

1920

SURENATH
 RAI
 v.
 NIHAL
 CHAND.

anything more about the question. It seems to us, however, that, in any case, whatever difficulty may be raised about the jurisdiction of the Munsif is completely removed by the conduct of the present applicants in accepting the Munsif's decision and submitting themselves to the decision of the arbitration court. The question whether the parties were still bound by the submission had been in substance decided against these applicants. The very utmost they could say would be that this decision had been given by a court not competent to deal with the entire subject matter of the award. If that was their only difficulty it could have been met in more ways than one. It may be that they could have brought the matter to an issue by filing another suit in the court of the Subordinate Judge in respect of the entire subject matter of the submission. At any rate, when there is a dispute between the parties to a submission as to whether or not the terms of that submission are still binding on them that dispute can be decided, like all other disputes, in one of the two ways, by the verdict of a competent court or by agreement between the parties, that is to say, by the party which has raised the objection determining not to press the same. In this case the Munsif had given a certain decision. If he was wrong the matter could have been carried before a higher tribunal. These applicants accepted that decision and went before the arbitrators. We think there is no authority whatever for the proposition that in these circumstances the arbitrators had no jurisdiction to proceed with the matter. On this view of the case we dismiss this application with costs.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

MENDYA (PLAINTIFF) v. JHURYA (DEFENDANT).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding—Holding owned by a joint Hindu family. Death of one member gives rise to no interest in his widow.

When the tenant of an occupancy holding is a joint Hindu family and one member thereof dies, his widow takes no share in the holding. *Mahabir Singh v. Bhagwanthi* (1) followed.

*Appeal No. 80 of 1919, under section 10 of the Letters Patent.

(1) (1916) J. L. R., 38 All., 325.

1920
 May, 28.

THE facts of this case were briefly as follows:—

Muswa who was an occupancy tenant died in 1894 leaving him surviving his son Jhurya, the defendant, and his grandson Ram Ghulam, the son of Muswa's deceased son. Ram Ghulam died after the coming into operation of Act II of 1901, leaving a widow Musammât Mēndya, the plaintiff. She brought a suit on the allegation that on the death of her husband she succeeded to his interests and therefore she was entitled to joint possession of the occupancy holding. The court of first instance dismissed the suit holding that the tenancy on the death of Ram Ghulam would devolve upon Jhurya, his brother. The lower appellate court held that under section 22 of the Agra Tenancy Act the plaintiff would succeed to the interest of her deceased husband, and therefore be entitled to joint possession of the occupancy holding. The defendant appealed and a single Judge of this Court allowed the appeal and dismissed the plaintiff's suit. The plaintiff appealed.

1920

MENDYA
v.
JHURYA.

Mr. *Agha Haidar*, for the appellant:—

The case of *Mahabir Singh v. Bhagwanti* (1) relied on by the court below is not applicable to the present case. So far as the succession of the tenures mentioned in section 22 was concerned the personal law, whether Hindu or Muhammadan, has been completely abrogated. The scheme of succession laid down in that section introduces a distinct and independent rule; *Bhura v. Shahab-ud-din* (2) and *Ali Baksh v. Barkat-ullah* (3). The rule of survivorship no longer applied in considering the devolution of tenures under section 22; *Sumaro Naddat v. Kesho Prasad Singh* (4). According to Select Decision No. 2 of the Board of Revenue, 1905, provision is made for succession to a Hindu widow who might be an occupancy tenant; as to the joint family the Legislature has thought fit to ignore it.

Babu *Jogindro Nath Mukerji* for the respondent, was not called upon.

TUDBALL and SULAIMAN, JJ.:—The facts of this case may be briefly put. When the present Tenancy Act came into force

(1) (1916) I. L. R., 38 All., 325.

(3) (1912) I. L. R., 34 All., 419.

(2) (1908) I. L. R., 30 All., 128.

(4) Select Decisions of the Board of Revenue, No. 13 of 1912.

1920

MENDYA
v.
JHURYA.

two persons Ram Ghulam and his uncle, Jhurya, who constituted a joint Hindu family, held an occupancy tenancy as a joint Hindu family. One member of that joint family has died and it is claimed by his widow that she is entitled to inherit his interests under section 22 of the Tenancy Act. A learned Judge of this Court who heard the appeal held, in view of the ruling in *Mahabir Singh v. Bhagwanti* (1), that the tenant, i. e., the joint family, not having died, Musammat Mendya, the widow of Ram Ghulam, acquired no interest in the tenure. We are not prepared to dissent from the ruling quoted. We can see nothing in the Act to prevent a joint Hindu family as such acquiring an occupancy tenure. Section 22 lays down the devolution of the interest of an occupancy tenant when the tenant dies. If one member of a joint Hindu family which has acquired an occupancy tenure dies, the occupancy tenant does not die and therefore section 22 does not operate. The Act has nowhere contemplated the circumstances of the present case. There was nothing in law before this Act was passed to prevent a joint Hindu family from acquiring occupancy rights. There is nothing in the present Act to prevent that acquisition now. Section 22 is the only section to govern the case of devolution, and that lays down that when a tenant dies the property devolves in a certain manner. So long as the joint family exists, the tenant in that case does not die and therefore section 22 does not operate. As the joint family in the present case owned the tenure, the family still remains the tenant in spite of the death of Ram Ghulam. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

(1) (1916) I. L. R., 38 All., 325