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to pay interest subsequent to the due date. This is a matter on which the plaint is entirely silent. The plaintiff's pleader, when examined subsequent to the presentation of that petition, stated that there was no subsequent agreement in any way affecting the terms of the loan. Having regard to these circumstances and to the great delay in making the application for amendment of the plaint, we are not prepared to say that the Subordinate Judge was wrong. The appeal is therefore dismissed with costs.

Appeal dismissed.

C. D. P.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Ghose.

1891 *July* 28.

PREONATH KARAR (APPELLANT) *v.* SURJA COOMAR GOSWAMI AND OTHERS (RESPONDENTS).*

Administrator—Administrator not so described, sale by—Sale by administrators not quâ administrators, but as heirs—Government securities.

Certain persons who were heirs of a deceased lady, and had also taken out administration to her estate, limited to certain Government securities, sold such Government securities to a *bonâ fide* purchaser under a written instrument, in which the vendors were not described as administrators.

Held, that the failure to so describe themselves did not affect the sale, inasmuch as they were entitled to sell either as heirs or administrators; and although as heirs they could sell no more than their own shares in such securities, yet the entire purchase-money having come to their hand, they, as administrators, were bound to administer the same as part of the assets of the estate, the question whether they did so or not, not being one which would affect the title of the purchaser.

West of England and South Wales District Bank v. *Murch* (1) and *Corser* v. *Cartwright* (2) followed in principle.

THIS was a suit brought by one Preonath Karar for the purpose of obtaining a declaration of right to a half-share in certain Government promissory notes of the nominal value of Rs. 7,400. The Government promissory notes originally belonged to one Nilmadhub Goswami, who died unmarried. On his death his

* Appeal from Original Decree No. 33 of 1890, against the decree of Baboo Hemanga Chundra Bose, Subordinate Judge of Hooghly, dated 9th December 1889.

(1) L. R., 23 Ch. D., 138.

(2) L. R., 7 H. L., 731.

adoptive mother, Kudumbini Debi, by inheritance became entitled to the said Government promissory notes for Rs. 7,400, and on her death the right to these notes was in one Jugomohun Goswami, her husband's uterine brother. Jugomohun died possessed of certain immoveable property, leaving him surviving two sons, Surja Coomar and Haro Coomar Goswami (defendants 1 and 2), a grandson by a deceased son, Hurish Chunder Goswami (defendant No. 3), and a widow, Saroda Sundari Debi (defendant No. 4), forming a joint Hindu family. In 1881 defendant No. 3 separated in mess from the rest of the family, and subsequently in 1884 the defendants 1 and 2 also came to a similar separation between themselves. No partition of these properties, however, took place between these parties. Jugomohun having died somewhat in debt, the family dwelling-house was sold, and in execution the rights and interest of the defendants 1 and 2 therein were purchased by one Indranarain Mukerjee, and on the 14th October 1885 a partition of the family dwelling-house was come to between Saroda Sundari Debi (defendant No. 4), Indranarain Mukerjee, and Hurish Chunder (defendant No. 3), and under this partition a quarter share of the family dwelling-house was allotted to Saroda Sundari. No partition, however, was ever come to with regard to the moveable properties left by Jugomohun. In September 1885, however, previously to the partition of the family dwelling-house, a conveyance was executed by Saroda Sundari, her two sons and her grandson in respect of a certain property, the interest of the two sons in which had been sold and purchased by one Keder Nath Lahiri, wherein the right of Saroda Sundari, "as the mother of many sons," to hold for her life a 4-anna share of the "estate" left by Jugomohun was admitted.

