of the 24th of May, 1911, was a sale by him of his reversionary rights and was therefore invalid under the provisions of section 6 of the Transfer of Property Act. This contention found favour in the court of first instance, but was overruled by the lower appellate court, which decreed the claim of the plaintiff. In our opinion the decision of the lower appellate court is correct. The learned judge held that the transaction of the 24th of May, 1911, was in fact and substance a settlement of disputed claims. We agree with this view. There was a claim put forward by Barati Lal to the property of Bhagga Lal as the person entitled to it upon the death of Bhagga Lal's daughter-in-law. That claim was denied by Musammat Mohan Dei. One party approached the other and upon receipt of consideration from Musammat Mohan Dei, Barati Lal abandoned his claim to the property. This was not a mere transfer of reversionary rights within the meaning of section 6 of the Transfer of Property Act. The case is very similar to that of *Mohammad Hashmat Ali* v. *Kaniz Fatima* (1). In this view the appeal must fail and it is unnecessary to consider the question of estoppel which was argued with great ability on behalf of the appellant. We dismiss the appeal with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

JADUBANSI KUNWAR AND OTHERS (PLAINTIFFS) *v.* MAHPAL SINGH AND OTHERS (DEFENDANTS).* 1915 *December, 2.*

Hindu law—Daughter's estate—Suit by unmarried daughter for possession of her father's property—Death of plaintiff—Right of married daughters to continue the litigation.

A separated Hindu died leaving him surviving a widow and four daughters, three married and one unmarried. After the death of her mother, the unmarried daughter sued to recover possession of her father's estate, naming her three married sisters as *pro formâ* defendants. The plaintiff, however, died during the pendency of the suit. The three married daughters were then on their application transferred from the array of defendants to that of plaintiffs. Nevertheless the suit was dismissed upon the ground that it had abated by reason of the death of the original plaintiff.

Held that the suit should not have been dismissed. The original plaintiff represented the estate, and her sisters were entitled to continue the litigation

* First Appeal No. 100 of 1914, from a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 20th of December, 1913.

(1) (1915) 13 A. L. J., 110.

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which she had commenced. *Mahadeo Singh* v. *Sheo Karan Singh* (1) and *Venkata Narayana Pillai* v. *Subbammal* (2) referred to. *Balak Puri* v. *Durga* (3) not followed.

THE facts of this case were as follows :—

The suit was one for possession of immovable property. The property originally belonged to one Rampal Singh. He was succeeded by his widow, Musammat Zamira. Rampal Singh left four daughters, Musammat Raghubansi Kunwar, Musammat Jadubansi Kunwar, Shyam Rani Kunwar and Bahuria Brij Raj Kunwar. The present suit was instituted by Bahuria Brij Raj Kunwar. She alleged herself to be entitled to the property upon the death of her mother, to the exclusion of her sisters, because she was unmarried whilst the others were married. She made her sisters *pro formâ* defendants. Whilst the suit was pending she died and thereupon an application was made by the surviving sisters that their names should be changed from the array of defendants to that of plaintiffs. The application was granted, apparently without any opposition on the part of the defendants. The evidence was taken, but on the case coming up for decision it was contended by the defendants that on the death of the original plaintiff the suit abated inasmuch as the right to sue did not survive to the substituted plaintiffs. The court below, without going into the merits of the case, made a decree in which it was stated :—"It is ordered and decreed that it is declared that Musammat Brij Raj Kunwar being dead, the suit has abated." The plaintiffs appealed to the High Court.

Munshi *Lakhshmi Narain*, for the appellants.

The Hon'ble Dr. *Sundar Lal*, Nawab *Abdul Majid* and Mr. *M. L. Agarwala*, for the respondents.

