

1903

BY THE COURT:—The appeal is dismissed but without costs as the respondent is not represented.

Appeal dismissed.

DEVI
PRASAD

A. H. LEWIS.

1903.
February 11.

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

THAKUR PARSHAD (PLAINTIFF) v. JAMNA KUNWAR AND OTHERS
(DEFENDANTS)*

*Will—Construction—Malik—Meaning of—Absolute interest—
Hindu widows.*

Unless there is something in the context qualifying it the word *malik* used in a will bears its technical meaning. When a testator bequeathed his property to his issue if he happened to have any, and if he had no issue then to his mother and wife who were to be "*malik aur kabiz*," held that the ladies obtained an absolute interest. *Surajmani v. Rabi Nath* (1) referred to.

THE facts appear from the judgment of their lordships.

Hon'ble Pandit *Sundar Lal* and Dr. *Satish Chandra Banerji*, for the appellant.

Pandit *Motilal Nehru*, *Munshi Gobind Prasad* and *Babu Satya Chandra Mukerji*, for the respondents.

STANLEY, C. J., and BANERJI, J.—The only question in this appeal is whether *Suraj Prasad*, the last owner of the property in suit, conferred upon his mother *Jamna Kunwar* by his will, dated the 9th of April 1902, an absolute estate in one half of the property left by him. The will provides that in the event of his marrying again and having issue, such issue shall be the owner (*malik*) of his property like himself. It then goes on to say "If I happen to have no issue, the names of my wife and mother shall be entered in equal shares and they shall be owners and in possession (*malik aur kabiz*)." It is urged that the mother of the deceased, *Musammat Jamna Kunwar*, acquired a life-estate only and not an absolute estate under the terms of this will. The word *malik* has been interpreted in the recent ruling of the Privy Council in *Surajmani v. Rabi Nath Ojha* (1). In that case their Lordships observe that "in order to cut down the full proprietary rights that the word (*malik*) imports something must be found in the context qualifying it." In the present case there is nothing in the context to qualify the word *malik* and

* First Appeal No. 248 of 1907 from a decree of B. J. Dalal, Additional District Judge of Cawnpore, dated the 11th of June 1907.

(1) (1904) I. L. R., 30, All., 84, P. C.

to indicate that the intention was that the word should not "bear its proper technical meaning." On the contrary while speaking of the rights of his issue, Suraj Prasad uses the word *malik*, indicating clearly that the issue should be the absolute owners. The same word is used in respect of his wife and his mother. There is nothing to "displace the presumption of absolute ownership implied in the word *malik*." We are, therefore, of opinion that the view taken by the court below is right and this appeal must fail. We accordingly dismiss it with costs.

Appeal dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Griffin.
 LALTA PRASAD (DECREE-HOLDER) v. SURAJ KUMAR AND OTHERS
 (JUDGMENT-DEBTORS)*

1909
 February 12.

*Act No. XV of 1877 (Indian Limitation Act), Schedule II, Article 179, Ex. 1.
 Decree executed against minor judgment debtors—Saving of limitation against other judgment-debtors.*

Where a decree was passed against two persons who were minors and others who were majors but the decree against the minors was subsequently declared to be inoperative, and the decree-holder never took out execution within three years from the date of his decree against his judgment-debtors other than those who were minors, held that in view of Article 179, (1) of the second schedule of the Indian Limitation Act the application for execution against the minors only were applications in accordance with law and saved the operation of limitation against all.

THE facts of this case are that the appellant and another obtained a decree against the respondents and two minors Kundan Lal and Balbhadra Prasad in 1900, which on appeal was affirmed by the High Court on February 19th, 1903. The said minors were represented in the suit by their mother, a married woman, but the defect was not noticed. On 24th August 1904, the decree-holder applied to execute the decree against the minors but execution was stayed as the minors had brought a suit through another guardian for a declaration that the decree was not binding on them as they had not been properly represented. The first Court dismissed that suit on 31st May 1905, and the decree-holders thereupon renewed their application on 6th June

* First Appeal No. 230 of 1908 from a decree of Girdhari Lal, Subordinate Judge of Cawnpore, dated the 12th May 1908.