APPELLATE CIVIL.

Before Adami and Sen, J.J.

1925.

BAIJNATH RAI

v.

June, 23.

MANGLA PRASAD NARAYAN SAHI.*

Hindu Law—limited owner, power of to alienate—legal necessity—surrender, meaning of—presumptive heir, whether has any interest in the property during the lifetime of limited owner—female holder, duty of, to maintain persons entitled to maintenance by last holder.

Under the Hindu law the liability of a woman who takes property, either by inheritance or survivorship, to maintain those whose maintenance was a charge upon it in the hands of the last holder, is the same as that of a man who inherits or succeeds to property.

The interest of a Hindu reversioner is a mere spes successionis which confers no right on the reversionary heir in the estate of the deceased, present or future, vested or contingent.

Amrit Narain Singh v. *Gaya Singh* (1) and *Mussammat Bhagwati Kuer* v. *Jagdam Sahay* (2), followed.

An alienation by way of compromise entered into between a limited owner and persons who had no bona fide claim to the property at the time of the compromise, is not binding on the reversioners.

Anup Narain Singh v. *Mahabir Prasad Singh* (3), followed.

An alienation by a limited owner of the estate held by her may be validated (*i*) if it can be shown to be a bona fide surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time

* Appeal from Appellate Decree no. 849 of 1922, from a decision of B. Harihar Charan, Subordinate Judge of Muzaffarpur, dated the 19th June, 1922, reversing a decision of B. Debi Prasad, Munsif of Hajipur, dated the 10th June, 1921.

(1) (1918) I. L. R. 45 Cal. 590; L. R. 45 I. A. 35.
(2) (1921) 6 Pat. L. J. 605 (613).
(3) (1918) 3 Pat. L. J. 83.

of the alienation, or (*ii*) if there was a legal necessity for the alienation of the whole or part of the estate.

A Hindu widow mortgaged the estate which she held, to *J*, to defray the expenses of the marriage of the son's daughter of the last male holder's paternal uncle, and the property having been sold in execution of the decree on the basis of that mortgage, was purchased by the decree-holder. *D*, a presumptive reversioner, brought a suit challenging the mortgage to *J* and all proceedings based thereon. The suit was compromised by an ekrarnama whereby *J* and *D* each took one-third of the property and the remaining one-third was retained by the widow. The share of *J* was purchased by the plaintiff, who in turn, conveyed his share in zarpeshgi to *B*. Thereafter the actual reversioners of the last male holder (the limited owner having died in the meantime) entered into possession of the estate and redeemed *B's* zarpeshgi. Plaintiff instituted the present suit on the basis of the ekrarnama for a declaration that he was entitled to obtain his share of the property on payment of the zarpeshgi money, and for a decree for redemption and possession in his favour. The suit was resisted by the reversioners who challenged the validity of the ekrarnama.

Held, (*i*) that the ekrarnama having been executed to compromise a suit brought by the heir-presumptive who had no title to the property itself during the lifetime of the limited owner, was without legal necessity and hence invalid; (*ii*) that it could not be supported on the ground of surrender as there was no alienation of the whole interest of the limited owner in the whole estate in favour of the next reversioner.

Second appeal by the plaintiff.

The appellant instituted the suit out of which this appeal arose for redemption and possession of certain specified shares in the properties set out in the plaint which he alleged were in the wrongful possession of the defendants first party. The following facts were undisputed, the questions raised being only as to the character and legal effect of some of the transactions:

Upon the death of one Ram Ratan Singh the family property, except certain parcels which went to some widows in lieu of their maintenance, came into the hands of one Dhuna Singh, his grand-son, by his

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son Maniar Singh. Subsequently, on the death of Dhuna Singh, the estate went by inheritance to his mother Mussammat Ramdularee Kuer, the widow of Maniar Singh. On the 11th April, 1896, Ramdularee executed a mortgage bond (Exhibit 8) for Rs. 1,000 in favour of one Jagannath Sahi, cousin of Durga Prasad Narain Sahi (the father of the plaintiff). By this mortgage bound the Mussammat purported to hypothecate 12-annas of tauzi nos. 2345 and 2346 by way of security for the loan which she purported to raise for defraying the expenses of marriage of Mussammat Ramsumaree Kuer with the plaintiff. Mussammat Ramsumaree was the son's daughter of Johnti Singh, the elder brother of Maniar Singh. On the 19th August, 1897, an ex-parte decree was obtained on foot of the mortgage above mentioned and the properties mortgaged brought to sale and purchased in the name of Jagannath Sahi. On the 16th November, 1898, Dhanpat Singh, the next reversioner, instituted a suit, being Suit no. 110 of 1898, challenging the mortgage in favour of Jagannath Singh and all proceedings based thereon. This suit was compromised, and the result was that on the 22nd August, 1899, an ekrarnama (Exhibit 11) was executed whereby Jagannath Sahi relinquished his claim to 12-annas of tauzi nos. 2345 and 2346 and accepted a third share of the estate subject to all debts and liabilities of Dhuna Singh. Ramdularee also took one-third and Dhanpat Singh, the next reversioner, took the remaining one-third share. On the 24th September, 1899, Jagannath sold his entire interest by kebala (Exhibit 1) to plaintiff for a consideration, it was alleged, of Rs. 3,500. Hence the plaintiff claimed to have become entitled to the shares in the mauzas claimed in the suit.

