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case of misdirection, if, upon the general view taken, the case has been fairly left within the jury's province. If the Judge attempts to take the case out of the jury's province by something in the nature of imposing his own view upon the jury it is a case of misdirection, but if a Judge simply states his own opinion which the law allows him to state, in such a manner that intelligent jurymen should see for themselves that it is only his opinion and nothing else, it is not necessary for him to add as a safeguard a remark that it is only his opinion and that the jury are perfectly at liberty to form their own. On the question of fact Judge's opinion in no way binds the jury, but the Judge has a right to express it so that the jury may know what it is. It is not a Judge's duty to conceal his opinion but to state it". I take the same view. I do not think that in this case there has been a misdirection to the jury which has resulted in a failure of justice. In my opinion there is no force in these appeals on the merits, but I think the sentence is excessive. I uphold the convictions, but reduce the sentences and direct that Mangal Singh, Ram Sarup, Munnan and Jang Bahadur be sentenced to five years' rigorous imprisonment, each.

Raza, J.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava.

1931 *March*, 30.

AJODHIA PRASAD (PLAINTIFF-APPELLANT) *v.* MUSAMMAT SANJHARI KUAR AND OTHERS (DEFENDANTS-RESPONDENTS).*

Hindu law—Transfer by a Hindu mother or widow without necessity is voidable and not void—Jus tertii—*Judgment establishing right to a property between two parties—Third party, whether entitled to set up the right of losing party against the successful party.*

Held that a transfer by a Hindu lady of a property held by her either as a Hindu widow or as a Hindu mother, in favour

*Second Civil Appeal No. 236 of 1930, against the decree of Pandit Krishnanand Pandey, Additional Subordinate Judge of Sultanpur, dated the 27th of May, 1930, confirming the decree of Babu Kali Charan Agarwal, Munsif, Sultanpur, dated the 11th of February, 1929.

of another person, even though altogether without necessity, is only voidable and not void. *Raja Modhu Sudan Singh* v. *Rooke* (1), and *Sitaram Ravaji Bhosle* v. *Khandu Mairala Shinde* (2), relied on.

Where, therefore, the plaintiff who was the donee from a Hindu widow sued to redeem a piece of land in the possession of the defendants as mortgagees and the defendants contended that the alienation in favour of the plaintiffs was void after the widow's death, the alienation was only voidable not void, and the mortgagee had no *locus standi* to resist the claim of the person who on the face of it had a perfectly good title to equity of redemption granted by a Hindu widow, and the only person who could dispute the validity of such a grant was the reversioner.

When a judgment has established the right to any property between two parties, it is not open to a third person to set up the right of that party whose title has been found against as against the successful party, for when the *jus* no longer exists he cannot set up such *jus tertii*. *Rahim Unnissa Begam* v. *M. A. Srinivasa Aiyangar* (3), relied on.

Mr. *Ghulam Imam*, for the appellant.

Dr. *Qutub Uddin* and Mr. *Hyder Husain*, for the respondents.

SRIVASTAVA, J. :—This is a second appeal against the judgment and decree, dated the 27th of May, 1930, of the Additional Subordinate Judge of Sultanpur, affirming the judgment and decree, dated the 11th of February, 1929, of the Munsif of that place. It arises out of a suit for redemption of a mortgage deed, dated the 15th of June, 1905, executed by Ambar and Musammat Sukhrani in favour of Randhir Singh, husband of Sanjhari Kuar, defendant No. 1. The suit was instituted by Musammat Katwari the widow of Ambar but subsequently Ajodhia Prasad was also joined as a plaintiff on the ground that Musammat Katwari before the institution of her suit had on the 25th of March, 1926, executed a deed of gift in respect of the property in suit in his favour. Musammat Katwari died during the pendency

(1) (1897) L.R., 24 I.A., 164. (2) (1920) I.L.R., 45 Bom., 195.
(3) (1927) 38 M.L.J., 266.

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of the suit which has since her death been carried on by Ajodhia Prasad as the sole surviving plaintiff.

