

The appeal must be dismissed with costs.

SUNDAR LAL, J.—I am of the same opinion.

BY THE COURT.—The appeal is dismissed with costs.

*Appeal dismissed.*

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June, 6.

*Before Mr. Justice Piggott and Mr. Justice Lindsay.*

KANHAIYA LAL AND OTHERS (DEFENDANTS) v. KISHORI LAL AND ANOTHER (PLAINTIFFS) AND DULI CHAND (DEFENDANT).\*

*Hindu Law—Hindu widow—Effect of compromise entered into by a Hindu widow with a limited estate—Rights of reversioners.*

A Hindu widow in possession as such of her husband's estate brought a suit for possession of two shops on the allegation that they formed part of her husband's estate. The suit was compromised, the effect of which was that the widow recognized the defendants as full proprietors and they, on the other hand, had to pay a certain sum of money. To raise this money they mortgaged the two shops. The mortgagee brought a suit for sale and the shops were purchased by H., at the auction sale. After the death of the widow the reversioners of her deceased husband brought a suit to recover possession of the aforesaid shops.

*Held*, that a compromise entered into by a Hindu widow with a limited estate, resulting in the alienation of property forming part of her husband's estate, cannot bind the reversioners, unless it is shown that it was for such purposes as would justify a sale by a Hindu widow—*Inrit Kunwar v. Roop Narain Singh* (1), *Musammatt Raj Kunwar alias Sheo Murat Koer v. Musammatt Inderjit Kunwar* (2), *Rajlakshmi Dasee v. Katyayani Dasee* (3), *Khunni Lal v. Gobind Krishna Narain* (4), *Mahadei v. Baldeo* (5) and *Bihari Lal v. Daud Husain* (6), referred to.

THE facts of this case were as follows :—

Kunj Lal and Duli Chand were in possession of a certain shop. They were sued for rent by Musammatt Lachcho, widow of Dwarka Das, who alleged that the shop had belonged to her husband. The suit was dismissed by the appellate court in 1894. After that, in October, 1894, Musammatt Lachcho together with her alleged adopted son Chunni Lal brought a suit against them for possession. That suit was compromised on the 9th of April, 1895, on the terms that if the defendants deposited Rs. 1,500 within six months, they should be considered to be in proprietary

\* First Appeal No. 379 of 1914, from a decree of Banke Bihari Lal, Subordinate Judge of Aligarh, dated the 10th of July, 1914.

(1) (1880) 6 C. L. R., 76.

(4) (1911) I. L. R., 33 All., 356.

(2) (1870) 5 B. L. R., 585.

(5) (1907) I. L. R., 30 All., 75.

(3) (1910) I. L. R., 33 Cal., 639.

(6) (1913) I. L. R., 35 All., 240.

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possession from that date, otherwise the suit would be decreed. To raise this amount as well as for other purposes Kunj Lal and Duli Chand hypothecated, on the 7th of October, 1895, the shop in favour of Kundan Lal, and left Rs. 1,500, with the mortgagee for deposit in court. The amount was duly put in. Kundan Lal sued to enforce his mortgage against Kunj Lal and Duli Chand; the suit was decreed on the 19th of November, 1900; in execution of the decree the shop was sold by auction and purchased by Harmukh Rai in 1901. Harmukh Rai obtained possession.

In the meantime, on the 29th of September, 1899, Kishori Lal, reversioner of Musammat Lachcho, brought a suit for a declaration that Chunni Lal's adoption was invalid and a declaration that all transfers which had been made by Chunni Lal and Musammat Lachcho would be inoperative after the death of Musammat Lachcho. Kunj Lal and Duli Chand were also made defendants to the suit, and the transfer of the shop in their favour by virtue of the compromise decree was included in the list of transfers sought to be set aside. This suit was decreed on the 11th of February, 1902; the decree was reversed by the High Court but restored by the Privy Council on the 15th of December, 1908. Kundan Lal was never made a party to this litigation.

Musammat Lachcho died in 1904. In 1913, a suit was brought by Kishori Lal and another for declaration of ownership and for possession of the shop and for recovery of mesne profits against the heirs of Harmukh Rai and others, on the ground that the auction purchase was of no effect. This suit was decreed. The heirs of Harmukh Rai appealed.

