1921

JEONI v. KALLU.

end of the litigation. He might one day say that he was willing to pay the rent to A, whom he thought to be the person entitled to it, and in another suit by A he might plead that since then he has found that C was the real owner and that he was to pay to him in good faith. We think that the view taken by the learned Judges who decided the case above mentioned was a correct view. The result of our observation is that the plaintiff's claim was bound to succeed. We, therefore, set aside the decrees of the courts below and decree the plaintiff's claim with costs in all courts.

Appeal decreed.

1921

January, 31.

Before Mr. Justice Piggott and Mr. Justice Walsh.

SRIMATI PRAMILA DEVI (PETITIONER) *v.* CHANDRA SHEKHAR CHATTERJI AND ANOTHER (OPPOSITE PARTIES).*

Act No. VII of 1889 *(Succession Certificate Act)—Preference as regards the granting of a certificate—Hindu law—Dayabhaga—Childless widowed daughter—Sons of a deceased daughter.*

The parties were governed by the Hindu law of the Dayabhaga School, and the question was whether preference was to be given, as regards the granting of a certificate for the collection of certain debts due to the father, to a widowed childless daughter or to the sons of a deceased daughter.

Held that the latter were to be preferred. According to the Dayabhaga a widowed childless daughter would be no heir to her father. *Sreemutty Bimola* v. *Dangoo Kansaree* (1) not followed. *Banoda Koomaree Dabee* v. *Purdhan Gopal Sahee* (2), *Radha Kishen Manjhee* v. *Rajah Ram Mundul* (3) and *Mokunda Lal Chakravarti* v. *Monmohini Debi* (4) referred to.

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

Babu *Saila Nath Mukerji*, for the appellant.

Babu *Harendra Krishna Mukerji* and Munshi *Vishun Nath*, for the respondents.

PIGGOTT and WALSH, JJ.:—The court below had to decide about the granting of a succession certificate for the collection of certain debts due to a deceased Bengali Brahmin, Babu Karunamoy Banerji. The rival applicants were a widowed daughter with no children and two sons by another daughter

* First Appeal No. 148 of 1920 from an order of B. J. Dalal, District Judge of Allahabad, dated the 25th of May, 1920.

(1) (1873) 19 W. R., C. R., 189.
(2) (1865) 2 W. R., C. R., 176.
(3) (1866) 6 W. R., C. R., 147.
(4) (1914) 19 C. W. N., 412.

previously deceased. The learned District Judge has given preference to the sons. He had only to determine *primâ facie* which of the parties before him had a preferential claim. We think his decision was clearly right. It has been contended before us, as it was in the court below, that the daughter who was a childless widow should not be postponed to the sons of the other daughter in the matter of inheritance, because under the provisions of the Hindu Widows' Re-marriage Act, No. XV of 1856, there was always the possibility of her marrying again. In support of this, one case in the Calcutta High Court has been laid before us, as it was before the court below. It is that of *Sreemutty Bimola* v. *Dangoo Kunsaree* (1). The point in question is dealt with in a brief and summary manner at the close of a judgment dealing mainly with another matter. It is not referred to in a standard book like Trevelyan's Hindu Law, where three other authorities of the Calcutta High Court are quoted for an interpretation of the law against the claim of this appellant. As long ago as the 14th of February, 1865, in *Benode Koomaree Dibee* v. *Purdhan Gopal Sahee* (2) the learned Judges of the Calcutta Hight Court said that daughters who were barren, or widows without male issue, or mothers of daughters only, can under no circumstances inherit. The same principle was followed in a later case, *Radha Kishen Manjhee* v. *Rajah Ram Mundul* (3). The point has been recently reconsidered by a Bench of the Calcutta High Court in *Mokunda Lal Chakravarti* v. *Monmohini Debi* (4), where the judgment expressly refers to the provisions of section 4 of the Hindu Widows' Re-marriage Act, No. XV of 1856. The terms of that section, to which we have referred, seem to bear out the view of the learned Judges of the Calcutta High Court in the latest reported decision. The court below, in a proceeding of this sort, was clearly right in accepting the view of the law which seems to have been generally acted upon in the Calcutta High Court where cases under the Dayabhaga law are likely to come up for decision. Something has been said about a point taken as to the respondents, that is to say, the daughter's sons not having

(1) (1873) 19 W. R., C. R., 169.

(2) (1865) 2 W. R., C. R., 176.

(3) (1866) 6 W. R., C. R., 147.

(4) (1914) 19 C. W. N., 412.

1921

SRIMATI PRAMILA DEVI v. CHANDRA SHEKHAR CHATTERJI.

performed the funeral ceremonies; but we can find no authority bearing out the contention of the appellant on this point. On the materials before him the learned District Judge was right in granting the succession certificate to the respondents. We dismiss this appeal accordingly with costs.

Appeal dismissed

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

1921

February 1.

BINDA PRASAD (PLAINTIFF) *v.* RAM CHANDAR AND OTHERS (DEFENDANTS).*

Insolvency—Creditor causing seizure of property as that of an insolvent—Suit by real owner for damages - Liability of creditor.

Where property is taken possession of as the property of an insolvent by the receiver in insolvency acting under orders of the court, and loss is caused thereby to the real owner of the property, it is not the receiver who is liable in respect of such loss, but the person at whose instance the court directed the receiver to take possession of the property. *Abdul Rahim* v. *Sital Prasad* (1) followed.

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

Mr. *Nihal Chand* and Babu *Harendra Krishna Mukerji*, for the appellant.

Babu *Sital Prasad Ghosh* and Munshi *Girdhari Lal Agarwala*, for the respondents.

TUDBALL and MUHAMMAD RAFIQ, JJ :—This is a plaintiff's appeal arising out of a suit for damages. The plaintiff's case was that he and one Abdul Haq became partners in a brick kiln business in August, 1913; that a deed of partnership was drawn up on the 16th of October, 1913; that the plaintiff supplied Rs. 2,000 and Abdul Haq Rs. 300 worth of capital, and that, the plaintiff not having the necessary technical knowledge, Abdul Haq ran the business. But the plaintiff, discovering that Abdul Haq was heavily involved in debt, decided to separate from him, and on the 26th of March, 1914, a deed of dissolution of partnership was drawn up, under which the plaintiff paid to Abdul Haq Rs. 300, his share of the capital, and Rs. 950, his share of some of the produce of the kiln. Apparently this sum of Rs. 1,250 was

* Second Appeal No. 864 of 1918 from a decree of E. R. Neave, Additional Judge of Meerut, dated the 16th of April, 1918, confirming a decree of Manmohan Sanyal, Subordinate Judge of Meerut, dated the 7th of August, 1917.

(1) (1919) I. L. R., 41 All., 653