PRIVY COUNCIL

HAR NARAINI KUNWAR (PLAINTIFF) *v.* SAJJAN PAL SINGH AND OTHERS (DEFENDANTS)

*J. C.** 1940 *June*, 26

[On appeal from the High Court at Allahabad]

Hindu law—Guardian and minor—Reversionary rights of minor—Agreement or arbitration regarding contingent reversionary right of minor is not binding on the minor—Widow's right as guardian of infant daughter to refer claim to the estate to arbitration.

A Hindu, a member of a divided family, by his will left all his property, ancestral and self-acquired, in the event of no son being born to him, to his widow for a Hindu widow's estate and, after her death, to his daughters, if alive, and their male issue, if alive, in equal shares. He was survived by his wife, a married daughter and an infant daughter, aged 3 years, and a daughter was posthumously born to him. Shortly after his death, certain collaterals claimed the estate. An agreement to refer the claim to arbitration was executed by the widow, for herself and as guardian of her minor daughters, and by the married daughter. By their award the arbitrators decided that after the death of the widow the ancestral property should go to the collaterals and the self-acquired property to the daughters. The married daughter and the posthumous child predeceased the widow. On the death of the widow the whole estate was claimed by the surviving daughter on the ground that she was entitled to succeed both under Hindu law and the will and that she was not bound by the award as her mother had no power to bind her by the agreement to refer the question of succession to arbitration.

Held, that she was entitled to succeed. The widow had no power to bind her by the agreement to refer the dispute to arbitration and her right was, therefore, unaffected by the award.

The case fell within the ruling in *Amrit Narayan Singh* v. *Gaya Singh* (1). The daughter was in precisely the same position as the son in that case.

APPEAL (No. 109 of 1936) from a decree of the High Court (December 21, 1934) which reversed a decree of the Subordinate Judge of Etah (August 26, 1930).

**Present*: Lord RUSSELL *of* KILLOWEN, Sir LANCELOT SANDERSON and Mr. M. R. JAYAKAR.

(1) (1917) 45 I.A. 35; I.L.R. 45 Cal. 590.

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A Hindu member of a divided family executed a will in 1890 in respect of all his properties, ancestral in Isauli, which had come to him, and self-acquired. By this will he provided that if his wife, who was then pregnant, gave birth to a son he would get the property: that if a daughter were born to her, his wife would get a Hindu widow's life estate and after her death all the married and unmarried daughters then alive or their male issue would get the property in equal shares. He empowered his wife to adopt a son and provided that if she did, the adopted son should get the Isauli property and nothing else and that after the death of the widow the other properties should go to the daughters and their descendants.

The subsequent events, so far as they are material, are stated in the judgment of the Judicial Committee.

1940. June, 10. *J. M. Parikh*, for the appellant: The wife did not give birth to a son, neither did she adopt one. The gift over under the will having failed, after the death of the widow the surviving daughter, the appellant, would succeed under the Hindu law. There is no disposition of the Isauli property after the death of the widow. There is, therefore, an intestacy in respect of that property. Under the will the widow had certain life interests and certain additional powers. She did not represent her husband's estate like a widow succeeding on intestacy, and the daughter's chance of succeeding was in no way dependent on the wishes of the widow. The agreement here is not a family settlement and the compromise is not binding on the daughter. A reversionary right is not transferable under Hindu law. By statute, too, it is not transferable; Transfer of Property Act, section 6(*a*). The widow had no power to bind the daughter by the agreement and the award is not binding on her. *Ramsumran Prasad* v. *Shyam Kumari* (1) is not applicable to the facts of this case.

(1) (1922) 49 I.A. 342; I.L.R. 1 Pat. 741.

The following cases were referred to: *Rajlakshmi Dasi* v. *Bhola Nath Sen* (1), *Katama Natchiar* v. *Raja of Shivagunga* (2), *Amrit Narayan Singh* v. *Gaya Singh* (3), *Harnath Kuar* v. *Indar Bahadur Singh* (4) and *Annada Mohan Roy* v. *Gour Mohan Mullick* (5).

W. W. Wallach, for the respondents: The widow in executing the agreement was representing her husband's estate. The case is distinguishable from an agreement executed by a guardian. It has always been held that the powers of a widow to compromise extend as far as those of the deceased male holder. So long as the compromise is a *bona fide* one, the widow can effect it, and it will bind the estate. The compromise here does not fail because, as a result of it, property which might have subsequently come to the reversioners, if the will was good, was transferred. The agreement was to refer the dispute to arbitration and the arbitrators were empowered to make a distribution of the property. Their award is valid and binding. There is nothing inequitable in it, nothing which might not have been the decision of a court of law.

The facts here are quite different from the facts in *Amrit Narayan Singh* v. *Gaya Singh* (3). The general principle is found in *Ramsumran Prasad* v. *Shyam Kumari* (6) and *Raoji Rupa* v. *Kunjalal Hiralal* (7).

J. M. Parikh, in reply, distinguished the last two cases cited.

1940. June, 26. The judgment of the Judicial Committee was delivered by Lord RUSSELL of KILLOWEN:

In order to explain the reasons why their Lordships think that this appeal should succeed, the barest statement of the relevant facts will be sufficient. One Jiwa Ram made his will dated the 20th August, 1890,

(1) (1938) 65 I.A. 365; I.L.R. [1938] 2 Cal. 653.
(2) (1863) 9 M.I.A. 543(604).
(3) (1917) 45 I.A. 35; I.L.R. 45 Cal. 590.
(4) (1922) 50 I.A. 69; I.L.R. 45 All. 179.
(5) (1923) 50 I.A. 239; I.L.R. 50 Cal. 929.
(6) (1922) 49 I.A. 342; I.L.R. 1 Pat. 741
(7) (1930) 57 I.A. 177; I.L.R. 54 Bom. 455.