Munshi *Panna Lal*, (with him The Hon'ble Dr. Tej Bahadur Sapru and Babu *Girdhari Lal Agarwala*), for the appellants :—

The first suit for rent was brought against Kunj Lal and Duli Chand by Musammat Lachcho as representing the estate of her deceased husband. She obtained a decree from the first court, and it was in appeal that she lost the suit. It must be taken, therefore, that the suit was fully and fairly prosecuted by her. It is not shown that there was any fraud or collusion. The judgement in the rent suit which was obtained against

the widow in her representative character without fraud or collusion and after full contest is binding upon the estate, and the plaintiffs cannot go behind it and question the title of Kunj Lal and Duli Chand, the predecessors in title of the appellants. In the view that Kunj Lal and Duli Chand did not acquire title to the shop from the dismissal of the rent suit, they did so as the result of the compromise decree. The compromise was a reasonable settlement of doubtful and disputed rights. Musammat Lachecho had no documentary evidence to support her alleged title to the shop; the defendants had been long in possession of it; and the former suit had been lost by her. Under these circumstances she acted wisely in entering into the compromise and making the best of a bad situation. Such a compromise is binding upon the reversioners, especially where the property has subsequently changed hands; *Bihari Lal v. Daud Husain*, (1) and *Khunni Lal v. Gobind Krishna Narain* (2). The plaintiffs in attacking the compromise forget that but for it there was every likelihood of Musammat Lachecho's suit for possession being dismissed, with the result that the shop would have been absolutely lost to the estate of Dwarka Das. The decree in Kishori Lal's suit is not binding upon the appellants. Neither Kundan Lal nor Harmukh Rai was a party to that suit. The fact that Kunj Lal and Duli Chand were made parties does not help the plaintiffs; for, a decree obtained against the mortgagors of the mortgage does not affect the rights of the mortgagee; *Sita Ram v. Amir Begam* (3) and *Soshi Bhusun Guha v. Gogan Chunder Shaha* (4). Kundan Lal, therefore, was not bound by that decree; nor was Harmukh Rai bound; he, as auction-purchaser in execution of a mortgage decree, represented the interests of the decree-holder Kundan Lal. Harmukh Rai was a *bond fide* purchaser for value and as such acquired a good title.

Munshi Gokul Prasad, (with him Mr. B. E. O'Connor), for the respondents:—

The dismissal of Musammat Lachecho's suit for arrears of rent did not confer any title upon Kunj Lal and Duli Chand.

(1) (1913) I. L. R., 35 All., 240.

(3) (1886) I. L. R., 8 All., 324.

(2) (1911) I. L. R., 33 All., 356.

(4) (1894) I. L. R., 22 Cal., 364.

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No question of title was decided in that suit. It failed for want of proof of the contract of tenancy alleged by her. The compromise decree relied upon by the appellants is not binding upon the reversioners. A Hindu widow, who is a qualified owner, cannot be party to a consent decree so as to bind the inheritance in the hands of the reversioners. It is only a decree obtained against the widow after full and fair contest that can have such an effect; *Imrit Konwar v. Roop Narain Singh* (1), *Rajlakshmi Dasee v. Katyayani Dasee* (2), *Gobind Krishna Narain v. Khunni Lal* (3) and *Mahadei v. Baldeo* (4). The cases relied on by the appellants are cases of family settlements, in which class of cases different considerations arise. The effect of the compromise decree was merely to create in favour of Kunj Lal and Duli Chand an alienation of the shop by Musammatt Lachcho. In the absence of proof of legal necessity the alienation by the widow passed no more than her own limited interest and ceased to be operative after her death; *Musammatt Raj Kunwar v. Musammatt Inderjit Kunwar* (5). The dismissal of the suit for rent in no way jeopardized the title of Musammatt Lachcho; there is no justification for supposing that her suit for possession was likely to be dismissed. On the other hand, the compromise in fact recognized her title. She was acting in bad faith in securing Rs. 1,500 for her own pocket by parting with her husband's property.

