Before Mr. Justice Lindsay and Mr. Justice Banerji.

JAI NARAIN SINGH (PLAINTIFF) *v.* MUNNA LAL AND OTHERS (DEFENDANTS).*

1927
December,
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Hindu law—Co-widows—Separation—Alienation by one widow for legal necessity—Other co-widow's participation in alienation not necessary.

Two co-widows, having entered into possession of the property of their deceased husband, divided the same between them, and one of them alienated, for legal necessity, a considerable part of her share. *Held*, on suit by the next reversioner after their death, that the widow was competent to alienate for legal necessity even without the consent of her co-parcener. *Thakuramani Singh* v. *Dai Rani Koeri* (1), followed. *Valluru* v. *Sasapu* (2), dissented from.

THIS was a suit relating to certain zamindari property which had belonged to Tej Singh, who died on the 28th of January, 1873. Tej Singh left surviving him two widows, Musammat Lachhmin Kuar and Musammat Chhattar Kuar.

After the widows obtained possession of the estate of their husband, they came to an arrangement by which they partitioned the property for the purpose of convenient enjoyment, but in course of time—partly to pay off debts left by Tej Singh and partly to meet the expenses of litigation—the widows parted with most of the property.

Musammat Lachhmin Kuar executed two mortgages of the share in her possession, dated, respectively, the 19th of January, 1895 and the 12th of January, 1897. The first of these mortgages was in favour of one Chhatar Mal, who subsequently assigned his interest to Chhatar Singh. In this document it was stated that Rs. 300 had been taken from the mortgagee in order

*First Appeal No. 130 of 1925, from a decree of Nadir Husain, Second Additional Subordinate Judge of Aligarh, dated the 3rd of December, 1924.

(1) (1906) I.L.R., 33 Calc., 1079. (2) (1925) 49 M.L.J., 479.

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to pay the revenue due for the *kharif* instalment for 1302 *fasli*. It was also recited that a sum of Rs. 50 had been received by Musammat Lachhmin Kuar previous to the execution of the deed. By this document 4 *biswas* out of 5 *biswas* in the possession of Musammat Lachhmin Kuar in *mauza* Dhori were mortgaged by way of security. The second mortgage was for Rs. 500 in favour of the same mortgagee. In this document it was stated that she had received Rs. 271 in cash for food and that the balance Rs. 229 had been borrowed in order to pay the land revenue due for the *kharif* instalment.

Decrees were obtained on these two mortgages and the property mortgaged was brought to sale. After the death of the surviving widow, Musammat Chhatar Kuar, in April, 1922, the present suit was brought by the then next reversioner of Tej Singh, Jai Narain Singh, seeking to set aside the sales upon the ground that the mortgages upon which they were based had been executed without legal necessity and were not binding on the reversioners.

The court of first instance dismissed the suit, being of opinion that the mortgages impugned by the plaintiff had been executed for legal necessity and were binding on the estate.

The plaintiff appealed.

Babu *Piari Lal Banerji*, for the appellant.

Dr. *Kailas Nath Katju*, Munshi *Panna Lal* and *Pandit Shiam Krishna Dar*, for the respondents.

THE judgement of the Court (LINDSAY and BANERJI, JJ.), after reciting the facts, and agreeing with the court below that the alienations made by Musammat Lachhmin Kuar were made for legal necessity and that the circumstances showed that Musammat Chhatar Kuar was a consenting party, thus continued :—

We come now to the point of law which was raised here but which was not raised in the court below. In-

deed the point is not taken in the memorandum of appeal, but the question being one of law we thought it proper to hear the learned counsel on both sides.

Mr. *Piari Lal Banerji* put forward the argument that the alienation made by Musammat Lachhmin Kuar, even if it was found to have been made for legal necessity, could not bind the reversioners unless the co-widow joined in the alienation. We have already indicated our opinion that from the circumstantial evidence it must be taken that Musammat Chhatar Kuar was a consenting party to this alienation, although it is certainly true that she did not join in executing the two mortgage-deeds of 1895 and 1897, respectively.

In support of his argument Mr. *Piari Lal Banerji* relied on a recent ruling of the Madras High Court in *Valluru* v. *Sasapu* (1). In this case the learned Judges, after reviewing all the authorities which deal with the legal position of co-widows, have set out six propositions which they have deduced from the previous authorities. Mr. *Piari Lal Banerji* relies on the fifth and sixth of these propositions. The fifth proposition is thus stated at p. 486 of the judgment:—

"Except for the limited purposes mentioned above, that is, during the lifetime of the alienee in a partition of the first kind or during the lifetime of all the co-widows in a partition of the second kind, there can be no alienation by a widow of her interest; and whether there is necessity or not, an alienation by one co-widow cannot bind the reversioner."

