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order should be set aside as not being in conformity with law. It is clear from the language of section 13 of the Gambling Act that all that could be confiscated were the instruments of gaming. This was so held in the case to which the learned Sessions Judge refers. Acceding therefore to the recommendation of the learned Sessions Judge, I set aside so much of the order of the Magistrate as directs the confiscation of the money found in the possession of the accused and direct that it be refunded to him.

APPELLATE CIVIL.

1918
March, 22.

Before Mr. Justice Piggott and Mr. Justice Walsh.

JUMANAN AND OTHERS (DEFENDANTS) *v.* JAHANJIRA (PLAINTIFF.)*

Hindu law—Hindu widow—Gift—Suit to contest alienation made by widow—Plaintiff not the nearest reversioner.

In order that a reversioner may be able to maintain a suit to contest an alienation, made by a Hindu widow, of her husband's property he must either be the next presumptive reversioner or he must show that the nearer reversioners are colluding with the widow. *Rani Anand Kunwar* v. *The Court of Wards* (1) and *Meghu Rai* v. *Ram Khelawan Rai* (2) followed. *Raja Dei* v. *Umed Singh* (3) distinguished.

THE facts of this case were as follows:—

On the death of one Tota, his widow succeeded to a life estate. She executed a deed of gift of part of her husband's estate in favour of her children by a second marriage. Thereupon, a male reversioner brought a suit for a declaration that the gift would not be binding after the death of the widow. One of the pleas in defence was that Tota had left a daughter who had an infant son, and that during the life-time of the daughter and the daughter's son, the plaintiff would not be the nearest reversioner to the estate of Tota and consequently would not be entitled to bring the suit. The plaintiff had made no mention of the daughter or her son in the plaint, and denied that she was Tota's daughter, but the court found against him on this point. It was also found that, but for the daughter and her son the plaintiff and one Tulshi, who was the second husband of the widow,

*First Appeal No. 220 of 1916, from a decree of Man Mohan Sanyal, Additional Subordinate Judge of Meerut, dated the 12th of June, 1916.

(1) (1880) I. L. R., 6 Calc., 764. (2) (1913) I. L. R., 35 All., 326.

(3) (1912) I. L. R., 34 All., 207.

would be the nearest reversioners. The lower court held that when a female or a minor intervened between the widow and a remote reversioner, the latter was entitled to bring the suit, and relying on the cases in I. L. R., 34 All., 207 and 4 I. C., 957, decreed the suit. The defendants appealed.

Mr. *Nihal Chand*, for the appellants, contended that the plaintiff was too remote a reversioner, and a suit by him was not maintainable, except on proof that the nearer reversioners had colluded with the widow or concurred in the alienation, or had refused to institute the suit or precluded themselves from doing so; *Rani Anand Kunwar* v. *The Court of Wards* (1). The circumstances and the manner in which the present suit was brought were similar to those of the case of *Meghu Rai* v. *Ram Khelawan Rai* (2) and the decision in that case applies fully to the present. The lower court has misapplied the case of *Raja Dei* v. *Umed Singh* (3). There the gift was made to the daughter's son himself, who was the nearest male reversioner, and so the case came within the exceptions mentioned in the Privy Council case. In the recent case of *Saudagar Singh* v. *Pardip Narain Singh* (4) the daughter, who was childless and widowed, had joined in making the alienation, and the suit was by some of the nearest class of reversioners.

Babu *Sheo Dihal Sinha*, for the respondent, submitted that, as had been held in the case of *Raja Dei* v. *Umed Singh* (3), as well as in some other cases, referred to therein, of the Allahabad High Court, a remoter reversioner could bring such a suit where the next reversioner was a female having only a life-interest. The existence of the daughter was, therefore, no hindrance to the plaintiff's bringing the present suit. The grounds of collusion etc., mentioned in the Privy Council case in I. L. R., 6 Calc., 764, were not exhaustive. The daughter's son was a minor, under the natural guardianship of his mother. The donees were half brothers of this daughter, and presumably there was collusion or acquiescence on her part. Under these circumstances, the next set of reversioners should be allowed to bring the suit. On the merits the suit was unanswerable, as the

(1) (1880) I. L. R., 6 Calc., 764. (3) (1912) I. L. R., 34 All., 207.

(2) (1913) I. L. R., 35 All., 326 (4) (1917) 16 A. L. J., 61.

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transfer was a mere gift. The question was whether it should be defeated by reason of its having been brought by a reversioner who was next in step to the daughter's son.

Mr. *Nihal Chand*, was not heard in reply.