Munshi *Panna Lal*, was heard in reply.

PIGGOTT, and LINDSAY, JJ.:—This is a litigation in respect of two shops in the town of Hathras. There were three sets of defendants originally impleaded, but we are really concerned only with the case as between the plaintiffs and the first set of defendants, namely Kanhaiya Lal and two members of his family. The suit related to two adjoining shops which may conveniently be spoken of as shop No. 1 and shop No. 2. The plaintiffs admitted that the defendants of the first party were in actual occupation of the shops, but alleged them to be in occupation of both shops as tenants. With regard to shop No. 1, these

(1) (1880) 6 C. L. R., 76.

(3) (1907) I. L. R., 29 All., 487.

(2) (1910) I. L. R., 38 Calc., 639.

(4) (1908) I. L. R., 30 All., 75.

(5) (1870) 5 B. L. R., 565.

defendants admitted the plaintiff's title. They pleaded that they had as a matter of fact paid the rent due from them to date and so denied the plaintiff's right to any relief in respect of this particular shop. We are concerned, so far as the appeal before us goes, only with the question at issue between the parties about shop No. 2. The title of the plaintiffs in respect of this shop is simple. They are the reversioners of one Bohra Dwarka Das, who died in or about the year 1854 A. D., leaving him surviving two widows. One of those widows, Musammat Lachcho, survived the other and continued to represent the estate of her husband up to the time of her death in 1904. The title of Kanhaiya Lal and his co-defendants in respect of the shop in question may be set forth in this way. Harmukh Rai, father of Kanhaiya Lal, purchased this shop at auction on the 24th of July, 1901. The sale was held on a decree, dated the 29th of November, 1900, in a suit brought by one Kundan Lal against Kunj Lal and Duli Chand. These persons had made a mortgage of this shop in favour of Kundan Lal on the 7th of October, 1895. There can be no doubt that Harmukh Rai as auction purchaser thereby acquired the right, title and interest of Kunj Lal and Duli Chand in this shop No. 2. The question really in issue is what that title was. The court below has found in favour of the plaintiffs on the question of title and has overruled all the objections taken by the contesting defendants, except with regard to the alleged payment of rent on account of shop No. 1. The appeal of Kanhaiya Lal and his co-defendants is against the decree of the court below awarding to the plaintiffs possession of shop No. 2 with mesne profits. There are seven paragraphs in the memorandum of appeal to this Court. The first and the seventh of these are argumentative and general. The points taken in the remaining paragraphs are substantially four. (1) It is contended that the plaintiffs have failed to prove their title as owners of the shop in question. (2) It is pleaded that there is some bar of limitation against the plaintiffs' suit. (3) It is contended that the ownership of the shop in question had passed to Kunj Lal and Duli Chand, through whom the plaintiffs derived their title, by reason of valid transfers under circumstances to be presently considered. (4) It is pleaded that the position of the

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défendants appellants is that of *bond fide* purchasers for value and that in any case they are entitled to be compensated for expenditure incurred by them upon improvements. We may take up these points in order.

[The judgement then proceeded to discuss the evidence.]

The whole of this evidence taken together seems to be quite sufficient to prove that Dwarka Das was the owner of shop No. 2 and to justify the inference that he continued to be the owner of the same up to the time of his death and was succeeded by his widow Musammat Lachcho.

This of course is subject to a finding in favour of the plaintiffs on the question of limitation.

[The judgement again proceeded to discuss the evidence.]

We therefore find that the plaintiffs have proved their title, and we are satisfied that they have brought their suit within limitation.

