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CHUNNI  
KUAB.

cannot be permitted to take advantage of an objection which would not have been available but for his own wrongful act. We reject the plea that the plaintiffs' suit for possession of the mortgaged property will not lie because brought after expiry of the mortgage term, on the ground that, by failure on their own part to comply with the conditions of the bond, and to deliver possession of the property, the defendants-appellants are out of Court. The appeal is dismissed with costs.

*Appeal dismissed.*

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June 27.

*Before Mr. Justice Straight and Mr. Justice Duthoit.*

RAGHU NATH AND OTHERS (DEFENDANTS) v. THAKURI AND OTHERS  
(PLAINTIFFS).\*

*Hindu widow—Alienation—Reversioner—Declaratory decree.*

Where a Hindu widow in possession as such of her deceased husband's property alienates it, only the person presumptively entitled to possess the property on her death may sue for a declaration of his right as against such alienation, unless such person has precluded himself from so suing by collusion and connivance, when the person entitled next to him may so sue.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court remanding the case under s. 566 of Act X of 1877.

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*) and *Pandit Ajadhia Nath*, for the appellants.

*Munshi Hanuman Prasad* and *Pandit Bishambhar Nath*, for the respondents.

The High Court (STRAIGHT, J., and DUTHOIT, J.,) made the following order of remand:

STRAIGHT, J.—This is a suit by Thakuri, Sheo Din, and Ram Prasad, alleging themselves to be reversioners of Nidhi Lal, deceased, after the death of his widow, Tulsha, to have their right declared against an alienation made by Tulsha in favour of her brother Raghu Nath, under a deed of gift of the 8th September, 1869. In the array

\* Second Appeal, No. 92 of 1881, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 22nd November, 1880, affirming a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 11th September, 1879.

of defendants are included Tulsha, Raghu Nath, her brother, the donee, and her other two brothers, who with him are said to be in possession of the property; Mathuria Kuar, daughter of Janki, the brother of Nidhi Lal, deceased, and ten other persons. The defence set up by Tulsha and her brothers is that the plaintiffs have no reversionary rights; that Mathuria Kuar is the next reversioner; and that the property in suit was separately acquired by Nidhi Lal. Mathuria Kuar filed a written statement of defence, which, while asserting her right to the property on the death of Tulsha, stated that she did not now seek to have it declared, but would do so at the proper time. She did not, however, appear to the suit in Court, and it proceeded so far as she was concerned "*ex parte*." The other defendants offered no objection to the claim of the plaintiffs. The first Court decreed in favour of the plaintiffs in these terms: "I therefore give plaintiffs a decree declaring their right as reversioners to succeed to the estate of Tulsha, if they or any of them survive her, and that the gift made in defendant's favour, so far as their right to succeed to the estate after the Musammat is concerned, should be null and void." The Judge in appeal upheld this decision and dismissed the appeal with costs. Tulsha and her brothers appeal to this Court, and the two points relied upon are, first, that Mathuria Kuar is the next reversioner on the death of Tulsha; second, that the lower Courts have not found the plaintiffs to be the next reversioners, and that, if they are reversioners, which is denied, they are too remote to be entitled to attack the alienation made by Tulsha.

It will be observed that the decree of the first Court granted the plaintiffs a larger relief than that asked for in their petition of plaint. All they sought was to have their reversionary right declared and to recover their costs. It was incompetent for the Subordinate Judge to hold them entitled "to succeed to the estate on the death of Tulsha," and so far his decree and that of the Judge upholding it cannot be sustained and must be set aside. It appears to us, however, that there are some points in the suit which have not been made the subject of such clear and specific findings as to enable us in the present state of the case satisfactorily to deal with and dispose of the appeal before us. It is not sufficient to enable the plaintiffs to maintain their suit that they should be reversioners. It was in-

