

APPELLATE CIVIL.

Before Jwala Prasad and James, JJ.

1927.

May, 24.

JAGDEO SINGH

v.

MUSSAMMAT RAJA KUER.*

Hindu Law—widow—Will by widow—no title conferred on legatee.

Although a transfer inter vivos by a Hindu widow, of property of which she is in possession as heir to her husband, confers upon the transferee the right to hold the property during the life of the widow, and even after her death unless the reversioners elect to treat the transferee as a trespasser after the widow's death, a Hindu widow cannot legally bequeath such property by will for a will takes effect only from the death of the testatrix, and from the moment of her death the widow ceases to have any interest in the property which reverts to her husband's heirs.

Durga Sundari Sen Gupta v. Ram Krishna Poddur(1), *A. R. Srinivasachariar v. A. Raghavachariur*(2), *Tirath Ram v. Kahan Devi* (3) and *Gadadhar Bhat v. Chandrabhagabai* (4), followed.

Tagore v. Tagore(5), *Bijoy Gopal Mukarji v. Krishna Mahishi Debi* (6) and *Kesho Prasad Singh Bahadur v. Chandrika Prasad Singh* (7), referred to.

Appeal by the plaintiffs.

*Appeal from Appellate Decree no. 1358 of 1924, from a decision of Babu Kamla Prasad, Subordinate Judge of Muzaffarpur, dated the 1st July, 1924, reversing a decision of Babu Hargobind Prasad Singh, Munsif of Muzaffarpur, dated the 1st February, 1924.

(1) (1913) 18 Cal. L. J. 162.

(2) (1924) 79 Ind. Cas. 1011.

(3) (1920) I. L. R. 1 Lah. 588.

(4) (1898) I. L. R. 17 Bom. 690.

(5) (1872) 18 W. R. 359.

(6) (1907) I. L. R. 34 Cal. 329, P. C.

(7) (1922) 68 Ind. Cas. 394.

1927.

JAGDEO
SINGH

v.

MUSSAMMAT
RAJA KUER.

This was an appeal by the plaintiffs to recover possession of 17-gandas 4-kouri pakka share which was represented by 2-annas 8-gandas kham share of Mauza Jalalpur. The plaintiffs claimed this property as legatees under a will executed by Mussammat Kasturi Kuer on the 27th January, 1914. The testatrix Kasturi Kuer, who held the properties as heir of her deceased husband Mithu Singh, had given the property in dispute to Sheolochan Kuer, widow of her deceased husband's brother by way of maintenance after a litigation between the two widows. Sheolochan Kuer transferred the property to Mahadeo Singh, predecessor, in interest of the defendant. Kasturi Kuer questioned this transfer and by a decree of the Calcutta High Court it was declared that the transfer was operative only until the death of Sheolochan Kuer and that the property would revert to Kasturi Kuer. Sheolochan Kuer died on the 10th September, 1910, four or five years before the death of Kasturi Kuer.

The defendant was holding the property under a transfer from Sheolochan Kuer which was held to be invalid; and if Kasturi Kuer had been alive she would have been entitled under the decree dated the 28th May, 1894, to get recovery of possession of the property and to hold it as a Hindu widow's estate during her life time, subject to the rights of the reversioners, if any. She, however, died before she could enforce her rights under the decree and obtain possession of the property; but before she died she executed a will on the 27th January, 1914, bequeathing this property to the plaintiffs. The plaintiffs had obtained probate of the will and now sought to obtain possession of the property on the ground that they were the representatives of Kasturi, and that the defendant had ceased to have any right after the death of Sheolochan Kuer and was a mere trespasser.

The trial Court decreed the plaintiffs' suit, holding that the will created in their favour a right to obtain possession of the property as against

1927.

JAGDEO
SINGH
v.
MUSSAMMAT
RAJA KUER.

trespassers, and that it did not matter that the widow's interest in the property ceased with her death; in other words, the trial Court held that the lady was competent to dispose of the property by will. In support of this view the learned Munsif relied upon the decision of the Judicial Committee in *Bijoy Gopal Mukarji v. Krishna Mahishi Debi* (1) and *Kesho Prasad Singh Bahadur v. Chandrika Prasad Singh* (2) a decision of the Patna High Court based upon the aforesaid decision. The reasoning employed was that if the widow could make a gift of the property which would be operative even after her death unless the reversioners questioned it, there was no reason why the widow should not be able to make a will of the same property subject to the right of the reversioners.

On appeal the learned Subordinate Judge of Muzaffarpur disagreeing with this view set aside the decision and dismissed the suit.

A. B. Mukarji, B. B. Mukarji and *U. N. Banerji*, for the appellants.

C. Prasad (for *S. Dayal*) for the respondents.

JWALA PRASAD, J. (after stating the facts set out above proceeded as follows): The learned Advocate for the appellant in attacking the view of the Court below has adopted the reasoning employed by the learned Munsif. Reliance is placed upon a passage in the judgment of the Judicial Committee of the Privy Council in *Bijoy Gopal Mukarji v. Krishna Mahishi Debi* (1) wherein their Lordships observe—

“A Hindu widow is not a tenant for life but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate it subject to certain conditions being

(1) (1907) I. L. R. 34 Cal. 329, P. C.

