

This appeal fails, and their Lordships will humbly advise His Majesty that it should be dismissed. The appellants must pay the costs of the appeal.

*Appeal dismissed.*

Solicitors for the appellants :—*T. L. Wilson & Co.*

Solicitors for the respondents :—*Barrow, Rogers & Neville.*

*J. V. W.*

VASONJI MORARJI (DEFENDANT) *v.* CHANDA BIBI (PLAINTIFF).

[On appeal from the High Court of Judicature at Allahabad.]

*Hindu Law—Alienation—Alienation by widow—Construction of deed of sale executed by widow—Whether it conveyed an absolute interest in the property or only a limited interest—Legal necessity—Evidence of intention of parties—Construction of deeds executed by natives of India—Recitals in deed as showing necessity and intention of executants.*

In this appeal their Lordships of the Judicial Committee held (reversing the decree of the High Court and restoring that of the Subordinate Judge) that on the construction of a deed of sale executed by a Hindu widow of property held by her as heir of her husband in favour of the appellant, she conveyed her absolute interest in such property, and not only the limited interest of a Hindu widow

Recitals to the effect, (a) that the husband did not leave property the produce of which was sufficient to meet her necessary expenses, (b) that she had been obliged to borrow money to provide the ordinary necessities of life, (c) that there were ancestral debts still unpaid, and creditors pressing for payment, and (d) that the only way to discharge them was to sell a portion of the property of her deceased husband, recitals which were necessary if the executant were disposing of her absolute interest, but serving no purpose if the object was to convey merely the limited interest of a widow, were held to show that the circumstances were such as to give her power to dispose of her absolute interest, and from which the inference could reasonably be drawn that it was her intention so to dispose of it.

Referring to the case of *Hunooman Persaud Pandey v. Munraj Koonwera* (1), as to the liberal construction it was necessary to put upon deeds executed by natives of India, their Lordships were of opinion that an examination in detail of the provisions of the deed in this case left no doubt in their minds that all the parties to it meant that the absolute interest in the property should be conveyed to the purchaser, and thought that it had by the deed been effectually conveyed to him.

That interest might well be construed as meaning the right to and interest in the property which the widow had, in the particular circumstances

\*Present :—Lord DUNEDIN, Lord ATKINSON, Sir GEORGE FARWELL and Sir JOHN EDGE.

(1) (1856) 6 Moo. I. A., 393 (412, 412).

1915

POTTU LAL  
v.  
PARBATI  
KUNWAR.

P.C.  
1915  
April 16.  
May 7.

1915

VASONJI  
MORARJI

v.

CHANDA BIBI.

of the case, powers, for the purpose indicated, to sell and dispose of, that is, the absolute interest, and not (as held by the High Court) as merely meaning the right and interest which a widow normally takes in the immovable property which her husband owned at his death and leaves after him. Any other construction their Lordships thought would plainly defeat the object and intention of the contracting parties.

APPEAL No. 24 of 1913 from a decree (6th February, 1912,) of the High Court at Allahabad, which reversed a decree (20th July, 1910,) of the Subordinate Judge of Benares.

The suit which gave rise to this appeal was brought by Chanda Bibi, the respondent, to recover possession with mesne profits of two houses in the city of Benares, which had belonged to a joint Hindu family the last surviving male member of which, one Kunj Behari Lal, died on the 6th November, 1890, leaving him surviving only his widow Rama Bibi, and one daughter the plaintiff. On Kunj Behari Lal's death Rama Bibi succeeded to the property for the estate of a Hindu widow, and on the 24th November, 1892, sold it to the appellant Vasonji Morarji, who converted the houses into a Dharamshalla, or rest house for pilgrims, laying out a considerable sum of money thereon. Phundo Bibi, another widow of the family, who had a charge for maintenance upon the family property also joined in the sale. Rama Bibi, the survivor of the two widows, died on the 19th of August, 1909; and on the 12th of January 1910, the present suit was filed by Chanda Bibi as the daughter and reversionary heir of Kunj Behari Lal claiming possession of the property from the appellant as defendant on the ground that the sale by Rama Bibi was made without necessity, and without the knowledge or consent of the plaintiff, and was therefore void after the death of Rama Bibi.