The Government promissory notes above referred to were lost during the lifetime of Kudumbini, and the defendants 1 and 2 after the death of their father, Jugomohun, in June 1882 applied to the Public Debt Office for the issue of duplicates in their names. The application was refused, as letters of administration had not been taken out to the estate of the last holder of the notes. Whereupon defendants 1 and 2 took out administration to the estate of Kudumbini, limited to these securities, and obtained registration of their names in the office of the Comptroller-General as payees,

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and in November 1885 they sold under a written instrument the 16-anna share in these Government promissory notes to one Uma Churn Ghose (defendant No. 5), Hurish Chunder (defendant No. 3) having relinquished all right to his share therein in consideration of a sum of Rs. 375 paid to him by Uma Churn Ghose, and joining in the instrument conveying the notes. The written instrument purporting to pass these Government promissory notes made no mention of the fact that defendants 1 and 2 had taken out letters of administration to the estate of Kudumbini, and therefore merely on the face of it purported to be one made by defendants 1 and 2 in their capacity as heirs. Uma Churn Ghose on the 21st September 1887 entered into a contract for the sale of these Government notes to Messrs. Speed and Company of Calcutta (defendants No. 6) through Mr. R. Braunfeld, their trustee and manager (defendant No. 7), but it was not until the 12th January 1888 that defendant No. 7 completed this purchase by obtaining from Uma Churn a regular conveyance. Meanwhile on the 5th and 20th October 1887 Preonath Karar under registered instruments of those dates bought from defendants 3 and 4 an 8-anna share in these Government notes, and on the 23rd October 1887 gave notice to Mr. Braunfeld (defendant No. 7) of his purchase, and applied as such purchaser to the Public Debt Office to have his name registered as payee of these notes. This application was refused, and Preonath Karar was referred to the Civil Court.

Preonath Karar thereupon brought this present suit for the purposes above mentioned against the persons above named—the defendants 1 to 7. The suit was virtually alone defended by defendants 6 and 7, who alleged that they were purchasers in good faith and for valuable consideration.

The Subordinate Judge dismissed the suit, holding that a partition must be held to have been come to by virtue of which the two sons, the grandson, and the widow of Jugomohun were entitled each to one-fourth of his estate; and that Hurish Chunder having disclaimed any right in these notes, the plaintiff had alone acquired a right to a quarter share in these notes, but he was not entitled to succeed in this suit, inasmuch as Messrs. Speed and Company through Mr. Braunfeld were *bonâ fide* purchasers for valuable consideration.

The plaintiff appealed to the High Court.

Dr. *Rash Behari Ghose* (with him Baboo *Shib Chunder Paulit*) for the appellant contended—

1. That a partition has been found by the Subordinate Judge, by which the two sons and grandson and widow were entitled to a quarter each of the estate of Jugomohun.

2. That the administrators had no power to sell. That the deed of sale of 23rd November 1885 conveyed only the interest of Surja Coomar and Haro Coomar in the promissory notes, and not the whole of the notes.

3. That the deed not containing any reference to the letters of administration, the vendors could only sell in their character of heirs their own interests.

4. That there was no relinquishment of the whole of Hurish's share by his letter of disclaimer, but only of the interest on the notes.

5. That the defendants took with notice.

The Advocate-General (Sir *Charles Paul*), Mr. *Braunfeld*, Baboo *Baikant Nath Das*, and Baboo *Joygopal Ghose* for the respondents.

The Advocate-General (Sir *Charles Paul*) contended that the Court merely found that there was a partition with the purchaser of the homestead only, all the other properties having been sold, and that this therefore was no partition according to Hindu law, as such a partition must be with the descendants; see *Mayne's Hindu Law*, 519.

That there was no possession and enjoyment by the widow—*Sheo Dyal Tewaree* v. *Judoonath Tewaree* (1).

That the widow was only entitled to maintenance; that this was a personal right which she could not sell; see *Vyvastha Darpana*, 1059, and *Bhyrub Chunder Ghose* v. *Nubo Chunder Gooho* (2). That a stranger cannot sue to have a widow's maintenance declared on property in the hands of a third party.

That the existence of a widow is not enough notice: she must have her maintenance ascertained and charged on the property before she can follow the property—*Nistarini Dossee* v. *Mukhun*

(1) 9 W. R., 61.
(2) 5 W. R, ¹¹¹

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Loll Dutt (1), *Bhuggobutty Dossee* v. *Konny Lall Mitter* (2), and *Sorolah Dossee* v. *Bhoobun Mohun Neoghy* (3), which show what kind of estate a Hindu widow is entitled to for her maintenance and on partition.

