

1921, and the original appellant died on the 8th of January, 1925. The appellants would invoke *Krishna Behari Sen v. The Corporation of Calcutta* (1) which certainly appears to be in their favour, but this decision is said not to have been followed in any other case by the Calcutta High Court or by any other High Court, whereas there are many decisions of various High Courts, some of which have been referred to by my learned brother, which are against the present contention. There can be no doubt that if the matter had to be decided on general grounds, the principle of *actio personalis moritur cum personâ* would prevail. There is nothing in any Indian enactment which in my opinion suggests that it was the intention of the Indian legislature to reject this principle.

1926

MAHAB
SINGH
v.
HUB LAL.

Appeal dismissed.

Before Mr. Justice Sulaiman and Mr. Justice Boys.

MOTI SHAH (DEFENDANT) v. GANDHARP SINGH (PLAINTIFF).*

1926
May, 14.

Hindu law—Hindu widow—Reversioner—Estoppel—Agreement entered into by a reversioner during the life-time of a widow in possession concerning the devolution of the estate.

There is nothing to prevent an agreement, entered into by the reversioner to an estate in the possession of a Hindu widow during the life-time of such widow, binding by estoppel the reversioner when the succession opens on the death of the widow.

Kanhai Lal v. Brij Lal (2), *Mahadeo Prasad Singh v. Mata Prasad* (3), and *Fateh Singh v. Thakur Rukmini Ram-anji Maharaj* (4), referred to. *Annada Mohan Roy v. Gour Mohan Mallik* (5), distinguished.

* First Appeal No. 95 of 1923, from a decree of Muhammad Zia-ul-Hasan, Subordinate Judge of Mainpuri, dated the 4th of July, 1922.

(1) (1904) I.L.R., 31 Calc., 993. (2) (1918) I.L.R., 40 All., 487.

(3) (1921) I.L.R., 44 All., 44. (4) (1923) I.L.R., 45 All., 389.

(5) (1920) I.L.R., 48 Calc., 586.

1926

MOTI
SHAH
v.
GANDHARP
SINGH.

THE facts of this case were as follows :—

On the death of one Suraj Narain, leaving him surviving his mother Musammat Durga Kunwar and a widow Musammat Tikam Kunwar, his zamindari property was recorded in the names of the ladies in equal shares. On the death of Durga Kunwar there arose three claimants to her share—Gandharp Singh, a first cousin of Suraj Narain, Moti Shah, and the widow Tikam Kunwar. These three claimants entered into a compromise, the effect of which was that Tikam Kunwar gave up her claim to the property recorded in the name of Durga Kunwar in favour of Gandharp Singh and Moti Shah, who were to divide the property between them in equal shares. There was a reservation that after her death Moti Shah would have no concern with the other half of the property which had remained in the possession of Tikam Kunwar. Moti Shah on his part further agreed to surrender at the time of mutation of names a lease which he held for 25 years from Tikam Kunwar.

After the death of Tikam Kunwar, Gandharp Singh brought the present suit, in which he claimed the whole of the zamindari property left by Suraj Narain, by avoidance of the agreements entered into, including a 10 kachwansi share in village Pitipur which had been sold in Tikam Kunwar's life-time in execution of a simple money decree against her. As to this share the case was that only the limited interest of Tikam Kunwar had been sold, and that he was entitled as next reversioner.

Moti Shah contested the claim mainly on the ground that the plaintiff was estopped from challenging the agreements which had been executed.

The first court decreed the claim, holding that the agreements in question did not create an estoppel

against the plaintiff. It held that the agreements were not necessarily intended to hold good beyond the life-time of Tikam Kunwar. It also held that the agreements did not amount to an estoppel within the meaning of section 115 of the Indian Evidence Act, 1872, also that they were not a family arrangement at all and did not constitute the recognition of a pre-existing title.

The defendant appealed.

Babu *Piari Lal Banerji*, for the appellant.

Mr. *Nihal Chand*, for the respondent.

