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It is next contended that the respondent's objection was time-barred. This contention is also incorrect. The application of Kailashi Kunwar was under clause (2) of section 110, and, as it was filed on the date fixed in the proclamation and not before the date fixed, it must be deemed to be a first application for partition, and as apparently no fresh proclamation was issued the respondent could come in with his objection and the court was entitled to adjudicate upon it. On this point we may refer to the case of *Khasay* v. *Jugla* (1).

The appeal fails and is dismissed with costs.

Appeal dismissed.

[See also the case of *Pema* v. *Jas Kunwar*, *supra* p. 528. Ed.]

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July, 28.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

WAHID ALI KHAN (DEFENDANT) *v.* TORI RAM AND ANOTHER (PLAINTIFFS).*

Hindu law—Hindu widow—Investments by widow from income of husband's estate—Whether or not such investments become accretions to the husband's estate.

Where immovable property is purchased by a Hindu widow in possession as such of the estate of her late husband out of the income of that estate, such property does not necessarily become an accretion to the husband's estate. The widow has full power to dispose of it during her life-time, and it is only when she manifests during her life-time a clear intention to treat it as an accretion to her husband's estate, or allows it at her death to remain undisposed of, that such property will become part of that estate.

THE facts of this case were, briefly, as follows :—

One Than Chand died leaving two widows, who succeeded to to his estate. The survivor of them, Musammat Lachman Kunwar, acquired by purchase in 1874, many years after Than Chand's death, the property in dispute in this appeal, consisting of a share in a village in which Than Chand had never owned any share. Thereafter the property was mortgaged by her; and in 1888 she made a gift of it to her brother, Chhidammi Lal. The property passed from Chhidammi Lal's heirs to the appellants through a series of transactions. Musammat Lachman Kunwar died in

* First Appeal No. 255 of 1911 from a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 10th of May, 1911.

(1) (1906) I. L. R., 28 All., 432.

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1905. The reversioners brought a suit for recovery of the property, alleging that it had been acquired out of the savings of the income of Than Chand's estate and that it formed part of the *corpus* of that estate. The Subordinate Judge decreed the claim. The defendants appealed.

Dr. *Satish Chandra Banerji* (with him Mr. *Ibn Ahmad*), for the appellant:—

The lower court is wrong in presuming that the property was acquired out of the income of the husband's estate and that it formed part of that estate. There is no presumption of law that property acquired by a Hindu widow forms part of her husband's estate. The question from what source the purchase money came is one of fact; and it was for the plaintiffs to start their case with evidence sufficient to shift the onus of proof; *Dakhina Kali Debi* v. *Jagadishwar Bhuttacharjee* (1); *Diwan Ran Bijai Bahadur Singh* v. *Indarpal Singh* (2). The plaintiffs advanced no evidence to prove that the purchase money came out of the savings of the income of Than Chand's estate. On the other hand, the appellant gave evidence to show that the money was advanced by Chhidammi Lal. Secondly, assuming that the property was purchased with the savings of the income, it is abundantly clear that the widow never intended that this property should form part of her husband's estate. She appropriated the property to herself, dealt with it by mortgaging it, and finally disposed of it by gift. Under such circumstances the property must be deemed to be her *stridhan*, and she was fully competent to dispose of it; Trevelyan: Hindu Law, page 458. The question is one of intention to be judged by the widow's conduct and mode of dealing with the property; *Bhagabati Koer* v. *Sahodra Koer* (3).

Pandit *Ramakant Malaviya*, (for The Hon'ble Munshi *Gokul Prasad*; with him Babu *Girdhari Lal Agarwala*), for the respondents:—

The leading case on the subject is that of *Isri Dutt Koer* v. *Hansbutti Koerain* (4). The circumstances of the present case are very similar to those of that case. Here, too, the widow has made a gift and other transfers to her relatives, not only of the property

(1) (1897) 2 C. W. N., 197.
(2) (1899) I. L. R., 26 Calc., 871.
(3) (1911) 16 C. W. N., 834.
(4) (1883) I. L. R., 10 Calc., 324.

in dispute, but also of other property which formed part of her husband's estate. She was attempting to change the succession, irrespective of whether the property was acquired by her or formed part of the original estate, and to give the inheritance to her own relatives. She was dealing alike with the property in dispute and property forming part of the original estate. Under such circumstances little value is to be attached to the fact of her alienation of the property in dispute as furnishing evidence of her intention to keep this property separate and apart from the *corpus* of her husband's estate. So, in the absence of satisfactory proof of such intention, the general rule must hold, namely, that property acquired with the accumulations of the income of her husband's estate would not constitute her *stridhan* but would form part of the *corpus* of that estate; Guru Das Banerji: *Hindu Law of Marriage and Stridhan*, second edition, page 309; Mayne: *Hindu Law*, seventh edition, page 846.

