

India. The phraseology of sub-section (11), in their Lordships' opinion, is fairly open to the contention that the suit was brought by the deceased plaintiff as representing, in his reversionary right, the estate of the last male owner, and that on his death such right devolved on the petitioner.

It is true that their Lordships go on to say that the case could be decided on a broader ground. It is, however, an expression of opinion by their Lordships that even a reversioner can represent the estate. If a reversioner can represent the estate there seems to be much stronger reason for holding that a Hindu woman in possession of the estate, as such, represents the estate. It has been held over and over again that in honest litigation the widow does so represent the estate, and that reversioners are bound by the result of the litigation. If reversioners are bound by the result of the litigation on the principle of *res judicata*, there seems very little reason why the persons who succeed one after another to the estate should not be entitled on succession to continue the litigation commenced by their predecessors. We think that the decision of the court below was not correct, and we accordingly allow the appeal, set aside the decree (or order) of the court below and remand the case with directions to re-admit the suit upon its original number and to proceed to hear and determine the same according to law. Costs will abide the result.

*Appeal decreed.*

*Before Justice Sir Pramada Charan Banerji and Mr. Justice Walsh.*

RAM NARAIN (DEFENDANT) v. JAGAN NATH PRASAD (PLAINTIFF)  
AND GANGA PRASAD AND OTHERS (DEFENDANTS). \*

*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 110, 111 and 112—Partition—Question of proprietary title.*

One of the co-sharers in a village applied in a Court of Revenue for partition, whereupon another of the co-sharers raised the objection that the village had already been partitioned privately and could not again be divided.

*Held* that this objection raised a question of proprietary title in respect of which the Court of Revenue had jurisdiction to refer the parties to the Civil Court.

IN this case Ram Narain, one of the co-sharers in a village, applied to the Revenue Court for the partition of his share.

\* First Appeal No. 193 of 1914, from a decree of Shiva Prasad, Subordinate Judge of Banda, dated the 31st of March, 1914.

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JADUBANSI  
KUNWAR  
v.  
MAHPAL  
SINGH.

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RAM NARAIN  
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PRASAD.

Jagan Nath Prasad, one of the non-applicants, raised an objection to the proposed partition, to the effect that the village had already been privately partitioned; that a definite portion of it had been allotted to him as his share, and that that portion could not be partitioned again. The Revenue Court, under the provisions of section 112 of the United Provinces Land Revenue Act, 1901, directed Jagan Nath Prasad to bring a suit in the Civil Court to have the question of title raised by him determined. Thereupon the plaintiff brought the suit out of which this appeal arose and the prayer in his plaint was "that it may be declared that the plaintiff is, by virtue of the mutual partition, separately the owner in possession of an eight anna share in mauza Gagauli according to the partition *chittis*, together with all the rights and interests in the cultivated and uncultivated lands, fruit bearing and timber trees and groves containing mango, mahua and other trees, which should not again be divided." The court below made a decree in his favour, holding that a partition was effected in 1880, but that it was only what is known as an imperfect partition. The applicant for partition appealed to the High Court.

Babu *Girdhari Lal Agarwala*, for the appellants.

Babu *Jogindra Nath Mukerji*, for the respondents.

BANERJI and WALSH, JJ. :—The plaintiff Jagan Nath is the son of one Sheo Dayal who had a brother named Mata Din. The defendants are the sons and grandsons of Mata Din. The appellant Ram Narain applied to the Revenue Court for a partition of his  $\frac{1}{10}$ th share in the village. Upon notice being issued to the recorded co-sharers, the plaintiff Jagan Nath raised an objection to the effect that the village had already been privately partitioned, that a definite portion of it had been allotted to his share and that that portion could not be partitioned again. He thus raised a question of proprietary title, and the Revenue Court was competent, under the provisions of section 112 of the Land Revenue Act, either to try the question itself or to refer the parties to the Civil Court. It elected to adopt the latter course, and directed the plaintiff to bring a suit in the Civil Court to have the question of title raised by him determined. Thereupon the plaintiff brought the suit out of which this appeal has arisen

and the prayer in his plaint is "that it may be declared that the plaintiff is, by virtue of the mutual partition, separately the owner in possession of an eight anna share in mauza Gagauli according to the partition *chittis*, together with all the rights and interests in the cultivated and uncultivated lands, fruit bearing and timber trees and groves containing mango, mahua and other trees, which should not again be divided". The court below has made a decree in his favour, holding that a partition was effected in 1880, but that it was only what is known as an imperfect partition. In this appeal the first contention raised is that the Revenue Court was not competent to refer the parties to the Civil Court and that the latter court had no jurisdiction to entertain the suit. We are of opinion that this contention has no force. As stated above, a question of proprietary title was raised, and the Revenue Court was fully competent to refer the parties to the Civil Court. As to the merits of the case, the evidence is overwhelming in favour of the finding of the learned Subordinate Judge. Partition *chittis* were prepared and the lands were divided, not as an arrangement for the distribution of profits but as a division of the lands in the village. The oral evidence is supported by the *dastur dehi*, which is printed on page 2 of the appellant's book. In our opinion the appeal is wholly without force. We accordingly dismiss it with costs.

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*Appeal dismissed.*

## MISCELLANEOUS CIVIL.

*Before Mr. Justice Tadbali and Mr. Justice Walsh.*

RAM SINGH (DEFPNDANT) v. MUSAMMAT BHANI (PLAINTIFF).

*Hindu law—Succession—Lunacy. Effect on the devolution of immovable property of lunacy of next heir—Suit to recover possession from daughters of lunatic—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 141.*

A person is disqualified under the Hindu law from succeeding to property if he is insane when the succession opens, whether his insanity is curable or incurable. *Deo Kishen v. Budh Prakash* (1) and *Tirbeni Sahai v. Muhammad Umar* (2) referred to. The daughter, therefore, of such person would derive no legal title through her father.

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\* Civil Miscellaneous No. 328 of 1915.

(1) (1888) I.L.R., 5 All., 509.

(2) (1905) I.L.R., 28 All., 247