Before Mr. Justice Muhammad Rafiq and Mr. Justice Stuart.

1921
March, 31.

DARBARI LAL (PLAINTIFF) *v.* GOBIND RAM AND OTHERS (DEFENDANTS). *

Res judicata—Hindu law—Reversioners—Alienation by widow—Declaratory suit by the then next reversioner—Subsequent suit by reversioner surviving at death of widow.

Held, that a decree obtained against a Hindu widow by the then next presumptive reversioner declaring that a sale made by the widow would not be valid after her death will not operate as res judicata in respect of a claim preferred by the next reversioner subsisting at the time of the widow's death. *Bhagwanta* v. *Sukhi* (1), *Venkatanarayana Pillai* v. *Subbammal* (2) and *Isri Dut Koer* v. *Mussumat Hansbutti Koerain* (3) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Girdhari Lal Agarwala*, for the appellant.

Pandit *Uma Shankar Bajpai* and Munshi *Panna Lal*, for the respondents.

MUHAMMAD RAFIQ and STUART, JJ. :—In this case the plaintiff appellant, who was entitled to succeed to the estate of one Hoti Lal on the death of the widow of Hoti Lal, Musammat Mul Kunwar, sued for recovery of possession of a house sold by Hoti Lal's widow, Musammat Mul Kunwar, to the ancestors of the defendants on the 20th of January, 1889. The courts below have found that this house was purchased by Musammat Mul Kunwar in 1869, eleven years after the death of Hoti Lal. They found further that there was nothing on the evidence to establish that the house had been purchased with the funds of Hoti Lal's estate in the hands of his widow or to establish that the widow had shown any intention to make the house an accretion to her husband's estate. They found further that there was nothing to establish even that the house had been purchased with the proceeds of savings out of the estate. The above findings are findings of fact which cannot be traversed in second appeal. The only point that remains is this. In the year 1890 the plaintiffs appellants' deceased uncle Buhh Sen, who was then

* Second Appeal No. 595 of 1918 from a decree of B. J. Dalal, District Judge of Aligarh, dated the 8th of February, 1918, confirming a decree of Sudershan Dayal, First Additional Subordinate Judge of Aligarh, dated the 30th of November, 1917.

(1) (1899) I. L. R., 22 All., 33. (2) (1915) I. L. R., 38 Mad., 406.
(3) (1883) L. R., 10 I. A., 150.

the presumptive next reversioner of Hoti Lal, obtained a declaratory decree against Mul Kunwar and the purchasers to the effect that Mul Kunwar had no right to transfer anything more than a life interest in the house in question. If this decree be treated as binding in the present case on the principle of *res judicata* the plaintiff appellant should certainly suceeed, but we agree with the lower courts that the decree does not operate as *res judicata*. The ruling of the Full Bench in *Bhagwanta* v. *Suhki* (1) has application. No reversioner can be held to derive his title from another reversioner. He derives his title from the last full owner, the title in question being the title to the estate. This is the law which prevails in this province, for nothing has been laid down by their Lordships of the Privy Council to vary the law laid down in this decision. There is nothing in the decision in *Venkatanarayana Pillai* v. *Subbammal* (2) inconsistent with the view taken by the Full Bench of this Court. There it was laid down that when a reversioner who had instituted a suit died during the hearing of the suit the next reversioner had a right to carry on the suit. Their Lordships were considering the provisions of order XXII, rule 1, of the Code of Civil Procedure. They were not concerned in any way with the question whether a decision in favour of or against one reversioner could be held to operate as *res judicata* in favour or against another reversioner. In fact at page 412 of that decision they said clearly that the test of *res judicata* applied by the Madras High Court was irrelevant to the inquiry whether the petitioner was entitled to continue the action commenced by his grand-father, and there is authority of their Lordships of the Privy Council themselves that no question of *res judicata* arises in these circumstances. The reference here is to the decision in *Isri Dut Koer* v. *Mussumat Hansbutti Koerain* (3). The words are " nor is it readily conceivable that the decision will be fruitless ; because the question of law is of such a nature that its decision, though not binding as *res judicata* between the widow and a new reversioner, would be so strong an authority in point as probably to deter either party from disputing it. "

(1) (1899) I. L. R., 22 All., 33. (2) (1915) I. L. R., 38 Mad., 406.
(3) (1883) L.R. 10 I. A., 150 (157).

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There was thus no bar of *res judicata* against the defendants respondents and it was open to them to take the pleas which they took. These pleas have been decided on the merits and have been rightly decided. The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1921
April, 8.

SRI THAKURJI (DEFENDANT) *v.* NANDA AHIR (PLAINTIFF) *

Hindu law—Mitakshara, Chapter 1, *sections* 27, 28 *and* 29—*Joint ancestral property—Gift of portion by one member for pious purposes—Circumstances in which such gift is valid.*

The second and third of the circumstances stated in paragraph 28 of Chapter 1 of the Mitakshara as justifying a transfer of joint ancestral property by one member of the family are not governed by the preceding words "in a time of distress"; but there are three separate and distinct exceptions. Thus the gift of a portion of the joint ancestral property made by one member of the family for pious purposes is valid, though not made in a time of distress.

The term "pious purposes" as used in paragraph 28 does not necessarily mean indispensable duties, such as the obsequies of the father, etc., mentioned in paragraph 29.

Gopal Chand Pande v. *Babu Kunwar Singh* (1) and *Raghunath Prasad* v. *Govind Prasad* (2) referred to.

THIS was an appeal under section 10 of the Letters Patent. The facts of the case appear from the judgment under appeal, which was as follows:—

"THE appellant in this second appeal is Sri Thakurji, through Parmeshwar Das. The suit was instituted by one Nanda Ahir and the relief claimed by him was that a decree might be given him for possession of 15 gandas and 4½ dants share together with *sir* lands etc., by removal of the unlawful possession of the defendant, first party, and cancelment of a waqfnama so called, dated the 1st of November, 1911. In the lower appellate court's judgment the facts are given that on the 1st of April, 1901, Sonai Ahir, father of the plaintiff, executed a deed of gift of 1½ pies out of 15 gandas and 4½ dants in favour of the defendant no. 1. The allegation was that this property was joint property of the family; that Sonai aforesaid had no right to give it in gift; that the defendant had taken possession of the entire 15 gandas and 4½ dants; the property was the self-acquired property of Sonai. The finding of the lower appellate court is that he agrees with the Munsif that it was satisfactorily proved that Sonai acquired the property in question from the income of the joint

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* Appeal No. 18 of 1920, under section 10 of the Letters Patent.

(1) (1843) 5 S. D. A., L. P., 24. (2) (1885) I. L. R., 8 All., 76.