

the present suit. The suit was, therefore, maintainable. On the merits the appellant is entitled to a declaration that the election of the respondent was void having been held contrary to law.

The only other question is whether the suit was brought within time. The period of limitation prescribed by the rules of 1884 may be disregarded, both because it applies only to a petition to be presented to the District Magistrate and because those rules had ceased to have any effect when the election was held. If the rules of 1884 are disregarded, the limitation applicable to the present suit is that prescribed by article 120 of schedule 1 to the Limitation Act, 1908, and the suit was brought within time. We express no opinion upon the question of the validity of the rule made under section 187 of the Municipalities Act, 1900, which prescribes a period of limitation for a suit to contest an election held under the rules of July, 1910.

We allow this appeal, set aside the decree of the court below, and give the appellant a declaration that the election of the respondent was invalid. The respondent must pay the appellant's costs in all three courts.

Appeal allowed.

FULL BENCH.

Before Mr. Justice Sir George Knox, Mr. Justice Tudball and Mr. Justice Chamier.
DURGA KUNWAR (PLAINTIFF) v. MATU MAL AND OTHERS (DEFENDANTS) *
Hindu law—Hindu widow—Powers of alienation possessed by a Hindu widow in respect of property of her husband—Transfer of debt secured by a mortgage.

A Hindu widow in possession as such of property which had been the property of her husband in his life-time can always alienate her life interest in such property and a transfer by her of the corpus of the property without legal necessity and not for a pious purpose is not void but only voidable at the instance of the reversioners.

A Hindu widow, without legal necessity transferred a mortgage debt and the security therefor, which had been the property of her late husband, to D, who thereafter sued to recover the debt by sale of the mortgaged property. *Held* that the transferee acquired all the rights which the widow had and could exercise during her life-time in respect of the mortgage, one of these being to recover the debt. *Bijoy Gopal Mukerji v. Krishna Mahishi Deli* (1) referred to.

THIS was a suit for sale on a mortgage, dated the 12th of June, 1879, made by Tara Singh and Bahadur Singh in favour of

*Appeal No. 140 of 1911 under section 10 of the Letters Patent.

(1) (1907) I.L.R., 34 Calc., 329.

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one Murli Dhar. The mortgagee died shortly after, leaving a son, Rup Ram, who died leaving Musammat Parbati, his mother, and Musammat Ganga Kunwar, his widow, surviving him. The two widows transferred the mortgagee right under the mortgage of the 12th of June, 1879, to Musammat Durga Kunwar, the plaintiff appellant in the present case. The plaintiff brought this suit for sale on foot of that mortgage. The defendants 1—6 were prior mortgagees of the same property under a mortgage of 1872, and they had purchased the property in 1890 in execution of a decree on their mortgage, to which decree neither the plaintiff nor her transferors or their predecessors in interest were parties. The defendants, 2nd party, were the mortgagors and their representatives, and the defendants, 3rd party, were the two ladies Ganga Kunwar and Parbati, the transferors. The plaintiff offered to redeem the prior mortgages, but in the alternative prayed that the property might be sold subject to those mortgages. The defendants, 3rd party, admitted the claim of the plaintiff, and defendants, 2nd party, did not appear. The defendants, 1st party, contested the claim on these grounds :—

- (1) The transferors being widows of members of a joint Hindu family, including others than their husbands, could not transfer the debt and the plaintiff did not get the widow's estate in the mortgage.
- (2) The sale to the plaintiff was without legal necessity and therefore void, and as a corollary from this, (3) that it was for the purpose of defeating the rights of the reversioners. The widows of Murli Dhar and Rup Ram were alive at the date of suit. The reversioners were no parties to the suit, but another suit was brought by them alleging themselves to be bandhus of Rup Ram and asking for a declaration that the transfer by Ganga Kunwar to plaintiff was void against them. The plaintiff defended that suit on the ground that the widows were competent to transfer. The Subordinate Judge found that the family was not joint, and that Ganga Kunwar had a widow's estate in the property left by her husband, including the mortgage, but that there was no legal necessity for the transfer. He dismissed the suit of the plaintiff, Durga Kunwar, and decreed that of the reversioners against her on these findings and gave them a decree that the plaintiff had acquired no rights whatever against them.

