APPELLATE CIVIL.

1910
January 12.

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

BAKHTAWAR AND ANOTHER (DEFENDANTS) *v.* BHAGWANA (PLAINTIFF) AND BADAM AND OTHERS (DEFENDANTS).*

Hindu Law—Hindu widow—Gift made by Hindu widow with consent of next reversioners—Suit by more remote reversioners to set aside the gift.

A gift by a Hindu widow, who succeeded to the separate estate of her deceased husband, of such estate is not valid and does not create a title which cannot be impeached by the remoter reversioner because it has been made with the consent of the next reversioner. *Ramphal* v. *Tula Kuari* (1) followed. *Bajrangi Singh* v. *Manokarnika Bakhsh Singh* (2) distinguished. *Rani Anund Koer* v. *The Court of Wards* (3) referred to.

THE plaintiffs brought this suit to get a deed of gift cancelled and to have it declared that a deed of gift executed by Musammat Kauli, a Hindu widow, in favour of Bakhtawar, defendant appellant, was inoperative as against the plaintiffs respondents, who were contingent reversioners. The defence was that the plaintiffs being contingent reversioners had no right to maintain a declaratory suit and that the deed of gift in question having been executed with the consent of Jas Ram, who was the only presumptive reversioner, passed the absolute estate and was valid. The court of first instance (Additional Judge of Meerut) held that the contingent reversioners could maintain the suit and although the presumptive reversioners consented to the gift, and attested the deed of gift, yet such attestation was not sufficient to pass an absolute title.

Babu *Durga Charan Banerji* for the defendants appellants contended that Jas Ram, who was the only nearest presumptive reversioner, having consented, the gift was a gift of the absolute estate, and the plaintiffs who were remote reversioners could not maintain a suit unless they proved that the presumptive reversioner was fraudulently colluding with the donor (widow). He referred to *Rani Anund Koer* v. *The Court of Wards* (3), *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (4), *Nobokishore* v. *Hari Nath* (5), *Bajrangi Singh* v. *Manokarnika Bakhsh Singh* (2) and *Ramphal Rai* v. *Tula Kuari* (1).

* First Appeal No. 207 of 1908, from a decree of Kanhaiya Lal, Additional Judge of Meerut, dated the 8th of May, 1908.

(1) (1883) I. L. R., 6 All., 116.
(2) (1907) I. L. R., 30 All., 1.
(3) (1880) L. R., 8 I. A., 14.
(4) (1861) 8 Moo. I. A., 529, at 551.
(5) (1884) I. L. R., 10 Calc., 1102.

Munshi *Gobind Prasad,* for the respondent, relied on *Rani Anund Koer* v. *The Court of Wards* (1) and argued that because the presumptive heir by reason of having signed the deed of gift had rendered himself incapable of suing, the remoter reversioner could sue.

STANLEY, C. J., and BANERJI, J.—The main question raised in this appeal is similar to that which was decided by a Full Bench of this Court in the case of *Ramphal Rai* v. *Tula Kuari* (2). It was in that case decided that a gift by a Hindu widow, who succeeded to the separate estate of her deceased husband, of such estate is not valid and does not create a title which cannot be impeached by the remoter reversioner because it has been made with the consent of the next reversioner. In the case before us Musammat Kauli, who was the widow of one Kallu, made a gift of property which belonged to her deceased son, Bhulan, in favour of the defendant Bakhtawar, the son of Musammat Bharno, a cousin of Kallu. This gift was made with the consent of Jasram, who is the nearest reversionary heir to Bhulan. The gift is impeached by the plaintiffs who are remoter reversioners.

It is contended before us that the ruling in *Ramphal Rai* v. *Tula Kuari* must be taken to have been overruled by the decision of their Lordships of the Privy Council in the case of *Bajrangi Singh* v. *Manokarnika Bakhsh Singh* (3). In that case a Hindu widow without legal necessity and without the consent of the reversionary heirs executed deeds of sale of successive portions of her husband's estate to her son-in-law. Afterwards deeds of relinquishment for valuable consideration ratifying the sale-deeds and agreeing not to dispute their validity were executed by all the nearest reversionary heirs, being the only living reversioners in the line of the common ancestor of themselves and the deceased owner of the estate. It was held that the consent of these persons was sufficient and binding on their descendants and that it was immaterial that it was given after the execution of the sale-deeds. This was a case of sales and not a case of gift and cannot be deemed therefore to govern the present case. In the course of their judgment their Lordships of the Privy Council

(1) (1880) L. R., 8 I. A., 14; I. L. R., 6 Calc., 764.
(2) (1883) I. L. R., 6 All., 116.
(3) (1907) I. L. R., 30 All., 1.