Dr. *Satish Chandra Banerji* was not heard in reply.

RICHARDS, C. J., and TUDBALL, J.—This appeal arises out of a suit for possession of immovable property. In the present appeal we are only concerned with a five biswa share in mauza Khiwali Abdullahganj. The claim is made by reversioners, who claimed that the shares in this village formed portion of the estate of Than Chand. Than Chand died very many years ago, leaving him surviving two widows, Musammat Dhan Kunwar and Musammat Lachman Kunwar. Musammat Lachman Kunwar survived Musammat Dhan Kunwar. Musammat Lachman Kunwar died on the 18th of March, 1905, and the present suit was instituted on the 6th of August, 1908.

The title to the property now in dispute is shortly as follows:—It originally belonged to a man called Dulli; and here we may mention that it is not contended that Than Chand ever owned this property or indeed any share in this village. One Sheikh Muhammad Sharf-ud-din had a decree against Dulli, and the property was put up for sale in execution of this decree. It was purchased by one Baldeo, otherwise Badlu, a Brahman. He was not the actual purchaser, but he acquired the rights of the purchaser through pre-emption. Baldeo, otherwise Badlu, having thus become possessed of the property, sold it to Musammat Lachman Kunwar in the

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year 1874, many years after her husband's death. Musammat Lachman Kunwar mortgaged the property; the exact date is not shown. She then on the 27th of November, 1888, made a deed of gift in favour of Chhidammi Lal, her brother, who entered into possesssion. After the death of Chhidammi Lal, his sons, Sham Lal, Hoti Ram and others, sold three biswas out of the five biswas to the appellant. A suit was then brought upon foot of the mortgage which Musammat Lachman Kunwar had made, but the appellant redeemed the mortgage before allowing the property to be put up to sale. He then brought a suit claiming to have the remaining portion of the property sold, basing his claim on the fact that he had redeêmed the property and paid the whole of the mortgage debt. The remaining portion of the property was sold and purchased by the appellant. The title of the appellant to the property is thus abundantly clear, unless it can be shown that the purchase by Musammat Lachman Kunwar in 1874 was a purchase made for the benefit of her husband's estate, and that she intended that the property should form portion of his estate. Some evidence was given on behalf of the appellant to show that the purchase money which Musammat Lachman Kunwar gave for the property was actually lent to her by Chhidammi. No evidence was given by the other side to show where the money came from. The learned Subordinate Judge disbelieved the evidence that Chhidammi Lal had advanced the purchase money, and he says at page 17 of the judgement:—"Musammat Lachman was then in possession of her husband's property and therefore the presumption is that she acquired this property with the income arising out of her husband's estate. It is laid down in Siromoni's *Hindu Law*, page 372, 2nd edition:—'Where a widow is in possession of her husband's estate the burden of proving any property to be her own separate property rests on the party calling it as such.' According to that principle it was for the defendants to prove that the share in question was Lachman's separate property and her *stridhan*, but I think that he has failed to do so. I do not believe Dulli and Bhupal's statements that Lachhman took the money for this purchase from Chhidammi. I find that Lachman purchased this property out of the income of her husband's property and that she had only a life interest in it and that she had no right

whatever to alienate it. The alienations made by her and her transferee's heirs are not binding on the plaintiffs." Even if we assume that the property was purchased out of the savings of the income of Than Chand's estate, the widow was entitled to deal with those savings as she thought fit. Now if it could be shown that at the time of the purchase it was her intention that the property should become an accretion to her husband's estate, she might not afterwards perhaps have been able to take it away from the husband's estate and change the devolution of the title thereto. In the present case, however, we find that not very long after the acquisition of the property she mortgaged it, thus dealing with it as her own property. We have already mentioned that her husband had never owned the property or any shares in this village. Subsequently, in the year 1888, she made a deed of gift. We do not think, under these circumstances, that we ought to hold that it was the intention of Musammat Lachman Kunwar to buy this property as an accretion to her husband's estate. It seems to us that the matter is well put in Mr. Trevelyan's work on Hindu Law at page 458 :—"Should she invest the income in such a way as to indicate her intention that it was not to form part of her husband's estate, but to remain at her disposal, whether such investment be of a temporary or permanent nature, she can deal with it, at any rate, during her life-time. Should she not dispose of property during her life-time, it does not pass to her heir, but is treated as a portion of her husband's estate." Under these circumstances, we think that the appeal ought to be allowed.

We accordingly allow the appeal, set aside the decree of the court below and, as against the present appellant, dismiss the plaintiff's claim with costs in all courts.

Appeal allowed.