APPELLATE CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Collister

RAM SARUP SINGH AND ANOTHER (DEFENDANTS) *v.* MOHAN SINGH AND OTHERS (PLAINTIFFS)*

1939 *April*, 12

Hindu law—Adverse possession by a widow of property which did not belong to her husband—Extent of title acquired by prescription—Whether the widow was prescribing for a widow's interest only—Whether widow took possession under a claim of inheritance—Burden of proof—Admission—Entry in mutation records.

There is no rule of law that whenever a Hindu widow is found in adverse possession of property she must be deemed to be prescribing for a widow's limited estate only. Where a Hindu widow takes possession of property to which she is not entitled to succeed under the Hindu law, the question whether she acquires by prescription a limited estate or an absolute estate depends on the question of fact whether she claimed to take the property by succession to her husband (or to her son as the case may be) or not. If there is no evidence that she so limited her claim and professed to take possession as claiming only a limited estate, she takes an absolute estate; the burden of proving that she acquired only a limited estate is upon the party asserting it.

An entry in the mutation register that the nature of transfer of interest was "inheritance", based upon a report signed by the patwari in an uncontested case, can not, in the absence of any application or statement by the widow herself, amount to an admission by the widow that she was claiming by inheritance.

Messrs. *A. Sanyal* and *Shiva Prasad Sinha*, for the appellants.

Mr. *A. P. Pandey*, for the respondents.

BENNET and COLLISTER, JJ.:—This is a Letters Patent appeal by defendant 1 Ram Sarup Singh, and defendant 2 Udit Singh, against the decree of a learned single Judge of this Court allowing the appeal of the plaintiffs. At the conclusion of the arguments in this case learned counsel for the plaintiffs respondents orally stated that plaintiff No. 2, Bikram Singh, had died after the decree

*Appeal No. 68 of 1937, under section 10 of the Letters Patent.

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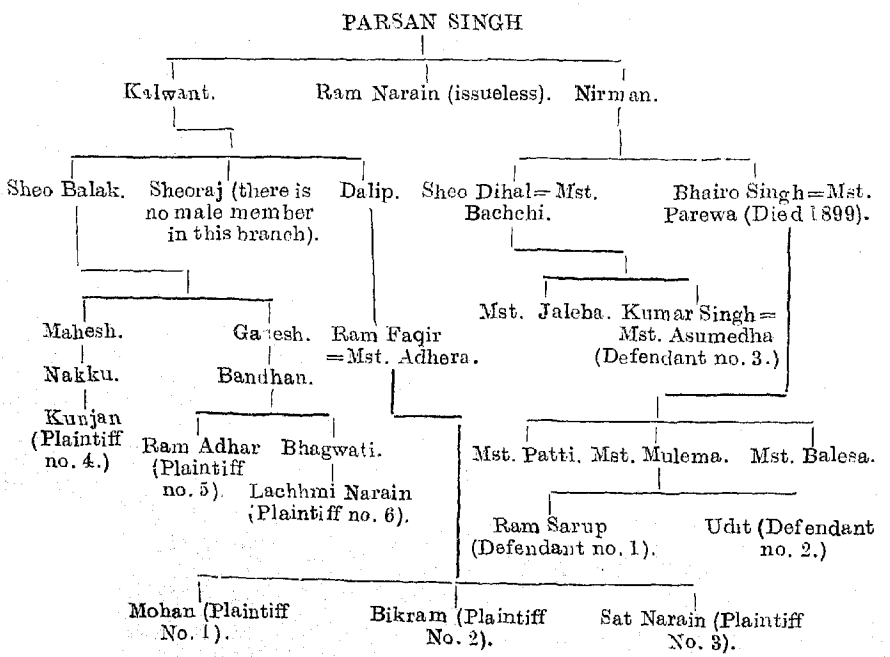
of the learned single Judge, the date of death being 7th November, 1938, and complained that his legal representatives had not been brought on the record. We think that the matter should have been the subject of an application in writing if learned counsel desired to bring it to our notice, but it appears to be sufficient to observe that the legal representatives of Bikram Singh are apparently his two brothers, plaintiff No. 1 Mohan Singh, and plaintiff No. 3 Sat Narain Singh, and as they are already on the record no further steps appear to be required. It is not asserted that these Hindu brothers were separate. The plaintiffs sued as the nearest reversioners of one Kumar Singh and if Bikram Singh had any sons they would not be his legal representatives as there are the two uncles plaintiffs 1 and 3, who are nearer reversioners, so they did not require to be brought on the record. The family pedigree is as follows:



