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to any other party. The learned Magistrate expressly noted in his judgment that it was not contested on behalf of the accused that the trees belonged to the zamindar. We are therefore unable to agree with the learned Sessions Judge that there was a possibility of the accused denying the ownership of the trees if they had been specifically questioned about the matter. We must, therefore, hold that the accused have in no way been prejudiced by either the omission to question them generally on the case after the prosecution evidence had been closed or by the omission to record the particulars of their examination.

The learned Sessions Judge is clearly wrong in thinking that a sentence of fine only was illegal. We, however, agree with him that the sentence of fine of Rs.50 on each of the four accused for the offence of cutting down two babul trees worth Rs.10 is rather severe. We accordingly accept this reference in part and upholding the convictions of all the accused reduce the fines imposed upon them to Rs.15 each; in default of payment of the fines they will undergo two weeks' rigorous imprisonment each. Out of the total amount so realised Rs.10 will be paid to the complainant as compensation.

PRIVY COUNCIL

J. C.*
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July, 15

LAKSHMI CHAND (PLAINTIFF) v. ANANDI (DEFENDANT)

[On appeal from the High Court at Allahabad]

Hindu law—Widow—Estate specially created by agreement between coparceners—Liability to forfeiture by unchastity.

By a document executed by two undivided brothers it was agreed that on the death of either, his widow should receive a moiety of the profits of the joint family estate.

Held that under the agreement the widow took a special estate created for her, different from the right to maintenance, and this estate would not be liable to divestment by subsequent unchastity.

Judgment of the High Court affirmed.

*Present: Lord THANKERTON, Lord WRIGHT and Sir SHADI LAL.

APPEAL (No. 100 of 1932) from a decree of the High Court (July 21, 1931) which reversed a decree of the Subordinate Judge of Muzaffarnagar (May 27, 1930).

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By a registered document executed by two undivided brothers on June 5, 1915, it was agreed that, on the death of either while the family remained joint, the survivor should manage the estate and the widow of the deceased brother should receive half the net profits.

[The document is set out in *Lakshmi Chand v. Anandi*, I. L. R., 48 All., 313; 53 I.A., 123.]

The appellant, who survived his brother, instituted the present suit in 1929 against his brother's widow, the respondent, for a declaration that she had forfeited her rights under the deed either by re-marriage or unchastity. The Subordinate Judge found that re-marriage was not proved, but that unchastity was and that, on that ground, the widow had forfeited her rights to the profits of the estate. The High Court concurred with the Subordinate Judge in finding that re-marriage was not proved, but reversed his finding on the issue of chastity and dismissed the suit.

The material facts are more fully stated in the judgment of their Lordships of the Judicial Committee.

1935, June 27 and 28. *Chinna Durai and Miss Miles* for the appellant: Two questions arise: (1) whether unchastity of the widow has been proved and (2) whether, if unchastity is proved, it would involve forfeiture of rights under the agreement.

[Their Lordships desired the second question to be argued first.]

The provision for the widow in the agreement was a kind of maintenance. A widow, by unchastity, would lose her right to maintenance. There was also a direction in the agreement that she should live in a particular house. She left that house. That would also be a ground for forfeiture.

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Reference was made to Mayne's Hindu Law (9th edition), sections 456 and 457, *Raja Prithee Singh v. Ranee Raj Kower* (1873) I. A. Sup. 203; s. c. 20 W. R. 21.

Jayswal, for the respondent, was not called upon.

1935, July 15. The judgment of their Lordships was delivered by Sir SHADI LAL:

On the 5th June, 1915, two brothers, Baldeo Sahai and Seth Lakshmi Chand, who constituted a joint Hindu family governed by the Mitakshara school of Hindu law, executed a document providing for the disposal of their estate. It was presented for registration, on the 8th June, at the office of the sub-registrar, and was duly registered on the 9th June.

