1926
March, 5.

Before Mr. Justice Sulaiman and Mr. Justice Mukerji.

MARU (PLAINTIFF) *v.* HANSO AND OTHERS (DEFENDANTS).*

Hindu law—Widow's estate—Hindu widow divesting herself of her estate not obliged to do so by one single act—Legal necessity.

If a Hindu widow brings about a complete effacement of herself with the result that the entire estate vests in the next reversioner, it is not necessary that the surrender should be effected by one act, nor has the question of legal necessity any thing to do with such a surrender.

Behari Lal v. *Madho Lal Ahir Gayawal* (1), *Rangasami Gounden* v. *Nachiappa Gounden* (2), *Bajrangi Singh* v. *Manokarnika Bakhsh Singh* (3), *Bhagwat Koer* v. *Dhanukdhari Prasad Singh* (4), and *Rao Bahadur Man Singh* v. *Maharani Nowlakhbati* (5), referred to.

THE facts of this case were as follows :—

One Ghasita, the last male owner of the property in suit, died leaving three daughters. On the death of the first the names of the two surviving daughters, Musammat Sundar and Musammat Hanso, were recorded in the revenue papers in equal shares. Musammat Sundar died about 1897 and on her death it is admitted in the plaint that Musammat Hanso caused the name of Sundar's son Bhartu to be entered in the revenue papers in place of her name as against the half share in her possession. Later on Musammat Hanso executed a deed of gift in 1916 with regard to the remaining half share in favour of Bhartu and got Bhartu's name recorded. On Bhartu's death the names of the defendants Nos. 2 to 4, his sons, were caused to be recorded in the revenue papers by Musammat Hanso.

* First Appeal No. 215 of 1922, from a decree of P. K. Ray, Subordinate Judge of Meerut, dated the 10th of March, 1922.

(1) (1891) I.L.R., 19 Calc., 236. (2) (1918) I.L.R., 42 Mad., 523.
(3) (1907) I.L.R., 30 All., 1. (4) (1919) I.L.R., 47 Calc., 466.
(5) (1925) I.L.R., 5 Pat., 290.

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The plaintiff came into court claiming the property so disposed of, as heir to Ghasita. He asserted that in spite of the entry of the name of Bhartu, Musammat Hanso herself remained in possession of the property. The contesting defendants denied that Musammat Hanso remained in possession of any portion of the property after the said transfer and pleaded that these transfers amounted to a complete effacement of the Hindu daughter's interest and a surrender in law in favour of the defendants' father. The learned Subordinate Judge has found as a matter of fact that Musammat Hanso divested herself of all interests in the two portions of the property by two successive stages and that she did not remain in possession of the property after the transfers. The learned Judge has found that the entire effect of these transactions was that a legal surrender took place in favour of Bhartu. He accordingly dismissed the suit.

The plaintiff appealed. He did not contest the facts as found by the trial court, but contended that the acts of Musammat Hanso did not amount to a legal surrender of her interest in the property.

Munshi *Shiva Prasad Sinha* (for Dr. *N. C. Vaish*), for the appellant.

Mr. *B. E. O'Conor*, for the respondents.

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

The only point urged before us is that in order to be valid as a complete surrender it is not only necessary that the surrender must be in respect of the entire estate but that it must also take effect simultaneously and at one and the same time. The contention is that if the entire estate is transferred in favour of the next reversioner by successive steps, no legal surrender can

take place. The learned vakil for the appellant relies on the case of *Behari Lal* v. *Madho Lal Ahir Gayawal* (1). The passage relied upon is as follows :—

"It was essentially necessary to withdraw her own life estate, so that the whole estate should get vested *at once* in the grantee. The necessity of the removal of the obstacle of the life estate is a practical check on the frequency of such conveyances."