On appeal to the High Court the case came up before RICHARDS, C. J., and BANERJI, J., who delivered the following judgements :—

RICHARDS, C. J.—This suit was brought to recover a sum of Rs. 70,000. principal and interest due under a mortgage, dated the 12th of June, 1879. The mortgage was made in favour of Murli Dhar by Tara Singh and Bahadur Singh. The principal was Rs 4,000. The rate of interest was Re. 1-2-0 per mensem, compound interest. The bond in suit is alleged to have been sold to the plaintiff on the 21st of May, 1909, in consideration of the sum of Rs. 7,500 by Musammat Parbati and Musammat Ganga Kunwar. Musammat Parbati was the wife of Murli Dhar, and Musammat Ganga Kunwar was the wife of Rup Ram, the son of Murli Dhar. Both the father and the son were dead prior to the execution of the sale-deed. It appears from the plaint itself that the property which it is now sought to bring to sale had already been sold under a mortgage decree on foot of a prior mortgage dated the 19th of February, 1872. The decree had been obtained as far back as the year 1890. The decree-holders had purchased the property themselves, and they have been in actual possession since some time between the years 1892 and 1895. The respondents are the representatives of these prior mortgagees. The plaintiff claims that when the suit was brought on foot of the prior mortgage neither Murli Dhar nor Rup Ram were made defendants, and that accordingly she, as assignee of the bond of the 12th of June, 1879, is now entitled to bring the property to sale on terms of paying to the respondents the amount, if any, due upon the mortgage of the 19th of February, 1872. She claims that over a lakh is due on foot of the mortgage of the 12th of June, 1879, but she relinquishes the sum of Rs. 76,938-14-0 and sues to realize the balance, that is to say, the sum of Rs. 70,000.

The suit out of which the connected First Appeal No. 174 of 1910 arises was tried in the lower court at one and the same time. It was a suit in which the plaintiffs in the suit claimed as reversioners a declaration that the sale deed of the 21st of May, 1909, was void as against them. A number of issues were tried in this last mentioned suit. The learned Subordinate Judge held that the bond in suit became vested in Rup Ram after the death of Murli Dhar, and that the plaintiffs Sri Gopal, Hoti Lal and Piari

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Lal were the reversioners. He found further that the sale of the 21st of May, 1909, was made without legal necessity and with a view to deprive the reversioners of their right. The court accordingly gave a decree in favour of the plaintiffs 2 to 4 declaring that the sale was void and ineffectual against them.

The learned Subordinate Judge also dismissed the plaintiff's claim in the present suit holding that, inasmuch as the bond was sold without legal necessity and for the purpose of defeating the rights of the reversioners, the plaintiff did not acquire by virtue of the sale any title to maintain the suit.

The plaintiff, Musammat Durga Kunwar, has appealed against the decree dismissing her suit and also against the decree in the connected appeal declaring that the sale was void against the reversioners.

It is difficult to understand why the owners of the bond in suit slept on their rights so long. There can, I think, be no doubt whatever that the purchase of the bond by the plaintiff was a speculative purchase. It is impossible to know exactly how much of the consideration for the sale actually passed, or what was the arrangement between the vendors and the vendee. I think, however, that we are bound to assume that the plaintiff became the assignee of the bond with such rights and title as Musammat Parbati and Musammat Ganga Kunwar could under the circumstances give her. She is entitled to get a decree if she can make good her claim. Bearing in mind the facts of the case and the date of the institution of the connected suit, I think there can be little doubt that the defendants in the present suit put forward the reversioners of Rup Ram to challenge the sale to Musammat Durga Kunwar, and that in all probability there was some arrangement between them. We can, however, hardly blame the defendants for using any weapon they can to retain the property, in the absolute possession of which they have so long been. It has not been attempted to show that the finding of the court below that the sale by Musammat Parbati and Musammat Ganga Kunwar was made without legal necessity is wrong. In fact the argument did not challenge the decision in the connected appeal, save to contend that the decree actually passed went a little too far, in that it declared that Musammat Durga Kunwar acquired no

right to the aforesaid bond. It was urged that she had acquired some title. She had acquired title as against her vendors. This, it seems to me under the circumstances of the present case, is purely a matter of form.

The argument put forward on behalf of the plaintiff appellant is as follows :—The widow represented the estate. She undoubtedly might have sued upon the bond and recovered the amount due thereon without being liable to account to any one. Therefore the plaintiff as her assignee has the same right [that she had and she can sue upon the bond. Furthermore the sale by a Hindu widow is voidable, not void, and that therefore it cannot be questioned by the defendants in this suit. These were the points argued. It seems to me that it by no means follows that because a Hindu widow can sue on foot of a bond and give a good discharge to the mortgagor that her assignee has the same right. A Hindu widow can sue upon a bond and collect the debts due to the estate because she is an heir and represents the estate, in other words, by virtue of the fact that she is a Hindu widow and in possession as such. Nothing I think can be more clearly established than the proposition that a Hindu widow cannot alienate the property except for certain special purposes or legal necessity: See *The Collector of Masulipatam v. Cavalry Vencata Narrainapah* (1).