RICHARDS, C.J., and MUHAMMAD RAFIQ, J. :—This appeal arises out of a suit for possession of immovable property. The property originally belonged to one Rampal Singh. He was succeeded by his widow, Musammat Zamira. Rampal left four daughters, Musammat Raghubansi Kunwar, Musammat Jadubansi Kunwar, Shyam Rani Kunwar and Bahuria Brij Raj Kunwar. The present suit was instituted by Bahuria Brij Raj Kunwar. She alleged herself to be entitled to the property upon the

(1) (1913) I. L. R., 35 All., 481 (2) (1915) I. L. R., 38 Mad., 406.
(3) (1907) I. L. R., 30 All., 49.

death of her mother, to the exclusion of her sisters, because she was unmarried whilst the others were married. She made her sisters *pro formâ* defendants. Whilst the suit was pending she died, and thereupon an application was made by the surviving sisters that their names should be changed from the array of defendants to that of plaintiffs. The application was granted, apparently without any opposition on the part of the defendants. The evidence was taken, but on the case coming up for decision it was contended by the defendants that on the death of the original plaintiff the suit abated inasmuch as the right to sue did not survive to the substituted plaintiffs. The court below, without going into the merits of the case, made a decree in which it was stated :—" It is ordered and decreed that it is declared that Musammat Brij Raj Kunwar being dead, the suit has abated." The plaintiffs have appealed.

A preliminary objection is taken by the respondents that no appeal lies. It is contended that the decree or order, whichever it is called, is not a " decree " within the meaning of section 2, clause (2) of the Code of Civil Procedure and that, no appeal being directly given by the Code, no appeal lies. It seems to us very doubtful whether under the circumstances of the present case the order of the court below is not a " decree " within the meaning of section 2, clause (2). After the death of the original plaintiff, so far from the suit having been declared to have " abated " new plaintiffs were brought on the record, and a formal decree has in fact been drawn up. In its very words it states that " it is ordered and decreed. " If on the death of the original plaintiff the defendants had asked the court to declare the suit abated, and it had done so, and if on the application of appellants the court had refused to set aside the abatement on the ground that right to sue did not survive, an appeal would have lain against such order. It is unnecessary, however, to decide whether the present appeal lies as such, because in our opinion the circumstances of the present case demand that if necessary we should treat the present appeal as an application in revision.

We now come to the merits of the case. If the original plaintiff's allegations be true, she was entitled to possession of the property claimed for a Hindu woman's estate. On her death her

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married sisters (surviving her) would take jointly. It is contended on behalf of the respondents that the claim of the original plaintiff was one personal to her; that her sisters would not take as her heirs but as the persons entitled next after her, and therefore they can in no way be said to be her "legal representatives" under section 2, clause (11). The respondents rely on the case of *Balakpuri* v. *Durga* (1). In that case an unmarried daughter claimed to redeem a mortgage on her father's property making her surviving married sister and the minor children of another deceased sister defendants to the suit. During the pendency of the suit the plaintiff died. On the application of the married sister and the children of the deceased sister to be brought on the record as plaintiffs, it was held that the claim of the original plaintiff being personal to her, the suit abated and the surviving sister could not carry on the litigation. The other side relies on the recent case of *Mahadeo Singh* v *Sheo Karan Singh* (2). In that case a daughter obtained a decree for possession of her father's estate against trespassers. Before she got possession she died and her sons applied for execution. The argument was that the sons did not take as heirs of the mother, but as reversioners to their grandfather, and that accordingly they were not entitled to execute the decree obtained by their mother. It was held that the suit by their mother must be deemed to be a suit by a Hindu woman representing the estate, and that accordingly her sons, who were reversioners, were entitled to execute the decree. In the very recent case of *Venkata Narayana Pillai* v. *Subbammal* (3), the question arose whether on the death of a reversioner who had brought a suit for a declaration that an alleged adoption was illegal and invalid, the next reversioner could be substituted for him and carry on the litigation as plaintiff. Their Lordships held that he could be so substituted. At page 413 their Lordships say:—"Sub-section (11) was embodied in Act V of 1908 with the object of putting in statutory language the result of the decisions of the Indian tribunals on the meaning of the words "legal representative"; but it is not clearly worded, and has already been the subject of criticism by at least one of the High Courts in

(1) (1907) I. L. R., 30 All., 49. (2) (1913) I. L. R., 35 All., 481.
(3) (1915) I L. R., 38 Mad., 406.

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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 possesion 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.

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December, 7.

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.