The argument is that the use of the expression "at once" by their Lordships indicated that the surrender must come into effect by one single act. This contention cannot be accepted. Their Lordships had before them an *ekrarnama* under which the limited owner had declared that she should, till the end of her life, hold possession of the estate and that it was only after her death that one Behari Lal was to enter into possession and enjoy the profits of the mauzahs. Their Lordships clearly meant that such a transfer was not an immediate transfer of the estate so as to amount to a surrender, because it was to take effect not at once but after her life time. The next case relied upon on behalf of the appellant is the case of *Rangasami Gounden* v. *Nachiappa Gounden* (2). Their Lordships in that case approved of the statement of law made by Lord MORRIS in *Behari Lal's* case. But a careful perusal of that judgement really destroys the appellant's argument. It may be noted that in a previous case decided by their Lordships of the Privy Council, viz., *Bajrangi Singh* v. *Manokarnika Bakhsh Singh* (3), successive sale-deeds executed by a Hindu widow with the consent of all the reversioners who were then alive, had been upheld by their Lordships. The language of the concluding portion of the judgement was such as to lead some courts to suppose

(1) (1891) I.L.R., 19 Calc., 236 (241) (2) (1918) I.L.R., 42 Mad., 523.
(3) (1907) I.L.R., 30 All., 1.

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that the consent of all the reversioners for the time being is absolutely sufficient and conclusively establishes the validity of such a transfer. Their Lordships in *Gounden's* case referred to this previous case and explained it. At page 547, their Lordships pointed out that the Calcutta view had been affirmed against the Allahabad view, but the judgement did not particularise on what exact ground the allegation was supported. Their Lordships then pointed out that in that particular case, viz., *Bajrangi Singh's* case, the decision might possibly have been supported by either of the two grounds :—

(1) " Although there were three successive alienations they *in cumulo* amounted to an alienation of the whole immovable property;"

(2) " But apart from that the alienations were all made for purposes of ostensible necessity."

This judgement clearly shows that their Lordships had in mind that successive alienations can be validly supported if the cumulative effect of these is an alienation of the whole estate in favour of the next reversioner. This observation of their Lordships militates against the suggestion that no surrender can take place unless it be by one act. The subsequent case of *Bhagwat Koer* v. *Dhanukdhari Prasad Singh* (1) is not directly in point. Lastly, reliance has been placed on the recent case of *Rao Bahadur Man Singh* v. *Maharani Nowlakhbati* (2). And it is urged that no surrender can take place unless it is supported by necessity. The case referred to is no authority for such a novel proposition of law. Their Lordships clearly re-affirmed their view in *Gounden's* case and remarked that where a surrender of her whole interest in the whole estate in favour of the nearest reversioners

(1) (1919) I.L.R., 47 Calc., 466. (2) (1925)) I.L.R., 5 Pat., 290.

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takes place, the question of necessity in such circumstances does not fall to be considered. The question of necessity arises when there is only a partial surrender or transfer.

On general principles also we see no good ground for holding that if a widow brings about a complete effacement of herself with the result that the entire estate vests in the next reversioner, though the same might have been obtained by a process consisting of several stages, there is no legal transfer. In our opinion, therefore, the appeal has no force and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Sulaiman and Mr. Justice Mukerji.

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March, 4.

CHUNNI SINGH (DEFENDANT) *v.* LAKSHPAT SINGH (PLAINTIFF) AND BHUREY KHAN AND OTHERS (DEFENDANTS).*

Act (Local) No. XI of 1922 *(Agra Pre-emption Act), sections* 16 *and* 22*—Pre-emption—One sale-deed conveying separate items of property to separate purchasers—Pre-emptor not obliged to implead purchasers other than the one in whose particular purchase he is interested.*

By one sale-deed several items of property were sold to different purchasers for different amounts of consideration. *Held* that a person wishing to pre-empt one particular item of the property so sold was not obliged to implead any of the purchasers other than the one concerned with the particular item in which he was interested. *Lachhman* v. *Tulsi Ram* (1), referred to. *Brij Narain Rai* v. *Ram Dhari Rai* (2), distinguished.

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

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* Second Appeal No. 223 of 1926, from a decree of Makhan Lal, Additional Subordinate Judge of Bulandshahr, dated the 26th of October, 1925, reversing a decree of Syed Nawab Hasan, Munsif of Khurja, dated the 24th of March, 1925.

(1) (1905) 2 A.L.J., 199. (2) (1916) 40 Indian Cases, 40.