

has been placed before us and, in so far as the judgment lays down the rule that a suit by a plaintiff for a declaration that he is entitled to the office of *mutawalli* is barred under section 42 of the Specific Relief Act unless there is also a claim for possession over the *waqf* property. We are respectfully unable to agree with it. It seems to us quite clear in principle that a person suing in his personal capacity for a declaration that he is entitled to represent a certain interest is not barred from obtaining a decree by reason of the fact that he does not in the same suit ask for possession over the property of the interest which he claims to represent and especially so in a case where the defendants have not set up any title adverse to that interest.

We hold that the suit instituted by the plaintiff-appellant was not barred under the provisions of section 42 of the Specific Relief Act. We accordingly allow the appeal, set aside the decree of both the courts below and remit the suit to the original court for decision upon its merits. Costs here and hitherto will abide the result.

*Appeal allowed.*

## APPELLATE CIVIL

*Before Syed Wazir Hasan, Acting Chief Judge and  
Mr. Justice Gokaran Nath Misra*

RAJA LAL BAHADUR SINGH (DECREE-HOLDER-APPELLANT) v.  
RAJENDRA NARAIN SINGH (JUDGMENT-DEBTOR-RES-  
PONDENT).\*

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November 21

*Interpretation of documents—Compromise decree conferring life estate on one person and giving remainderman's interest absolutely to a second person—Remainderman's interest, whether a vested interest or only a contingent interest.*

Where the terms of a compromise were that in the event of R surviving L he (R) will be permanent owner with powers of transfer and of transmitting inheritance of the whole of the

\*Execution of Decree Appeal No. 38 of 1928 against the order of Ra' Sahib Gopi Behari Sahai, Assistant Collector, 1st class, Partabgarh, dated the 15th of March, 1928.

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*alias*  
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*Srivastava  
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property and in the event of *R* not so surviving his male descendant according to the rule of lineal primogeniture will be entitled to the said property with powers of transfer and heritability, *held*, that in the properties in which life interest was granted by the terms of the compromise in favour of *L* the remainderman's estate in its entirety and absolutely was simultaneously conferred by the terms of the compromise on *R* and this was a vested interest. The possibility that *R* might not be alive at the determination of the prior estate, to come into possession of his remainderman's estate, cannot convert the said interest into a contingent interest.

*Sundar Bibi v. Lal Rajindra Narain Singh* (1), followed.

Messrs. *M. Wasim* and *H. N. Das*, for the appellant.

*Mr. Radha Krishna*, for the respondent.

HASAN, A.C.J. and MISRA, J.:—This is an appeal arising out of execution proceedings of a decree for rent dated the 16th of December, 1925 which the appellant obtained against the respondent for a sum of Rs. 7,657-1-7, principal amount, from the court of the Assistant Collector of first class in the district of Jaunpur. The execution proceedings have been initiated in the court of a first class Assistant Collector in the district of Partabgarh on a certificate of transfer from the court of Jaunpur. The application for execution has been rejected. Hence this appeal.

For the satisfaction of the decree mentioned above the appellant seeks to attach and sell the right which the judgment-debtor respondent possesses in five villages situate in the district of Partabgarh. The question in the appeal is as to the nature of that right. If that right amounts to vested interest as the appellant contends it does, it is agreed that the said right is saleable. If, on the other hand, it is merely contingent interest as the respondent contends, it is again agreed that it is not saleable.

This right was acquired by the appellant by virtue of a decree founded on a compromise dated the 20th of May, 1915, passed by the Subordinate Judge of Partabgarh in a suit No. 4 of 1914 in which the respondent,

Rajendra Narain Singh, was the plaintiff and the appellant, Raja Lal Bahadur Singh, was the defendant. The former is the elder brother of the latter. The determination of the question for decision depends on the correct interpretation of the aforementioned compromise.