The sixth proposition is stated in the following language:—

"If an alienation for necessity is to bind the reversioners all the co-widows must join in it."

We are not prepared to accept either of these propositions as stated. We have examined for ourselves all

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the case-law on this subject, beginning with *Myna Baee's* case (1). It must be taken as well established that two co-widows succeeding to the estate of a deceased husband take the property as co-parceners in the strictest sense and, as such, the general rules regarding alienation would be that there could be no alienation by one without the consent of the other.

The cases fall into two classes. In some of them the contest has been between the alienee of one co-widow and the surviving co-widow. In others, there has been a claim put forward by the reversioner against the alienee after the death of both the widows.

It is necessary to keep these two classes of cases distinct. We need not enter into a discussion of the cases in so far as they relate to claims by the survivor of two co-widows against the alienee of the other co-widow. We are dealing here with a claim made by the reversioner after the death of both the widows. Where there is a single Hindu widow the reversioner is bound by any alienation made by her of her husband's estate for legal necessity. It follows, therefore, that if there are two widows and they both join in a sale or mortgage to raise money for legal necessity, the reversioners are bound, and they are bound because of the existence of a necessity which justifies the alienation. How then does the case stand where the two widows have separated for purposes of conveniently enjoying the estate left by the husband? Is it to be said that if one of the widows, acting under the pressure of legal necessity, is obliged to alienate a portion of the estate in her possession, the reversioner is not to be bound? It seems quite clear that the existence or non-existence of legal necessity cannot depend upon the consent of the other widow. Take the case of two co-widows, one of whom has three daughters whom she is obliged to marry; her co-widow has no daughters. Or

(1) (1867) 11 Moo. I.A., 487.

take again the case of one co-widow who is in easy circumstances and who can depend upon her own relations for support in a time of distress, while the other widow has no such resources at her disposal. Is it to be said that because the widow who is well-to-do refuses her consent to an alienation made by the other widow in circumstances which render the alienation necessary, the estate is not to be bound? We do not think that any authority for such a proposition is to be deduced from the reported cases. It is no doubt true that co-widows succeeding to the estate of their husband are undivided co-parceners and the general rule, of course, is that one co-parcener is not entitled to alienate without the consent of the other. It is also true that no arrangement made by the widows for the separate enjoyment of portions of the estate can destroy their legal position as co-parceners. But is it correct to say that in no case can a co-parcener alienate without the consent of the other? The Hindu law does not say so, and in this connection we would refer to a passage in the *Mitakshara*, chapter I, section I, clauses 27 and 28. Clause 27 deals with the general law regarding the rights of disposal by one co-parcener, but clause 28 declares an exception on that general rule and lays down that even a single individual may conclude a donation, mortgage or sale of immoveable property during a season of distress for the sake of the family and especially for pious purposes.

If that is the Hindu law to be applied to the case of co-parceners, there can be no reason in principle why it should not be applied to two co-widows, who, according to all the decided cases, are co-parceners in the strictest sense, and it seems to us, therefore, that if there are two co-widows enjoying their husband's estate as co-parceners, one of them can, under the exception to the rule we have just quoted, conclude a donation, mortgage or sale of immoveable property during a season of distress "for

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the sake of the family and especially for pious purposes." That being so, we are not prepared to accept the argument that even where legal necessity exists an alienation by one co-widow will not bind the estate unless the other co-widow joins in the alienation. The proposition has, in our opinion, been laid down far too broadly and the exception contained in the *Mitakshara*, chapter I, clause 28, has not, in our opinion, been kept in mind. In the course of the discussion the case of *Thakurmani Singh* v. *Dai Rani Koeri* (1) has been referred to. That, in our opinion, supports the conclusion at which we have arrived. In that case it was held that a mortgage by one widow without the consent of the other was binding on the reversioner to the extent that the debt secured by the mortgage was incurred for legal necessity.

Holding, therefore, that there was legal necessity in this case and being of opinion that Musammat Lachhmin Kuar was entitled for legal necessity to alienate this property without the consent of her co-widow Musammat Chhatar Kuar, we are of opinion that the estate is bound. But, as we have said, it must be taken that Chhatar Kuar did consent to this alienation, and while it is true that she did not actually join as a party in the two mortgages executed by Lachhmin Kuar, we hold that it was not necessary for the purpose of binding the estate in the hands of the reversioners that she should do so.

The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

(1) (1906) I.L.R., 33 Calc., 1079.