The facts which gave rise to the present suit are as follows. Bhairo Singh died and left a widow Mst. Parewa who held a zamindari share of 1 anna 6 pies and this widow died in 1899. Bhairo Singh was separated from his nephew Kumar Singh, and Kumar Singh died as is the finding of the lower appellate court about three weeks after the death of Mst. Parewa. Mst. Asumedha, defendant No. 3, was then entered for the property of Bhairo Singh 1 anna 6 pies, and she was also entered for a 6 pie zamindari share of her husband Kumar Singh. The immediate cause of the present suit is a deed of gift dated 6th of October, 1931, executed by Mst. Asumedha in favour of Ram Sarup and Udit, defendants 1 and 2, by which she made a gift of the two shares amounting altogether to two annas zamindari share.

The plaintiffs sued claiming in paragraph 3 of the plaint that the two annas zamindari share was the property left by Kumar Singh and that on the death of Kumar Singh Mst. Asumedha Kunwar entered into possession of the property as a Hindu widow with a life interest. The plaintiffs therefore asked for a declaratory decree that the defendants 1 and 2 are not the sons of the sister of Kumar Singh deceased but are the sons of the daughter of Bhairo Singh. This portion of the decree was granted by the trial court although the defence was that defendants 1 and 2 were sons of the sister of Kumar Singh and therefore the nearest reversioners under the Hindu Law of Inheritance (Amendment) Act. The finding of fact is not now in contest. The other portion of the relief was that there should be a declaration that the deed of relinquishment which purported to be a deed of gift dated 6th October, 1931, was null and void against the reversionary rights of the plaintiffs after the death of Mst. Asumedha Kunwar. In regard to this relief the trial court granted a declaration so far as concerns the 6 pies zamindari share which had been held by Kumar Singh, and no appeal was taken by the defendants against that decree. The trial court held

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that Kumar Singh had not entered into possession at all of the 1 anna 6 pies zamindari share held by Mst. Parewa, widow of Bhairo Singh, and the court further held that Mst. Asumedha had been entered for this share by mutation in 1899 and that she had held it by adverse possession against the three daughters of Bhairo Singh who were entitled to hold by succession after their mother, and further that she had held it for the period of 18 years after the death of the last surviving daughter of Bhairo Singh and had therefore acquired a title by adverse possession against defendants 1 and 2. The trial court further held that this adverse possession by Mst. Asumedha acquired for her an absolute title as full owner of the 1 anna 6 pies share of Bhairo Singh and not merely the limited estate of a Hindu widow. The suit was therefore dismissed in regard to this 1 anna 6 pies share.

The plaintiffs filed an appeal in the lower appellate court claiming that the adverse possession of Mst. Asumedha Kunwar was that of a Hindu widow and therefore that she had acquired an estate merely of a Hindu widow in the 1 anna 6 pies share originally of Bhairo Singh and that having acquired that estate she was unable to divest herself of it by a deed of gift or relinquish in favour of defendants 1 and 2 although they were the rightful heirs entitled to possess that share.

The plaintiffs brought a second appeal in this Court and the learned single Judge of this Court has held that the title acquired by Mst. Asumedha Kunwar in the 1 anna 6 pies share was only that of a Hindu widow and that she had also acquired the full title by adverse possession to the estate of her husband and that her deed of gift to defendants 1 and 2 was therefore invalid and the claim of the plaintiffs was allowed. Against that decree of the learned single Judge this Letters Patent appeal has been brought and the question before us is whether under the circumstances of this case Mst. Asumedha Kunwar acquired adverse possession as a Hindu widow

for herself and the full title for the estate of her husband or whether she acquired the full title for herself.

No case has been shown to us in which a person acquiring title by adverse possession as a Hindu widow attempted to make a gift of her rights to the rightful heirs and the courts have never held that she could not divest herself of the rights which she had acquired by adverse possession. The case is therefore somewhat unique in this feature.

