which we have referred. We may point out that when the Legislature gave permission to institute a third appeal in an Act which was passed two days after Act No. II of 1901, namely, Act No. III of 1901, they used the expression "third appeal." We refer to section 213 of the Land Revenue Act. For these reasons we allow the preliminary objection and dismiss the appeal with costs.

Appeal dismissed.

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

RAJ KISHORE (PLAINTIFF) *v.* DURGA CHARAN LAL AND OTHERS (DEFENDANTS).*

Hindu law—Hindu widow—Effect of relinquishment of estate by widow in favour of the present reversioners.

A Hindu widow in possession of a widow's estate in property of her deceased husband, a separated and childless Hindu, relinquished possession thereof to two persons who at the time were the next reversioners, they agreeing to pay her a maintenance allowance; but it did not appear that she intended to make them, if she could, full owners of the property, although certain incorrect recitals in the agreement entered into by the widow, when she gave possession of the property, might have lent colour to this suggestion. Both the persons thus put into possession predeceased the widow. *Held* that the nearest reversionary heir to the widow's late husband was entitled to succeed on the death of the widow.

Quære whether in these Provinces a Hindu widow can accelerate the estate of the heir by conveying absolutely and destroying her life estate? *Behari Lal* v. *Madho Lal Ahir Gayawal* (1) and *Ramphal Rai* v. *Tula Kuari* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

The Hon'ble Pandit *Sundar Lal* and Munshi *Mangal Prasad Bhargava*, for the appellant.

Messrs. *A. E. Ryves*, and *W. Wallach*, and Munshi *Haribans Sahai*, for the respondents.

STANLEY, C.J., and KNOX, J.—The plaintiff appellant during the course of the hearing of this appeal abandoned his

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* Second Appeal No. 957 of 1904, from a decree of Lala Baijnath, Rai Bahadur, District Judge of Jaunpur, dated the 16th of June 1904, reversing a decree of Maulvi Syed Zainul-abdin, Subordinate Judge of Jaunpur, dated the 18th of March 1904.

(1) (1891) I. L. R., 19 Calc., 236. (2) (1883) I. L. R., 6 All., 116.

1906

RAJ KISHORE v. DURGA CHARAN LAL.

claim to the grove, portion of the property sought to be recovered in the suit out of which this appeal has arisen. It has been found by the lower appellate Court upon an issue remanded to it by this Court that the ruined house in kasba Kirakat, also claimed in the suit, was not self-acquired property of Sheobakhsh Rai, and the claim to this house therefore clearly fails. The only property therefore now in dispute between the parties is a 6 anna 8 pie share in kasba Kirakat *khas* and a 6 anna 8 pie share in Chak kasba. These two shares had been the self-acquired property of Sheobaksh Rai, the husband of Musammat Sheobarna Kunwar. He died childless many years ago leaving his widow him surviving. At time of his death his presumptive heirs were his two nephews Rameshar Dayal and Sheoambar Lal, sons of his uncle Bhairo Dat. The defendant Durga Charan Lal is the grandson of Rameshar Dayal. After the death of her husband Musammat Sheobarna Kunwar made transfers in favour of several parties of portions of the property of her husband, including kasba Kirakat *khas*. In consequence of these transfers Rameshar Dayal instituted a suit to have the transfers set aside and for possession of the property, alleging that it was ancestral property which had belonged to Sewai Lal, the father of Sheobakhsh Rai, and that Sheobakhsh Rai had predeceased his father. It was decided in that suit that none of the transfers were made to meet a legal necessity and therefore that they should be cancelled, but that Musammat Sheobarna was entitled to retain possession of the property during her life. This we gather from the decree of the Subordinate Judge of Jaunpur, dated the 20th of April 1871, which has been filed in this case. Sheobarna Kunwar after the date of this order appears to have permitted Rameshar Dayal to hold possession of the property in dispute in this suit, which was half of the property owned by Sheobakhsh Rai in kasba Kirakat *khas* and Chak kasba, he paying her maintenance allowance, but there is no evidence before the Court to show what the arrangement was under which he was allowed so to enjoy the property. In a document dated the 13th of March 1872 whereby Musammat Sheobarna Kunwar gave up possession of the other half of the property in dispute to Sheoambar Lal, the father of the plaintiff, there is a recital that her husband was the owner of a 13 anna 4 pie share

