1906

CHHITAR MAL v. JAGAN NATH PRASAD.

the respondent's offer at a higher figure. We do not think it necessary to go into the question as to whether or not the District Judge had power to act as he has done. It seems to us that the question does not arise. We think that the principle on which we should act in this case is the principle that a Court will never enforce specific performance against a minor when such enforcement is to his detriment. Here it is manifest, that, if the plaintiff appellant succeeds, the result will be the loss of at least a hundred rupees to the minor. We think that Courts in this country, as in England, will not allow a bargain made by an improvident guardian to be enforced against the interests of the minor, if it be shown to be a bargain made to the detriment of the minor. Here there can be no doubt whatever that by her bargain the mother did not obtain the full value of her son's property. Therefore for that short reason, without going into any other considerations, we think that this appeal fails and must be dismissed with costs. We order accordingly.

Appeal dismissed.

1906

December 7.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir George Knox.

SUNDAR LAL AND OTHERS (PLAINTIFFS) *v.* CHHITAR MAL AND OTHERS (DEFENDANTS).*

Hindu Law—Joint Hindu family—Redemption of mortgage—Suit by father dismissed—Subsequent suit by sons.

A joint Hindu family, consisting of father and sons, were co-mortgagors by way of usufructuary mortgage of joint family property. The father sued for redemption, but was unsuccessful. *Held* on suit by the sons claiming to redeem the whole mortgage, that the sons were not precluded by reason of the result of their father's suit from suing to redeem, but they could not obtain redemption of more than their own shares.

THE facts of this case will be found reported in I. L. R., 29 All., 1, also in the Weekly Notes for 1906, at p. 242.

Babu *Jogindro Nath Chaudhri*, Babu *Sarat Chandra Chaudhri* and Munshi *Kedar Nath*, for the appellants.

The Hon'ble Pandit *Sundar Lal* and Babu *Durga Charan Banerji*, for the respondents.

---

* Second Appeal No. 340 of 1905 from a decree of A. B. Bruce, Esq., District Judge of Agra, dated the 3rd of February 1905, confirming a decree of Babu Rajnath Prasad, Subordinate Judge of Agra, dated the 7th of July 1904.

1906

SUNDAR LAL v. CHHITAR MAL.

STANLEY, C.J., and KNOX, J.—This second appeal arises out of a suit for redemption which was brought by the plaintiffs appellants and a number of other parties who claim to be entitled to a share in a village named Alaula, comprising an area of 157·67 acres. The claim of the plaintiffs appellants was dismissed on the ground that it was barred by a decision in a suit brought by their father, the defendant Jhadda, in respect of the same cause of action. When the case came before us for hearing we pointed out that the decision of the suit in which Jhadda was the claimant did not operate as *res judicata* against his sons, the present appellants, and we therefore held that the Courts below were in error as to this. We remanded several issues to the lower appellate Court for determination under section 566 of the Code of Civil Procedure. We have the finding upon these issues before us.

It has been found that, of the property of which possession was claimed in the suit, $17\frac{1}{15}$ biswansis formed the share of the appellants. It has been also established that the mortgage under which the defendants held the property was satisfied many years ago by perception of the rents and profits. Mr. *Kedar Nath* on behalf of the appellants has contended before us that the appellants, together with Jhadda, formed a joint Hindu family and that the appellants were therefore entitled, notwithstanding the decision against Jhadda in the previous suit, to redeem the entire of the share of the family in the joint family property. Mr. *Sundar Lal* on the other hand has pointed out authority for the proposition that when Jhadda sought to redeem the mortgaged property and failed in his attempt to do so, his share in the joint family property must be treated as necessarily excluded from the claim of the present appellants. We think that this latter contention is well founded, and that the appellants can only now obtain possession of their share of the joint family property and not the share also of their father Jhadda. This being so, the appellants will be declared entitled to possession of $17\frac{1}{15}$ biswansis, that is, $21\frac{1}{3}$ out of 60 shares of 157·67 acres. They will also be entitled to their proportionate part of the sum found to be due in respect of profits up to the year 1309 Fasli and to a further sum in respect of their proportionate share of profits up to the time when possession shall

1906

SUNDAR LAL v. CHHITAR MAL.

be handed over to them—these sums to be ascertained in the execution department. We accordingly allow the appeal to this extent and modify the decree of the lower appellate Court accordingly. The parties will have their costs in all Courts proportionate to failure and success.

Two objections were filed which have not been pressed. We say nothing as to the costs of these objections.

Decree modified.

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

1906 *December* 14.

PADAM LAL (PLAINTIFF) *v.* TEK SINGH AND ANOTHER (DEFENDANTS).*

Hindu law—Mitakshara—Will—Construction of document—Property devised to wife as "malik"—Estate taken by widow.

Where a Hindu governed by the Mitakshara law devised immovable property to his wife stating that she would be the "malik" of the property after his death, it was *held* that the word "malik" imported an absolute proprietary interest, and that, in the absence of any indication of a contrary intention on the part of the testator, the widow took an absolute, and not merely a life estate in the property so devised. *Surajmani* v. *Rabi Nath* (1) dissented from. *Jamna Das* v. *Ramautar Pande* (2) distinguished. *Lala Ramjewan Lal* v. *Dal Koer* (3), *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy* (4) and *Raj Narain Bhadury* v. *Ashutosh Chuckerbutty* (5) followed.

The facts out of which this appeal arose were as follows:—

One Gayendra Narain died possessed of the entire 16 annas of a village named Muhana, and leaving him surviving his second wife Musammat Kadam Kunwar and two daughters by her, Janki Kunwar and Rukmin Kunwar, and a daughter Tulsha Kunwar by his first wife. By his will dated the 31st of July 1866 Gayendra Narain declared that out of the 16 anna zamindari in the village Muhana "Musammat Kadam Kunwar will be the malik of a 10 anna 8 pie share" and Musammat Tulsha Kunwar his daughter of a 5 anna 4 pie share. He then stated that he had caused each of these ladies to be placed in separate possession of her share and that mutation of names might be effected in the revenue department under the will. On the death of

---

* First Appeal No. 278 of 1904, from a decree of Babu Bipin Bihari Mukerji, Subordinate Judge of Cawnpore, dated the 15th of August 1904.

(1) (1903) I. L. R., 25 All., 351. (3) (1897) I. L. R., 24 Calc., 406.
(2) (1904) I. L. R., 27 All., 364. (4) (1897) I. L. R., 24 Calc., 834.
(5) (1899—1900) I. L. R., 27 Calc., 44 and 649.