The defence was that the sale was for legal necessity; defendant purchased in good faith after due inquiry; that the plaintiff had consented to the sale; and that the subsequent outlay on the property was made with her knowledge.

The sale-deed, dated the 24th November, 1892, after reciting the title to the property to be conveyed of which one Rash Behari Lal became the sole and absolute owner by a deed of sale, dated the 29th April, 1831, stated that Rash Behari Lal died in 1849 leaving two sons Radha Govind Lal, and Krishna Chaitanya Deo who together "jointly owned, possessed and enjoyed the

property left by their father ;" that Radha Govind Lal died in 1863 leaving Phundo Bibi one of the executants of the deed, as his widow ; that Krishna Chaitanya Deo died in 1884 leaving a son Kunj Behari Lal above mentioned whose widow Rama Bibi was the other executant, and his daughter was Chanda Bibi the plaintiff, married to Sham Lal. The material portions of the deed were as follows :—

" Now, I, the said Rama Bibi, on my part declare that I am the owner of the whole property left by the said Kunj Behari Lal, deceased, but Musammam Phundo Bibi, the other executant, being an elderly woman in the family, the property left by Goshain Kunj Behari Lal was enjoyed jointly by courtesy by Musammam Phundo Bibi, and whereas the husbands of the executants did not leave any sufficient property from which or from the proceeds of which he could defray all our necessary expenses, we, the said executants, had to borrow money from time to time to provide ourselves with the ordinary necessaries of life, and whereas at the time of respective deaths of Radha Govind Lal and Krishna Chaitanya Deo they were indebted to several persons, and whereas the said creditors are pressing hard for their money and there seems to be no other way of paying off the debts incurred by the said deceased Radha Govind Lal and Krishna Chaitanya Deo and also those debts incurred by us for purposes aforesaid than by selling a portion of the immoveable property inherited by Goshain Kunj Behari Lal we hereby jointly and severally agree to convey and sell all our full existing rights and interests in the said houses to Seth Vishunji Morarji of Bombay in lieu of Rs. 10,500 (ten thousand and five hundred) only which has been paid in cash, and as Musammam Phundo Bibi has been joined as executant by virtue of her position in the family and for the additional guarantee of the said vendee Vishunji Morarji, I, the said Rama Bibi, do hereby convey, sell and transfer all my rights and interest in the said houses which I inherited from my said deceased husband, Goshain Kunj Behari Lal, for the said sum of Rs. 10,500 (ten thousand five hundred) to the said Vishunji Morarji without any reservation of any kind, and whereas I, the said Phundo Bibi, who have no other interest in the said property than that of maintenance, have consented to execute this deed of sale with the object aforesaid, on my part absolutely convey, transfer and sell whatever rights I have in the said houses including those of maintenance to the said vendee for a sum which is included in the said amount of Rs. 10,500 (ten thousand five hundred). We, the said Phundo Bibi and Rama Bibi, in lieu of Rs. 10,500 only jointly convey, transfer and sell all our existing rights, title and interests in or belonging and appertaining to the said houses including easements to Vishunji Morarji, and from this day henceforth the said Vishunji Morarji will be the full owner and proprietor of the said houses in our stead and shall own, possess and enjoy them in the same way as we have been hitherto doing, and as proof of the existing debts and the necessity of conveying the property for purposes aforesaid, Sham Lal, the husband of Chanda Bibi, the daughter of Goshain Kunj Behari Lal, has signed as one of the witnesses of the

1915

VISHUNJI  
MORARJI  
v.  
CHANDA BIBI.