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The same question which has now arisen was decided by a Bench of the High Court at Allahabad in the year 1925. A certified copy of the judgment of the High Court has been filed in this case and it is also reported in *Sundar Bibi v. Lal Rajindra Narain Singh* (1). It was held in that case that the interest which the respondent possesses in the villages entered in schedule A of the compromise in which schedule the villages now in question are also entered is vested interest. We have come to the same conclusion.

*Hasan,  
 A.C.J. and  
 Misra, J.*

According to the terms of the compromise and the decree founded thereon Raja Lal Bahadur Singh, the appellant, was to acquire life interest in the property entered in schedule A and the remainder thereof was disposed of by paragraph 3 of the compromise. The precise paragraph therefore under construction is paragraph 3. We will here translate the said paragraph, the original of which is in vernacular.

“In the event of Babu Rajendra Narain Singh surviving Babu Lal Bahadur Singh he (that is Babu Rajendra Narain Singh) will be the permanent owner with powers of transfer and of transmitting inheritance of the whole of this property. In the event of Babu Rajendra Narain Singh not so surviving his male descendant according to the rule of lineal primogeniture will be entitled to the said property with powers of transfer and heritability subject to the conditions stated in paragraph 4 of the compromise. The other male descendants of Babu Rajendra Narain Singh will be

(1) (1925) I.L.R., 47 All., 496.

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entitled to maintenance. The plaintiff (that is Rajendra Narain Singh) or his male descendant who shall be the owner of the estate according to the terms of this compromise will be entitled to obtain possession of these properties by means of execution of this decree."

*Hasan,  
A.C.J. and  
Mistri, J.*

We are of opinion that in the properties described in schedule A in which life interest was admittedly granted by the terms of the compromise in favour of Babu Lal Bahadur Singh the remainderman's estate in its entirety and absolutely was simultaneously conferred by the terms of the same compromise on Babu Rajendra Narain Singh and this was a vested interest. The possibility that Babu Rajendra Narain Singh might not be alive at the determination of the prior estate to come into possession of his remainderman's estate cannot convert the said interest into a contingent interest. The death of the life tenant, Babu Lal Bahadur Singh, at some time or another is a certain event, and if on the happening of that event Babu Rajendra Narain Singh is not alive to take possession of his estate his heir according to the rule of primogeniture will be entitled to that estate. In this connection reference may profitably be made to the provisions of section 19 of the Transfer of Property Act, 1882.

It appears to us that clause 3 under consideration immediately confers on Babu Rajendra Narain Singh an absolute estate of inheritance in the remainder to come into possession on the death of Babu Lal Bahadur Singh. If this is the real character of the estate which Babu Rajendra Narain Singh acquires under this compromise as we hold it is, the fact that he himself might not be alive at the determination of the prior estate for life is of no consequence. The further fact that devolution of the inheritance is subjected to the rule of male lineal primogeniture is also of no importance. According to our judgment in the property in which Babu Lal Bahadur Singh is given a life interest the remainderman's interest of an absolute nature came

to be vested in Babu Rajendra Narain Singh simultaneously with the life interest of Babu Lal Bahadur Singh.

The precise argument presented before us on behalf of the respondent was that the first male descendant of Babu Rajendra Narain Singh according to the rule of lineal primogeniture takes the estate directly under the grant and not as an heir of his father; in other words, to borrow a phrase from the English Law of Real Property, he takes as a purchaser. Having regard to the language of paragraph 3 of the compromise we are unable to give effect to this argument. "Babu Rajendra Narain Singh will be the permanent owner with powers of transfer and transmitting inheritance" clearly disclose the intention of granting an absolute estate of inheritance on Babu Rajendra Narain Singh subject, of course, to the prior life estate in favour of Babu Lal Bahadur Singh. The clause also prescribes a special line of descent, but whether that is valid or not is a question with which we are not concerned in the present case.

We accordingly allow this appeal, set aside the order of the Assistant Collector, dismiss the objections of the respondent and direct that the execution proceedings shall proceed according to law and in the light of this order. The respondent will pay the costs of the appellant in both the courts.

*Appeal allowed.*

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