in kasba Kirakat *khas* and a 13 anna 4 pie share in Abdullahpur by right of purchase and of shares in two other villages with which we are not concerned and that Musammat Sheobarna Kunwar was in possession of this property up to the date of the document. Then follows this recital :—" One half of this property has been decreed in favour of Lala Rameshar Dayal on the ground of right and proof of inheritance." Then follows a statement that Musammat Sheobarna Kunwar was an old and pardanashin lady and unable to do the work of the ilaka and that Sheoambar Lal is entitled to it by right of inheritance and was prepared to bring a suit to enforce his right, and after these recitals she purported to give up her possession of this half of the property to Sheoambar Lal and to put him into possession of it. The document contained a provision that out of the income of the property Sheoambar Lal should, during the lifetime of Sheobarna Kunwar, give her in cash Rs. 31-8 per annum and the income of a market for one day in one month for her maintenance. This document was witnessed by, amongst others, Rameshar Dayal, who described himself as "the owner of the other half of the property." The recital in this document that one half of the property had been decreed in favour of Rameshar Dayal is not correct. As we have pointed out, by the decree of the Subordinate Judge of Jaunpur of the 12th of April 1871 the transfers made by Musammat Sheobarna were declared to be invalid, but her life estate in the property was not interfered with, nor was one half of the property decreed in favour of Rameshar Dayal. This recital in the document of the 13th of March 1872 is altogether inaccurate. Both Rameshar Dayal and Sheoambar Lal predeceased Musammat Sheobarna. She died on the 24th of October 1894, and upon her death the defendants, who were in possession of the property in dispute, refused to give up possession to the plaintiff, who admittedly was the nearest reversionary heir of Sheobakhsh Rai at the death of Musammat Sheobarna. Hence the suit out of which this appeal has arisen.

The first Court decreed the plaintiff's claim in respect of the property now in dispute, but upon appeal the lower appellate Court reversed the decision of the Court below, holding that the plaintiff under all the circumstances had no right to the property

1906

RAJ KISHORE v. DURGA CHARAN LAL.

In the course of his judgment the learned District Judge says :—"After the suit of 1871 the widow gave half the property in Kirakat to the plaintiff and he is in possession of it. The other half remained in possession of the defendant. During the widow's lifetime each of the parties let the property to tenants and recovered its rent as owner. The widow received maintenance from both. Therefore, although the property may have been the property of Sheobakhsh and went to his widow after his death, yet the parties by their own conduct treated it as if it belonged to Sewai Lal by right of survivorship after the death of his son and allowed the widow to give half to one and put the other in possession of the other half. They cannot therefore recede from their own conduct now, and the plaintiff, who is in possession of the half, turn round and say that his half was limited to the widow's life-estate. It was on the contrary given to his father as he was about to sue for it in recognition of his right as reversioner, and the widow contented herself with a maintenance allowance as if it was the joint property of her husband and father-in-law. I therefore hold that the plaintiff has no right to sue."

We are of opinion that this decision is erroneous. If there were any evidence on the record to show that Musammat Sheobarna absolutely relinquished her life estate in the property in favour of Rameshar Dayal, we should have been bound to consider whether or not that relinquishment did not have the effect of accelerating the estate of Rameshar Dayal, who at the time was one of the two presumptive heirs of Sheobakhsh Rai. In the case of *Behari Lal* v. *Madho Lal Ahir Gayawal* (1), Lord Morris, in delivering the judgment of their Lordships of the Privy Council, observed :—"It may be accepted that according to the Hindu Law the widow can accelerate the estate of the heir by conveying absolutely and destroying her life-estate." In that case it was not necessary to decide this question seeing that it was held that as the widow retained possession for her own life of the property of her husband under the provisions of the ikrarnama under which she purported to relinquish it, she had not completely surrendered her estate and it did not therefore

(1) (1891) I. L. R., 19 Calc., 236.