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cumbent upon them, before they could succeed, to establish that there were no nearer reversionary heirs than themselves, or that, if there were, those nearer heirs had precluded themselves from suing by colluding with and concurring in the alleged wrongful alienation by the widow. In the absence of any such collusion or concurrence the nearest reversioner would be that person who at the time of suit would succeed to the estate were the widow to die then and there. "The right to bring such a suit is limited and as a general rule belongs to the presumptive reversionary heir." If therefore the plaintiffs do not fall within this category and there are nearer reversioners, who have not colluded or connived with the widow in the manner already described, their "*status*" fails them and their claim cannot be entertained. But there is another matter which requires to be cleared up with regard to the precise position held by Mathuria Kuar. It appears that Nidhi Lal died childless, leaving his widow, Tulsha, and his brother, Janki, father of Mathuria Kuar, surviving him. It is admitted by the learned pleader for the appellants that, if Nidhi Lal's estate had been separately acquired, and had not become joint property of himself and his brother Janki, Mathuria Kuar would not rank as an heir, but that it would devolve at Tulsha's death on the nearest male surviving relative of Nidhi Lal. But it is contended that the estate of Nidhi Lal was joint; that Janki was his heir; and that Mathuria Kuar in this case would take the estate upon the death of Tulsha. It is, therefore, necessary that there should be a finding upon this point, as also in reference to the other matters already adverted to in this judgment. We accordingly remand the following issues to the lower appellate Court for determination under s. 566 of the Civil Procedure Code; should the Judge think it necessary to do so he may take additional evidence: (i) Was the property alienated by the deed of gift of the 8th September, 1869, the joint property of Nidhi Lal and Janki, and enjoyed by them in common, or was it the self-acquired property of Nidhi Lal, and did it retain that character till his death? (ii) Have the plaintiffs proved that there are no nearer reversionary heirs than themselves to the estate of Nidhi Lal? (iii) If there are nearer reversionary heirs than themselves, who are they, and have they each and all of them precluded themselves from suing by colluding with and conniving at the alleged wrongful alienation by Tulsha?

The findings when recorded will be returned into the Court, and ten days will be allowed for objections from a date to be fixed by the Registrar.\*

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On the lower appellate Court returning its findings on these issues the High Court (STRAIGHT, J., and DUTHOIT, J.) delivered the following judgment:—

STRAIGHT, J.—Upon the findings now returned it is established that Mathuria Kuar is the nearest reversionary heir, and that there is no collusion between her and Tulsha in respect of the alienation sought to be set aside by the suit. The determination of these questions of fact is in favour of the appellants, whose appeal must therefore prevail, and we accordingly decree it with costs.

*Appeal allowed.*

## CIVIL JURISDICTION.

1881  
June 28.

*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

THE COLLECTOR OF CAWNPORE AS MANAGER OF THE ESTATE OF SHEORATAN, MINOR (DEFENDANT) v. KEDARI AND OTHERS (PLAINTIFFS)\*.

*Suit for money had and received\* for plaintiff's use—Implied contract—Small Cause Court sui—Zamindari due.*

A zamindar as such claimed and realized from a tenant Rs. 20, being one fourth of the price of trees cut down and sold by the tenant, basing his claim on general usage. The tenant sued to recover such money, denying that any such usage existed. *Held* that the suit was in the nature of one for money had and received by the defendant for the plaintiff's use, and therefore cognizable in the Court of Small Causes. *Lachman Prasad v. Chammi Lal* (1) followed.

THE manager of a certain estate under the superintendence of the Court of Wards, situated in the Cawnpore district, demanded and realized on behalf of the proprietor of such estate from the plaintiffs in this suit, who were tenants of such proprietor, one-fourth of the price of six trees which they had cut down and sold. Such demand was based on general usage as recorded in the *wajib-ul-arz* of such

\* Application, No. 36 of 1881, for revision under s. 622 of Act X of 1877 of a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 30th November, 1880, affirming a decree of Munshi Lalla Prasad, Munsif of Cawnpore, dated the 25th August, 1879.

(1) *ante* p. 6.