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DULARI
v.
MOL CHAND.

end with her death. It has been practically admitted that if the property in question were ordinary zamindari property which had descended to an indigent sister in priority to an affluent one, the estate would devolve on the death of the poor sister on the rich sister in priority to the poor sister's sons. It seems to us that Musammat Dulari's rights were acquired on the death of her father, that is to say, prior to the passing of the present Tenancy Act, and that these rights were merely postponed during the lifetime of Musammat Shibbo. The present Tenancy Act does not purport in any way to take away the rights which had already been acquired. For these reasons we think that both the courts below were wrong, the court of first instance in not giving the plaintiff a decree for the entire holding and the lower appellate court in dismissing the suit altogether. We allow the appeal, set aside the decree of the lower appellate court and modify the decree of the court of first instance by awarding the plaintiff a decree for her claim in full. The plaintiff will have her costs in all courts.

Appeal decreed.

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February 4.

Before Mr. Justice Sir George Know and Mr. Justice Karamat Husain.
KESHO RAM SINGH AND ANOTHER (DEFENDANTS) v. RAM K JAR AND
ANOTHER (PLAINTIFFS).*

Act No. I of 1877 (Specific Relief Act) section 42—Suit for declaration of abstract right—Cause of action—Act No. VII of 1889—(Succession Certificate Act) section 8.

A Hindu widow applied for a succession certificate to enable her to collect the debts of her deceased husband consisting mainly of a sum of Rs. 4,000 odd on fixed deposit with a bank. Objections being raised by the next reversioners, an order was passed enabling the applicant only to draw the interest accruing due from time to time on this deposit. The applicant then brought a suit for a declaration that she was entitled to the whole sum of money. *Held* that the suit was maintainable, the limitation upon her power to get in the money having been imposed at the instance of the reversioners.

THE facts of this case were as follows :—

The plaintiff Musammat Ram Kuar, widow of one Ram Bharose Singh, applied to the District Judge of Allahabad, for a succession certificate in order to enable her to realize a sum of Rs. 4,000 odd, held in fixed deposit by the Allahabad Bank to

* Second Appeal No. 1191 of 1908 from a decree of C. Rustomjee, District Judge of Allahabad, dated, the 25th of May, 1908, confirming a decree of Prag Das, Subordinate Judge of Allahabad, dated the 12th of December, 1907.

the credit of her deceased husband. Notice was issued to the defendants, who were the next reversioners. They put in an application as follows:—

“The petitioners do not object to the lady’s enjoying the interest on this money, but as Musammat Ram Kuar has only a life interest and has no right to appropriate the corpus except for legal necessity, it is desirable that some orders should be passed for safeguarding the interests of the reversioners.”

Upon this application the District Judge, Mr. B. J. Dalal, passed the following order:—

“The objection is reasonable. The applicant’s pleader states that the applicant cannot give security.

“I therefore empower the applicant only to receive interest on the money deposited in the Allahabad Bank, under section 8(a) of the Succession Certificate Act. A certificate shall be made out in the applicant’s name in that form for the debt entered in the application.”

The plaintiff, Musammat Ram Kuar, then brought the present suit in the court of the Subordinate Judge asking for the following reliefs:—

“(a) that the order of the District Judge in the Succession Certificate case be set aside;

(b) that she may be declared to be fully entitled to realize the whole amount held by the Allahabad Bank.”

The defendants pleaded that inasmuch as they had never denied her title, there was no cause of action for the suit. Both the courts below refused to set aside the order of the District Judge in the succession certificate case, but gave the plaintiff a decree for the other declaration asked for. The defendants appealed.

