

Therefore the Additional Judge had jurisdiction to hear the appeal in the present case. The application for revision fails and is dismissed with costs.

Application dismissed.

1912

MUTASADDI
LIAL
v.
MULI MAL.

APPELLATE CIVIL.

1912

January, 8.

Before Mr. Justice Karamat Husain and Mr. Justice Chamier.

RAJA DEI (DEFENDANT) v. UMED SINGH (PLAINTIFF).*

Hindu law—Hindu widow—Suit by remote reversioner to set aside alienation by widow—Immediate reversioner a female having a life estate only—Acceleration of estate.

N died leaving a widow W, a daughter R D and a daughter's son K S. W, during the life-time of R D, made a gift of the property to K S. Held, on suit by other reversioners more remote than K S for a declaration that the gift was not binding on them, that the suit would lie. The question of the acceleration of K S's estate would not arise because at the date of the gift done was not the next reversioner. *Balgobind v. Ram Kumar* (1), *Hanuman Pandit v. Jota Kunwar* (2) and *Abinash Chandra Mazumdar v. Harinath Shaha* (3) followed. *Madari v. Malki* (4) and *Ishwar Narain v. Janki* (5) dissented from. *Rani Anand Koer v. The Court of Wards* (6) referred to.

THE facts of this case were as follows :—

One Nagina died, leaving a widow, Musammat Waziri and a daughter, Raja Dei. During the life-time of the daughter, Musammat Waziri made a gift of the property to the daughter's son, Kan Singh. The plaintiffs, who were the next male reversioners, brought the present suit to set aside the alienation. The defendant pleaded that they had no right to sue, and that the gift merely accelerated the succession of Kan Singh.

Both courts held that there could be no question of acceleration, as the gift was made not to the daughter but to the daughter's son. They also held that the plaintiffs, in spite of being remote reversioners, were entitled to sue. The defendant appealed.

* Second Appeal No. 402 of 1911 from a decree of C. E. Guiterman, Additional Judge of Saharanpur, dated the 9th of March, 1911, confirming a decree of Pramatha Nath Banerji, Subordinate Judge of Saharanpur, dated the 22nd of March, 1910.

(1) (1884) I. L. R., 6 All., 431.

(2) Weekly Notes, 1903, p. 207.

(3) (1904) I. L. R., 32 Calc., 62.

(4) (1884) I. L. R., 6 All., 428.

(5) (1898) I. L. R., 15 All., 132.

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

I. L. R., 6 Calc., 764.

1912

RAJA DEI
v.
UMED SINGH.

Babu Lalit Mohan Banerji, for the appellant, cited *Bhupal Ram v. Lachma Kuar* (1), *Tulsha v. Baru* (2), *Hansraj Morarji v. Bai Moghibai* (3), *Abinash Chandra Mazumdar v. Hari Nath Shaha* (4), *Bepin Bihari Kundu v. Durga Charan Banerji* (5), *Madari v. Malki* (6), *Balgobind v. Ramkumar* (7), *Ishwar Narain v. Janki* (8).

Mr. Nihal Chand, for the respondents, was not called upon.

CHAMBER, J.—Nagina Singh died many years ago, leaving a widow, Musammat Waziri, a daughter, Musammat Raja Dei, and a daughter's son, Kan Singh. In June, 1909, Musammat Waziri, who was in possession of the estate of her husband, made a gift of it to Kan Singh. The plaintiffs at once brought this suit for a declaration that the gift was not binding upon them. The plaintiffs other than the present respondent, Umed Singh, are more distantly related to Nagina Singh than Umed Singh is. The courts below have agreed in making a declaration as prayed in favour of Umed Singh. Kan Singh died while the suit was pending in the court of first instance. The appeal to the lower appellate court was filed by Musammat Raja Dei, and it is she who has filed this second appeal. In this Court it is contended that at the date of the institution of this suit, Umed Singh was not the nearest reversionary heir of Nagina Singh, and therefore the suit was not maintainable. Indeed, it is contended that even Kan Singh, supposing he had not been the donee of the property, could not have maintained a suit for a declaration inasmuch as the next reversioner was his mother, Raja Dei.

There is, of course, no doubt that the nearest reversioner, who is the presumptive heir, though he may have only a contingent interest, may sue for a declaration that a transfer by a female heir in possession of the property of the last full owner does not bind the estate. Upon the question whether a remote reversioner may maintain such a suit when the immediate reversioner is or rather will be the holder of a life-estate only, as where the immediate reversioner is a Hindu female, there is some conflict of

(1) (1888) I. L. R., 11 All., 253.

