1932

ANAND SINGH v. COLLECTOR OF BIJNOR.

any way time barred is founded apparently on section 140 of the Contract Act. That section lays down that where a surety makes payment he is invested with all the rights which the creditor has against the principal debtor. But this is not the only section of the Contract Act under which the surety has a right. The surety also has a right under section 145 of the Contract Act which states as follows: "In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully." There would be no question of the right of the surety under section 145 being limited to the rights of the creditor against the principal debtor.

For the reasons stated above we allow this appeal in part to the extent indicated, that is, a decree will be granted in favour of Raja Udai Raj Singh defendant No. 2, and the decree will be limited to the amount of the decree obtained by the creditors against the principal debtor as already stated, that is, the Rs.20,000 and interest at the contractual rate for six years, and thereafter simple interest at 6 per cent. per annum on the total amount up to the date of payment. [An order as to costs followed.]

Before Mr. Justice Pullan and Mr. Justice Niamat-ullah.

1932
June, 14.

BHAROSA SHUKUL (PLAINTIFF) *v.* MANBASI KUER AND ANOTHER (DEFENDANTS).*

Hindu law—Stridhan—*Widow acquiring property from savings of income of her husband's estate—Accretion to husband's estate—Presumption—Widow's intention at the time of acquisition—Alienation by her.*

Any profits which may accrue to a widow during her possession of her husband's estate become her *stridhan*, and

*Second Appeal No. 1359 of 1929, from a decree of Charu Deb Banerji, Subordinate Judge of Azamgarh, dated the 1st of August, 1929, modifying a decree of S. Ejaz Husain, Second Additional Munsif of Azamgarh, dated the 10th of July, 1928.

can be used by her to acquire property for herself. In certain cases a presumption has been drawn that the acquisitions so made are to be treated as accretions to the husband's estate unless she indicates a contrary intention and so deals with them that they remain her own. But at the outside it is a presumption, and it is a question of fact to be determined, if there is any dispute, whether a widow has or has not so dealt with the property.

Where the widow, acting as she said at her husband's wish, rounded off the property which she had received from him by acquiring another portion of the same estate, and treated the property so acquired as one with the property received from her husband and seven years later she gifted the whole property so united in favour of a stranger, it was *held* that a case of accretion to the husband's estate was clearly established. In the circumstances of the case the fact that the widow made an alienation of the property in her lifetime did not disprove that at the time of making the acquisition she had an obvious intention of making an accretion to her husband's property. Indeed the transfer of both the properties lumped together proved rather than disproved such an intention.

Mr. *A. P. Pande*, for the appellant.

Mr. *S. S. Sastry*, for the respondents.

PULLAN and NIAMAT-ULLAH, JJ. :—The plaintiff sued as the reversionary heir of one Ram Narain Shukul for a declaration that a deed of gift executed by Manbasi Kuer, widow of Ram Narain Shukul, in favour of one Sabhapat Pande, is void as against the plaintiff. The property gifted is partly the property of Ram Narain Shukul and partly property obtained by pre-emption by the widow. The suit was decreed by the Munsif, but in appeal the Subordinate Judge held that the plaintiff was entitled to a decree only in respect of that portion of the property which belonged to Ram Narain. As to the other half he held that although it would have been considered to be an accretion to the husband's estate if the widow had died without making any disposition of it, the fact that the widow had actually disposed of it in her lifetime shows it to have been her own exclusive property, and the transaction as to this

1932

BHAROSA SHUKUL v. MANDASI KUER.

portion of the property cannot be challenged by her husband's heirs. We have been asked in second appeal to consider that there is in this case a presumption that the acquisition made by the widow must be regarded as an accretion to her husband's estate. It is not disputed that any profits which may accrue to a widow during her possession of her husband's estate become her *stridhan*, and can be used by her to acquire property for herself; but in certain reported cases a presumption has been drawn that the acquisitions so made are to be treated as accretions to the husband's estate unless she indicates a contrary intention. The first case cited is that of *Isri Dut Koer* v. *Hansbutti Koerain* (1), in which it was held that where a widow invested the unexpended income of her husband's estate and alienated the property so purchased together with the original estate of her husband for the purpose of changing the succession, the accretion was clearly established. In the present case the property acquired by the widow by pre-emption was an undivided share in the same property in which she had already acquired the undivided share of her husband. She treated the two properties as one and gifted them to her brother's son. In a later case, *Sheolochun Singh* v. *Saheb Singh* (2), their Lordships took the view that where a widow invests the income derived from her husband's property in the purchase of other property, "*prima facie* it is the intention of the widow to keep the estate of the husband as an entire estate and that the property purchased would *prima facie* be intended to be an accretion to that estate". Both these cases appear to us to favour the appellant's claim. That the property acquired by the widow was acquired from the savings of her husband's estate is in our opinion a finding of fact of the courts below, and it is clear that she treated the property so acquired as one with the property received from her husband, and alienated the property so united in such a manner as to

(1) (1883) I.L.R., 10 Cal., 324. (2) (1887) I.L.R., 14 Cal., 387.

defeat the claim of the reversioners. In the latest ruling of their Lordships of the Judicial Committee in *Nabakishore Mandal* v. *Upendrakishore Mandal* (1) there is a passage which may in our opinion be quoted with advantage in the present case :