As regards the law on the point we are referred in the first instance to a ruling of their Lordships of the Privy Council of the year 1894 in *Lachhan Kunwar* v. *Manorath Ram* (1). In that case a Hindu proprietor died leaving a widow and a son who died leaving the widow of his father. The father's widow either during the son's lifetime or on his death took possession of the property left by the father and remained in possession for 17 years until she died. The son's widow who was really entitled to succeed brought a suit against the father's widow for the property, but this was dismissed on the ground of limitation in 1875. Before her death the father's widow transferred part of the property by gift. It was found that she had not made any assertion that she was taking possession of the estate as a Hindu widow. It was held therefore that by taking possession she had taken possession of an absolute estate and that she was entitled to make a gift of that estate. On page 450 their Lordships observed: "The contention that although it might be barred as against the son and all persons claiming under him, the effect was only to extinguish those rights, and to let in the rights of any persons who would claim as reversionary heirs of Mangal does not appear to their Lordships to be supported by authority, nor is it tenable, *unless it were clearly shown that when Jit Kunwar took possession she professed to do it as claiming only the limited estate of a widow.*"

(1) (1894) I.L.R. 22 Cal. 445.

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The next ruling is *Sham Koer* v. *Dah Koer* (1), a ruling of 1902. In that case there was a member of an undivided Hindu family whose widow and son's widow obtained possession of a portion of his property which was assigned by a *hibbanama* to a third person. The reversionary heirs then brought a suit against the survivor of the widows and her assignee to set aside the gift and for possession. This suit was brought after the period of limitation had expired from the time when the widows took possession. On page 671 their Lordships stated: "The only question therefore is—Have the appellants given satisfactory proof of an arrangement with the two widows, which would be an answer to the plea of limitation?" In this connection on page 672 it is mentioned that reliance was placed in argument on certain documents such as a mukhtarnama which stated that the villages were in possession of the widows "as life-interest". This mukhtarnama was executed by one of the widows. "Their Lordships, however, think that having regard to the position of the widows, who were pardanashin ladies, and considering that the mukhtar appointed by them was the mukhtar of the reversionary heirs, it would be dangerous to rely on such an admission, unless it were proved that the attention of the widows was directly called to it." The ruling shows that some words in a document executed by widows cannot be taken to be an admission by the widows.

The next ruling in point of time is *Lajwanti* v. *Safa Chand* (2), a ruling of 1924. In that case one Jawahar Mal was the owner of the property in dispute and he died in 1852 leaving three widows who took possession as widows. The eldest widow gave birth to a posthumous son who lived for a few months. This son therefore became the last male holder. Certain litigation arose betwen a nephew who claimed to be the adopted son and two of the surviving widows, the one who gave birth to the posthumous son having died. It was held

(1) (1902) I.L.R. 29 Cal. 664. (2) (1924) I.L.R. 5 Lah. 192.

that the two widows were entitled to the estate for their lives. This was of course incorrect. Many years later the question then arose of the title to these two widows when they had been holding the estate, and it was held that as they were not heirs under the Hindu law their possession from 1869 to 1910 was adverse, but it was held that the property did not become their *stridhan*: on the other hand they had acquired by adverse possession owning the title of Hindu widows. On page 198 it was stated: "The Hindu widow, as often pointed out, is not a life renter but has a widow's estate—that is to say, a widow's estate in her deceased husband's estate. If *possessing as widow* she possesses adversely to anyone *as to certain parcels*, she does not acquire the parcels as *stridhan* but she makes them good to her husband's estate. The result is the mauzas are Jawahar Mal's estate, the respondents having no title to attack them, and as such the plaintiff is entitled as heir to her father to take them." In this case the property was the property originally of the husband of the widows and there was no question apparently but that they had taken as his widows. They did not apparently during their lifetime make any attempt to dispose of these mauzas. The circumstances of this particular ruling are different therefore from those of the rulings where the question has arisen in what capacity the widows took possession where the widows have attempted to make a disposal of the property afterwards.

The scope of this ruling in *Lajwanti's* case has been considered in a ruling of the Oudh Chief Court in *Raj Bahadur Singh* v. *Kanhaiya Bakhsh Singh* (1), where it was held that there is no rule that whenever a Hindu widow is found in adverse possession of property she must be treated as being in adverse possession of a widow's estate only.

