

APPELLATE CIVIL.

1909

November 10.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
 HARGAWAN MAGAN AND ANOTHER (DEPENDANTS) v. BAIJNATH DAS
 (PLAINTIFF) AND SHEO DAS (DEPENDANT).*

*Act No. IV of 1882 (Transfer of Property Act), Chapter II, section 6,
 clause (a)—Reversioner—Release by reversioner of his interest in
 certain promissory notes expectant on death of present holder.*

The reversioner expectant on the death of a Hindu widow executed a document purporting to be a release in favour of the widow of his interest in certain Government promissory notes to which the widow was entitled during her life. *Held* that this was a transfer of the chance of an heir apparent succeeding to property and therefore void. *Sham Sundar Lal v. Achhan Kumar* (1) referred to.

THE facts of this case were as follows :—

One Ghaibi Ram died leaving three sons, Baijnath Das, Sheo Das, and Gauri Shankar, and a widow Musammat Parbati. Sometimes after Ghaibi Ram's death, the three sons separated and distributed the property left by their father among themselves. After separation Gauri Shankar died childless leaving a widow Musammat Rambha. A guardian was appointed of the property of Musammat Rambha, as she was a minor at the time of her husband's death. He converted the entire property left by Gauri Shankar to Government promissory notes. Musammat Rambha also died, and the property in the promissory notes devolved upon Musammat Parbati, mother of Gauri Shankar, as his next heir. Some disputes arose between Musammat Parbati and Sheo Das, which came to an end in a compromise, whereby Sheo Das released all his reversionary right in the promissory notes in favour of Musammat Parbati. After Musammat Parbati's death Hargawan and Mul Chand, who held a decree against Sheo Das, proceeded to attach one-half of the Promissory notes in execution of their decree, alleging it to be the share of Sheo Das, judgment-debtor, as one of the reversioners of Gauri Shankar. Baijnath Das objected to the attachment under section 278 of the Code of Civil Procedure, 1882. He stated that inasmuch as Sheo Das had already

* First Appeal No. 55 of 1908 from a decree of Shah Amjadullah, Subordinate Judge of Mirzapur, dated the 30th of January 1908.

relinquished his interests in the promissory notes in favour of Musammatt Parbati, nothing remained to him to inherit after her death. The executing court disallowed the objection. Baijnath Das therefore instituted this suit for a declaration that Sheo Das had no interest in the promissory notes and that they could not be attached in execution of a decree against him. The main defence taken was that the deed of relinquishment executed by Sheo Das in favour of Musammatt Parbati was void. The Subordinate Judge overruled this plea and decreed the suit. The defendants appealed.

Maulvi *Muhammad Ishaq* for the appellants contended, that the deed of relinquishment purporting to convey the reversionary interest of Sheo Das was bad under section 6 of the Transfer of Property Act, 1882. It transferred no interest to Musammatt Parbati and the right of Sheo Das remained unaffected. He cited *Jagan Nath v. Dibbo* (1), *Achhan Kuar v. Thakur Das* (2) and *Nund Kishore Lal v. Kanee Ram Tewary* (3).

Babu *Lalit Mohan Banerji* (with him *Munshi Kabindi Prasad*), for the respondents replied.

STANLEY, C. J., and BANERJI, J. :—The facts of this case are these:—One Ghaibi Ram died leaving three sons, Baijnath Das, Sheo Das and Gauri Shankar and a widow Musammatt Parbati. After the death of Ghaibi Ram the three sons separated. Gauri Shankar died leaving some cash and jewelry. His widow Musammatt Rambha was at the time a minor. A guardian of the property of the minor was appointed by the court and he sold the jewelry and with the proceeds of the sale of the jewelry and with the money left by Gauri Shankar he purchased Government promissory notes of the face value of Rs. 17,600. Upon the death of Musammatt Rambha the promissory notes passed to Musammatt Parbati, the mother of Gauri Shankar, as the next heir to his property. On the 1st of August 1904, Sheo Das executed a document in favour of Musammatt Parbati, whereby he purported to convey to her and release in her favour all his interest in the promissory notes, referred to above. Musammatt Parbati is now dead, and the only heirs left by her are her two sons Baijnath Das and Sheo Das. The appellant, Hargawan Magan, and Mul Chand,

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(1) Weekly Notes, (1908), p. 284. (2) (1895) I. L. R., 17 All., 125.

(3) (1902) I. L. R., 29 Calc., 355.

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the predecessor in title of the other appellant, held a decree, dated the 17th of November, 1903, against Sheo Das and in execution of that decree they caused a half share of the promissory notes to be attached as the property of Sheo Das. Thereupon Baijnath Das preferred a claim alleging that he alone was entitled to the promissory notes. His objection having been overruled the suit out of which this appeal has arisen was brought by him for a declaration that the half share of the promissory notes attached by the decree-holders was not liable to sale in execution of their decree.

The court below has made a decree in favour of Baijnath Das for one-half of the half share claimed by him. It was of opinion that the document of the 1st of August, 1904, was a deed of family settlement and that under it Musammat Parbati acquired an absolute interest in one half of the promissory notes.

From this decree the present appeal has been preferred. The first contention on behalf of the appellants is that the claim is barred by limitation, inasmuch as the suit was originally brought against Hargawan Magan only and the representative of Mul Chand was added after the expiry of one year from the date of the order disallowing the objection preferred by Baijnath Das. This contention is in our opinion untenable, inasmuch as we find that the aforesaid order was passed in proceedings to which Mul Chand or his legal representative was not a party. The plaintiff no doubt was bound to bring his suit within one year from the date of the order to have it set aside as against the persons in whose favour it was made, but as Mul Chand or his legal representative was not a party to the proceedings in which the order was passed, the provision of the Limitation Act which requires a suit to be brought within one year did not apply as against him. The main contention on behalf of the appellants is that the release, dated the 1st of August, 1904, was in reality a transfer of reversionary rights and that such a transfer is void having regard to section 6 (a) of the Transfer of Property Act. This contention is in our opinion well founded. By the instrument mentioned above Sheo Das purported to convey to his mother his interests in the Government promissory notes. Those interests were only those of a reversioner. At the time when

the document was executed his mother was in possession and he had a reversionary interest only, contingent on his surviving his mother. What he transferred was the chance of an heir apparent succeeding to property within the meaning of clause (a) of section 6 of the Transfer of Property Act. Chapter II of that Act relates to transfers of property by acts of parties and sub-head (a) refers to "transfers of property whether movable or immovable." It is clear therefore that the clause applies to a transfer of the rights of an expectant heir in movable as well as in immovable property. In *Sham Sundar Lal v. Achhan Kunwar* (1) their Lordships of the Privy Council held that under the Hindu Law a person could not make a disposition of or bind his expectant interest. This case has been followed in subsequent cases both by the Calcutta High Court and by this Court, and it has been held in all those cases that the rights of a reversioner cannot be validly transferred. The transfer therefore upon which the plaintiff relies is an invalid transfer and had not the effect of conferring upon Musammât Parbati an absolute interest in any part of the promissory notes in question. Upon her death the ownership of the promissory notes passed to Baijnath Das and Sheo Das in equal shares, and therefore the appellants were entitled to attach the half share of Sheo Das in execution of the decree held by them. The suit of Baijnath Das is consequently untenable and ought to have been dismissed. We allow the appeal, set aside the decree of the court below and dismiss the suit of the plaintiff with costs in both courts.

Appeal allowed.

(1) (1898) I.L. R., 21 All., 71.

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