

APPELLATE CIVIL.

Before Mr. Justice Chamier and Mr. Justice Piggott.

UMRAO KUNWAR AND ANOTHER (DEFENDANTS) v. BADRI
(PLAINTIFF) AND NIADAR (DEFENDANT)*

Hindu Law—Execution of a will by a Hindu widow—Suit for declaration by reversioner—Cause of action—Whether suit maintainable.

A Hindu widow executed a will and thereby bequeathed her husband's property in her hands to a certain person purporting to do so under the oral directions of her husband. The next reversioner brought this suit for a declaration that the will in question was void and ineffectual as against his interest. *Held*, that the mere execution of the will did not afford a sufficient reason for granting a declaratory decree. *Ram Bhajan v. Gurcharan* (1) followed; *Jaipal Kunwar v. Indar Bahadur Singh* (2) referred to.

THE facts of this case are fully set forth in the judgement.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants.

Dr. *S. M. Sulaiman*, for the respondent.

CHAMIER and PIGGOTT, JJ.—This was a suit by a plaintiff claiming to be the next reversioner under the Hindu Law to the estate of one Dewa. The said Dewa died leaving a widow, Umrao Kuar. This lady has executed a will bequeathing the property in her hands as widow of Dewa to one Tika Ram, son of Niadar, brother of the said Dewa. In the will there is a recital to the effect that the bequest is made in accordance with oral directions given by Dewa. The plaintiff sought a declaration that the will in question is void and ineffectual as against his interest, and that Tika Ram, who was impleaded as defendant No. 2, will acquire no rights under the said will. The court of first instance dismissed the suit upon a preliminary point, holding that there had been no alienation by Umrao Kuar of the property in her hands, and that under the circumstances the mere execution of a will would not afford a sufficient reason for granting a declaratory decree. It supported itself by a quotation from Mulla's Principles of Hindu Law. The learned District Judge on appeal has reversed the finding on the preliminary point and remanded the case for trial on the merits. He bases his

*First Appeal No. 23 of 1915 from an order of L. Johnston, District Judge of Meerut, dated the 1st of August 1914.

(1) (1904) 1 A.L.J. R., 468. (2) (1904) I.L.R., 26 All., 238.

decision upon the reported case of *Jaipal Kunwar v. Indar Bahadur Singh* (1). It is obvious that in that case their Lordships of the Privy Council maintained the decision of the courts in India with considerable reluctance, and carefully guarded themselves against being understood to hold that the execution of a will under such circumstances as the present would afford a cause of action for a declaratory suit on the part of the nearest reversioner. It is certainly not the practice of this Court to encourage such suits, vide *Ram Bhajan and others v. Gurcharan* (2). The learned District Judge moreover, while purporting to follow the Privy Council ruling quoted by him, has really departed from the spirit of that ruling by interfering with the decision of the court of first instance. We think that the learned Additional Subordinate Judge was right in refusing to grant the declaration sought by the plaintiff and gave good reason for his decision. We set aside the order of the court below and restore the decree of the court of first instance dismissing the suit. The defendants-appellants will get their costs in this Court and in the lower appellate court.

1915

 UMRAO
KUNWAR
v.
BADRI.

Appeal decreed.

Before Mr. Justice Chamier and Mr. Justice Piggott.

MUHAMMAD INAMULLAH KHAN (JUDGEMENT-DEBTOR) v. NARAIN DAS
(DECREE-HOLDER).*

 1915
April 21.

Code of Civil Procedure (1908), order XXXVIII, rule 5; order XXXIX, rule 1,
section 94—*Injunction—Malikana dues.*

One M.I., mortgaged *malikana dues* from certain villages to one N. N. sued on his mortgage and obtained an order absolute for sale of the property. Later, he obtained an injunction restraining the judgement-debtor from receiving the *malikana dues*. Held, that the court below was not justified in either attaching the *malikana dues* or restraining the judgement-debtor by injunction from receiving it inasmuch as all that the decree-holder was entitled to do under his decree, was to have the property sold.

THE facts of this case were as follows :—

One Muhammad Inamullah Khan mortgaged his right to receive what are described as *talugdari malikana dues* from a number of villages to one Narain Das in the year 1901. Narain Das brought a suit on foot of his mortgage and obtained

*First Appeal No. 185 of 1914, from an order of Shekhar Nath Banerji, Subordinate Judge of Agra, dated the 22nd of August 1914.

(1) (1904) I.L.R., 26 All., 238.

(2) (1904) 1 A.L.J.R., 468.