PRIVY COUNCIL.

JHANDU (PLAINTIFF) *v.* TARIF AND OTHERS (DEFENDANTS.)

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

*P. C.** 1914 *October*, 23.

Reversioners—Right of reversioner to sue—Suit to set aside alienation and for possession—Nearest reversionary heir alleged to be precluded from suing.

In this case it was *held* (affirming the decision of the High Court at Allahabad) that the appellant could not maintain the suit (to set aside an alienation by a widow and for possession) because a nearer reversionary heir was in existence whom he had failed to prove to be precluded from suing.

The general rule laid down in *Rani Anund Koer* v. *The Court of Wards* (1) followed.

APPEAL 133 of 1913 from a judgement and decree (8th June, 1911,) of the High Court at Allahabad which reversed a judgement and decree (16th February, 1910,) of the court of the Subordinate Judge of Meerut.

The suit giving rise to this appeal was brought by the appellant claiming as next reversionary heir of one Sukhram who died in 1903 leaving a widow Imirti whose name was in November, 1903, entered in the Revenue registers in place of that of Sukhram in respect of the property left by him. In August, 1904, a suit had been brought in the Saharanpur court by four persons, Nihal, Mir Singh, Kallu and Kehri against Imirti, alleging that she had not been lawfully married to Sukhram and contending that they were his next reversioners, and consequently his heirs, and entitled to possession of his property. That suit was decreed by the Subordinate Judge, but the District Judge held that the pedigree set up was not proved, was indeed a false pedigree, and dismissed the suit on the 17th of August, 1905. On the 2nd of March, 1909, Imirti by two registered deeds transferred the property in possession of which she was as widow of Sukhram to the respondents.

The present suit was on the 8th of October, 1909, instituted by the appellant against Imirti and the other respondents, her transferees, to recover from the latter the property which had belonged to Sukhram. The plaintiff alleged that Imirti was not the lawful wife of Sukhram and that her transferees acquired no title to the property she conveyed to them ; and he set up a pedigree to show

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that he was the next reversionary heir of Sukhram, and entitled to succeed to his property.

The defence was (*inter alia*) that Imirti was the lawful wife of Sukhram, and that the appellant was not the next reversionary heir of Sukhram.

The Additional Subordinate Judge found that the four persons who had brought the previous suit were all one degree nearer in relationship to Sukhram than the appellant; but held that, though they were admittedly alive, they had brought a similar suit which had been dismissed, and were thus precluded from bringing another suit; and that being the case the present appellant was entitled to maintain the suit as heir of Sukhram.

On appeal a Divisional Bench of the High Court (S. KARAMAT HUSAIN and E. M. D. CHAMIER, JJ.) held that, the plaintiffs in the former suit which was dismissed being alive, and being nearer reversionary heirs by one degree than the present appellant, the latter could not maintain the suit. The decision of the Subordinate Judge was accordingly reversed and the suit dismissed with costs.

On this appeal—

B. Dube for the appellant contended that, though there was a nearer reversioner alive, he had by bringing a suit similar to the present one, on a forged pedigree, which suit had been dismissed, precluded himself from bringing another suit with the same object and between the same parties. Reference was made to section 13 of the Code of Civil Procedure, 1882; and to *Rani Anund Koer* v. *The Court of Wards* (1), *Jhula* v. *Kanta Prasad* (2) and *Govinda Pillai* v. *Thayammal* (3). If the appellant had no right to possession he was entitled, it was submitted, to a declaration that the deed executed by the widow of Sukhram was not an absolute conveyance, but only valid for her life: section 42 of the Specific Relief Act (I of 1877) was cited.

J. M. Parikh for the respondent was not called upon.

1914, October 23rd.—The judgement of their Lordships was delivered by Lord DUNEDIN :—

(1) (1880) I. L. R., 6 Calc., 764. (772); L. R., 8 I. A., 14.

(2) (1887) I. L. R., 9 All., 441.

(3) (1904) I. L. R., 28 Mad., 57.

One Sukhram was an owner of property and died. He left behind him a lady named Musammat Imirti who was supposed to be his legal widow, having been married in the Karao form of marriage. If she was his legal widow she was entitled to the life enjoyment of the property which Sukhram left.

In 1904 four persons called Kehri, Kallu, Nihal and Mir Singh raised an action against this lady alleging that they were the representatives of Sukhram They further alleged that she was not a legal widow at all, and that accordingly they were entitled to possession of Sukhram's property. They were cast in that action because they failed to produce a proper pedigree which showed that they were in the degree of relationship which would entitle them to succeed even if their allegations against the lady were true.

The present plaintiff is a person of the name of Jhandu, who, admittedly, in the pedigree is one degree further off from Sukhram than Mir Singh, who is still alive. He raised the present action on precisely the same averments as Mir Singh and the others raised their action in 1904, that is to say, he averred that Musammat Imirti was not a real widow, but was, as he described it, a Bhatni widow with whom Sukhram had illicit connection and who lived with him as a kept woman. He therefore asked for possession of the property. It seems that after 1904, but before the institution of the present suit, Musammat Imirti made a conveyance of part of the lands to certain third parties. The Subordinate Judge gave judgement in the plaintiff's favour, disregarding the fact that in no supposition could the plaintiff ever be entitled to immediate possession for which he asked, owing to the fact that Mir Singh was still alive and was a degree nearer than the plaintiff.

