

acquiring such rights. There is nothing to prevent a woman being a tenant of agricultural land, and if she held it continuously for 12 years she would acquire a right of occupancy just as a man would. We cannot therefore attach to the fact that the words in section 22 are words importing only the masculine gender the weight which is sought to be placed upon them. We think that Musammat Rasul-un-nissa having been an occupancy tenant, her half brother, who, it is not denied, was the son of the same father, is entitled to succeed under clause (c) of the section. The same question was very fully considered by the members of the Board of Revenue in *Ikramuddin v. Irshad Ali* (1). There it was held that a Muhammadan widow who succeeded to an occupancy holding acquired an absolute estate, and that on her death, after the 1st of January 1902, the persons to succeed will be her heirs and not the heirs of her deceased husband. We agree in this view. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

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KHAN
v.
MASHUQ
ALI KHAN.

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December 1.

Before Mr. Justice Richards and Mr. Justice Griffin

JAGAN NATH (PLAINTIFF) v. DIBBO AND OTHERS (DEFENDANTS).*

Act No. IV of 1882 (Transfer of Property Act), section 6—Hindu Law—Transfer by a Hindu reversioner of his reversionary interest.

Held that it is not competent to a Hindu reversioner to transfer his reversionary interest expectant on the death of a Hindu widow. *Sham Sunder Lal v. Achhan Kunwar* (2) followed.

ON the 6th of September 1884, Tota Ram and Har Sukh, who then had a reversionary interest in certain property expectant on the death of a Hindu widow, Musammat Shitabo, executed a mortgage thereof in favour of one Jagan Nath. Musammat Shitabo was in possession, and her name was recorded in the revenue papers. The mortgage deed was registered and from the registration endorsement it appeared that the mortgagors appeared before the Sub-Registrar, acknowledged the deed and admitted receipt of the mortgage money. Musammat Shitabo died on the 5th October 1888. On the 18th of January 1906

* First Appeal No. 199 of 1906 from a decree of Kunwar Bahadur, Subordinate Judge of Shahjahanpur, dated the 18th April of 1906.

(1) Sel. Dec. Board of Revenue No. 2 of 1905. (2) (1898) L. R., 25 L. A., 183.

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the mortgagee instituted the present suit against various transferees both from Musammat Shitabo and the mortgagors to enforce his mortgage. The Court of first instance (Subordinate Judge of Shahjahanpur) found that no consideration for the mortgage had actually passed, but that the mortgage was executed in order that the mortgagee might carry on litigation on behalf of the mortgagors against the widow. That Court therefore dismissed the suit. The plaintiff appealed to the High Court.

Babu Jogindro Nath Chaudhri (for whom Babu Surat Chandra Chaudhri), for the appellant.

Maulvi Muhammad Ishaq and Babu Durga Charan Banerji, for the respondents.

RICHARDS AND GRIFFIN, JJ.—This was a suit to enforce a mortgage dated the 6th of September 1884. The defence was that the mortgage was without consideration, that the mortgagors had no power to mortgage the property and that the suit was barred by limitation. The admitted facts are that at the date of the mortgage one Musammat Shitabo was in possession as a Hindu widow, having succeeded her husband, one Bhola, who died childless. A number of transfers have since been made. Some of the defendants are the transferees of Musammat Shitabo and some are transferees of Tota Ram and Har Sukh the mortgagors named in the mortgage deed. The mortgage deed bears interest at the rate of $37\frac{1}{2}$ per cent. per annum. Musammat Shitabo died on the 5th of October 1888, and no proceedings were taken until the institution of the present suit on the 18th of January 1906. The Court below has found that the deed was fictitious and that no consideration passed. The mortgage deed was registered, and it appears from the endorsement of the Registrar that the mortgagors appeared before him, acknowledged the deed and admitted receipt of the mortgage money. The money was not paid before the Sub-Registrar, and Jagan Nath, the mortgagee, produces no receipt. The defendants' witnesses depose that Tota Ram and Har Sukh were very poor persons and that they entered into an arrangement with Jagan Nath that Jagan Nath should carry on litigation for them, and in the event of its being successful, the property was to be shared and that as part of this arrangement the mortgage in suit was