The only defence with which we are concerned in this appeal is that the title possessed by Musammat Katwari in the property in suit was either as a Hindu widow or as a Hindu mother and that the plaintiff's title based on the gift by Musammat Katwari therefore determined on her death and the plaintiff could not maintain the suit for redemption after the death of Musammat Katwari. In this connection it was also pleaded that one Hiraman was a brother of Ambar and had left a grandson Ramhit who was the nearest reversioner of Musammat Katwari. It was alleged that the only person entitled to redeem the property after the death of Musammat Katwari was Ramhit who was subsequently impleaded as a defendant. The plaintiff met the plea based on the title of Ramhit by asserting that Ramhit had previous to the present suit, instituted a suit for cancellation of the deed of gift dated the 25th of March, 1926, executed by Musammat Katwari in favour of the plaintiff and it was held in that suit that Ramhit had failed to prove that Hiraman was a brother of Ambar and that he was the next reversioner of Musammat Katwari. The suit was accordingly dismissed on that ground (exhibit 38). The plaintiff pleaded that this decision has become final between him and Ramhit and it was therefore not open to the defendants to set up the title of Ramhit as a reversioner against him.

Both the lower courts have held, and it is no longer disputed before me, that Musammat Katwari owned the property in suit as a limited owner, either in her right as a Hindu widow or as a Hindu mother. But they have held that as the defendant No. 1 was no party to the litigation, just mentioned, between Ramhit and the plaintiff, she was not bound by the decision (exhibit 38) passed in that case. The lower appellate court has also found on the evidence led in the present case that Ramhit was the nearest reversioner of Musammat Katwari.

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I am of opinion that the learned Subordinate Judge has misdirected himself and has not approached the case from the correct standpoint. The lower appellate court having found that Musammat Katwari held the property in suit either as a Hindu widow or as a Hindu mother it follows that the transfer made by her in favour of the plaintiff even though altogether without necessity, was only voidable and not void. In *Raja Modhu Sudan Singh* v. *Rooke* (1), the question arose as regards the validity of a putni lease granted without legal necessity by a Hindu widow in possession of her husband's estate. It was held by their Lordships of the Judicial Committee that the lease was only voidable, the reversionary heir having the right to treat it as valid. In *Sitaram Ravaji Bhosle* v. *Khandu Mairala Shinde* (2), the plaintiffs, who were the donees from a Hindu widow sued to redeem possession of the land in the possession of the defendants as mortgagees. The defendants contended that the alienation in favour of the plaintiffs was void after the widow's death. It was held that the alienation was only voidable, not void and the mortgagee had no *locus standi* to resist the claim of the person who on the face of it had a perfectly good title to equity of redemption granted by a Hindu widow, and the only person who could dispute the validity of such a grant was the reversioner. It may be noted that Ramhit though he was impleaded did not contest the plaintiff's claim. The learned Subordinate Judge referring to the attitude adopted by Ramhit in the case observes as follows :—

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> "Ramhit has not appeared in the case and his disinclination to help the respondent (defendant No. 1) is probably due to the fact that he thinks that he is not to gain anything on account of an adverse judgment against him (exhibit 38) in which he was held not to be an heir of Katwari.

(1) (1897) L.R., 24 I.A., 164. (2) (1920) I.L.R., 45 Bom., 105.

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Whatever may be the reason for it, the fact remains that Ramhit the alleged reversioner even though he was made a party, did not dispute the title of the plaintiff in the present suit.

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The matter needs also to be looked at from another point of view. The defendant No. 1 seeks to defeat the plaintiff's claim by setting up the title of Ramhit against him. Can he set up such *jus tertii* when the *jus* no longer exists as it has already been decided between the plaintiff and Ramhit, that Ramhit has no title and is not the reversionary heir and that decision has become final between them? It is true that the defendant was no party to the decision between the plaintiff and Ramhit and that decision does not therefore operate as *res judicata* between the plaintiff and the defendant. But I am of opinion that it is not open to the defendant to set up the rights of Ramhit as against the plaintiff in the face of the conclusive adjudication between them that Ramhit has no title to the property as against the plaintiff. I am supported in this view by the principle of a decision of the Madras High Court in *Rahim Unnissa Begam* v. *M. A. Srinivasa Aiyangar* (1), in which it was held that when a judgment has established the right to any property between two parties, it is not open to a third person to set up the right of that party whose title has been found against as against the successful party. Such cases form the exception to the rule of *res inter alios acta*.

For the above reasons I am of opinion that the lower appellate court is wrong in throwing out the plaintiff's claim, on the basis of Ramhit's title as the nearest reversioner. I accordingly allow this appeal with costs, set aside the decision of the lower appellate court and send the case back to the court of the Munsif to readmit it in the register of suits and to dispose of it according to law.

Appeal allowed.

(1) (1927) 38 M.L.J., 266.