PIGGOTT and WALSH, JJ.:—This is an appeal by the defendants in a suit for a declaration which arose on the following state of facts. One Tota died, leaving him surviving a widow Musammat Gumanan and a daughter named Musammat Khajani. This daughter has been married, presumably since her father's death, and is now the mother of an infant son named Surju. Before the birth of the daughter's son, the nearest reversioners under the Hindu Law, after the life-estate of the widow and of the daughter, were two persons named Tulshi and Jahangira. They are distant male agnates, according to the pedigree set up in the plaint, and are equal in degree, their grand-fathers having been own brothers. Musammat Gumanan has contracted a second marriage (the parties belong to the Jat caste) with Tulshi, one of the aforesaid reversioners, and has borne him children. She has now executed a deed of gift of one-half of her late husband's estate in favour of her sons by Tulshi. Jahangira brought the suit out of which this appeal arises for a declaration that this alienation will not bind him after the death of the widow. In the plaint as filed the existence of Musammat Khajani and her son, Surju, was simply ignored. The defendants made it a part of their defence that, even after the life-estates of the widow and the daughter came to an end, the next heir to the estate would be Surju, son of Khajani, and neither the plaintiff Jahangira nor his alleged joint reversioner Tulshi. The parties were at issue upon various questions of fact in the court below. On the one hand, the defendants put the plaintiff to proof of the pedigree set up by him. On the other hand, the defendants alleged that Musammat Khajani was not the daughter of Tota at all. It seems to have been suggested that she was a daughter of Tulshi by a former wife, whom he had married before he contracted his union with Musammat Gumanan. These questions of fact have been determined by the learned Subordinate Judge in the sense already stated, and the parties before this Court are not prepared to contest these findings of fact. The appeal is based therefore upon

a single question of law, the contention being that Jahangira should not be permitted to maintain the suit, seeing that he is not the presumptive reversioner to the estate of Tota in the presence of the daughter's son, Surju. Since the decision of their Lordships of the Privy Council in *Rani Anand Kunwar* v. *The Court of Wards* (1) this question of law may be regarded as having been definitely settled. The right to maintain a suit of this sort does not belong to any one who may have a possibility of succeeding to the estate of inheritance held by the widow for her life. As a general rule the suit must be brought by the presumptive reversionary heir. It may be brought by a more distant heir, if those nearer in the line of succession are in collusion with the widow or have precluded themselves from interfering. These principles were applied by a Bench of this Court in a case very similar to the present, that of *Meghu Rai* v. *Ram Khelawan Rai* (2), and this decision seems to be clearly in favour of the defendants appellants and against the view taken by the court below. The learned Subordinate Judge founded his decision on the case of *Raja Dei* v. *Umed Singh* (3). That case would be on all fours with the present if the gift by Musammat Gumanan had been in favour of the minor Surju, son of Musammat Khajani. It could then have been said that the donee was precluded from suing to contest the validity of the gift and that a more distant reversionary heir was entitled to come forward and assert his rights. On the facts now before us the only arguable plea which can be taken on behalf of the plaintiff respondent is based upon the fact of Surju's minority. This, however, in no way precludes the bringing of a suit by a next friend on his behalf. In the plaint itself, there is no suggestion of collusion on the part of the minor, or of the minor's mother as his natural guardian. Their interest is simply ignored. On this state of facts the plaintiff cannot claim the benefit of the exceptions recognized by their Lordships of the Privy Council to the general principles that the suit for a declaration of this sort must be brought by the presumptive reversionary heir. This appeal therefore must succeed. We allow it accordingly and,

(1) (1880) I. L. R., 6 Calc., 764 (2) (1913) I. L. R., 35 All., 326.

(3) (1912) I. L. R., 34 All., 207.

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setting aside the decree of the court below dismiss the plaintiff's suit with costs throughout.

Appeal allowed.

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Before Mr. Justice Tudball and Mr. Justice Abdul Raoof.

KUNJ BEHARI LAL (DEFENDANT) *v.* THE BHARGAVA COMMERCIAL BANK, JUBBULPORE (PLAINTIFF) *

Act No. IX of 1872 (Indian Contract Act,) section 176—Pledge—Sale by pawnee of property pledged—Notice of sale.

The words - "He may sell the things pledged on giving the pawnor reasonable notice of the sale" - as used in section 176 of the Indian Contract Act, 1872, mean that the pawnee must give reasonable notice of his intention to sell: it does not necessarily mean that a sale should be arranged beforehand and that due notice of all the details should be given to the pawnor.

THE facts of this case were as follows:—

In 1912, the plaintiff Bank advanced a loan of Rs. 1,700 to the defendant on the security of certain ornaments which were pledged with the Bank for that purpose. From January, 1914, onwards the Bank began to press for re-payment and gave repeated notices of their intention to sell the ornaments in satisfaction of their dues. The defendant, on various occasions, asked for and obtained time for payment. Ultimately, on the 15th of September, 1914, the Bank gave notice that if the account was not settled within a fortnight they would sell the ornaments without further reference. The money not having been paid, the Bank sold the ornaments on the 5th of October, 1914. The sale proceeds proved insufficient to discharge the debt in full and the present suit was accordingly brought to recover the balance. The defendant pleaded that proper notice had not been given and the ornaments had been sold at an under-value. He urged that he should be given credit for the full value of the pledge. The lower courts held that the notice given was reasonable, and though the sale had been at some under-value, yet the Bank not being guilty of fraud or any other irregularity, was not liable for the loss suffered by the defendant. The suit was accordingly decreed. The defendant appealed to the High Court.

Pandit *Kailas Nath Katju*, for the appellant, submitted that on a true construction of section 176 of the Indian Contract Act

* Second Appeal No. 950 of 1915, from a decree of D. R. Lyle, District Judge of Agra, dated the 7th of June, 1915, confirming a decree of Chatur Behari Lal, Munsif of Agra, dated the 31st of March, 1916.