Then came another set of transactions which were the immediate cause of the plaintiff's suit. The plaintiff alleged that on the 18th September, 1909, he and the then presumptive heir, Dhanpat Singh, borrowed a sum of Rs. 1,995-0-0 from Bechan Sahi, father of defendant no. 9, and Basist Sahi, defendant

no. 10, and executed a zarpeshgi bond in respect of the tauzi nos.comprised within the estate of Dhuna Singh, in favour of Bechan and Basist Narain. It was said that out of the sum of Rs. 1,995 the plaintiff obtained Rs. 595 only and Basist Narain the balance of Rs. 1,400. Thereafter Dhanpat Singh, the presumptive reversioner, died, and his son Ramparichan Singh came into possession of all his estate. He applied for mutation of his name before the Collector; the application was opposed by the actual reversioners of Dhuna Singh who were the defendants first party in the suit (for by that time Musammat Ramdularee had died and succession had opened to the reversioners). On the 28th November, 1918, it was alleged by the plaintiff, a collusive and fraudulent ekrarnama was entered into between Ramparichan Singh and the defendants first party, whereby the defendants first party obtained a portion of the zarpeshgi property, and, on the strength thereof, on the 14th March, 1919, collusively got the entire amount of zarpeshgi, that is, Rs. 1,995, deposited in Court in the name of the creditors, that is, the defendants third party, without the knowledge of the plaintiff, and the defendants third party collusively withdrew the said bond money from the Court and gave up possession of the zarpeshgi property to them. Hence the plaintiff was denied the opportunity of depositing his proportionate share of the debt. As a result the defendants first party obtained possession of the entire zarpeshgi property and were still in possession thereof. On the facts above mentioned the plaintiff prayed for a declaration that he was entitled to get possession of his share of the properties given in zarpeshgi on payment of his share of the debt and for a decree for redemption and possession in his favour. The defendants first party, the present reversioners, were the contesting defendants. They assailed the mortgage (Exhibit 8) as unsupported by any legal necessity and the transactions entered into under Exhibit 8, Exhibit 11 and Exhibit 1 as being void and of no effect as they were alleged to be parts of a device to deprive the

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reversioners of their just rights and to divide up the estate between the limited owner Ramdularee and the presumptive owner Dhanpat Singh. They alleged that Jagannath was a mere farzidar of Ramdularee and no interest passed under the ekrarnama (Exhibit 11) to Jagannath, and, consequently, none passed to the plaintiff under the sale deed (Exhibit 1). As regards the zarpeshgi deed dated the 18th September, 1909, their case was that that was really a transaction entered into by Ramdularee in the name of the plaintiff and Dhanpat Singh for the purpose of paying up the debts of Dhuna Singh due to Gopal Sahi and others; that they were just debts of the last male holder and, therefore, binding on the reversioners and on the estate; that the allegation of the plaintiff that a portion of the zarpeshgi money was due from him was utterly false; that upon the death of Dhanpat his son Ramparichan realised that the estate had passed to the defendant first party, the present reversioners, and he thereupon saw the necessity of executing the ekrarnama dated the 28th November, 1918, to discharge the aforesaid debt; that the defendants first party had as such reversioners paid off the zarpeshgi debts and secured possession of the property to which they were justly entitled and that the plaintiff's claim to redemption and possession should be dismissed. The suit was decreed by the trial court but this decision was reversed in appeal.

S. M. Mullick and *S. Dayal*, for the appellants.

L. N. Sinha and *L. K. Jha*, for the respondents.

SEN, J. (after stating the facts set out above, proceeded as follows): Two main points of law have been put forward before us. First, whether the expenses of marriage of Ramsumaree Kuer could come within the description of legal necessity; and consequently whether the mortgage (Exhibit 8) or any rights thereunder could be deemed to be valid beyond the lifetime of the limited owner. Secondly, did the ekrarnama (Exhibit 11) pass a valid title to Jagannath Singh or was it invalid and of no effect? Was it

a mere device by the limited owner to defeat the right of the reversioners?