Babu Peary Lal Banerji, for the appellant:—

A declaratory suit is governed by the provisions of section 42 of the Specific Relief Act and two things are essential before such a suit is maintainable. First, an allegation by the plaintiff that she was entitled to a legal character or right, and second, that the defendant was denying or was entered to deny such character or right. A suit for a declaration of an abstract right was not

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maintainable : *Man Kuar v. Tara Singh* (1), *Shah Muhammad v. Kashi Das* (2). In the present case the plaintiff was a Hindu widow and as such entitled to enjoy unconditionally the income from the money and was also entitled to dispose of or appropriate the corpus of the fund for legal necessity. She had no higher powers than this and the defendants had all along admitted this. As there was no denial of her title or right, the basis of an action for a declaration was wanting. He cited Mayne's Hindu Law, 7th edition, section 368, and *Bhagwan Deen v. Myna Bacc* (3). The plaintiff had misconceived her remedy. The District Judge had special jurisdiction to make any order under section 8 of the Succession Certificate Act. If there was an improper exercise of jurisdiction, the plaintiff should have appealed under section 19 of that Act to the High Court which could have dealt with the matter in the exercise of jurisdiction conferred by the same Act. The plaintiff not having appealed and the granting of a declaratory decree being discretionary, the courts below should have refused the plaintiff a declaration.

Babu *Damodar Das*, for the respondent, was not called upon.

KNOX and KARAMAT HUSAIN, JJ.:—This second appeal arises out of a suit brought by Musammat Ram Kuar, widow of one Ram Bharose Singh. It appears that at the time of his death Ram Bharose Singh had a sum of money in fixed deposit in the Allahabad Bank. After his death, his widow applied for a succession certificate enabling her to receive this sum of money. Notice was sent to the present defendants, who admittedly are the next reversioners to Ram Bharose Singh. They, while not disputing the right of the lady, asked for an order protecting their reversionary interests. The District Judge at first asked Musammat Ram Kuar to give security, and upon her saying that she was unable to do so, he granted her a certificate under section 8 of the Succession Certificate Act (VII of 1889), enabling her only to receive interest on the deposit. Musammat Ram Kuar then brought the present suit asking that her title to this sum in deposit might be declared; that she might be granted a decree entitling her to withdraw the money, and that the order of the

(1) (1885) I. L. R., 7 All., 583 at p. 585. (2) (1884) I. L. R., 7 All., 199.
(3) (1867) 11 Moo. I. A., 487.

District Judge of Allahabad in the succession certificate case, might be set aside. The courts below have granted her the reliefs she claimed, with the exception that they declined to set aside the order of the District Judge. It is contended in appeal here that as the appellants had never denied the right or legal character of the respondent Musammat Ram Kuar, she was not entitled to a declaration of an abstract right. The contention is that the lady should have appealed from the order of the District Judge refusing her a certificate to realize the whole amount, and that she has no cause of action for this declaratory suit, inasmuch as the appellants have never denied her title. It was, however, due to the appellants' action in the succession certificate case that limitations were placed upon the power of the lady Musammat Ram Kuar to recover the deposit from the Bank. We are of opinion that this order gave the lady a right to bring the present suit. We dismiss the appeal with costs.

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Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
 MASUM-UN-NISSA (PLAINTIFF) v. LATIFAN AND OTHERS (DEFENDANTS).
 Civil Procedure Code (1882), section 396—Partition—Preliminary decree
 in plaintiff's favour—Resistance to commissioner—Refusal of plaintiff's
 application for reissue of commission.

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 February 5.

A preliminary decree for partition of a house having been made, the court appointed a commissioner to view the house and prepare a scheme for partition. In this he was resisted by the husband of the plaintiff and was unable to execute the commission. The plaintiff applied for the issue of a fresh commission, but the court refused this and dismissed the suit altogether. *Held* that the court had no authority to nullify its decree by totally dismissing the suit, but ought to have acceded to the request of the plaintiff to reissue the commission and to have seen that its order was obeyed.

THIS was an appeal under section 10 of the Letters Patent against a judgement of GRIFFIN, J. The facts of the case appear from the judgement under appeal, which was as follows:—

“Plaintiff's suit was for possession by partition of certain shares in two houses. By an order dated 19th September, 1906, the court of first instance decreed plaintiff's claim for partition and separate possession over 36 *sihams* out of 96 *sihams*. A decree was prepared in accordance with that judgement. In the same order it was directed that a commission will issue to the amin to draw up proposals for the partition and he was directed to submit his report before 31st October, 1906. From the amin's report it appeared that the plaintiff refused to

* Appeal No. 85 of 1908 under section 10 of the Letters Patent.