1915

VASONJI  
MORARJI  
v.  
CHANDA BIBI.

deed. Should at any time the said vendee or his heirs and representatives be deprived of the whole or part of the property conveyed by this deed, he or they would be entitled to recover the money in full or in part as the case may be from us and rest of our property."

The Subordinate Judge, on the issues raised, found (*inter alia*) that the plaintiff was not a minor at the date of the sale; that her husband Sham Lal had acted throughout the transaction on behalf of the executants; that the plaintiff had full knowledge as to what was going on, and had given her consent and authorised her husband to attest the deed. He further held that the defendant before purchasing the property had taken all possible precautions and had acted in good faith, and was therefore fully protected by the provisions of section 38 of the Transfer of Property Act (IV of 1882). He therefore dismissed the suit with costs.

On appeal the High Court (Sir HENRY RICHARDS, C. J., and BANERJI, J.) held that the deed only purported to convey to the defendant the "life estate of the widow Rama Bibi," and, reversing the decision of the Subordinate Judge, gave the plaintiff a decree. The High Court said—

"It is contended before us that under the terms of the sale-deed executed in favour of the defendant nothing passed to him beyond the life-interest of the vendor, Musammat Rama Bibi. This contention is in our opinion well-founded. In the sale-deed the vendor, Rama Bibi, stated: 'I, the said Rama Bibi, do hereby convey, sell and transfer all my rights and interest in the said houses which I inherited from my said deceased husband, Goshain Kunj Behari Lal.' Lower down it is stated in the sale-deed, 'We sell all our existing rights, title and interest,' and referring to the vendee it is stated that 'he will be the full owner and proprietor of the said houses in our stead and shall own, possess and enjoy them in the same way as we have been doing.' These recitals show that the widow was selling such rights as she had as a widow, that is to say, her life estate. It is possible that she intended to sell the property absolutely, but the language used in the document is what we must go by, and having regard to the nature of the interest which according to the terms of the document, was conveyed to the defendant it is not open to him to say that he acquired an absolute interest in the property and that the intention was to convey such interest to him. In view of the terms of the document we are unable to hold that anything beyond the widow's life-interest was conveyed. It is said that the plaintiff assented to the sale and is therefore estopped from claiming the property. She was no party to the deed, and all that appears is that her husband was a marginal witness to it. Holding as we do that the effect of the document was only to transfer the life estate of the widow, which determined on her death, no question of estoppel arises,"

On this appeal, which was heard *ex parte De Gruyther, K. C.*, and *G. R. Lowndes* for the appellant contended that on the proper construction of the deed of sale of the 24th November, 1892, the widow's whole estate in the property was intended to pass, and did in fact pass under the deed to the appellant. A widow took under the Hindu law more than a mere life estate in the property of her deceased husband; Mayne's Hindu Law (7th Ed.), page 819. Where there is legal necessity for her alienation of it, or part of it, she had power to give the transferee an absolute estate in the property alienated. The evidence in the case fully established that legal necessity for the alienation existed, as was rightly found by the Subordinate Judge. Rama Bibi therefore had power to convey an absolute estate; and from the circumstances of the case and the terms of the deed, it could be clearly inferred that it was the intention of the parties to it to do so: see Transfer of Property Act (IV of 1882), section 8. Reference was made to *Hunooman Persaud Pandey v. Munraj Koonwarree* (1) as showing that a liberal construction is to be put on such deeds.

1915

---

VASONJI  
MORARJI  
v.  
GHANDA BIBI.

It was also contended that the sale was made with the knowledge and consent of the respondent which was shown by her husband signing the deed as a witness; and that the appellant was in the circumstances entitled to rely on section 38 of the Transfer of Property Act as protecting his title.

1915 May 7th :—The judgement of their Lordships was delivered by Lord ATKINSON :—

This is an appeal from a decree of the High Court of the North-Western Provinces, Allahabad, dated the 6th February, 1912, whereby a decree of the Subordinate Judge of Benares, dated the 28th July, 1910, was set aside. The respondent did not appear on the hearing before this Board to support the judgement appealed from.