In *Uman Shankar* v. *Mst. Aisha Khatun* (2) it was laid down that admissions by a Hindu widow that she

(1) (1926) 99 Indian Cases, 890. (2) (1923) I.L.R. 45 All. 729.

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had acquired the property as heir to her husband do not necessarily involve the legal inference that she was asserting only a limited interest and not her absolute right.

The scope of the ruling in *Lajwanti's* case was further considered in *Rikhdeo Tiwari* v. *Sukhdeo Tiwari* (1). At page 715 the ruling observed: "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 Mst. 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)."

In *Dungar Singh* v. *Maid Kunwar* (4) there was a ruling by a Bench of which one of us was a member with MUKERJI, J., and in that case it was laid down that where a Hindu widow takes a property to which she is not entitled to succeed under the Hindu law, the question whether she acquires a limited estate or an absolute estate depends on the question of fact whether she claimed to take the property through her husband or not. If she has taken through her husband she acquires by prescription only a limited estate of a Hindu widow and does not obtain an absolute estate, but if there is no evidence that she has so limited her claim she takes an absolute estate as *stridhan*. Learned counsel for the plaintiffs respondents relied on the way in which the facts had been treated in that ruling which was a first appeal, but we do not think that the method of treatment of the facts has any bearing on the present case, as the evidence in that case was different. The widow in that case gave evidence and the statement in her

(1) (1927) I.L.R. 49 All. 713.
(2) (1919) I.L.R. 43 Mad. 244.
(3) (1924) I.L.R. 46 All. 769.
(4) A.I.R. 1933 All. 822.

deposition partly formed the basis of the decision. We have not had any statement by defendant 3 in the present case.

For the respondents reliance is also placed on *Shankar Lal* v. *Damodar Das* (1), a ruling by the same Bench. On page 451, column 2, it was held: "The mere fact that a Hindu woman holds a property need not necessarily imply that she holds it for her own benefit. She may hold it on behalf of her husband's estate or on behalf of her son's estate as the case may be." In that case the widow Mst. Basanti "made a clear statement that she was holding as heir to her husband". This statement was in her will.

We now have to examine the evidence in the present case in the light of these rulings. There is firstly the fact that mutation was effected separately for the 1 anna 6 pies share and the 6 pies share. Learned counsel for the respondents claimed that the two documents produced are admissions by the widow that she took by inheritance. It is true that in column 9 the nature of transfer is stated to be "inheritance", but these documents are not statements by the widow. They are signed only by the patwari Achaibar Lal. There is no reason to suppose that the widow made any report or application for mutation or that there was any contested case. All that is produced is a copy of the mutation register and it is not headed with the heading of any contested case. Under the U. P. Land Revenue Act, Act III of 1901, section 35, when a report is made to the Tahsildar in an undisputed case he records a succession and it is only if there is a dispute that he refers the matter to the Collector for decision under section 40. The Tahsildar therefore was acting in this manner as an executive officer and not as a court. The mere fact that the patwari reported (under department VII Board of Revenue circulars) that the name of Mst. Asumedha should be entered by inheritance does not in any way

(1) A.I.R. 1931 All. 450.

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amount to an admission by her. The next document was a usufructuary mortgage by Mst. Asumedha dated 31st July, 1901. This usufructuary mortgage was in favour of the grandmother of the plaintiffs and the plaintiffs are at present in possession of the property. The usufructuary mortgage does not anywhere set out that Mst. Asumedha was holding the property as the widow of her husband. She could not have done so in view of the fact that her husband was not the person legally entitled to the property and he had never held it.