This document, which has been variously described as an agreement or a joint will of the two brothers, stated, *inter alia*, that, in the event of one brother dying without leaving a male issue, his widow's name should be substituted for that of the deceased husband in the public records relating to the estate. Her interest in the estate was defined in the eighth paragraph of the instrument, and, as there is a controversy between the parties about the interpretation to be placed upon it, it is necessary to set it out *in extenso*:

"(8) We, both the parties, have, up to this time, been jointly managing all the estate affairs and shall continue to manage it in the same way, provided no partition takes place. After the death of one party all managements relating to the estate shall be made by the surviving party. The wife of a deceased party shall have no right to get the property partitioned in the life of the other party, but shall continue to get her share of the profit from the other party after deducting the expenses relating to the estate. If the other party evades the payment of the profit, she shall be entitled to seek remedy in court only for recovery of profit."

Before discussing the question raised on this appeal, it is desirable to state the circumstances which have led to the present litigation. It is common ground that Baldeo Sahai died on the 10th June, 1915, without leaving male issue; and that the name of his widow, Musammat Anandi, was entered, instead of the name of the

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deceased, in the relevant revenue records. Lakshmi Chand did not, however, give her the profits to which she was entitled under the paragraph quoted above, and brought, in 1918, an action for a declaration that the transaction embodied in the document amounted to a testamentary disposition of the coparcenary estate and could not take effect, as on the death of Baldeo Sahai his brother became the sole owner of the entire joint estate by the rule of survivorship. This claim was rejected, not only by the trial court, but also by the High Court. The plaintiff then preferred an appeal to His Majesty in Council, but that appeal too was dismissed on the 15th March, 1926. The judgment of the Privy Council dismissing the appeal is reported in *Lakshmi Chand v. Anandi* (1), and will be referred to presently.

In the meanwhile, Musammat Anandi, who had not received any profits from her brother-in-law, had commenced, in 1920, a suit to recover her share of the profits for the period of five years, from 11th June, 1915 to 10th June, 1920. The progress of the suit was considerably delayed, and it was not until March, 1928, that the trial court granted her a decree for Rs.81,423-12. The appeal brought by Lakshmi Chand against this decree was dismissed by the High Court in February, 1929.

Though defeated in his suit to impeach the validity of the deed of 5th June, 1915, Lakshmi Chand made no payment of the profits even after the judgment pronounced by the Privy Council, with the result that Musammat Anandi had to bring, in August, 1926, another suit for profits for the period from the 15th June, 1920 to the 30th July, 1926. In this suit she obtained a decree for a sum exceeding one lakh of rupees.

The above narrative does not, however, exhaust the list of the cases between Lakshmi Chand and his sister-

(1) (1926) I.L.R., 48 All., 313.

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in-law. In May, 1929, he instituted the present suit to defeat her right to recover profits, and the ground of attack put forward this time was that she had forfeited her right by reason of her re-marriage and unchastity with one Tara Chand. The trial court and the High Court have concurred in holding that there was no re-marriage, and that point cannot be, and has not been, re-agitated before their Lordships.

On the question of unchastity, the Subordinate Judge found in favour of the plaintiff, but the High Court, after a survey of all the relevant circumstances, felt no hesitation in deciding that the charge of unchastity was false. The learned Judges rightly held that the onus of proving unchastity rested upon the plaintiff, and they observed that the trial Judge "in dealing with this issue has not always kept this fact in view that the onus in the matter lay upon Lakshmi Chand and not upon Musammat Anandi". The High Court also decided that Musammat Anandi could not, by reason of unchastity, be divested of the estate which was conferred upon her by the document executed by both the brothers.

On this appeal against the judgment and the decree pronounced by the High Court, the plaintiff again repeats the charge of unchastity and maintains that her misconduct has deprived her of the right to recover the profits. Their Lordships do not think that it is necessary to discuss the evidence on the issue of unchastity, as they are clear that the appeal must fail on the ground that the charge of unchastity, even if it were established, would not cause a forfeiture of the estate she had got under the document.