We now come to consider the most important issue in the case, namely the question whether Kunj Lal and Duli Chand had acquired a good title to this shop under a certain compromise decree, dated the 9th of April, 1895. We have already referred incidentally to the fact that one Chunni Lal claimed the estate of Dwarka Das as his adopted son. There was prolonged and complicated litigation before the claim of Chunni Lal was disposed of and this question was definitely decided against Chunni Lal by their Lordships of the Privy Council on the 15th of December, 1908, when they disposed of certain consolidated appeals then pending before them arising out of previous litigation in this country. There is no question of the rights of Chunni Lal arising in the suit now before us. The matter is referred to by us only to explain the previous array of Chunni Lal as a co-plaintiff with Musammat Lachcho in a litigation which we are called on to consider. It would seem that during the year 1893, there was friction between Musammat Lachcho and Kunj Lal and Duli Chand, who were then occupiers of this shop No. 2. Musammat Lachcho brought a suit in her own name to recover certain money as arrears of rent for this shop. This suit was decreed by the court of first instance on the 15th November, 1893, but was dismissed on the 7th of June, 1894,

by the court of first appeal. We find from documentary evidence on this record that this dismissal had nothing to do with any claim of Chunni Lal, or with any doubt as to the proprietary title of Musammat Lachcho. The claim for rent was dismissed simply on the finding that Musammat Lachcho had failed to prove the rent agreement on which she was suing. It was, however, presumably in consequence of this dismissal that, on the 22nd of November, 1894, a second suit was filed by Musammat Lachcho and Chunni Lal jointly against Kunj Lal and Duli Chand, to establish their title to this shop and to recover possession. This suit ended in a compromise which was made the basis of a decree passed on the 9th of April, 1895. The compromise is printed at page 26 R. of the record before us. The parties in question agreed that a decree for proprietary possession be passed in favour of the then plaintiffs, Chunni Lal and Musammat Lachcho, but this decree is subject to a condition. It is provided that, if the defendants Kunj Lal and Duli Chand pay into court for the benefit of the plaintiffs within six months, Rs. 1,500, with interest, they shall then be considered to be in proprietary possession of the shop in question from the date on which such payment is made. We know that it was in order to raise money for the payment of this sum of Rs. 1,500, as well as in return for a certain further advance, that Kunj Lal and Duli Chand proceeded to mortgage this shop in favour of Kundan Lal, and it has already been explained how the latter was eventually compelled to bring a suit upon his mortgage, and how the title of the contesting defendants is derived from the auction purchase on Kundan Lal's decree. The question is whether by this compromise decree Kunj Lal and Duli Chand did or did not obtain proprietary title to the shop in question, that is to say, a title binding upon the reversioners. According to the case for the plaintiffs respondents they acquired nothing more than Musammat Lachcho was competent to transfer, namely, that lady's life interest. If this contention is sound, then Harmukh Rai as auction purchaser also acquired a proprietary title terminable with Musammat Lachcho's death, and he had no valid title to plead against the present plaintiffs.

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The case-law on the question of the effect of a compromise decree obtained against a Hindu female in possession of limited interest or estate may be said to go back to the decision of their Lordships of the Privy Council in *Imrit Konwur v. Roop Narain Singh* (1). The question directly in issue in that suit was in regard to the validity of an adoption. At page 81 of the report certain general remarks are made as to the effect of litigation against a Hindu widow, when such litigation results in a compromise decree. That case has been considered and the principles believed to be laid down therein have been followed in subsequent decisions of various High Courts in this country. We may refer to *Musammatt Raj Kunwar alias Sheo Murat Koer v. Musammatt Inderjit Kunwar* (2), *Rajlakshmi Dasee v. Katyayani Dasi* (3), *Gobind Krishna Narain v. Khunni Lal* (4) and *Mahadei v. Baldeo* (5). Following broadly the principles derivable from these cases, the correct view would seem to be that the compromise decree of the 9th of April, 1895, which we are now considering, was in effect nothing more than an alienation on the part of Musammatt Lacheho of a shop which had formed part of the estate of her late husband. Such alienation could only bind the reversioners if it were shown to have been made for such purposes as would justify a sale by a Hindu widow. No question of this sort is raised in the case now before us. It is, however, contended that the general principle that a decree obtained by compromise against a Hindu widow representing the estate of her late husband will not bind the reversioners is subject to certain qualifications. It has been pointed out to us that the decision of this Court in *Gobind Krishna Narain v. Khunni Lal* (4) was actually reversed by their Lordships of the Privy Council, *vide Khunni Lal v. Gobind Krishna Narain* (6) and we have also been referred to another case *Bihari Lal v. Daud Husain* (7). In both these cases the litigation was between members of the same family and their Lordships took the view that the compromise decree was of the nature of a family settlement. They laid

(1) (1880) 6 C. L. R., 76.