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criticised the judgment in *Ramphal Rai* v. *Tula Kuari*, and rejected the rule laid down by this Court, namely, "that in order to validate an alienation by a Hindu widow of her deceased husband's estate for purposes other than those sanctioned by the Hindu Law, it must have the consent of all those among his kindred who can reasonably be regarded as having an interest in questioning the transaction." They agreed with the High Court of Calcutta that "ordinarily the consent of the whole body of persons constituting the next reversion should be obtained, though there may be cases in which special circumstances may render the strict enforcement of this rule impossible." Applying that rule they held in agreement with the Judicial Commissioner that the consent to the sales of six reversionary heirs, there being no other reversionary heir living at the time of the transfers, superior or equal in degree to those reversioners, was sufficient. In the judgment they expressed their unwillingness to extend a widow's power of alienation beyond its present limits. It does not appear to us that this decision of their Lordships can be treated as overruling the decision in *Ramphal Rai* v. *Tula Kuari*, the transaction in which case was a gift and not a sale for consideration. We think therefore that the court below rightly decided this question.

It is further contended that the plaintiffs being remote reversionary heirs are not entitled to maintain a suit to have the gift made by Musammat Kauli questioned. There is no force, we think, in this contention. Jas Ram the nearest reversionary heir by consenting to the gift and concurring in the act of Musammat Kauli has precluded himself from disputing the validity of the impeached gift. Consequently the plaintiffs as next presumable reversioners would be entitled to sue.

In the case of *Rani Anund Koer* v. *The Court of Wards* (1) their Lordships of the Privy Council, at page 772, observe: "It cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain a suit of the present nature, for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must in their Lordships' opinion be limited. If the nearest

(1) (1880) L. R., 8 I. A., 14; I. L. R., 6 Calc., 764.

reversionary heir refuses without sufficient cause to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or has concurred in the act alleged to be wrongful, the next presumable reversionary heir would be entitled to sue."

These are the only questions discussed in the appeal and the appeal appears to us to be without force. We therefore dismiss it with costs.

Appeal dismissed.

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December 17.

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

CHHUTAN LAL (DEFENDANT) *v.* SHIAM PRASAD AND OTHERS (PLAINTIFFS) AND MUSAMMAT MUL KUNWAR AND OTHERS (DEFENDANTS).*

Act No. III of 1877 (Indian Registration Act), section 33—Registration—Presentation of document by agent holding a power of attorney—Authentication of power.

A document was presented for registration by the agent of a *parda-nashin* lady acting under a power of attorney authorizing him generally to present documents for registration on behalf of his principal. The power of attorney was not executed in the presence of the Sub-Registrar; but the Sub-Registrar had gone to the house of the executant, questioned her, and satisfied himself that the power of attorney had been voluntarily executed, and had endorsed the power of attorney with a statement that he had so satisfied himself. *Held* that the power of attorney was properly executed and authenticated within the meaning of section 33 of the Indian Registration Act, 1877, and the document presented by the executant's agent was validly presented.

THIS was a suit for sale on a mortgage executed under the following circumstances. The mortgagor Musammat Mul Kunwar, a *parda-nashin* lady, on the 28th October, 1897, executed a general power of attorney in favour of Narain Prasad and Mazhar Ali Khan, and on the 31st October following executed the mortgage deed in suit. On the 4th November, 1897, both the documents were presented for registration on behalf of the lady at the office of a Sub-Registrar by Mazhar Ali Khan. On the next day the Sub-Registrar proceeded to the dwelling house of the lady and on her admitting the execution and the completion of the documents registered the power of attorney and the mortgage deed. On suit brought by the mortgagees for sale one of

* First Appeal No. 206 of 1908, from a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 25th May, 1908.