

proper course is for one of these pending cases to be submitted to this Court together with a statement of the facts of the particular case and a statement of the conflicting opinions of the members who are dealing with it. A copy of this order should be sent to the Board of Revenue and the matter will be taken up again when the record of any case pending before the Board and involving the points of law referred to is submitted to us with a statement of the facts and a statement of the opinions of the members of the Board. We consider it essential to have the case presented to us in this way in order to enable us to issue notice to the parties who must be represented by counsel when the case comes up before this Court for disposal.

1927

RAJA SRI
KRISHNA
DUIT DUB
BAHADUR
v.
RAM
ACHHAIBAR
RAI.

APPELLATE CIVIL.

Before Mr. Justice Ashworth and Mr. Justice Kendall.

RIKHDEO TIWARI (PLAINTIFF) v. SUKHDEO TIWARI
AND OTHERS (DEFENDANTS).*

1927
March, 11.

Hindu law—Hindu widow—Alienation by widow—Question as to origin of widow's title—Adverse possession.

On the death of one *ST*, *N*, who was the widow of a pre-deceased nephew of his, got possession of some of his property and remained in possession for more than twelve years. The widow and one of two grandsons having alienated some of this property, the other grandson sued to have the sale set aside.

Held, that *N* had acquired a title which was good not only against the reversioners to *ST*, but as against the reversioners to her husband's estate.

Lajwanti v. Safa Chand (1), distinguished. *Varada Pillai v. Jeevarathnammal* (2) and *Kali Charan v. Piari* (3), referred to.

* Second Appeal No. 1883 of 1924, from a decree of Zorawar Singh, Additional Subordinate Judge of Ghazipur, dated the 5th of September, 1924, confirming a decree of Kanhaiya Lal Nagar, Munsif of Muhammadabad, dated the 4th of April, 1923.

(1) (1924) I.L.R., 5 Lah., 192.

(2) (1919) I.L.R., 43 Mad., 244.

(3) (1924) I.L.R., 46 All., 769.

1927

RIKHDEO
TIWARI
v.
SUKHDEO
TIWARI.

THIS was a second appeal arising out of a suit brought by one Rikhdeo Tiwari to have adjudged void a sale-deed, dated the 27th of May, 1912, executed by his grandmother Musammat Naulasi along with his elder brother Sukhdeo, who purported to execute it both on behalf of himself and of the plaintiff, a minor at the time. The suit was brought on the allegation that Musammat Naulasi's husband was Sita Ram, a son of Sheo Tiwari and that the property came down to Musammat Naulasi from Sheo Tiwari through Sita Ram. Both the courts below found that as a matter of fact Sheo Tiwari was not the father of Sita Ram but the uncle, and that Sita Ram predeceased Sheo Tiwari. They consequently found that when Sheo Tiwari died, Musammat Naulasi had no title to the property left by him and that her possession of the same must be held to be adverse to the reversioners of Sheo Tiwari. There was no direct evidence to show how Sukhdeo came to be associated in the sale-deed impugned, but it was suggested that he was merely joined at the instance of the transferee in order to preclude any possible claim, such as the present one, either by Sukhdeo himself or by Rikhdeo. Both the lower courts found that at the date of execution of the sale-deed which was impugned, Musammat Naulasi had acquired absolute title in the property sold by twelve years' adverse possession, and the suit was, accordingly, dismissed. The plaintiff appealed.

Pandit *Uma Shankar Bajpai*, for the appellant.
Babu *Piari Lal Banerji*, for the respondents.

The judgement of the Court (ASHWORTH and KENDALL, JJ.), after stating the facts as above, thus continued :—

In this second appeal we are asked to hold that the lower courts were wrong in deciding in favour of

1927

 RIKHENDO
 TIWARI
 v.
 SUKHENDO
 TIWARI.

accretion of title to Musammat Naulasi by reason of twelve years' adverse possession. We are referred to the Privy Council decision in *Lajwanti v. Safa Chand* (1) as authority for the view that a widow getting possession of property, which could have come to her husband lawfully in his lifetime as reversioner or heir, must be deemed to limit her claim to that of a Hindu widow. We would distinguish this decision, as it has previously been distinguished, on the ground that in the Privy Council case, at the time when the widow entered into possession, she was entitled to the property as widow and it was only subsequently that the birth of a posthumous son made her liable to dispossession. In the present case Musammat Naulasi was not entitled under any view to a Hindu widow's possession at the time when she obtained entry. The Privy Council decision has been distinguished in the same way in other cases. We would refer to *Varada Pillai v. Jeevarathnammal* (2) and *Kali Charan v. Piari* (3).

It has been urged that as a matter of fact there is evidence which will justify it being held that the widow limited her claim to a widow's estate. The evidence relied upon is an entry in the *khewat* showing that her name was associated with that of her daughter and her daughter's sons (exclusive of the present plaintiff). The lower appellate court found that this evidence did not apply to the property in suit or property left by Sheo Tiwari. It is quite conceivable that this entry was with reference to property left by her husband Sita Ram. We are told that he left some such property.

For the above reasons we hold that the lower courts were right in holding that Musammat Naulasi acquired an absolute title in the property by adverse

(1) (1924) I.L.R., 5 Lah., 192.

(2) (1919) I.L.R., 43 Mad., 244.

(3) (1924) I.L.R., 46 All., 769.

1927

RIKHDEO
TIWARI
v.
SUKHDEO
TIWARI.

possession and that this absolute title was acquired not only against the reversioners of Sheo Tiwari's estate but as against any reversioner to her husband Sita Ram's estate.

We dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Lindsay and Mr. Justice Sulaiman.

1927

March, 15.

MUHAMMAD ASKARI (PLAINTIFF) v. RAHMAT-ULIAH
AND OTHERS (DEFENDANTS).*

Muhammadian law—Pre-emption—Talab-i-ishtishhad—Second demand made to one only of several vendees—Previous notice of date of sale—Pre-emption of share of one of several vendees.

Held, in a suit for pre-emption based on the Muhammadian law—(1) that the mere fact of a previous notice to the plaintiff pre-emptor that the property is going to be sold on a certain date cannot operate as an estoppel or deprive him of his right to claim pre-emption after the sale has actually taken place; (2) that where the sale is to several vendees jointly, the pre-emptor is not obliged to pre-empt the whole, but can pre-empt the share of any one of the vendees; (3) that if the first demand is made to all the vendees, but the second to one only, the plaintiff can only get a decree in respect of the share of that one vendee.

Aliman Begam v. Ali Husain (1), *Gunput Jha v. Anund Singh Das* (2) and *Birj Beharee Singh v. Durbaree Lal* (3), referred to.

THIS was a suit for pre-emption. The claim was originally based both on an alleged custom as well as the Muhammadian law. The claim, so far as the

* First Appeal No. 529 of 1923, from a decree of Joti Sarup, Additional Subordinate Judge of Saharanpur, dated the 15th of September, 1923.

(1) (1923) I.L.R., 45 All., 449. (2) (1848) S.D.A. (Lower Provinces) 22.

(3) (1850) S.D.A. (Bengal) 585.