The next document is the deed of gift in suit dated 6th October, 1931. In this document also Mst. Asumedha does not state that she holds as the widow of her husband. She states merely that the property "is owned and possessed by me, the executant, over which the mortgagees are in possession now. I, the executant, have no male or female issue." Learned counsel placed some reliance on an expression which is in vernacular *"aur apne warasat se ham muqir alehda hogae"* and which has been somewhat vaguely rendered in the translation as "I, the executant, have severed my connection from the inheritance." The lower appellate court has observed that this reference to inheritance may be taken to apply to the 6 pies share which Mst. Asumedha had and to which she had succeeded from her husband. We do not think that any connection can be claimed to exist between the 1 anna 6 pies share and a right of inheritance. Nor is it clear that Mst. Asumedha intended to put forward such a statement. In this deed of gift there is a certain amount of confusion and in one place she refers to defendants 1 and 2 as sons of her sister, and in another place she refers to them as sons of her husband's sister. Learned counsel has pointed out that the deed of gift is of 1931 and the Hindu Law of Inheritance (Amendment) Act came into force two years previously in 1929. The document states that legal opinion was taken and apparently the legal opinion was that the defendants 1 and 2 would have a claim as

sons of a sister of Kumar Singh to inherit from him as reversioners. Very possibly this was introduced into the document to support their claim to the 6 pies share which had belonged to Kumar Singh. The courts below have found that that claim is false and that they are not the sons of the sister of Kumar Singh. But the courts have found that they are sons of the daughter of Bhairo Singh and are therefore entitled as the legal heirs to the estate of Bhairo Singh on the death of all his daughters which took place 18 years before the suit. We think that the language in the deed of gift is intended to bolster up this false claim of inheritance as heirs of Kumar Singh and we do not think that the language is intended to set out that Mst. Asumedha claimed to take as a Hindu widow.

Moreover the rulings which we have quoted indicate that the important question is what claim did Mst. Asumedha put forward at the time that she took possession of the property in question. This is a matter to be established by evidence. Apparently she made no claim at the time to inherit as a Hindu widow in regard to this 1 anna 6 pies share. The mere fact that the patwari thought she was entitled to inherit as a Hindu widow has no bearing on the point. We think therefore that the burden of proof lay on the plaintiffs to establish that Mst. Asumedha had taken possession of the 1 anna 6 pies share as a Hindu widow claiming only the rights of a Hindu widow and the plaintiffs have failed to show that, according to the finding of the two courts below. No doubt it is open to this Court to form its own opinion in second appeal because this is a matter of legal inference from the documents. We have examined the documents and we do not consider that this legal inference has been established by learned counsel for the plaintiffs. We consider that on this view of the case the decree of the lower appellate court was correct.

Accordingly we allow this Letters Patent appeal and we set aside the decree of the learned single Judge in

favour of the plaintiffs and we restore the decree of the lower appellate court with costs of both the proceedings in this Court to the defendants 1 and 2.

Before Justice Sir Edward Bennet and Mr. Justice Collister

MOIN UDDIN (DEFENDANT) *v.* ABDUS SAMAD (PLAINTIFF)*

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Municipalities Act (Local Act II of 1916), section 321—Municipal Board sanctioning construction of a flour mill—Appeal by owner of neighbouring house against the sanction dismissed—Finality of the appellate order—Subsequent civil suit by the neighbour on the ground of a private nuisance—Maintainability—Jurisdiction.

Sanction was granted, on certain conditions, under section 245 of the Municipalities Act to the defendant to instal a flour mill in a certain building. The plaintiff, who was the owner of an adjoining house, appealed under section 318 of the Municipalities Act against the order granting sanction, but his appeal was dismissed. Then he brought a suit against the defendant on the allegations that his walls had cracked by the vibrations caused by the mill and his house had become unhealthy and uninhabitable on account of the smoke and noise attendant on the working of the mill. The question was whether the suit was maintainable in view of section 321 of the Act: *Held*, that the suit was not barred by section 321.

Section 245 of the Municipalities Act is concerned with public nuisances and not with private nuisances. When the Municipal Board grants sanction and imposes conditions under section 245, what it has to consider is the interests of the public; it is not concerned with the rights or interests of any individual as such. There is nothing whatsoever in the Municipalities Act which gives jurisdiction to the Municipal Board to adjudicate in matters of controversy between private individuals, and there is nothing in the Act which could be held to prevent the plaintiff from coming to court and pleading that the defendant was working his flour mill in such a way as to cause a nuisance to him personally as a resident of an adjoining house.

The order of the appellate authority dismissing the plaintiff's appeal under section 318 of the Act, and upholding the sanction which had been granted by the Municipal Board to the

*Appeal No. 42 of 1936, under section 10 of the Letters Patent.