It is true that the right of a Hindu widow to maintenance is conditional upon her leading a life of chastity, and that she loses that right if she becomes unchaste. The argument advanced for the appellant, proceeding as it does upon this rule of the Hindu law, is, however, irrelevant to the question before their Lordships. What the widow has been given in the present case is not

maintenance but the income of an estate specially created for her by the two brothers. The nature of that estate has already been determined by this Board in the previous case between the parties, and it is sufficient to say that it was then decided finally that the instrument in question contained an agreement between the two brothers that :

“Musammat Anandi should, on the death of Baldeo Singh, have and enjoy for her life an interest in a moiety of the joint property equivalent to the interest which the widow of a sonless and separated Hindu would have in her deceased husband's estate, and that the interest which she obtained by the mutual agreement of Baldeo Sahai and Lakhmi Chand should continue for her benefit for her life, notwithstanding the birth, if it should happen, of 'male issue' to Lakhmi Chand.”

This is the estate she took under the instrument, and it is clear that the right to receive maintenance is very different from a vested estate in property. Under the Hindu law a widow having inherited a widow's estate is not liable to forfeit it by reason of her subsequent unchastity, and there is no provision in the document making chastity a condition of the enjoyment by her of the estate bestowed upon her.

The learned counsel for the appellant urges another ground for terminating Musammat Anandi's estate, which was not mentioned in the courts below. He maintains that, while the deed required her to live in a dwelling house in Khatauli, she gave up her residence there and migrated to a place called Paswara in order to prosecute her intrigue with her paramour; and that this circumstance should operate as a forfeiture of her estate. The deed no doubt allowed her to live “in any house she might choose” situated in a specified enclosure at Khatauli, and enjoined Lakshmi Chand not “to turn her out of it”. But this was a right given to her, not an obligation imposed upon her. She was not bound always to live in the house in question. She, however, lived in it continuously for more than eleven years after the death of her husband, and left it only when she

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apprehended violence from the appellant. Moreover, there is no provision in the document which would warrant a forfeiture of her estate on that ground.

The appellant has, in their Lordships' opinion, failed to show any reason for avoiding his liability to pay the income of a moiety of the entire estate to the respondent. They will, therefore, humbly advise His Majesty that the appeal be dismissed with costs.

Solicitors for the appellant: *Douglas Grant and Dold.*

Solicitors for the respondent: *Nehra and Co.*

J. C.*
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ATMA RAM (DEFENDANT) v. BENI PRASAD AND OTHERS
 (PLAINTIFFS)

[On appeal from the High Court at Allahabad]

Civil Procedure Code, section 115—Material irregularity—Suit on behalf of widows, wards under the Court of Wards Act (U. P. Act IV of 1912)—Representative suit—Withdrawal of suit by Collector—Summary rejection by court of application by next reversioner to be added as plaintiff—Jurisdiction of High Court—Form of order.

A suit by a Collector acting under the United Provinces Court of Wards Act (U. P. Act IV of 1912) claiming property as family property on behalf of widows, wards of the Court of Wards, is a representative suit.

On the withdrawal of the Collector, the widows would be debarred under section 55 of the Court of Wards Act from continuing the suit in their own names, but the next reversioner would be entitled to continue the suit.

The summary dismissal of an application by the next reversioner to be added as a plaintiff in such a suit on the withdrawal of the Collector, without a proper consideration of the application and on a misapprehension of its nature, and the dismissal of the suit on the Collector's application is a material irregularity within section 115 of the Code of Civil Procedure.

In reversing the decree of the lower court dismissing the suit in such circumstances the proper order to be made by the High Court is to order that the decree of the lower court be recalled, that the reversioner be added as a plaintiff and the Collector dismissed from the suit.

Decree of the High Court varied.

*Present: Lord MACMILLAN, Sir JOHN WALLIS and Sir SHADI LAL.