That the recital in the deed of 26th September 1885 (Kedar Nath Lahiri's)—"I, Saroda Sundari Debi, as the mother of many sons, being entitled to, &c.," could not be construed to extend to other properties, but must be limited to the property dealt with by that deed.

That the Court having found that defendant No. 6 was a *bonâ fide* purchaser without notice, his purchase could not be affected by the purchase of defendant No. 5. That Soorja Coomar and Haro Coomar were administrators when they sold the property vested in them, and they could sell the whole absolutely. That under Act VI of 1889, section 14, they need not obtain the consent of the Court, as section 19 makes valid such sales.

That if the administrators had misapplied, they were personally liable under section 146 of the Probate and Administration Act of 1881: besides they have given a bond with sureties which was protection enough for the proper application of the moneys which came to their hands.

That the deed of 23rd November 1885 conveyed a good title to the purchaser Uma Churn Ghose, as the vendors were heirs as well as administrators, and therefore they could convey a valid title in either character; *West of England and South Wales District Bank* v. *Murch* (4) and *Corser* v. *Cartwright* (5).

Judgment of the Court (PETHERAM, C.J., and GHOSE, J.) was as follows:—

This was a suit by one Preonath Karar for declaration of right to a moiety share of certain Government promissory notes of the value of Rs. 7,400. They belonged originally to Nilmadhub Gossain, and devolved on his death upon his mother, Kudumbini, under the law of inheritance; and on the death of the latter, one Jugomohun Gossain became entitled to them as the next reversionary heir. Jugomohun left a widow, Saroda Sundari (defendant

(1) 17 W. R., 432.
(2) 17 W. R., 433 (note).
(3) I. L. R., 15 Calc., 292.
(4) L. R., 23 Ch. D., 138.
(5) L. R., 7 H. L., 731.

No. 4), and two sons, Surja Coomar and Haro Coomar (defendants 1 and 2), and a grandson, Hurish Chunder (defendant No. 3), by a pre-deceased son. It appears on the evidence that Jugomohun was possessed of certain immoveable properties, and after his death the two-third share of his two sons, the defendants 1 and 2, in most of, if not in all, the properties, including the dwelling-house, was sold away at auction for their debts. The evidence further shows that the defendant No. 3 separated in mess from the defendants 1 and 2 in 1881, and subsequently the latter came to a similar separation between themselves in 1884. No partition of the properties, however, seems to have then taken place between these parties, but in a conveyance executed jointly by the widow Saroda Sundari, her two sons, and Hurish Chunder, her grandson, dated 26th September 1885, in respect of a certain property, in which the interest of the two sons had been sold and purchased by one Kedar Nath Lahiri, the right of Saroda Sundari "as the mother of many sons" to hold for her life a 4-anna share of "the estate" left by Jugomohun was admitted by the sons, as also by the grandson, then represented by his mother, Shureshury Dabee. And subsequently, in October 1885, there was an actual partition by metes and bounds between the widow, Hurish Chunder, and one Indranarain, who had purchased the interest of the two sons in respect to the dwelling-house.

Nothing in particular seems to have been then said as regards the Government promissory notes. They stood in the name of Kudumbini, and had been lost during her lifetime. After the death of Jugomohun, Surja Coomar and Haro Coomar alone applied to the Public Debt Office for issue of duplicates. It is admitted by the plaintiff in the plaint, and it may also be gathered from the evidence, that these two persons obtained letters of administration in respect of the promissory notes; and the Public Debt Office on the authority of the said letters registered the names of Surja Coomar and Haro Coomar as the payees, and subsequently that of one Uma Churn Ghose, who in November 1885 obtained a conveyance from those two individuals, of the notes; but before the duplicates could be issued, it was brought to the notice of the Comptroller-General of Accounts that there was another person, Hurish Chunder, who was entitled to an interest in the said

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notes. This person, however, subsequently (28th September 1886) wrote a letter to the Comptroller-General, disclaiming all interest, and acquiescing in the duplicates being issued to Uma Churn; and it is proved on the evidence that this was done in consideration of Rs. 375, which Uma Churn paid to him, Hurish Chunder. We may therefore take it that there was a transfer by both the sons and grandson to Uma Churn.