(4) (1907) I. L. R., 29 All., 437.

(2) (1870) 5 B. L. R., 585.

(5) (1908) I. L. R., 30 All., 75.

(3) (1911) I. L. R., 33 Cal., 639.

(6) (1911) I. L. R., 33 All., 356.

(7) (1918) I. L. R., 35 All., 240.



down, however, a test which appears to tell very strongly against the appellants in the case now before us. They said that the true test to apply to a transaction which is challenged by the reversioners as an alienation not binding upon them is "whether the alienee derives title from the holder of the limited interest of life tenant." Now on the terms of the compromise decree which we are now considering and which have already been set forth, it is obvious that the alienees, namely Kunj Lal and Duli Chand, derived their title from the holder of a limited interest, namely from Musammat Lachcho. We disregard, of course, the position of Chunni Lal as a co-plaintiff, because the question of his alleged adoption has been finally determined in the negative. The decree itself recognizes the right of the plaintiff Musammat Lachcho, who, along with Chunni Lal, had sued to recover possession of the property. It contains what is virtually a covenant to transfer the shop in favour of the defendants on payment of Rs. 1,500, to be made within the specified time. We do not think that the doctrine of family settlement can or ought to be extended to suits in which the parties to the litigation were undoubtedly not members of the same family. It seems to us that the general principle laid down by this Court in *Mahadei v. Baldeo* (1) applies to the facts now before us. The contention of the appellants therefore that Kunj Lal and Duli Chand had a valid title under the compromise decree of the 9th of April, 1895, in our opinion fails.

The only other point taken is that the appellants should be treated as *bona fide* purchasers for value. We do not think that the doctrine embodied in section 41 of the Transfer of Property Act, No. IV of 1882, has any possible application to the facts now before us. The plaintiffs in the present case are reversioners suing to recover their own property by the avoidance of an alienation made by a Hindu widow. They cannot be said to have done anything to put forward that widow as holding an estate larger than that actually possessed by her. The contesting defendants must suffer by reason of the defective title of the original mortgagee from whom they as auction-

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(1) (1908) 1 L. R., 80 All., 75.

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purchasers derive their own. There had been a cross-objection filed on behalf of the plaintiffs, contesting the dismissal of their claim in respect of shop No. 1 and also with regard to part of the plaintiffs' claim on account of shop No. 2. On this point we think it sufficient to say that there is nothing in the evidence to lead us to differ from the conclusion arrived at by the learned Subordinate Judge.

The result is that the appeal and cross-objection both fail, and we dismiss them both with costs.

*Appeal dismissed.*

*Before Mr. Justice Watsh.*

W. E. Mc GOWAN v. JOHN GEORGE Mc GOWAN. \*  
 Act No. IV of 1869 (*Indian Divorce Act*), section 37 -Practice—  
*Alimony—Discretion of Court.*

*Held* that the power to make an order for alimony in favour of the wife after a decree for divorce obtained by the husband on the ground of adultery is discretionary. In a case where there was no suggestion that the husband's conduct had led to the wife's misconduct and the wife was in fact under the roof of the co-respondent, the court refused to exercise its discretion. *Kelly v. Kelly* (1) referred to.

THIS was an application for alimony by the wife after a decree *nisi* for divorce.

The facts of the case for the present purpose are briefly as follows :—

The petitioner Mrs. McGowan was the defendant in a suit for divorce which was decreed against the petitioner by a single Judge of this Court on the 23rd of May, 1916. This was a petition claiming alimony from the husband pending the confirmation of the decree. The defence to the application was that the wife was living with the co-respondent.

Mr. E. A. Howard, for the petitioner :—

A wife is entitled to alimony. She has filed an appeal against the decree for divorce and it is the legal duty of the husband to support his wife as long as the decree has not been made absolute.

\* Miscellaneous Application in Matrimonial Suit No. 2 of 1916.