

the course of the suit the factory may be ordered to be sold with a view to the distribution of the assets of the partnership. We are clearly of opinion that a suit for dissolution of partnership with the usual ancillary relief is not a suit for the "determination of any other right to or interest in immovable property" within the meaning of clause (d). We allow the application, set aside the orders of both the courts below and send back the case to the court of first instance through the lower appellate court with directions to re-admit the plaint upon its original number in the file and to proceed to hear and determine the suit as speedily as possible. The record may be returned by this Court at an early date. The respondent will have to pay the costs incurred in the court of first instance by reason of the order of that court, the appeal to the lower appellate court and the application in revision here.

Application allowed.

1919

DURGA DAS
v.
JAI NARAIN.

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

JAI KALI (APPLICANT) v. BALDEO SINGH AND OTHERS (OPPOSITE PARTIES.)*

1919
March, 7.

Suit for specific performance of an agreement to sell in favour of a member of joint Hindu family personally—Death of plaintiff—Application by widow to be substituted for her deceased husband—Legal representative.

A deceased Hindu's wife (in the absence of male heirs) represents him in a suit for specific performance of a personal contract made with him, notwithstanding the fact that the deceased was a member of a joint Hindu family.

THE facts of this case were as follows:—

A suit was brought by one Audhesh Chandar to enforce by specific performance an alleged contract to sell certain immovable property. Whilst the suit was pending the sole plaintiff died. His widow, Musammat Jai Kali, then applied to be brought on to the record in his place. Her application was opposed by some one or more of the defendants, who alleged that her deceased husband was a member of a joint Hindu family and that therefore his wife had no right to continue the suit. This contention met with the approval of the court below, which rejected the application of Musammat Jai Kali to be brought on to the record in the place of her deceased husband.

1919

JAI KALI
v.
BALDEO
SINGH.

Against this order Musammat Jai Kali applied in revision to the High Court.

Pandit *Kailas Nath Katju*, for the applicant.

Dr. *Surendra Nath Sen* and *Munshi Gokul Prasad* (for whom *Munshi Jang Bahadur Lal*), for the opposite parties.

RICHARDS, C. J., and BANERJI, J. :—This application arises under the following circumstances. A suit was brought by one Audhesh Chandar to enforce by specific performance an alleged contract to sell certain immovable property. Whilst the suit was pending the sole plaintiff died. His widow then applied to be brought on to the record in his place. Her application was opposed by some one or more of the defendants, who alleged that her deceased husband was a member of a joint Hindu family and that therefore his wife had no right to continue the suit. This contention met with the approval of the court below, which rejected the application of Musammat Jai Kali to be brought on to the record in the place of her deceased husband, and (we are informed) on a subsequent date declared that the suit had abated. We think the order rejecting the application of Musammat Jai Kali was incorrect. It would of course follow that any subsequent order declaring that the suit had abated was also incorrect. The suit by Audhesh Chandar was a suit upon an alleged contract to sell to him certain immovable property. This was a contract personal to himself, and, even if he happened to be a member of a joint Hindu family, his wife is the person who would represent him in the suit to enforce the alleged contract. The argument put forward by the other side is that a question arose as to who was the "legal representative" of the deceased plaintiff, and that according to the provisions of order XXII, rule 5, this question is to be determined by the court in which the suit is pending. In our opinion on the admitted facts of the present case no question arose as to whether any person other than his widow represented the deceased plaintiff. It is quite clear that the surviving members of a joint Hindu family could not in a case like the present represent the deceased plaintiff. It is no doubt true that where one member of a joint Hindu family dies all his rights cease and the property from thenceforward is held by the surviving members; but this

proposition of law is in no way inconsistent with the other proposition which we have laid down, namely, that a deceased Hindu's wife (in the absence of male heirs) represents him in a suit for specific performance of a personal contract made with him. The court, therefore, refused to exercise a jurisdiction which it had, namely, to bring the applicant on to the record. We allow the application, set aside both orders of the court below, and direct that court to bring the name of the applicant on to the record in the place of her deceased husband and then to proceed to hear and determine the suit according to law. The applicant will have his costs in this Court. Other costs will follow the result.

Application allowed.

APPELLATE CIVIL.

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

KRISHNA PAL SINGH AND OTHERS (DECREE-HOLDERS) v.

DESAJ RANJIT SINGH AND OTHERS (JUDGMENT-DEBTORS)*

Execution of decrees—Mesne profits—Decree fixing the mesne profits at a specified sum—Judgment-debtor not entitled to deductions on account of payments made by him.

Where a decree for mesne profits itself names a definite sum at which such profits have been assessed, it is not open to the judgment-debtor in answer to an application for execution to claim to set off any payments, such as taxes or ground-rent, made by him, as payments which should have been made by the decree-holder; but the decree must be executed as it stands. *Kachar Ala Chela v. Sha Oghadbbhai Thakarshi* (1) distinguished.

THIS was an application in execution of a decree of the Privy Council, arising out of the appeal in the case of *Bilas Kunwar v. Desraj Ranjit Singh* (I. L. R., 37 All., 527). Originally the plaintiff had sued the defendant for the possession of a house situated in Allahabad by ejectment of the defendant. The Subordinate Judge in decreeing the plaintiff's suit fixed the mesne profits at Rs. 65 per mensem. In appeal by the defendant the High Court reversed the decree of the

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v.
BALDEO
SINGH.

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March, 7.

*First Appeal No. 208 of 1918, from a decree of Shekhar Nath Banerji, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Allahabad, dated the 18th of March, 1918.

(1) (1892) I. L. R., 17 Bom., 35.