It has no doubt been held that the reversioners cannot question the sale during the life of the widow save to the extent of getting a declaration that the sale is not to be binding on them, and it is argued that the sale is voidable only and not void; and the case of *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* (2) is relied upon. That was a case in which the reversioners sued to recover possession of certain property in respect of which a Hindu widow could alienate subject to certain conditions being complied with, and that therefore the alienation was not absolutely void but was voidable at the election of the reversionary heir, who might, if he thought fit, affirm it or treat it as a nullity. The Court was there dealing with the partial alienation made by the widow, i.e. a lease, which her successors might or might not adopt if they found it was made without authority. It seems to me, however, that the question whether or not an alienation by a

(1) (1860) 8 Moo. I. A. 529 (551).

(2) (1907) I. L. R., 34 Calo., 329.

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Hindu widow is void or voidable is immaterial in the present appeal. It has not been suggested that there is any distinction as to the class of property which a Hindu widow is restrained from alienating. She has no more right to assign that part of the estate which consists of mortgagee rights than she has to assign the immovable property strictly so called. In either case she or her assignee must show that circumstances existed which made the alienation a valid alienation.

In the present case the sale by the widow has been successfully challenged unless we set aside the decree in the connected case. It is said, however, that this is a question between the reversioners on the one side and the widow on the other, and that third parties are not entitled to raise the question of the validity or invalidity of the sale. I do not think that this proposition is sound. Suppose that a Hindu widow alienated mortgagee rights in a case in which it had to be admitted that she was not justified in making the alienation according to the Hindu Law. Suppose that her assignee sued on the bond and recovered the full amount, from the mortgagor. Suppose further that afterwards the reversioners obtained a declaration that the sale was void as against them. Would not the mortgagor in such a case in a suit by the reversioners after the death of the widow be obliged to pay the mortgage debt a second time, save perhaps to the extent of the interest which had accrued during the life-time of the widow? Could not the reversioners say:—"The widow is now dead and as against us the sale is a complete nullity?" It seems to me that it could be argued with irresistible force that the assignee of the widow could not give a good discharge for the mortgage debt until after it was established that the sale was a sale which a Hindu widow was entitled to make for legal necessity or for a pious purpose. It seems to me that where it is or may be necessary for the protection of a third party to question the validity of an alienation by a Hindu widow, such third party is undoubtedly entitled to do so. See *Hazari v. Lallu* (1).

I do not think that an unauthorized sale by a Hindu widow can clothe her assignee with the Hindu widow's right to represent the estate and collect the debts. It is possible that under certain

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circumstances it might be shown that the widow was driven to sell the mortgagee rights, as, for example, if she had no means to institute a suit to recover the amount. In such a case, however, I think the transaction would be justified on the ground of necessity or perhaps on the ground that under the special circumstances of the case it was the only possible way of realizing the debt due to the estate. In such a case I think the Court to be consistent, should hold that the whole estate had passed to the transferee and that the reversioners were absolutely bound by the transfer made by the widow. I would dismiss the appeal.

BANERJI, J.—The question in this appeal which arises out of a suit for sale upon a mortgage, is whether an assignee of the mortgage from a Hindu widow, on whom the mortgagee rights devolved by right of inheritance, is entitled to maintain the suit, if the assignment was not made for legal necessity. The facts are these:—Tara Singh and Bahadur Singh executed the mortgage in question in 1879 in favour of Murli Dhar. Upon the death of Murli Dhar the mortgage devolved on his son Rup Ram, whose widow Musammat Ganga, jointly with Musammat Parbati, the widow of Murli Dhar, transferred the mortgage to the plaintiff on the 21st of May, 1909. As Musammat Parbati had no right to the mortgage, the transfer by her is of no consequence and the transfer must be deemed to be a transfer by Musammat Ganga, who alone was entitled to the mortgagee rights. It has been found by the court below that the transfer was without legal necessity, and this finding has not been challenged before us. It is by virtue of this transfer that the plaintiff is seeking to enforce the mortgage.