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by which, after stating that being a member of a divided family he was the owner of the divided property specified below, he provided that (in the events which happened) his wife Hans Kunwar should "remain the owner in possession of the entire property left by me like a Hindu widow till her lifetime", and after her death "all the married and unmarried daughters who be alive or whose male issue be alive shall get the estate acquired, i.e., the property in equal shares." At the end of the will were specified four items of property of which the first was described as "ancestral property in mauza Isauli, pargana Jalesar, district Etah—4 biswas out of 20 biswas." The other three items were non-ancestral property which had been acquired by the testator.

The testator, who never had a son, died on the 26th or 27th August, 1890. He was survived by his wife and two daughters, viz., a married daughter Kawal Kunwar and the plaintiff who was then aged three. A third daughter (Het Kunwar) was born posthumously, who died at about the age of seven years.

The will has been construed as containing no disposition, in the events which happened, of the ancestral property in mauza Isauli after the death of the widow. It would accordingly (the testator being divided and having no son) in the normal course belong to the daughter or daughters living at the death of the widow.

Shortly after the death of the testator disputes arose. Certain collaterals claimed the ancestral property, alleging that they were joint with the testator. One Nem Kunwar claimed that her son Narain had been adopted by the testator, and that the testator had made a later will leaving the whole property to him.

On the 27th February, 1891, an agreement was entered into between the various claimants of the one part, and the widow and the testator's married daughter of the other part, by which it was agreed to refer the disputes to arbitration. The material recital states: "There is

a dispute between us the parties in respect of the property specified below . . . and it is not settled, hence for its decision we the parties unanimously have accepted to abide by the decision of the arbitrators regarding the dispute." The specified property consisted of the four items specified by the will.

By their award the arbitrators decided that as to the ancestral property in mauza Isauli the widow should remain in possession and occupation during her life, and that after her death it should be divided among the collaterals in certain detailed shares, the testator's daughters not having any concern therewith nor any share therein. As to the acquired property the widow was to remain in possession and occupation during her lifetime, and after her death it was to go to the daughters as therein mentioned.

The widow died on the 12th February, 1928, leaving the plaintiff as the sole survivor of the three daughters. The Isauli property was mutated in favour of the collaterals. As to the other property the plaintiff succeeded thereto and the present litigation is not in any way concerned with it.

The plaintiff instituted the present suit in the court of the Subordinate Judge at Etah, on the 11th January, 1930, against the collaterals, claiming that under Hindu law she alone became entitled to succeed to the property in Isauli on the death of the widow, and that the agreement to refer and the award were not binding on her for a number of reasons specified in the plaint.

The Subordinate Judge decreed the suit.

On appeal to the High Court of Judicature at Allahabad the decree of the Subordinate Judge was set aside and the suit was dismissed with costs in both Courts.

From that order the plaintiff has now appealed to His Majesty in Council and a number of points have been argued before the Board.

It is, however, unnecessary to express an opinion upon any except one, which in their Lordships' opinion is

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covered by authority of this Board, and is decisive of this case.

It was contended, and this was the foundation of the High Court's judgment, that a Hindu widow represents her husband's estate, and can compromise claims so as to bind reversioners. That this is true as regards such matters as claims by creditors who are claiming to be paid out of an estate, but are not disputing the title of those beneficially interested in the estate, is beyond doubt; but whether the principle necessarily applies when the claim is one which disputes such title, is another question. But it need not be investigated in the present case for the simple and sufficient reason that in making the agreement to refer, the widow in no way purported to bind the estate, or to act as representing the estate of her husband. The agreement is clear upon the point. She and her married daughter executed the agreement as the second party, and the widow is expressly described as doing so in a double capacity, viz. "in her right and as mother and natural guardian of minor daughters Musammat Har Naraini"—i.e. the plaintiff—"and Het Kunwar." She was, as guardian, contracting on behalf of her infant children.

In those circumstances she was attempting to do what this Board has, in the case of *Amrit Narayan Singh* v. *Gaya Singh* (1) said, cannot be done.

In that case an infant was under Hindu law entitled to succeed on the death of his mother to property which originally belonged to his maternal grandfather. Under a compromise in an arbitration with certain agnates who claimed the property, in which compromise the infant's father Rajander acted for his son, an arrangement was come to, during his mother's lifetime, which deprived the infant of his reversionary interest in his grandfather's property. On the mother's death the son brought a suit to recover the property, and it was held that he was not bound by the compromise. It will be observed that

(1) (1917) 45 I.A. 35; I.L.R. 45 Cal. 590.

the interest of the plaintiff in the property in suit in the present case is identical with that of the infant son; and in relation to that interest their Lordships made use of the following language (p. 39):

"A Hindu reversioner has no right or interest *in praesenti in the property which the female owner holds for her life. Until it vests in him on her death, should be survive her,* he has nothing to assign or to relinquish or even to transmit to his heirs. His right becomes concrete only on her demise; until then it is mere *spes successionis.* His guardian, if he happens to be a minor, cannot bargain with it on his behalf or bind him by any contractual engagement in respect thereto. Rajander's action, therefore, in referring to arbitration any matter connected with his son's reversionary interest was null and void."

Their Lordships are of opinion that the present plaintiff is in precisely the same position as was the son in the case cited, that her mother had no power to bind her by the agreement to refer, and that consequently her right to the property in suit is unaffected by the award.

Their Lordships will humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court should be discharged and the decree of the Subordinate Judge restored.

The respondents must pay the costs of this appeal and of the proceedings in both the Courts in India.

Solicitors for the appellant: *Hy. S. L. Polak & Co.*

Solicitors for the respondents: *Barrow, Rogers & Nevill.*