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situation of nothing but confusion could be thus produced. The plain law of the Succession Act would be eviscerated, and in each case inquiry might have to be entered upon as to whether a deceased subject of the Crown wished or by his acts compelled that the law of the land should not apply to his case. A particular subject can settle that in India, as in other parts of the Empire, by exercising—whatever be his religion—his power of testacy, and definitely declaring how he desires his affairs to be regulated so far as his own individual property is concerned. In this case Kunwar Randhir Singh did not do so, and it is not for a Court to enter upon an examination of his conduct so as to prevent the Indian law of intestate succession getting its full and proper application.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the judgment of the Subordinate Judge should be restored, and that the respondent should pay the costs of the appeal.

Appeal allowed.

Solicitor for appellant:—*H. S. L. Polak.*

Solicitors for respondent:—*T. L. Wilson & Co.*

APPELLATE CIVIL.

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

GHISIAWAN PANDE (PLAINTIFF) v. MUSAMMAT RAJ KUMARI
 AND OTHERS (DEFENDANTS)*.

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 March, 9.

Hindu law—Hindu widow—Alienation by widow—Consent of the then nearest reversioner not sufficient to validate the alienation if there is no legal necessity.

Where it is found as a fact upon the evidence that a transfer of her husband's property made by a Hindu widow is not a transfer for valid legal necessity, the fact that the next reversioner has joined the widow in making the transfer does not render it valid and binding as against the remoter reversioners. *Bajrangji Singh v. Manokarnika Baksh Singh* (1) and *Rangasami Gounden v. Nachiappa Gounden* (2) referred to.

THE facts of this case are thus stated in the following order of remand.

* First Appeal No. 118 of 1917 from a decree of Muhammad Shafi, Subordinate Judge of Gorakhpur, dated the 11th of January, 1917.

(1) (1907) I. L. R., 30 All., 1. (2) (1918) I. L. R., 42 Mad., 523.

Munshi *Kamla Kanta Varmā*, for the appellant.

Dr. *Surendra Nath Sen*, Munshi *Iswar Saran* and Munshi *Girdhari Lal Agarwala*, for the respondents.

MEARS, C. J., and KNOX, J. :—It being admitted by the plaintiff for purposes of argument that Nageshar Ram is the son of Musammat Raji and Chandar Ram, and therefore the next reversioner at the moment, the question is, is the plaintiff entitled to maintain an action for a declaration, and ought he, on the finding of the lower court that the sale deed in dispute was executed without lawful necessity, to have a declaration in his favour in the terms as asked for in paragraph 12, clause 2, of the plaint ?

In this case the plaintiff brought a declaratory action, in which he asked, first, that it might be held that Nageshar Ram was not the grandson of one Ram Saran, and, secondly, that it might be held by the court that a certain sale deed executed by the widow of Ram Saran was executed without lawful necessity, and that as against him (the plaintiff) it was ineffectual after the death of the widow of Ram Saran. In the court below the question of the relationship of Nageshar Ram to Musammat Raj Kumari, the widow of Ram Saran, came into question, and the learned Subordinate Judge has found as a fact that Nageshar Ram is in truth the offspring of Musammat Raji and Chandar Ram, and is therefore the grandson of Musammat Raj Kumari and is at this moment the next reversioner to this estate. He also found that the sale deed in dispute, which was one executed by the widow and Nageshar Ram, was not executed for legal necessity. He found other issues also—that the claim was not barred by time and that the lady Musammat Raj Kumari was a necessary party in the case ; and then he concludes by saying without further discussion or argument :—“The claim is dismissed with costs”.

The plaintiff takes exception to that and he says as soon as it has been held that he was right in alleging that the deed was executed without lawful necessity, it follows there should be a declaration in his favour in accordance with his prayer, to be found in paragraph 12, clause 2, of the plaint, and even though in the same judgment it is found against him that he (the

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plaintiff) is not the next reversioner, nevertheless he stands so closely to the family that he is entitled to maintain the action, and entitled to that declaration, which may, amongst the many chances and risks of life, prove to be of substantial benefit to him.