The defendants to the suit are the representatives of the mortgagors and certain purchasers of the mortgaged property in execution of a decree upon an earlier mortgage of 1872. The suit was contested by these transferees alone and they contended that the plaintiff had no right to sue. Murli Dhar, the person in whose favour the mortgage in suit was executed, was not made a party to the suit under the earlier mortgage and therefore he or his representative in interest has still the right as subsequent mortgagee to redeem that mortgage and then to sell under the mortgage in his favour. This is what the plaintiff seeks to do in this case.

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The court below has dismissed the suit, apparently under the impression that the transfer of the mortgage of 1876 made by Musammat Ganga being without legal necessity is absolutely void and that therefore the plaintiff is not entitled to maintain the suit. This view is clearly erroneous. An alienation by a Hindu widow without justifying necessity is not absolutely void, but it is voidable only. In any case it will hold good during the life-time of the widow. This has been so repeatedly held by their Lordships of the Privy Council that it is unnecessary to cite authorities. I may however refer to the recent case of *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* (1).

The mortgage which is sought to be enforced in this suit secures a principal sum of Rs. 4,000. The plaintiff has purchased it for Rs. 7,500. It has been found in the connected suit brought by the reversioners that she paid full consideration and that the sale is a real transaction. On this point there is no controversy in this appeal. The amount claimed by the plaintiff is Rs. 70,000. Apparently she is a speculator, but, that circumstance should not induce us to overlook the real question involved in the case. If she has a legal right to maintain the suit that right must be enforced. The decision of the case, in my opinion, depends on the nature of the estate held by a Hindu widow and her powers of alienation in respect of it.

The nature of a Hindu widow's estate was thus stated by their Lordships of the Privy Council in *Moniram Koluta v. Keri Kolutani* (2):—"According to the Hindu law a widow who succeeds to the estate of her husband in default of male issue . . . does not take a mere life estate in the property. The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her estate is an anomalous one". Mr. Mayne describes it in the following terms:—"Her (the widow's) absolute right to the fullest benefit of her life interest appears long to have been recognized . . . A woman is in no sense a trustee for those who may come after her. She is not bound to save the income. She is not bound to invest the principal. If she chooses to invest it, she is not bound to prefer one form of investment to another form as being more likely to

(1) (1907) I. L. R., 34 Calc., 329.

(2) (1880) I. L. R., 5 Calc., 778.

protect the interests of the reversioner. She is forbidden to commit waste or endanger the property in her possession, but short of that, she may spend the income and manage the principal as she thinks proper" (7th Edition, p. 840). She has no power absolutely to alienate the estate or a part of it, whether movable or immovable, except for certain purposes, but if she alienates it the transfer is, in every case, valid during her life-time and will have full effect and operation till her death. The only distinction between an alienation for a legal necessity and any other alienation is that the former endures after her death and is binding on the reversioners, whereas in the case of the latter it has full force and effect till her death, but may be avoided by the reversionary heirs of her husband after her death. From the operation of the above rule no class of property is exempt and it applies as much to mortgagee rights as to any other rights. Therefore when a Hindu widow sells the mortgagee rights which she inherited from her husband, but the sale is without legal necessity, the transferee, in my opinion, acquires all the rights which the widow had and could exercise during her life-time in respect of the mortgage. Such a transfer is not absolutely void, and I do not know of any authority which declares it to be so. There can be no doubt that the widow herself could bring a suit to enforce the mortgage. It is equally clear that she could give a full discharge to the mortgagor. If she received the mortgage money from the mortgagor and gave him a discharge, it would not lie in the reversioner to claim that money over again from the mortgagor. Her powers are not, as pointed out by Mr. Mayne, less than those of the manager of a family property. That a manager can give a complete discharge to the mortgagor is beyond controversy and doubt. Therefore, a Hindu widow also may do so. If she transfers her rights under the mortgage the transferee is, in my opinion, entitled to give a discharge to the mortgagor. If the mortgagor has obtained a discharge from the transferee he would not, any more than in the case of a discharge by the widow, be liable to the reversioner for the mortgage debt. The only right of the reversioner will be, as it seems to me, to prevent the widow, in the case of the widow, from wasting the corpus of the mortgagee-estate, *i.e.*, the amount of the mortgage debt inherited by her,