As a question of fact it is now beyond all dispute that the amount of Rs. 1,000 which was raised upon the mortgage (Exhibit 8) was actually employed on the marriage expenses of Mussammat Ramsumaree Kuer. What is disputed is that there was any duty cast upon the limited owner Mussammat Ramdularee to defray the marriage expenses of Ramsumaree Kuer out of the estate in her hands. It is urged that the duty of marrying Mussammat Ramsumaree lay on Jhonti Singh, or, in the last instance, upon Dhuna Singh, the last male holder. It is also urged that directly the estate passed by inheritance to Mussammat Ramdularee Kuer it ceased to be bound to pay the marriage expenses of Jhonti's son's daughter. This view appears to me clearly untenable. The true principle as laid down by the Shastras is that where a person takes a property, either by inheritance or survivorship, he is legally bound to maintain those whose maintenance was a charge upon it in the hands of the last holder (*see* Mayne, Article 453).

"A female heir is under exactly the same obligation to maintain the members of a family as a male heir would have been by virtue of succeeding to the same estate. The obligation extends even to the King when he takes the estate by escheat or by forfeiture." (*See* Mayne, Article 458.)

In fact the duty of the person who inherits is to provide for the maintenance, education, marriages, sradhs and other usual religious expenses of the coparceners and of such members of their family as they are, or were when alive, legally or morally bound to maintain. Now, Ramsumaree Kuer would easily come within the description of such members as were dependent on the male coparceners when they were alive. In this view it appears that the mortgage (Exhibit 8) was for legal necessity and the mortgagee decree-holder got a valid right and title to the properties purchased by him at the execution sale.

The next question relating to the validity or otherwise of the ekrarnama (Exhibit 11) calls for a

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somewhat detailed investigation. The Munsif held that the ekrarnama was not supportable on the ground of alienation by Ramdularee for legal necessity, nor was it supportable on the doctrine of surrender or renunciation. He further held that Dhanpat Singh, the presumptive reversioner, had no right or interest in praesenti in the property which Ramdularee held for life until it vested in him on her death should he survive her. He had no substantial claim on which to litigate with her at the time and that therefore the ekrarnama which purported to compromise the matters in dispute and difference between the parties to that suit could not be held to be legally valid. On this ground he held that the plaintiff who derived his title from Jagannath on foot of the said ekrarnama could not recover possession by redemption of any portion of the estate as against the reversioners. He accordingly dismissed the suit. On appeal the learned Subordinate Judge held that the plaintiff's vendor Jagannath had derived a good title under the mortgage; that he could not be blamed for suing on it when the mortgage money was not paid; that the ekrarnama whereby Jagannath relinquished what he had purchased under the decree and took what was given to him as one-third of the estate plus the encumbrance thereon was good and valid so far as Jagannath was concerned and it conferred a title on him. With regard to the other parties to the ekrarnama he observes—

> "Whether it operated as surrender or alienation on behalf of the lady in favour of Dhanpat is a different question with which we are not concerned in the present suit."

Upon these findings he proceeded to hold that the plaintiff had a right to redeem the zarpeshgi which Dhanpat executed in favour of the defendant third party and he allowed the appeal.

It has been urged before us that a disposition by compromise such as that effected by the ekrarnama (Exhibit 11) is perfectly valid as the entire estate was then in the hands of Mussammat Ramdularee, and that although a limited owner, she was still the manager,

and as such manager was quite competent to dispose of the estate to the best of her discretion. The subject of the power of a limited owner to deal with the estate of the last male holder as against the rights of the reversioner was dealt with very fully in the case of *Rangasami Gounden* v. *Nachiappa Gounden* (1). The Judicial Committee in that case observed :—

" This raises a consideration of the whole subject of the power of a Hindu widow over the estate which belonged to her husband to which she has succeeded either immediately on the death of her husband or as heir on the death of her own childless son, her husband being already dead. This subject has been dealt with in many cases which are too numerous to cite individually; it has given rise to different currents of judicial opinion, and, as in this case and some others, to actual difference in judicial determination.

* * * *

" It has often been noticed before, but it is worth while to repeat, that the rights of a Hindu widow in her late husband's estate are not aptly represented by any of the term of English law applicable to what might seem analogous circumstances. Phrased in English law terms, her estate is neither a fee nor an estate for life, nor an estate tail. Accordingly one must not, in judging of the question, become entangled in Western notions of what a holder of one or other of these estates might do. On the other hand, what a Hindu widow may do has often been authoritatively settled. Here arises that distinction, which as Seshagiri Ayyar, J., most justly observed in the present case, will, if not kept clearly in view, inevitably lead to confusion—the distinction between the power of surrender or renunciation, which is the first head of the subject, and the power of alienation for certain specific purposes, which is the second.

" To consider first the power of surrender. The foundation of the doctrine has been sought in certain texts of the Smritis. It is unnecessary to quote them.