become immediately vested in the grantee. In the judgment it is said:—"It was essentially necessary to withdraw her own life estate so that the whole estate should get vested at once in the grantee. The necessity of the removal of the obstacle of the life estate is a practical check on the frequency of such conveyances." The position taken up by their Lordships of the Privy Council is in conflict with the rule laid down by a Full Bench of this Court in the case of *Ramphal Rai* v. *Tula Kuari* (1). In the course of their judgment, in that case, the learned judges, consisting of Straight, Oldfield, Brodhurst and Tyrell, JJ., said:—"We know of nothing in the Hindu Law to sanction the view that a person possessed of limited rights, such as those of a Hindu widow, can by uniting with one of many others having identical interests in expectancy on the happening of a certain event anticipate that event and convert such individual expectancy into an immediate absolute estate of full proprietorship. If this were permissible, it would virtually confer upon a Hindu widow the right of directing the succession to her husband's property in her lifetime when in law it only happens upon her death." It is unnecessary for us in the present case to determine whether the position assumed by the Judicial Committee in the case of *Bihari Lal* v. *Madho Lal Ahir Gayawal* was intended as a recognition of the rule which undoubtedly prevails in the Calcutta High Court, inasmuch as we are unable to find on the record any evidence to establish that Musammat Sheobarna Kunwar ever made an absolute surrender of her life estate in favour of Rameshar Dayal. It would seem that by some arrangement Rameshar Dayal was permitted to hold possession of the property, he paying a certain allowance to Musammat Sheobarna for her maintenance. This falls far short of proving an absolute surrender of the life estate.

It was weakly contended that the plaintiff is estopped from maintaining the suit. This argument was based upon the document of the 13th of March 1872, on the fact that the plaintiff and his father took benefits under that document and on the fact that Rameshar Dayal was a witness to that document and in it described himself as owner of the property in dispute. We are unable to hold that these matters or any conduct

(1) (1883) I. L. R., 6 All., 116.

1906

RAJ KISHORE v. DURGA CHARAN LAL.

on the part of the plaintiff or of his father Sheoambar Lal are, or is, such as to disentitle the plaintiff to maintain his claim.

Under these circumstances we think that the decision of the Court of first instance was correct. Raj Kishore was admittedly the nearest reversionary heir of Sheobakhsh Rai when the inheritance opened up on the death of Musammat Sheobarna. We therefore allow the appeal, set aside the decree of the lower appellate Court, and restore the decree of the Court of first instance in regard to two properties mentioned in schedule B, namely, the shares in kasba Kirakat khas and in Chak kasba. In respect of the house in ruins in kasba Kirakat and the grove mentioned in the schedule to the claim the appeal fails. The proper order we think as to costs will be that the parties shall pay and receive costs in all Courts, according to failure and success. We order accordingly. The mesne profits awarded to the plaintiffs will be determined in execution.

Decree modified.

1906

June 28.

Before Mr. Justice Banerji.

PARSOTAM NARAIN (DEFENDANT) *v.* CHHEDA LAL (PLAINTIFF).*

Act No. IV of 1882 *(Transfer of Property Act), sections* 52, 86 *and* 87—*Lis pendens—Suit for foreclosure—Suit not terminated until decree absolute.*

A suit for foreclosure of a mortgage is not terminated until the passing of the decree absolute. A purchase, therefore, of the mortgaged property made after the passing of the decree *nisi*, but before such decree is made absolute, is subject to the doctrine of *lis pendens*. *Higgins* v. *Shaw* (1), *Chunni Lal* v. *Abdul Ali Khan* (2) and *Shivjiram Sahebram Marwadi* v. *Waman Narayan Joshi* (3) followed. *Bellamy* v. *Sabine* (4) referred to.

THE facts of this case are fully stated in the judgment of the Court.

The Hon'ble Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the appellant.

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*Second Appeal No. 620 of 1904 from a decree of B. J. Dalal, Esq., District Judge of Mainpuri, dated the 4th of May, 1904, confirming the decree of Maulvi Aziz-ur-Rahman, Subordinate Judge of Mainpuri, dated the 9th of February 1904.

(1) 2 Dr. and War., 356.
(2) (1901) I. L. R., 23 All., 331.
(3) (1897) I. L. R., 22 Bom., 939.
(4) (1857) 1 De G. and J., 566.