

By this decree the old decree of the 16th of December, 1902, was entirely superseded. The present appeal was preferred on the 18th of April, 1903, pending the disposal of the application for review. It is admitted that the application for review and the order passed thereon could not be treated as having been made under section 206, inasmuch as it was not an application to bring the decree into conformity with the judgment or to amend a clerical error. Consequently the order passed on review amounted to a new decree, superseding, as we have said, the old decree. Under these circumstances the decree against which the present appeal has been preferred does not exist, and the appeal cannot be heard. The same question came before a bench of this Court in the case of *Kuar Sen v. Ganga Ram* (1). Edge, C.J. and Young, J., there decided that a preliminary objection similar to the one now raised was fatal to the hearing of the appeal. We dismiss the appeal. Under the circumstances we say nothing as to costs.

1905

KANHAIYA
LAL
v.
BALDEO
PRASAD.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkill.

1905
November 8.

MADAN MOHAN LAL (PLAINTIFF) v. AKBARYAR KHAN AND OTHERS
(DEFENDANTS).*

*Hindu law—Hindu widow—Effect of decree against widow in possession—
Reversioners.*

A reversioner succeeding to an estate after the death of the widow of the former owner will be bound by a decree obtained against the widow, provided that there has been a fair trial of the suit in which such decree was passed. *Katama Natchiar v. The Rajah of Shivayanga* (2), and *Hari Nath Chatterjee v. Motdur Mohan Goswami* (3) followed.

THE plaintiff in this case sued as next reversioner to recover certain zamindari property which had been of one Mindhai Lal in his life-time. Mindhai Lal, according to the plaintiff, died in January 1881, and after his death the property in suit was taken possession of by his widow, Dayali Kunwar, who died on the 6th of July, 1891. The suit was filed on the 4th of July,

* First Appeal No. 300 of 1903 from a decree of Babu Prag Das, Subordinate Judge of Bareilly, dated the 31st of August, 1903.

(1) Weekly Notes, 1890, p. 144. (2) (1863) 9 Moo. I. A., 543.
(3) (1893) I. L. R., 21 Cal., 8.

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1903. It appears that shortly after the death of Mindhai Lal, Dayali Kunwar instituted a suit against two persons named Bhupal Rai and Jisukh Rai, and one Haji Jafaryar Khan, the predecessor in title of the present defendants respondents, for possession of the property in dispute, alleging that the possession of Bhupal Rai and Jisukh Rai was only as managers of the property for a limited period under a religious endowment made by Mindhai. Bhupal Rai and Jisukh Rai, on the contrary, claimed to be absolutely entitled to the property. In that suit it was held upon the evidence of a number of witnesses, and also on documentary evidence, that Bhupal Rai and Jisukh Rai were absolutely entitled to the property under a gift from Mindhai Lal. Accordingly that suit was dismissed. In the present suit the judgment in the former suit between Dayali Kunwar and Bhupal Rai and Jisukh Rai and Jafaryar Khan was relied upon by the defendants, and it was contended that that judgment bound the reversioner, the present plaintiff. The Court of first instance (Subordinate Judge of Bareilly) accepted this contention and dismissed the suit. The plaintiff appealed to the High Court.

Mr. S. Sinha, Munshi Gobind Prasad and Dr. Satish Chandra Banerji, for the appellant.

Babu Jogindro Nath Chaudhri and Mr. R. Malcomson, for the respondents.