The suit out of which the appeal has arisen was brought by the respondent against Thakur Vasonji Morarji, a well-to-do merchant of Bombay to recover possession of a certain house in the city of Benares, and also mesne rates.

(1) (1856) Moo. I. A. 393 (411, 412).

1915

VASONJI  
MORARJI  
v.  
GHANDA BIBI

The land upon which this house is built was part of the immoveable property inherited by the respondent's father, one Kunj Behari Lal, the last surviving male member of a joint Hindu family, who died on the 6th November, 1890. He left his widow, Musammat Rama Bibi, and the respondent, his daughter by that lady him surviving. He had no other issue. One Musammat Phundo Bibi, the widow of Goshain Radha Govind, the paternal uncle of Kunj Behari Lal, was, in and subsequent to the year 1892, entitled to maintenance out of the property so inherited by the latter. By deed, dated the 24th November, 1892, these two widowed ladies jointly conveyed to Thakur Vasonji Morarji some interest in the site of the aforesaid house with the two houses then standing upon it in consideration of the sum of Rs. 10,500.

The main question in dispute upon which the two Indian tribunals have differed is the nature of the interest so conveyed. The Subordinate Judge held in effect as a fact, first, that the sale of these houses was made by Musammat Rama Bibi as a matter of necessity, in order to discharge out of the purchase money certain debts due respectively by her husband's father, Krishen Chaitan Deo, deceased, and his aforesaid paternal uncle amounting to Rs. 9,500 with interest, for the payment of which the creditors were pressing, and also certain debts incurred by herself, in order to obtain the necessaries of life for the family; and, secondly, that Musammat Rama Bibi, having under these circumstances the power to sell the absolute interest in this immoveable property, she intended so to do; that this deed, on the true construction of its terms, effected her intention, and carried to and vested in the purchaser the absolute interest in the then existing two houses and their sites.

The High Court, while not differing from or disturbing in any way the conclusions of fact at which the Subordinate Judge had arrived, or questioning the intention of Musammat Rama Bibi, to sell and convey the absolute interest in the piece of immoveable property, held that the terms of the deed were inadequate to convey to the purchaser anything beyond her own interest in the same, which they described as a life-interest.

The purchaser, the defendant in the suit, died on the 22nd of March, 1913. He purchased these houses for the purpose of founding a Dharamshalla on their site, and with that object caused the two dilapidated houses standing upon it at the date of the deed to be demolished, and one house to be erected upon the site at a cost to him of Rs. 13,000. Rama Bibi died on the 19th August, 1909, Phundo Bibi having pre-deceased her. On the 12th January, 1910, this suit was instituted by the respondent, as heir of her father, claiming the relief asked for on the ground that the sale by her deceased mother was made without necessity and without her, the respondent's, consent. The Subordinate Judge found as a question of fact that the respondent was not a minor at the date of the deed, and that she had full knowledge of the intended sale, and consented to it. Owing to the fact that the respondent did not appear on the hearing of this appeal, their Lordships thought it right not to content themselves with accepting and acting on the findings of fact of the Subordinate Judge, without examining for themselves the evidence upon which those findings purport to be based. Counsel for the appellant has accordingly fully opened this evidence. Their Lordships have fully considered it, and are clearly of opinion that the existence of the debts incurred by the predecessors of Kunj Behari Lal to the amount mentioned, the necessity for the sale of the absolute interest in these two houses in order to discharge them, and the payment of them out of the purchase money when obtained, are clearly established. Their Lordships see no reason whatever to dissent from any of the Subordinate Judge's findings of fact.