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and in the case of the transferee, to claim the amount of the mortgage due at the date of the death of the last male owner of the mortgagee rights. This point, however, I am not called upon to decide in this case, as the reversioners are not parties to it and the contingency to which I have referred has not yet arisen. But I fail to see that there is any bar to the right of the transferee from the widow to enforce the mortgage. As the widow was entitled to do so, her transferee is, in my opinion, equally entitled. The transferees of the mortgaged property are in this respect in no better position than the mortgagor. Any other view is likely to cause hardship and in some cases would result in injury to the rights of the reversioners. Suppose the widow has not the means to defray the costs of bringing a suit to enforce the mortgage. If she cannot transfer it so as to give the transferee a right to sue upon the mortgage a claim for sale may become time-barred and the mortgagee rights may become extinct. This will be to the prejudice of the reversioners. Again, if the widow has made an assignment of the mortgage she has no longer any right to sue on it. And if we hold that the transferee cannot sue, no suit can be brought upon the mortgage. The reversioner has no right to bring such a suit in the widow's life-time. The result will be that no one would be able to enforce the mortgage, and if the widow lives for more than twelve years after the mortgage has become due the mortgage will become incapable of enforcement. For these reasons I am of opinion that the plaintiff is entitled to maintain the suit, and I am unable to agree with the decision of the court below on this point.

The plaintiff is, of course, not entitled to sell the mortgaged property unless she redeems the prior mortgage under which the defendants, first party, purchased it, or she may do so subject to the prior mortgage. There are other questions involved in the suit which the court below has not decided. I would, therefore, allow the appeal and remand the case to that court for trial on the merits.

The decree of the Court accordingly followed the judgement of the Chief Justice and from that judgement the plaintiff appealed under section 10 of the Letters Patent.

The Hon'ble Pandit *Moti Lal Nehru* (Munshi *Gulzari Lal* with him), for the appellant :—

A Hindu widow could give a valid discharge to the creditors of her husband. The appellant stood in the shoes of the widow and could represent her. In dismissing her claim the court was protecting not the reversioner, but the debtors, because any future suit on the mortgage would be time-barred now. No question of legal necessity arose in the case, because for her life a widow could transfer all her rights. Whatever may be the nature of the property the rights of the widows were the same. The rights of reversioners could only arise when the mortgage money came into the hands of the widows or their transferees. There was no question about it yet. The plaintiff might never redeem, or the sum payable to the prior mortgagees may work out to a figure which the plaintiff might not be able to pay. Again, the reversioners were only entitled to the sum due on the mortgage on the death of *Rup Ram*. Whatever interest has accrued since then it is the property of the widow and through her of her transferee. A reversioner had no vested interests and was not entitled to a personal decree. The widow was not a trustee for the reversioners, nor has a case of waste been made out; *Hurrydoss Dutt v. Sreemutty Uppoornah Dossee* (1) *Golapchander Shastri's Hindu Law*, p. 426, summed up the law as to the estate enjoyed by a Hindu widow; *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* (2) *Modhu Sudan Singh v. Rooke* (3).

Munshi *Govind Prasad* (Nawab *Muhammad Abdul Majid* with him), for the respondents :—

There was no dispute so far as the rights of a Hindu widow were concerned, but certain restrictions had been placed on those rights. She could sue on a mortgage and the reversioners could [restrain her from waste, but here she had transferred her rights without any necessity. The question would be as to the position of the assignee. If the plaintiff got a decree and the property was sold, either the decree-holder or a third party would purchase the property. Before the sale the prior mortgage would have to be redeemed. If the purchase was made by a third party, the question

(1) (1856) 6 Moo. I. A., 493.

(2) (1907) I. L. R., 34 Cal., 329 (333).

(3) (1898) I. L. R., 25 Cal., 1.

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would remain--could the reversioners proceed against the purchaser? The widow could not transfer the corpus. Again what exactly would be the corpus? Interest had gone on accumulating and was an accretion to the estate; Mayne, p. 628, 6th edition. Could a person holding under an assignment from another with a limited interest bring a suit upon the mortgage? It would mean a transfer of the corpus. The sale would not bind the reversioners.

The Hon'ble Pandit *Moti Lal Nehru* was not heard in reply.

KNOX, TUDBALL and CHAMIER JJ :—The facts of this case as found by the court below and which are not now contested before us are briefly as follows :—

Rup Ram, a separated Hindu, died leaving a widow, Musammat Ganga Kunwar, and a mother, Musammat Parbati. One part of his estate was a debt secured by a simple mortgage over certain property. The widow and mother without legal necessity transferred this by deed of sale in favour of the present plaintiff appellant, who has brought this suit for sale impleading as defendants,

- (1) the mortgagors or their representatives,
- (2) the transferors of the bond, and

(3) certain prior mortgagees who had sued upon their bond without impleading the puisne mortgagee and having obtained a decree for sale had in execution thereof purchased the property and obtained possession.