"There remains only the transaction which was entered into later on the 5th of May, 1895. That was entered into by the survivor of the two widows, Prasanna Kumari. The alleged justification for this depends on different considerations. It is said that the property sold had been acquired by the widow out of her *stridhan*, and that consequently she was quite free to deal with it as she thought best. Now there can, their Lordships think, be no doubt that whatever *stridhan* she possessed was due to the accumulated savings from the income of the property which she received from her husband's estate, and though it is true that when that property had been received it would be possible for her so to deal with it that it would remain her own, yet it must be traced and shown to have been so dealt with, and in this case there is no sufficient evidence of this having been done. Further, in this particular case it appears that part, at least, of the property had been purchased from the tenants of the estate itself. This does not mean that the inheritance had been so acquired, but that, owing, it may be, to difficulties which had arisen in connection with the occupiers, their tenant rights had been bought in part by the release of the arrears of rent and in part by a payment of cash; and having so acquired their interest, it was the property which they had formerly occupied which was sold under the *kobala* of the 5th of May, 1895. If that be the true transaction no question could arise about the right of the widow in connection with her *stridhan*, because the tenant rights so acquired would be an obvious accretion to the husband's property, which, if it were possible for her to segregate, would require some more unequivocal act for the purpose than anything to be found in this evidence."

We consider that in the present case it is proper to hold that the widow, when she acquired by pre-emption a second undivided share in the property and added it to the undivided share of her husband which she already possessed, was making, in the words of their Lordships, "an obvious accretion to her husband's property", and

(1) (1921) 20 A.L.J., 22.

1932

BHAROSA SHUKUL v. MANBASI KUER.

even if we consider the subsequent alienation to a stranger to be an indication that at the time of the alienation she did not wish to treat the property so united as being her husband's estate, we are still met with the difficulty that the alienation was not made until seven years after the purchase of the property by pre-emption. We do not consider in the circumstances of this case that the fact that the widow made such an alienation in her lifetime is any proof that when she made the purchase she had no intention of making an accretion to her husband's property; and as a matter of fact she herself stated that she made the purchase and the transfer in pursuance of her husband's wishes, indicating thereby that she did not wish to treat the property so acquired as her *stridhan*. The Subordinate Judge was in error in supposing that the matter can be decided simply on the finding that the widow is still alive; but so far as the question of presumption goes, we have been referred to a ruling of their Lordships of the Judicial Committee in *Rajah of Ramnad* v. *Sundara Pandiyasami Tevar* (1), in which their Lordships suggest that there is authority for holding that the presumption may be the other way; and this view has been taken by the Madras High Court in several cases, notably that of *Ayiswaryanandaji Saheb* v. *Sivaji Raja Saheb* (2). That was a case in which the ladies who made the purchase had not been in possession of the corpus of the estate, and as the learned Judges held, there was consequently no room to presume the widows' intention to make them accretions to their husband's estate; and the decision of the Privy Council on which they relied, *Rajah of Ramnad* v. *Sundara Pandiyasami Tevar* (1), appears to us to determine the true method in which this question must always be solved. Their Lordships observed: "But at the outside it is a presumption and it is a question of fact to be determined, if there is any dispute, whether a widow has or has not so dealt with her property." We take this principle as our

(1) (1918) I.L.R., 42 Mad., 581. (2) (1925) I.L.R., 49 Mad., 116.

1932

BHAROSA SHUKUL v. MANBASI KUER.

guide. We have no doubt that when the widow, acting as she says at her husband's wish, rounded off the property which she had received from him by acquiring another portion of the same estate, she intended the property so acquired to be treated as an accretion; and her subsequent transfer to one who was no heir of her husband, involving as it does an unlawful transfer of her husband's own estate to a stranger, does not disprove the widow's intention at the time of the purchase. Indeed the authority of their Lordships of the Judicial Committee may, as we have shown above, be cited to indicate that such a transfer proves rather than disproves the widow's intention to make an accretion to the estate of her husband: *Isri Dut Koer* v. *Hansbutti Koerain* (1). In our opinion the plaintiff in the suit was entitled to the decree which he sought. We accordingly set aside the decree of the lower appellate court and allow the appeal with costs and restore the decree of the court of first instance.

Before Mr. Justice Pullan and Mr. Justice Niamat-ullah.

CHANDRABHAN (DEFENDANT) *v.* RAJ KUMAR (PLAINTIFF).*

1932 *June*, 15.

Limitation Act (IX of 1908), sections 6, 9, 19—Acknowledgment, effect of—Terminates the time already running and starts a new period—Disability of plaintiff at date of acknowledgment, although time had once begun to run.

The effect of an acknowledgment under section 19 of the Limitation Act is that the former period, already running, is not extended but terminated, and a new period starts running from the date of the acknowledgment. If, therefore, there is a disability at the date of the acknowledgment, it is a disability at the time from which the period of limitation is to be reckoned, within the meaning of section 6 of the Act, and that section will apply, notwithstanding the fact that the original period has begun to run as there had been no disability at that time.

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*First Appeal No. 316 of 1928, from a decree of J. N. Mushran, Subordinate Judge of Etah, dated the 26th of May, 1928.

(1) (1883) I.L.R., 10 Cal., 324.