The judgement of the Court (SULAIMAN and BOYS, JJ.), after reciting the facts as above, thus continued :—

It would be convenient to dispose of first the preliminary question whether these agreements were intended to be confined in their effect to the life-time of Musammat Tikam Kunwar only. The language of the document militates against this view :—“ The property is to *belong* to Gandharp Singh and Moti Shah in equal shares.” It is not said that it shall remain in their possession during the life-time of Musammat Tikam Kunwar only. Further, if the idea was that the property shall be divided during the life-time of Musammat Tikam Kunwar only, then there was not so much need for providing that after her death Moti Shah should have no concern whatsoever with her property. Again, as the plaintiff's case now is, he was a mere reversioner and had no vested interest at that time. There was therefore no absolute necessity for Musammat Tikam Kunwar to obtain his consent if she merely wanted to give a portion of the property to Moti Shah. The word used in the original is “ *malik* ”, which means “ absolute proprietor ”, and in no way suggests that the interest that was to

1926

MOTI
SHAH
v.
GANDHARP
SINGH.

1926

 MOTI
SHAH
v.
GANDHARP
SINGH.

go to these persons was a limited one. We are therefore of opinion that the learned Judge erred in thinking that the arrangement made by the agreement was to hold good during the life-time of Musammat Tikam Kunwar only.

As to the question of estoppel, we have already seen that the plaintiff, apart from saying that the agreement is not binding on him, has not explained under what circumstances this agreement was executed. He has not chosen to go into the witness box to explain away his own agreement. If this agreement embodied a compromise which amounted to a settlement of a doubtful claim, it must be held binding on the plaintiff, even though at the time when he entered into it he was a mere reversioner. It is he who has succeeded to the estate and is now claiming the property. He must therefore be personally estopped from claiming it if he has previously entered into a binding contract.

The point urged is that this agreement was without consideration inasmuch as Gandharp Singh was at that time a mere contingent reversioner. On the plaintiff's own case he got possession of a half share in Musammat Durga Kunwar's property during the life-time of Musammat Tikam Kunwar, to which he was not then entitled. That is the first consideration. Next, Moti Shah gave up all claim to the estate in the possession of Musammat Tikam Kunwar, whether that claim would have been good, bad or indifferent. In the third place Moti Shah agreed to surrender the lease which he held for 25 years. In a case of mutual compromise consideration passed from either side, and it is impossible to hold that a compromise of this kind is without consideration.

It is next contended that inasmuch as the interest of a reversioner is a mere contingent right i.e., *spes*

successionis, he cannot transfer it, relinquish it or surrender it. If this argument merely means that a reversionary right cannot be the subject of a transfer, it is quite sound, for such a transfer is prohibited by section 6 of the Transfer of Property Act. But there is nothing to prevent a reversioner from so acting as to estop himself by his own conduct from subsequently claiming a property to which he may succeed. The learned advocate for the respondent has relied strongly on the case of *Annada Mohan Roy v. Gour Mohan Mallik* (1). On the facts that case is quite distinguishable, because there the suit was for the specific performance of a contract of sale entered into by a reversioner during the life-time of a Hindu widow. The court declined to enforce such a contract. But after stating that a Hindu reversioner has nothing to assign or relinquish or transmit to his heirs, the learned ACTING CHIEF JUSTICE at page 542 remarked:—"But though a transfer of his interest by a reversioner is void, he may, by becoming a party to a compromise and by taking the benefit of the compromise, be estopped from claiming as a reversioner." We say no more than that. That a reversioner can be bound by a compromise to which he is a party, is well settled by the decision of their Lordships of the Privy Council in the case of *Kanhai Lal v. Brij Lal* (2). In a Division Bench case of this Court, namely, *Mahadeo Prasad Singh v. Mata Prasad* (3), it was remarked that the doctrine of estoppel as laid down in the Evidence Act was a rule of pleading, based upon a man's conduct who by his representation made to a third party has induced the latter to alter his position, and that therefore the mere fact that the presumptive reversioner had no vested interest

1926

 MOTI
 SHAH
 v.
 GANDHARV
 SINGH.