For the purposes of the point to which we are coming, it has been argued by Mr. *Kamla Kant Varma* that he will approach the point on the assumption that the decision of the learned Judge in the Subordinate court as to the relationship between Musammat Raj Kumari and Nageshar Ram has been correctly decided by the court. The point, therefore, outstanding is this: Can the plaintiff, in view of his admission set out above that he himself is not the immediate reversioner, commence an action of this kind for a declaration in the life-time of Nageshar Ram? We are told that this is a substantial point of law and passages in text books have been read to us and undoubtedly there are authorities to be found in the books on the question of the rights of persons who are not immediate reversioners which give them the right to maintain action in certain circumstances. One of those circumstances would appear to be when the immediate reversioner either colludes or so places himself in relation to the widow that he cannot subsequently assume a hostile attitude and himself ask for relief against a questionable transaction. Another instance, of course, is where the next reversioner has refused to take proceedings. There are no doubt many others. We ourselves sitting here should not feel any difficulty in arriving at a decision, but out of courtesy to the learned Subordinate Judge, who has not had this point argued before him, we think that he should at all events in the first instance hear the arguments and decide whether in the circumstances as they now stand, that is, on the admission that Nageshar Ram is the grandson of Musammat Raj Kumari, the plaintiff had a right to commence the action, and a right to the declaration that he asks for in paragraph 12, clause 2, of the plaint. The learned Subordinate Judge will, therefore, try this issue, treating the plaintiff as a man who from the outset came into court agreeing that Nageshar Ram stood in front of him as reversioner, but contending that that fact, in the

circumstances, did not disable him from seeking the aid of the court and obtaining a declaration. Mr. *Kamla Kant Varma* has made it perfectly clear to us that his admission that *Nageshar Ram* may be treated as the grandson of *Musammat Raj Kumari* is an admission made only for the purpose of getting a decision as to whether the plaintiff is not entitled to the declaration, and must not be deemed to extend further nor to hamper him if on any subsequent occasion he desires to go into the facts and contend that the plaintiff after all was the next reversioner at the date of his bringing the suit.

After the learned Subordinate Judge has heard the arguments and has given his judgment on this part of the case, ten days will be allowed to either party to file objections and the appeal will then be restored to our list.

On the return of the finding the appeal was again put up and judgment was delivered as below:—

MEARS, C. J., and BANERJI, J.:—On the 4th of November, 1920, a Bench of this High Court sent back this case to the learned Subordinate Judge for him to decide one issue, which was, whether the plaintiff, who admitted for the purposes of that issue that *Nageshar Ram* was the son of *Chandar Ram* and *Musammat Raji*, could in the circumstances maintain the action for a declaration that a sale deed executed by *Musammat Raj Kumari* and *Nageshar Ram* would not operate against him after the death of *Musammat Raj Kumari*. The learned Subordinate Judge has considered the law and the circumstances and has decided that it is competent to the plaintiff to ask for such a declaration. We are of opinion that his decision is right and that the plaintiff is entitled to the declaration for which he has prayed.

Reference was made to the case of *Bajrangji Singh v. Manokarnika Bakhsh Singh* (1) as embodying the correct proposition of law, namely, that an alienation by a Hindu widow with the consent of the next reversioner was binding as against the remoter reversioners, and binding apart from legal necessity. Our attention was, however, drawn to the later case of

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Rangasami Gounden v. Nachiappa Gounden (1) where the cases are considered in detail. The result of the rulings is summarized at page 535 and onwards. At page 536 there is a summary of the circumstances under which alienations by a widow of her deceased husband's estate can be supported.

We are of opinion in the present case that, as the court below found as a fact upon evidence that the transfer of the 29th of February, 1916, was not a transfer for valid legal necessity, the joining in of Nageshar Ram, who was then the next reversioner, did not give to Musammat Raj Kumari the power to make that conveyance. The finding of fact that there was no legal necessity has not been shown to us to be incorrect and we view it with approval. We are, therefore, of opinion that both on the facts and on the law the learned Subordinate Judge came to a correct conclusion as to the right of Ghisiawan to claim a declaratian.

When the matter was sent down by this Court in November of 1920, Mr. *Kamla Kant Varma* definitely reserved to himself the right to argue that the Judge came to an incorrect conclusion of fact as regards the relationship which Nageshar Ram bore to Musammat Raj Kumari, and he has argued to-day the point which he then reserved. [The judgment then proceeded to deal with this issue of fact.]

In these circumstances we are of opinion that the learned Subordinate Judge came to a right conclusion of fact as regards the pedigree of Nageshar Ram and this appeal must therefore be allowed to the extent that it must be declared that in the event of the plaintiff surviving Musammat Raj Kumari the sale deed of the 29th of February, 1916, will not be binding upon him. The appeal as regards the finding of fact as to Nageshar Ram's relationship with Musammat Raji is dismissed. Under the circumstances we direct each party to bear their own costs here and below.

Appeal modified.

(1) (1918) I. L. R., 42 Mad., 523.