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executed ; that the Rs. 2,000 was never paid, and that Jagan Nath did not carry on the litigation. That there was litigation going on at that time is very clear, and the nature of the litigation appears. It was a suit by Har Sukh and Tota Ram to set aside alienations made by Musammat Shitabo on the ground that she as Hindu widow had no right to alienate the property she had succeeded to as widow of Bhola. It further appears that Shitabo was entered as the owner at this very time in the public *khewat*. We see no reason to differ from the finding of the learned Subordinate Judge that there was no consideration for the mortgage. Jagan Nath years ago instituted a suit on another bond executed by Har Sukh in his favour without any mention of the present bond, though the latter was for a much larger amount. It has been held by the Privy Council in the case of *Sham Sunder Lal v. Achhan Kunwar* (1) that it is not competent for a Hindu reversioner to transfer his reversionary interest expectant on the death of Hindu widow. See also the case of *Nand Kishore Lal v. Kance Ram Tewary* (2). It is, however, contended on behalf of the plaintiff that he can call to his aid the provisions of section 43 of the Transfer of the Property Act, 1882, which provides that "where a person erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists." This section, of course, cannot apply if the deed was really without consideration, but even if there was some consideration for the deed, it would be necessary for the plaintiff to show that there was an erroneous representation by Har Sukh and Tota Ram that they were in possession of the property at the date of the mortgage. Jagan Nath when examined did not attempt to show that he did not know that Musammat Shitabo was in possession as a Hindu widow, or that there was any representation to him which made him think that Har Sukh and Tota Ram were in possession of the estate. On the other hand he says that he was told that money was wanted for litigation, and we know from the evidence on the record that the nature of this litigation was to set aside

(1) (1898) L. R., 25 L. A., 183.

(2) (1902) I. L. R., 29 Calc., 355.

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alienations by Musammat Shitabo, and that Musammat Shitabo was alive and was a party to the litigation. Both these grounds are fatal to the plaintiff's case. We accordingly dismiss the appeal with cost.

Appeal dismissed.

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December 1.

Before Mr. Justice Aikman and Mr. Justice Karamat Husain.

KANDHYA LAL (APPLICANT) v. MANKI (OPPOSITE PARTY).*

Act No. V of 1881 (*Probate and Administration Act*), section 78—Act No. IX of 1872 (*Indian Contract Act*), section 129—Administration—Surety—Continuing guarantee.

When a person becomes surety that an administrator will duly get in and administer the estate of a deceased person, this is not a continuing guarantee within the meaning of section 129 of the Indian Contract Act, 1872. Such a surety cannot of his own free will withdraw from his suretyship. *Subroya Chetty v. Ragammal* (1) followed. *Raj Narain Mookerjee v. Ful Kumari Debi* (2) dissented from.

IN this case letters of administration to the estate of her deceased husband were granted by the District Judge of Benares to one Musammat Manki conditioned on her giving a bond with one surety for the due collection and administration of the estate. One Kandhya Lal became surety. Less than six months afterwards Kandhya Lal applied to the District Judge asking him to cancel the bond which he had given and to call upon Musammat Manki to provide a fresh surety. The District Judge rejected this application. The surety thereupon appealed to the High Court.

Babu Lalit Mohan Banerji, for the appellant.

Babu Sital Prasad Ghosh, for the respondent.

AIKMAN and KARAMAT HUSAIN, JJ.—The respondent Musammat Manki obtained from the District Judge letters of administration for the estate of her deceased husband on condition of her giving a bond together with a surety for the due collection, getting in and administering the estate. The appellant Kandhya Lal became surety for her. Less than six months afterwards the appellant asked the District Judge to cancel the surety bond which he had given and to call upon Musammat Manki

* First Appeal No. 64 of 1908 from an order of G. A. Paterson, District Judge of Benares, dated the 30th of March 1908.

(1) (1905) I. L. R., 28 Mad., 161. (2) (1902) I. L. R., 29 Calc., 68.