STANLEY, C.J. and BURKITT, J.—It appears to us that the question raised in this appeal is concluded by a decision of their Lordships of the Privy Council. The property, which is the subject-matter of the appeal, belonged to one Mindhai Lal, who died many years ago, leaving a widow, Musammat Dayali Kunwar, but no issue, him surviving. Shortly after his death Musammat Dayali Kunwar instituted a suit against two persons named Bhupal Rai and Jisukh Rai, and also one Haji Jafaryar Khan, the predecessor in title of the defendants respondents, for possession of the property in dispute, alleging that the possession of Bhupal Rai and Jisukh Rai was only as managers of the property for a limited period under a religious endowment made by Mindhai Lal. Bhupal Rai and Jisukh Rai, on the contrary, claimed to be absolutely entitled to the property. It was held in that suit upon the evidence of a number of witnesses, and

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also documentary evidence, that Bhupal and Jisukh Rai were absolutely entitled to the property under a gift from Mindhai Lal. Accordingly the suit was dismissed. Musammat Dayali Kunwar died on the 6th of July, 1891, and the present suit was instituted by the plaintiff on the 4th of July, 1903, that is, two days short of 12 years after the death of the Musammat, claiming possession of the property and alleging that Musammat Dayali Kunwar was only entitled to a life interest, and that, upon her death, he, as the reversionary heir, became entitled to succeed. The Court below has dismissed the suit on the ground that the decree passed in the previous suit was binding upon the reversioner, and accordingly the suit could not be maintained.

It appears to us that this was a correct view of the law. In the suit brought by the widow for the recovery of the property which had belonged to her husband the widow in our opinion represented the estate, and any decree obtained against her in that suit would be binding upon the reversioners. That a widow would under such circumstances represent the estate was held by their Lordships of the Privy Council in the case of *Katama Natchiar v. The Rajah of Shivagunga* (1). Their Lordships in that case, upon the question whether a decree passed in a suit brought by a widow for possession of the estate of her husband would bind those claiming the estate in succession to her, held that "unless it could be shown that there had not been a fair trial of the right in that suit, or, in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to a new suit by any person claiming in succession to" the widow. "For, assuming her to be entitled to the zamindari at all, the whole estate would for the time be vested in her absolutely for some purposes, though in some respects for a qualified interest; and until her death it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the Courts of this country as to tenants in tail representing the inheritance would seem to apply to the case of a Hindu widow, and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding

(1) (1863) 9 Moo. I. A., 54.

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heirs were not bound by a decree fairly and properly obtained against the widow." In the later case of *Hari Nath Chatterjee v. Mothur Mohun Goswami* (1) their Lordships reaffirmed to the ruling in the case which we have quoted. We must take it, then, that a reversioner succeeding to an estate after the death of the widow of the former owner would be bound by a decree obtained against the widow, provided that there was a fair trial of the suit in which the decree was passed. Nothing has been laid before us to lead us to suspect that in the suit instituted in 1886 by the widow for the recovery of possession of the property a fair trial was not had, and, this being so, it was properly held that the suit which has given rise to this appeal failed. We, therefore, dismiss this appeal with costs.

Appeal dismissed.

1905
November 8.

Before Mr. Justice Banerji and Mr. Justice Richards.
NASIR-UN-NISSA (JUDGMENT-DEBTOR) v. GHAFUR-UD-DIN
(DECREE-HOLDER).*

Civil Procedure Code, sections 237 and 578—Execution of decree—Application for attachment—Omission to verify inventory of property sought to be attached—Irregularity.

Held that the omission in an application in execution for attachment of immovable property to verify the inventory of the property sought to be attached in the manner prescribed by section 237 of the Code of Civil Procedure is an irregularity only and does not vitiate the application. *Basdeo v. John Smidt* (2) followed.

IN execution of a decree for money the respondent applied for attachment of certain immovable property in the hands of the appellant as legal representative of his deceased debtor, Fakhr-ud-din. Objection was taken by the appellant that the inventory of the property sought to be attached was not verified in the manner prescribed by section 237 of the Code of Civil Procedure. The Court, executing the decree, however (Subordinate Judge of Bareilly), overruled the objection, holding that the omission to verify the inventory was a mere irregularity which did not affect the merits of the case, and ordered that execution should proceed. The judgment-debtor appealed to the High Court

* First Appeal No 134 of 1905 from a decree of Pandit Pitambar Joshi, Subordinate Judge of Bareilly, dated the 15th of May, 1905.

(1) (1893) I. L. R., 21 Calc., 8. (2) (1899) I. L. R., 22 All., 55.