On the 21st September 1887 Mr. Braunfeld, as representing Messrs. Speed and Company, entered into a contract with Uma Churn for the purpose of these promissory notes, and paid Rs. 800 as part consideration; but before a conveyance could be executed, the plaintiff Preonath obtained in the first instance a bill of sale (5th October 1887) from Hurish Chunder of a third share of the notes, and in the second place from Saroda Sundari (20th October 1887) of a 2 annas 13 gundahs share in these notes, she representing herself to be the owner of a 4-anna share as the widow of Jugomohun Gossain, and relinquishing to him (the plaintiff) the share of 1 anna 8 gundahs and odd already sold by Hurish in excess of his legitimate share. The plaintiff, on the 23rd October 1887, gave notice of his purchase to Mr. Braunfeld, who, however, on the 12th January 1888 completed his purchase by obtaining from Uma Churn a regular conveyance on payment of the balance of the consideration money that had been agreed upon.

The plaintiff subsequently applied to the Comptroller-General to have his name registered as payee in respect of a moiety share, but that officer said that this could not be done unless he, the plaintiff, established his right in the Civil Court. Thereupon the plaintiff brought the present suit.

The Subordinate Judge has dismissed the suit. He is of opinion that by reason of the separation between the sons and grandson of Jugomohun, the partition of the dwelling-house between Hurish Chunder, Indranarain (purchaser), and the widow, and recognition of her share in the estate of Jugomohun by the purchaser, Kedar Nath Lahiri, under the transaction of the 26th September 1885, she must be taken to be entitled to a share, and which is one-fourth, in the promissory notes, as part of that estate; and that, therefore, the plaintiff has acquired a valid right by his purchase from that lady; but that notwithstanding this, he, the plaintiff, could not

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succeed as against the defendant No. 7, Mr. Braunfeld, because the property in the promissory notes passed to the latter on the 21st September 1887; that he purchased in good faith for a valuable consideration from the assignee of the defendants 1 and 2, who were the only persons that had obtained letters of administration, and that the only other person who was known to have any interest as an heir of Jugomohun, viz., Hurish Chunder, had put in a disclaimer in the office of the Comptroller-General of Accounts.

Against this decree the plaintiff has appealed to this Court.

The first question that we have been called upon to decide in this appeal is whether Saroda Sundari had any interest in the promissory notes, such as she could pass under a conveyance to the plaintiff.

The rights of a Hindu widow having several sons, such as Saroda Sundari is, have been considered in *Sheo Dyal Tewaree* v. *Judoonath Tewaree* (1), *Kedar Nath Coondoo Chowdhry* v. *Hemangini Dassi* (2), *Sorolah Dossee* v. *Bhoobun Mohan Neoghy* (3), and *Hemangini Dasi* v. *Kedar Nath Kundu Chowdhuri* (4). The result of these cases seems to be, so far as they bear upon the question now before us, that a Hindu widow having several sons is entitled to be maintained from the estate left by her husband so long as the sons remain undivided; and that if and when the sons come to a partition of the paternal estate, she is entitled for her life to a share equal to that of each of the sons; but that the share which she thus takes is not in right of her being a co-parcener, having any pre-existing interest in the estate, but in lieu of, or by way of provision for maintenance. If, therefore, it were necessary to decide in this case whether Saroda Sundari was entitled to a fourth share in the estate of Jugomohun, it would be necessary to consider whether there was a partition in law between the sons and grandson of Jugomohun, such as would entitle the widow, Saroda Sundari, to claim a share in her husband's estate. The Subordinate Judge does not seem to have addressed himself to this question, and we do not quite follow all the reasons upon which he held that Saroda Sundari was entitled to a share. But in the view that

(1) 9 W. R., 61.
(2) I. L. R., 13 Calc., 336.
(3) I. L. R., 15 Calc., 292.
(4) L. R., 16 I. A., 115.