The mortgagors did not defend the suit. The vendors admitted the claim. The prior mortgagees contested it, and the one defence with which we are concerned in this appeal was that the plaintiff had no right to sue, as the sale was without legal necessity and the widow could not transfer her right to sue.

During the pendency of this suit certain reversioners brought another suit against the two ladies and their vendee asking for a declaration that the sale in favour of the latter was null and void as against them, and that under it the vendee acquired no right to the bond. They claimed that their maternal grand-father Puran Mal and Rup Ram had been joint, and that on the death of the latter Puran Mal became the sole owner of the joint family property, and on his death their mother, whom they also impleaded, became entitled to a life interest.

The two suits were heard together, and the court held that Rup Ram was separate from Puran Mal and was the last male owner, but that the plaintiffs in the second suit were the next reversioners as being bandhus; that the transfer was without legal necessity, and that the transferee acquired no right under the sale-deed. It accordingly decreed the suit of the reversioners *in toto* and dismissed that of the transferee Musammat Durga.

The latter appealed in both suits, and the appeals coming before a Bench of this Court, the Judges who constituted that Bench, differed on the question of law which arises for decision in the case. The learned Chief Justice agreed with the court below. Mr. Justice Banerji held that the widow at least transferred to the appellant her interest as a Hindu widow, and she being still alive the transferee was entitled to sue and recover the debt, and that the reversioners were only entitled to a declaration in their suit that the transfer, as against them, was null and void.

The present appeal has been preferred under the Letters Patent.

In our view the decision of Mr. Justice Banerji is correct.

In the circumstances the suit of the reversioners is, from the point of view of their interests, suicidal. If the assignee cannot sue to recover the debt, the bar of limitation will prevent both the widow and the reversioners, who succeed her, from recovering the money. Their suit has, therefore, been brought really in the interests of the prior mortgagees.

It is not denied that the estate of a Hindu widow is more than a mere life interest. She is an owner whose powers of alienation are restricted. See *Bijoy Gopal Mukerji v. Krishna Mahishi Debi* (1). In certain circumstances she can represent the estate and her acts will bind the reversioners.

She is entitled to enjoy and spend the whole income of the estate, though she can be restrained from wasting and destroying the corpus, and there is nothing in law to prevent her from transferring her so-called life interest. A transfer by her of the corpus of the estate without legal necessity and not for a pious purpose, is not void, but is voidable by the reversioners and may be so declared at their instance. It cannot be denied that if she

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transferred immovable property in this manner her transferee would be entitled to hold and possess it during her life-time and to recover possession of it by suit as against a third party who was wrongfully in possession; *i.e.*, if the mortgage in the present instance had been usufructuary, her transferee would clearly have been entitled to sue for possession, provided there was no bar of limitation.

In the present case the widow is entitled to spend all income accruing on the debt after the death of Rup Ram and her transferee is "*at least*" entitled to recover this amount and to appropriate it to her own use. It is impossible to hold, therefore, that the latter has no power to sue. It may be that if the reversioners intervened in the suit of the assignee, the court might pass such a decree as would protect their interests and the corpus of the estate, but in the present case, though they are fully aware of the suit, they have not intervened to protect their own interests; on the contrary, they have preferred the suicidal course of attempting to destroy the corpus by preventing the recovery of the debt.

We agree with BANERJI, J., that the transferee acquired all the rights which the widow had, and could exercise, during her life-time in respect of the mortgage, one of those being the right to recover the debt. It is pleaded that if the mortgagors pay the debt they will be open to another suit by the reversioners on the death of the widow and may have to pay a second time. The widow is a party to the suit and the estate is duly represented, and we do not think that there is any force in the argument. It is urged that the sale for Rs. 7,500 in the present case of a debt amounting to over one lakh is, on the face of it, a wasting of the corpus by the widow. We can express no opinion on this at this stage, nor are we called upon to do so. The value of the property mortgaged and the amount of the prior burden are two other material factors which would have to be considered in this connection. But the point does not arise for our decision.

We, therefore, allow this appeal and set aside the decrees both of this Court and of the Additional Subordinate Judge, and remand the suit to the latter court for decision on the merits. The appellant will have her costs in this Court in any event.

Appeal allowed.