(1) (1920) I.L.R., 48 Cal., 536. (2) (1918) I.L.R., 40 All., 487.

(3) (1921) I.L.R., 44 All., 44.

1926

MOTI
SHAH
v.
GANDHARP
SINGH.

in the estate which he could effectively deal with, did not prevent the application of the rule of estoppel if he had by his conduct induced another person to alter his position; and further that it was incorrect to say that in no case a reversioner can by his act or conduct estop himself from challenging a transfer after he has succeeded to the estate. This case was referred to in the Full Bench case of *Fateh Singh v. Thakur Rukmini Ramanji Maharaj* (1), where it was held that a reversioner who actually succeeds to the immovable property can be estopped from challenging an alienation by a Hindu widow to which in her life-time he had himself agreed. The Full Bench case does proceed on the principle of estoppel. There seems therefore no good ground for releasing the plaintiff from the effect of the estoppel merely because at the time when he entered into it he was a mere reversioner. It has already been stated that we do not in fact know whether he at that time had conceded that he was a mere reversioner, or was claiming any higher right on the ground of jointness or on some other ground. Having given away the property under a settlement of rival claims, he cannot now get it back, even though it did not vest in him originally but has vested in him now.

As regards the 10 kachwansis share which had been sold at auction and purchased by the defendant, the matter is different. That share was a part of the property which had stood recorded in the name of Musammat Tikam Kunwar herself, and the share was sold in execution of a simple money decree against the lady. All that could be sold was the rights and interests of the Hindu widow, and the defendant did not purchase anything more than that, *vide* the case of *Kallu v. Faiyaz Ali Khan* (2). It is therefore clear

(1) (1923) I.L.R., 45 All., 339.

(2) (1908) I.L.R., 80 All., 394.

that on the death of Musammat Tikam Kunwar, the plaintiff as the next reversioner is entitled to that part of the property.

The appeal is accordingly allowed and the decree of the lower appellate court is modified and the plaintiff's suit with regard to the 3 biswas, 15 biswansi share in Pitipur and 2 biswas 8 kachwansi in Mulpura, is dismissed. The claim as regards 10 kachwansis in Pitipur stands decreed. We direct that the parties should pay and receive costs in proportion to their success and failure.

1926

MOTI
SHAH
v.
GANDHARP
SINGH.

Before Mr. Justice Daniels and Mr. Justice King.

RANS BAHADUR RAI AND OTHERS (DEFENDANTS) v.
CHITRA KUT RAI AND ANOTHER (PLAINTIFFS) AND
BINDESHRI AND OTHERS (DEFENDANTS).*

1926

May, 17.

*Mortgage—Foreclosure—Regulation No. XVII of 1806—
Formalities necessary to complete title of mortgagee.*

Although in the case of foreclosure of a mortgage to which Regulation XVII of 1806 applies it may be necessary for a mortgagee claiming a complete title to show that the procedure prescribed has been strictly followed, when once a decree for proprietary possession or for declaration of his proprietary title has been passed in favour of the mortgagee and has become final it is not open to the mortgagor to go behind it and allege that the formalities prescribed by the Regulation have not been complied with. *Badal Ram v. Taj Ali* (1), *Ram Baran Rai v. Har Sewak Dube* (2), and *Jagdip Narain Rai v. Ram Sarup Khan* (3), distinguished. *Forbes v. Ameeroonnissa Begam* (4), referred to. *Maula Bakhsh v. Tajammul Husain* (5), followed.

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

* Second Appeal No. 1345 of 1923, from a decree of E. L. Norton, District Judge of Gorakhpur, dated the 6th of August, 1923, reversing a decree of Hari Har Prasad, Additional Subordinate Judge of Gorakhpur, dated the 9th of April, 1923.

(1) (1907) 4 A. L. J., 717.

(2) (1918) I.L.R., 40 All., 387.

(3) (1919) 17 A. L. J., 691.

(4) (1865) 10 Moo. I.A., 340.

(5) Weekly Notes, 1892, p. 51.