(1) (1919) I. L. R. 42 Mad. 523; L. R. 46 I. A. 72.

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They will be found in the opinions of the learned Judges in some of the cases to be cited. But in any case it is settled by long practice and confirmed by decision that a Hindu widow can renounce in favour of the nearest reversioner if there be only one or of all the reversioners nearest in degree if more than one at the moment. That is to say, she can so to speak by voluntary act operate her own death." (Pages 531 and 532.)

At page 536 their Lordships observed—

"The result of the consideration of the decided cases may be summarized thus: (*1*) An alienation by a widow of her deceased husband's estate held by her may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a bona fide surrender, not a device to divide the estate with the reversioner. (*2*) When the alienation of the whole or part of the estate is to be supported on the ground of necessity, then, if such necessity is not proved aliunde and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners as might fairly be expected to be interested to quarrel with the transaction will be held to afford a presumptive proof which, if not rebutted by contrary proof, will validate the transaction as a right and proper one. These propositions are substantially the same as those laid down by Jenkins, C.J., and Mookerjee, J., in the case of *Debi Prosad*." (1)

The question to be considered, therefore, is whether the ekrarnama in question can be supported on either of the principles above laid down. There can be no valid contention in this case that the ekrarnama is supportable on the doctrine of legal necessity. On the finding that the mortgage deed was for legal necessity the sale of 12 annas in favour of

(1) (1913) I. L. R. 40 Cal. 721.

Jagannath of tauzi nos. 2345 and 2346 may be considered to be valid and binding. But thereafter we find that Dhanpat, the presumptive reversioner, institutes a suit against Musammat Ramdularee and Jagannath for a declaration that the mortgage was not for legal necessity and that therefore the sale was not binding. It was this suit which was purported to be compromised by the ekrarnama (Exhibit 11) and by virtue of that ekrarnama each of the three parties to the suit got a third share in the whole estate. The transaction has to be looked into from different points of view. First, had Dhanpat at that time any right or interest in the property in regard to which he instituted the suit? True he was entitled as presumptive reversioner, to institute a suit for a declaration, but was he under any circumstances entitled to a share in the property? The interest of a Hindu reversioner has been defined as spes successionis, that is, a mere possibility of succession. Such a possibility gives no interest to the reversionary heir in the estate of the deceased, present, or future, vested or contingent. this principle is supported by various rulings among which may be mentioned the case of *Amrit Narain Singh* v. *Gaya Singh* (1) and *Musammat Bhagwati Kuer* v. *Jagdam Sahay* (2). On this principle it has also been laid down that an alienation by way of compromise entered into between a limited owner and persons who had no bona fide claim to the property at the time of the compromise is not binding on the reversioners. [*Anup Narain Singh* v. *Mahabir Prosad Singh*, (3).] Therefore it is clear that the ekrarnama in question offends the principle laid down in these rulings on account of the fact that it purports to give Dhanpat Singh who had no interest in praesenti at the moment a third share in the whole estate which he was clearly not entitled to.

Secondly, looking at it from the point of view of the limited owner, Mussammat Ramdularee Kuer, the

(1) (1918) I. L. R. 45 Cal. 590; L. R. 45 I. A. 35.
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question that has to be considered is whether she purported to efface herself completely and to operate her own death as it were by relinquishing the entire estate and consequently accelerating the interest of the consenting heir. This she clearly did not do, for she purported to take under the ekrarnama one-third of the estate. It is urged before us that this share in the estate was given to her in lieu of her maintenance. It is doubtful if she could do so, but the matter does not arise at all inasmuch as there is no evidence on the record, nor does it appear to have been contended in any stage of the proceedings that the share that she took was by way of her maintenance. On this ground it appears to me to be quite clear that the ekrarnama is illegal and invalid as against the right of the actual reversioners. The learned Subordinate Judge seems to think that it is not necessary to consider whether the ekrarnama operated as a surrender or alienation on behalf of the lady in favour of Dhanpat, but that it is sufficient to consider as to whether Jagannath got a valid title under it. Such a piecemeal consideration of the ekrarnama is wholly unwarranted. It is either valid or invalid and if it be invalid, it must be held to be invalid in respect of all the parties. That being so, the conclusion is irresistible that Jagannath never got a valid title under the ekrarnama and that therefore the plaintiff is not entitled to any relief.

This decision will not in any way prejudice such rights as the plaintiff or his vendor Jagannath might have in respect of tauzi nos. 2345 and 2346 which Jagannath purchased at auction in execution of his mortgage decree.

The appeal must therefore be allowed with costs. The judgment and decree of the learned Subordinate Judge must be reversed and the judgment and decree of the learned Munsif restored.

ADAMI, J.—I agree.

Appeal allowed.