The question of the proper construction of the deed of conveyance remains. The principle laid down by Lord JUSTICE KNIGHT BRUCE in delivering the judgement of this Board in the case of *Hunooman Persaud Pandey v. Babooee Munraj Koonweree* (1), is particularly applicable to this case. At pp. 411—412 of the report he says :—

“ Deeds and contracts of the people of India ought to be liberally construed. The form of expression, literal sense, is not to be so much regarded as the real meaning of the parties which the transaction discloses.”

Well, it appears to their Lordships that an examination in detail of the provisions of the deed of conveyance in this case

(1) (1856) 6 Moo. I. A., 393 (411, 412).

1915

VASONJI  
MORARJI  
v.  
CHANDA BIBI.

cannot leave any doubt upon one's mind that all the parties meant that the absolute interest in these two houses should be conveyed to the purchaser, and thought that it had by the deed been effectually conveyed to him. That instrument commences with a full and detailed recital of the title to the property. It contains a declaration that Rama Bibi is the owner of all the property left by her deceased husband, but that Phundo Bibi being an elderly woman in the family, this property was by courtesy enjoyed by the latter jointly with herself.

It is then recited that the deceased husbands of these two ladies (both of whom execute the deed) did not leave behind them property, the produce of which was sufficient to meet their necessary expenses; that they had been obliged to borrow money to provide the ordinary necessaries of life; that the father and paternal uncle of Kunj Behari Lal were at the time of their respective deaths each indebted to several creditors, still unpaid, who were pressing for their money; and that the only way by which money could be procured to discharge all these debts was by selling a portion of the property inherited by Kunj Behari Lal. Not, be it observed, a particular estate, or interest in the whole or a portion of that property but a portion of the property itself, part of the corpus as it were, if one may use that expression.

Now, it is plain that all these recitals touching the existing indebtedness of the executants and their predecessors could only have been introduced for the purpose of showing that the circumstances were such as to give to the executants the power to dispose of the absolute interest. The recitals were entirely otiose, serving no purpose whatever, if the intention and object of the parties were merely to dispose of the interest to which Rama Bibi would normally be entitled as the widow of her deceased husband. She could dispose of that interest whether debts existed or not. So that special pains are taken to set out in detail the facts and circumstances which remove every fetter from her power of disposition over the absolute interest.

It is next recited that the two executants have jointly and severally agreed to sell and convey all their full and existing rights in the two houses to the purchaser for the sum of



Rupees 10,500, to be paid in cash; and that Phundo Bibi has joined as an executant by virtue of her position in the family for the additional guarantee of the vendee. Her right to maintenance was a liability affecting the absolute interest in every portion of the property left by Kunj Behari Lal. It might last beyond the life of Rama Bibi if Phundo Bibi outlived her; but the vendee, it was agreed, was to enjoy the property absolutely discharged from this latter liability for all time. By the operative granting part of the deed Rama Bibi in the first place sells, conveys, and transfers all her rights and interest in these two houses to the purchaser without any reservation. Then Phundo Bibi transfers to him her only right in the property, namely, her right to maintenance. And then the two ladies jointly proceed to sell and convey to him all their own existing right, title, and interest in, or belonging or appertaining to these two houses, including easements, and declare that from the execution of the deed thenceforth the purchaser shall be—

“the full owner and proprietor of the said houses in our stead, and shall own, possess, and enjoy them in the same way as we have been hitherto doing.”

Then there follow two very significant provisions, first, that—

“as proof of the existing debts and the necessity of conveying the property for purposes aforesaid Sham Lal, the husband of Chanda Bibi” (*the respondent*) “has signed as one of the witnesses of the deed,”

and secondly, that—

“should at any time the said vendee or his heirs and representatives be deprived of whole or part of the property conveyed by this deed he or they would be entitled to recover the money in full or in part, as the case may be, from us and rest of our property.”

That guarantee might not be of much value, but it contemplated a loss which might occur after the death of Rama Bibi. Well, the purchase money was paid, the debts were discharged, and Sham Lal and the creditors of the male debtors, whose claims were paid, signed the deed as witnesses.