The High Court set aside that judgement and dismissed the suit, holding that it was impossible for the plaintiff to get what he asked, because, in any event, Mir Singh, under the present circumstances, would cut him out.

An appeal has been taken to their Lordships' Board, and the learned counsel for the appellant really gave up at once any idea of insisting on the relief which the plaintiff asked for; and which he got from the Subordinate Judge, because he admitted that the

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widow being alive he could not possibly get possession. That of course is tantamount to an admission that she is a real widow and not, as put in the plaint, a kept woman. But he has pressed their Lordships to turn the pleadings round and to give him a declaration that this conveyance by the widow to these third persons was bad as an absolute conveyance, and was only given as for the period of her own life.

Now it is the fact that a reversioner in India may have a declaration from a court to the effect that a conveyance by the person presently in possession is only good for the life of that person and is not good as an absolute conveyance of the property against the reversioners. But it is perfectly well settled that that declaration will only be given to persons who stand in a certain relationship. It was laid down by this Board in the case which has been quoted of *Rani Anund Koer* v. *The Court of Wards* (1) " that the right to bring such a suit is limited, and, as a general rule, belongs to the presumptive reversionary heir." It is quite true that the Board indicated that, in certain cases, the nearest reversionary heir might have precluded himself in some way by his own act or conduct from suing—as by collusive action with the widow—and in that case a reversioner in a more remote degree might be allowed to prosecute the suit. The argument that was addressed to the Board was that this was such a case, because Mir Singh having brought the suit in 1904, and failed through producing a false pedigree, never could sue again.

There are two reasons either of which is sufficient to prevent that argument prevailing. The first has already been indicated, namely, that the relief asked for here was possession of the property, and that the declaration now sought for can scarcely be spelt out of the pleadings at all. But there is another objection which is equally fatal, and it is this. In 1904, when Mir Singh brought his suit, this deed of conveyance by the widow was not in existence, and therefore it is impossible to say that Mir Singh has, by his conduct in raising an action in 1904, precluded himself from challenging by way of declaration the deed which at that time was not in existence.

(1) (1880) I. L. R., 6 Calc., 764: L. R., 8 I. A., 14.

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Their Lordships will therefore humbly advise His Majesty to dismiss the appeal with costs.

Appeal dismissed.

Solicitors for the appellant : *Barfield & Barfield.*

Solicitor for the respondents : *Edward Delgado.*

J. V. W.

JAMBU PRASAD (PLAINTIFF) *v.* MUHAMMAD AFTAB ALI KHAN AND OTHERS (DEFENDANTS).*

P. C.* 1914 *November,* 2, 3, 25.

And another appeal ; two appeals consolidated.

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

Act No. III of 1877 *(Indian Registration Act), sections* 32, 33, 34, 35—*Presentation of documents for registration—Registration, if document is presented by an unauthorized person, not valid—Jurisdiction of Registering Officer to register document—Admission of execution by executant of deed, effect of, on registration—Prevention of fraud, object of sections* 32 *to* 35—*Duty of courts not to allow defeat of provisions of Act.*

Sections 32 and 33 of the Registration Act (III of 1877) relating to the presentation of documents for registration, are imperative, and their provisions must be strictly followed ; and where it was proved that agents who presented deeds of mortgage for registration had not been duly authorized in the manner prescribed by the Act to present them, the deeds were held not to be validly registered, so as (under section 49) to affect immovable property or to be received in evidence of any transactions affecting such property ; or under section 59 of the Transfer of Property Act (IV of 1882) to be effective as mortgages.

A Registrar or Sub-Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it or by the representative or assign of such person, or by an agent of such person, representative or assign duly authorized by a power of attorney executed and authenticated in the manner prescribed by section 33 of the Act.

Executants of a deed who attend a Registering Officer to admit execution of it cannot be treated for the purposes of section 32 of the Act as presenting the deed for registration. They would no doubt be assenting to the registration, but that would not be sufficient to give the Registering Officer jurisdiction.

One object of sections 32 to 35 of the Registration Act, III of 1877, was to make it difficult for persons to commit frauds by means of registration under the Act ; and it is the duty of the courts in India not to allow the imperative provisions of the Act to be defeated.

Ishri Prasad v. *Baijnath* (1) and the principle laid down in *Mujib-un-nissa* v. *Abdur Rahim* (2) followed.

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* *Present* :—Lord DUNEDIN, Lord SHAW, Sir JOHN EDGE and Mr. AMEER ALI.

(1) (1903) I. L. R., 28 All., 707. (2) (1900) I. L. R., 23 All., 233 : L. R., 28 I. A., 15.