(2) (1908) 4 A. L. J., 677.

(3) (1905) 7 Bom., L. R., 622.

(4) (1904) I. L. R., 32 Cal., 62.

(5) (1908) I. L. R., 35 Cal., 1086.

(6) (1884) I. L. R., 6 All., 428.

(7) (1884) I. L. R., 6 All., 481.

(8) (1899) I. L. R., 15 All., 182.

1912

 RAJA DEI
 v.
 UMED SINGH.

authority in this Court. In *Madari v. Malki* (1) STRAIGHT and BRODHURST, JJ., held that such a suit could not be maintained unless the immediate reversioner was shown to be in collusion with the heir in possession, but in *Balgobind v. Ram Kumar* (2) OLDFIELD and MAHMOOD, JJ., held that such a suit could be maintained.

In *Ishwar Narain v. Janki* (3) TYRRELL and BLAIR, JJ., refused to follow the decision in the latter case and adopted the view taken in the former case. In the case of *Hanuman Pandit v. Jota Kunwar* (4), my learned colleague, after referring to several decisions of this and other courts, said that he preferred the decision in *Balgobind v. Ram Kumar*, and the same view was taken in *Dirgibjai Singh v. Jagannath Singh* (5), which is the latest case in this Court. The balance of authority in the Calcutta High Court is clearly in favour of the view taken in *Balgobind v. Ram Kumar*, and the Madras High Court have held in several cases that such a suit can be maintained by a remote reversioner when the immediate reversioner is a female entitled to a life-estate only. I have myself in several cases in Oudh followed the view taken by OLDFIELD and MAHMOOD, JJ., in *Balgobind v. Ram Kumar*, by the Madras High Court and by many Judges in the Calcutta High Court, and I am content to adopt the arguments contained in the judgement of MAHMOOD, J., and in the judgement of BRETT and MOOKERJEE, JJ., in the latest case in the Calcutta High Court, *Abinash Chandra Mazumdar v. Harinath Shaha* (6). I am of opinion that a remotereversioner presumptively entitled to the full ownership of the property can maintain such a suit as this, where the immediate reversioner is a female who will take, if anything, a limited or life-estate only. The existence of Raja Dei, then, in my opinion, offers no bar to the maintenance of the present suit. Nor in my opinion is the maintenance of the suit barred by the fact that Kan Singh was at the date of the institution of the suit the next reversioner presumptively entitled to the full ownership of the

(1) (1884) I. L. R., 6 All., 428.

(2) (1884) I. L. R., 6 All., 431

(3) (1893) I. L. R., 15 All., 182.

(4) Weekly Notes, 1908, p. 207.

(5) F. A. No. 210 of 1910.

(6) (1904) I. L. R., 32 Calc., 62.

1912

RAJA DEVI
v.
UMED SINGH.

property. In *Rani Anund Koer v. Court of Wards* (1) their Lordships of the Privy Council said:—

“If the nearest 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 concurred in the act alleged to be wrongful, the next presumptive reversioners would be entitled to sue.”

These remarks clearly cover the present case where the nearest reversionary heir was a female who supports the alienation in question, and the nearest reversionary heir presumptively entitled to the full ownership of the property was the person in whose favour the transfer complained of was made. In my opinion the courts below were right in holding that the respondent, Umed Singh, was competent to maintain this suit. It has not been suggested that they did not exercise a wise discretion in making a declaration in his favour. I would observe in conclusion that no question of acceleration of estates arises here, for Kan Singh, the donee, was not the next reversioner. I would dismiss the appeal with costs.

KARAMAT HUSAIN, J.—I agree with my learned colleague in the order proposed by him.

BY THE COURT.—Order of the Court is that the appeal be dismissed with costs.

Appeal dismissed.

1912

January, 10.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball.

EMPEROR v. BANSI AND OTHERS.*

Act No. XLV of 1860 (*Indian Penal Code*), section 426—Act No. VIII of 1873 (*Northern India Canal and Drainage Act*), sections 7, 70—Cutting walls of canal—Mischief—Penal provisions of the Canal Act not exclusive of the *Indian Penal Code*.

Held that section 70 of the Northern India Canal and Drainage Act, 1873, does not bar the prosecution of an accused person under any other law, for any offence punishable under the Canal Act: held also that it is an act of wilful mischief punishable under the *Indian Penal Code* for any person to make a breach in the wall of a canal.

* Criminal Revision No. 634 of 1911, from an order of E. C. Allen, Sessions Judge of Mainpuri, dated the 28th of October, 1911.

(4) (1880) L. R., 8 I. A., 14; I. L. R., 6 Cal., 764.