Thus every precaution which apparently occurred to the minds of the parties to the instrument or to those of their advisers was taken to show on the face of the document that circumstances existed which would empower Rama Bibi to dispose of the absolute interest in this property.

1915

YASOJJI  
MORARJI2.  
CHANDA BIBI.

1915

VASANJI  
MORARJI  
v.  
CHANDA BIBI.

There can be no doubt, therefore, as to the object and intention of the parties to the transaction, and as to their view as to the meaning and effect of the language of the instrument. They all obviously intended that all the interest which the recited circumstances, true in themselves, empowered Rama Bibi to alienate should pass to the vendee, and it is equally plain that they thought that the effect of the instrument was to pass it to him.

The High Court seem to have attached little importance to some, if indeed not all, of the pregnant recitals which have been referred to. They took the two following passages from the granting part of the deed, first:—

“ I, the said Rama Bibi, do hereby convey, sell, and transfer all my rights and interest in the said houses which I inherited from my said deceased husband, Goshain Kunj Bahari Lal.”

And secondly—

“ We . . . sell all our existing rights, title, and interest

As together with the declaration that the vendee—

“ will be the full owner and proprietor of the said houses in our stead, and shall own, possess, and enjoy them in the same way as we have been hitherto doing.”

They then proceed to say—

“ These recitals ” (as they erroneously style them) show that the widow was selling such rights as she had as widow, that is to say, her life-estate.”

With all respect to the learned Judges of the High Court, their Lordships are quite unable to take that view. They think that the High Court fell into the very error which Lord JUSTICE KNIGHT BRUCE, in the passage already quoted, stated should be guarded against in the construction of deeds between the people of India. They took the strict literal sense of the words in the passages referred to, and ignored the meaning which the parties to the transaction obviously attached to them. It is not quite accurate to describe the interest which a widow normally takes in immoveable property, which her husband inherits and leaves at his death, as a “life-estate.”

In Ch. 2 of Mr. Mayne’s “Hindu Law,” 8th Ed., p. 846, he lays it down that it is wholly incorrect so to describe her estate, and that it would be just as untrue to speak of the estate of a father under the Mitakshara law as one for life.

“Hindu law,” he says, “knows nothing of estates for life or in tail or in fee. It measures estates not by duration but by use. The restrictions upon the use of an estate inherited by a woman are similar in kind to those which limit the powers of a male holder but different in degree. The distinctive feature of the estate is that at her death it reverts to the heirs of the last male owner.”

And again at page 870 :—

“It is not a life estate, because, under certain circumstances, she can give an absolute and complete title.

Nor is it in any sense an estate held in trust for the reversioners. Within the limits imposed upon her, the female holder has the most absolute powers of enjoyment.”

If the circumstances existed which enabled her to dispose of that absolute interest, and she intended to dispose of it, the language of the instrument does not seem inadequate for the purpose.

Taking the deed as a whole and endeavouring to reconcile its various provisions the one with the other, giving effect as far as possible to each, their Lordships find nothing in its language constraining them to adopt a construction which would plainly defeat the object and intention of the contracting parties. They think the passages relied upon by the High Court may well be construed as meaning to refer to the right to, and interest in, the property which Rama Bibi, as the widow of, her deceased husband, had, in the particular circumstances of the case, power, for the purpose indicated, to sell and dispose of, that is, the absolute interest, and not as merely meaning to refer to the right and interest which a widow normally takes in the immoveable property which her husband owned at his death and leaves after him.

Their Lordships are, therefore, of opinion that the decree appealed from was erroneous and should be reversed, that the decree of the Subordinate Judge should be restored with costs throughout, and they will humbly advise His Majesty accordingly.—

The respondent will pay the costs of this appeal.

*Appeal allowed.*

Solicitors for the appellant:—*T. L. Wilson & Co.*

*J. V. W.*

1915

---

VASANJI  
MORARJI  
v.  
CHANDA BIBI.