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we take, and which we shall presently express, of the rights that the defendant has acquired, we do not think it is necessary to express any opinion on the question.

As regards the conveyance executed by Hurish Chunder, we are of opinion that the plaintiff acquired no title under it, Hurish Chunder having had already put in a disclaimer in the Comptroller-General's office upon receipt of a valuable consideration from Uma Churn and acquiescing in the duplicates being issued to him. This was long before Hurish Chunder sold to the plaintiff, and it is obvious that that sale could not give him, the plaintiff, any title as against Uma Churn, or his assignee, Mr. Braunfeld.

Then, as regards the question, what is the title which Uma Churn acquired under his purchase from the defendants 1 and 2 in November 1885, the matter seems to stand thus—

The promissory notes, as already mentioned, stood in the name of Kudumbini, and the defendants 1 and 2 obtained letters of administration in respect thereto, and being administrators they had the power, with the consent of the Court, to dispose of them (Act V of 1881, section 90). The consent of the Court was not, however, obtained to the sale which they made to Uma Churn; but this circumstance by itself would not make the sale void, as the defect of title has been cured by Act VI of 1889, section 19, the operation of which section is retrospective, and there is no other fact that we know of in this case which would invalidate the sale. If the administrators have misapplied the estate of the deceased, or have by this transaction subjected it to loss or damage, they are liable to make good the loss or damage (section 114, Act V of 1881), but there is no reason to hold that the sale in question is bad.

It has, however, been contended that the sale by the administrators was not *quâ* administrators, but as heirs of Kudumbini, and therefore the sale does not bind Saroda Sundari or her assignee, the plaintiff. We are, however, of opinion that the fact that the conveyance does not describe the defendants 1 and 2 as administrators, but as heirs, does not affect the case, because either as administrators or as heirs they were entitled to sell, though no doubt as heirs they could not sell anything more than their

own shares. The purchase-money, however, came into their hands; and as administrators they would be bound to administer the same as part of the assets of the estate; but whether they do so or not, it does not affect the title of the purchaser. (See in this connection, *West of England and South Wales District Bank* v. *Murch* (1) and *Corser* v. *Cartwright* (2).

We hold, therefore, that Uma Churn acquired a good title under his purchase; and it follows, therefore, that he was entitled to sell the notes to Mr. Braunfeld. No doubt, before Mr. Braunfeld obtained his conveyance, the plaintiff gave him notice of his purchase, but this was *after* he (Mr. Braunfeld) had entered into a contract for the purchase with Uma Churn, and paid a portion of the purchase-money.

Upon these grounds we are of opinion that the plaintiff is not entitled to succeed in this case; the result being that the appeal will be dismissed with costs.

Appeal dismissed.

T. A. P.

ORIGINAL CRIMINAL.

Before Sir W. Comer Petheram, Knight, Chief Justice.

QUEEN-EMPRESS *v.* JOGENDRA CHUNDER BOSE AND OTHERS.

1891
August 25.

Disaffection and disapprobation—Penal Code (Act XLV of 1860), *ss.* 124A, 500—*Defamation.*

The terms 'disaffection' and 'disapprobation' explained, and section 124A referred to, and explained to the Jury.

JOGENDRA CHUNDER BOSE, Kristo Chunder Banerjee, Brojo Raj Banerjee, and Arunodoy Roy were committed for trial at the Calcutta Sessions by the Officiating Chief Presidency Magistrate as the Proprietor, Editor, Manager, and Printer of the *Bangobasi*, a weekly vernacular newspaper, having a large mofussil circulation and having its office at No. 34-1, Colootollah Street.

The accused were charged under sections 124A and 500 of the Penal Code with attempting to excite feelings of disaffection to the Government established by law in British India, and with

(1) L. R., 23 Ch. D., 138. (2) L. R., 7 H. L., 731.