what had gone before, there was no ambiguity left. It was made clear that they relied upon an alleged title in the first appellant inconsistent with any present or future rights of the respondent or any other reversionary heir. And, further, the appellants have no legitimate interest in this appeal except in respect of costs; and it is clear that the costs which have been incurred have been caused by the course taken by them throughout the case.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The respondent not having appeared, there will be no order as to costs.

In order to guard against any possible misapprehension hereafter their Lordships think it well to point out that, although in the present case issues have necessarily been raised and decided as to the position of the respondent as next reversionary heir to the taluqa, those issues have been raised and

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decided only between the parties to the suit, and that whenever the inheritance opens by the death of the widow the present decision will have settled nothing as to who should succeed.

Appeal dismissed.

Solicitors for the appellants—Messrs. *Young, Jackson, Beard and King.*

J. V. W.

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December 14.

FULL BENCH.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Blair and Mr. Justice Banerji.

HARDEO SINGH AND ANOTHER (APPLICANTS) *v.* HANUMAN DAT NARAIN (OPPOSITE PARTY).*

Criminal Procedure Code, sections 195, 439—*Sanction to prosecute—Revision—Appeal—Act No. XLV of* 1860 *(Indian Penal Code), section* 211.

Held that an application made under clause (6) of section 195 of the Code of Criminal Procedure may probably be regarded as an application by way of appeal, though it is not material by what name the application is called in pursuance of which the appellate Court revokes (or grants) a sanction granted (or refused) by a Subordinate Court. *Mehdi Hasan* v. *Tota Ram* (1) discussed.

Held also that to constitute the offence provided for by section 211 of the Indian Penal Code it is sufficient that a false complaint should be made against any person. It is not necessary that summons should be issued upon such complaint.

THE facts of this case are as follows:—

A complaint was laid by Hardeo Singh against six persons, including Hanuman Dat Narain, of criminal trespass and assault. Hanuman Dat Narain was, however, though mentioned in the complaint, not summoned to answer any charge. Against the other five persons mentioned in the complaint summonses were issued and an inquiry took place before a Magistrate having second class powers. The result was that the complaint was thrown out and a formal order of acquittal was recorded. Subsequently Hanuman Dat Narain made an application to the same Magistrate for sanction to prosecute the complainant Hardeo Singh under sections 211 and 193 of

* Criminal Revision No. 458 of 1903.

(1) (1892) I. L. R., 15 All., 61.