

nothing to prevent a mortgagee purchasing under such a sale with the leave of the court. It has been held by their Lordships of the Privy Council that a mortgagee who purchases with the leave of the court is exactly in the same position as any other purchaser. Therefore the fact of the purchaser being a person other than the mortgagee, in my opinion, makes no difference so far as the application of section 99 is concerned. The learned Judges in that case do not, as it seems to me, go the length of holding that a sale in contravention of section 99 is absolutely void. If that is so, and if such a sale is only voidable, it not having been avoided before confirmation, the title of the mortgagor or of those whom he represents, or of those who derive title from him passes absolutely to the purchaser and no right remains in those persons by virtue of which they can claim redemption.

TUDBALL, J.—I concur.

By THE COURT.—The order of the Court is that the appeal is allowed and the plaintiffs' suit is dismissed with costs in all courts.

*Appeal decreed.*

## APPELLATE CIVIL

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

RENKA AND ANOTHER (DEFENDANTS) v. BHOLA NATH (PLAINTIFF)  
AND NANNHU MAL AND OTHERS (DEFENDANTS)\*

*Hindu law—Hindu widow—Rights of widow in respect of the property of her deceased husband.*

A Hindu widow in possession as such of her husband's estate is not liable to account to anyone; but is at liberty to do what she pleases with the property during her life-time provided only that she does not injure the reversion.

THIS was a suit by a person claiming to be the next reversioner to the estate of one Sewa Ram, on the death of his widow Musammat Renka. The defendants were the widow herself and certain nephews of hers to whom the widow was alleged to have granted a lease of a large amount of the property at a very low rent. The plaintiff claimed to treat this lease as an act of waste committed by the widow and asked for various reliefs; principally that the lease should be cancelled and he himself appointed

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\* First Appeal No. 148 of 1913, from a decree of Banke Bihari Lal, Additional Subordinate Judge of Aligarh, dated the 25th of March, 1913.

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manager of the property, or, failing that, that some person should be appointed receiver; that the widow should be given a fixed sum per annum for her maintenance and that the rest of the income should be accumulated for the benefit of the reversioner. The court of first instance appointed a receiver. The widow appealed to the High Court.

The Hon'ble Dr. *Sundar Lal* and Munshi *Gulzari Lal*, for the appellants.

Mr. *B. E. O'Connor* and Pandit *Shiam Krishna Dar*, for the respondents.

RICHARDS, C. J., and BANERJI, J.—In the suit out of which this appeal arises the plaintiff is the alleged reversioner to the estate of one Sewa Ram, upon the death of his widow Musammat Renka, the defendant of the first party. The defendants of the second party are alleged to be the nephews of the Musammat on whom she has conferred certain benefits as tenants. The defendant of the third party is a lessee from the defendant of the first party. The defendants of the fourth party are other reversioners, who apparently do not join in the suit. The claim seems to us a most extraordinary one. The plaintiff alleges that a large amount of property has been given to Jwala Prasad and his brother as their agricultural holding at a very low rent. It is also alleged that the lease granted by the Musammat is at a low rent and that a premium was taken. Paragraph 9 states that Rs. 600 or Rs. 700 per annum would be quite sufficient for the expenses of the Musammat and that the rest of the income of the property should be accumulated. The plaintiff then prays that he himself should be appointed manager during the life-time of the widow, but failing this, the court should appoint some other person as receiver; that the lease in favour of the defendant No. 3 should be declared absolutely null and void; that failing this, the plaintiff may be declared entitled to the property comprised in the lease by way of pre-emption; and lastly, that an injunction should be granted against the defendants.

The court below has made a decree appointing a receiver over the property. In our opinion the plaintiff has entirely misconceived his rights and the court below has granted him relief to which he is in no way entitled. A Hindu widow is

entitled to remain in possession of her husband's estate during her life-time and she is not liable to account to any one. Of course, she can be restrained from committing wilful waste where it is clearly and distinctly proved that she has been guilty of such action. A Hindu widow is entitled to give the property to anyone she likes to enure so long as she lives and she need ask for no rent or other compensation for what she has done. She is clearly entitled to grant a lease and to take a premium provided that that lease is not to last longer than the term of her own life. If a Hindu widow alienates or deals with the property to the prejudice of the reversioners in a way not authorized by law, the reversioners are entitled to bring a suit for a declaration that the acts of the widow shall not prejudice the reversioners. In our opinion in the present case no acts of any kind were proved which would in any way justify the court in taking away the life estate of the widow and appointing a receiver. The widow is entitled to spend as she thinks best the entire income of the estate during her life-time.

We must set aside the decree of the court below and dismiss the plaintiff's suit with costs in all courts. If the receiver has taken possession he should forthwith file and verify his final account in the court below and when the same has been accepted by the court below he will be at once discharged.

Objections have been filed by the respondent upon which there was a deficiency in court fee which has not been made good though time has been allowed. These objections are therefore rejected with costs.

*Appeal allowed.*

*Before Sir Henry Richards, Knight, Chief Justice, and Justice  
Sir Pramada Charan Banerji.*

BHAGWAN DAYAL AND ANOTHER (PLAINTIFFS) v. PARAM SUKH  
DAS (DEFENDANT)\*

*Civil Procedure Code (1908), order IX, rule 13; order XXXII, rule 3—  
Guardian ad litem—Illusory appointment of guardian—Competence of  
minors to have a decree passed without their being represented set aside.*

A suit was brought against certain minor defendants naming as guardian *ad litem* their uncle, who was also a defendant. The uncle refused to act as

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\*Second Appeal No. 1612 of 1913, from a decree of Rama Das, first Subordinate Judge of Aligarh, dated the 2nd of September, 1913, confirming, decree of P. K. Roy, Munsif of Koil, dated the 18th of January, 1913.