(2) (1922) 68 Ind. Cas. 394.

complied with. Her alienation is not, therefore, absolutely void, but it is prima facie voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court and he shows his election to do the latter by commencing an action to recover possession of the property”.

1927.

JAGDEO
SINGHv.
MUSSAMMAT
RAMA KUER.JWALA
PRASAD, J.

It is to be observed that although their Lordships made a distinction between the estate of a Hindu widow and that of a life tenant their decision did not declare that acts of a Hindu widow which would affect the property after her death would be valid. In the case of transfers inter vivos, the widow confers upon the transferee the right to hold the property during her life: she has a full right to do so; but where she confers a right which is valid during her life time and gives effect to it by delivery of possession, a distinction is made between the rights acquired by the transferee before the death of the widow and those which he enjoys after her death. He enters into possession of the property under a valid title and his occupation thereof is not ipso facto or ab initio void. The interest which may survive after the death of the widow is not in the circumstances absolutely void, by reason of the fact that the title was validly created at the beginning, but it is voidable at the instance of the reversioners. It is for them to ratify or confirm the act of the limited owner or to treat the occupier as a mere trespasser after the death of the widow. In fact their Lordships did treat the transaction as a trespass upon the property and the holders thereof as trespassers after the death of the widow; for Article 141 of the Limitation Act which governs the case of the plaintiff seeking to eject a trespasser from an immovable property was applied. That case cannot be cited as an authority for the proposition that the widow can create a valid interest or even voidable title in favour of any person to take effect after her death, that is, by means of testamentary bequest.

1927.

JAGDEO
SINGH
v.
MUSAMMAT
RAJA KUER.

JWALA
PRASAD, J.

'Will' has been defined in the Hindu Wills Act as meaning

"the legal declaration of the intention of the testator with regard to his property which he desires to be carried into effect after his death."

Mr. Abani Bhusan Mukharji quoted the definition of 'will' given by their Lordships of the Judicial Committee in *Tagore v. Tagore* (1) in support of his contention that a will like a gift transfers the property from the date of its execution with this difference only that in the latter the possession is immediately taken and in the former the possession is deferred till after the death of the donor. The passage upon which he relies is as follows :

"Will means a continuous act of gift up to the moment of the donor's death and though revocable in his lifetime, is, until revocation, a continuous act of gift up to the moment of death, and does then operate to give the property disposed of to the persons designated as beneficiaries".

These words cannot be held in any way to imply that the property bequeathed by the testator is vested in the legatee from the date of the execution of the will. The essential difference between a will and a settlement or deed inter vivos, as appears from the definition of 'will' given in the Act and that given by their Lordships of the Judicial Committee lies in the fact that a will only takes effect after the death of the testator. A deed is an assurance of property from living persons to living persons but a 'will' is an assurance of property from the dead to the living. The gift inter vivos operates from the date of its execution, but a will is not operative till after the death of its maker. In the former title is vested from the date of the deed or as indicated therein, in the latter it invariably vests after the death of the testator, for before his death he can revoke the will at any moment he likes. Therefore the legatee under a will made by a Hindu widow does not take any interest until the death of the widow when the widow

(1) (1872) 18 W. R. 359, P. C.

herself ceases to have any interest in the property which reverts to the heirs of her deceased husband. Hence the widow has no property at her death to dispose of, as was held in the case of *Durga Sundari Sen Gupta v. Ram Krishna Poddar* (1) where the Chief Justice, Sir Lawrence Jenkins, and Sir Ashutosh Mookerjee upheld the decision of N. R. Chatterji, J. This case was followed by the Madras High Court in *A. R. Srinivasachariar v. A. Raghava-charuar* (2). There it was definitely laid down that disposal of her husband's property by a widow confers no title on the legatee to eject even a trespasser. This ruling applies exactly to the present case. The plaintiffs have acquired no title under the will and cannot eject the defendant even if he is a trespasser. The same conclusion was arrived at by the Lahore High Court in *Tirath Ram v. Kahan Devi* (3) and by the Bombay High Court in *Gadadhar Bhat v. Chandra-bhagabai* (4).

The distinction between a widow's estate and a life estate seems to be that in the former the exact successor after the death of the widow is not known until she dies, whereas in the life estate the next successor, the holder of the remainder, is known; and the remainder may vest before the death of the life tenant. In the widow's estate which is peculiar to Hindu Law nothing vests in the reversioners during her life: the entire property vests in the widow; with this important difference that her personal heirs do not succeed after her death, but the heirs of her husband, the previous full owner, succeed to the property. But the widow who holds a widow's estate and one who holds a life estate are both subject to this limitation that they cannot create any interest beyond their life time. The view taken by the Court below seems to be correct. The decree is accordingly affirmed and the appeal is dismissed.

JAMES, J.—I agree.

Appeal dismissed.

(1) (1918) 18 Cal. L. J. 162.

(2) (1924) 79 Ind. Cas. 1011.

(3) (1920) I. L. R. 1 Lah. 588.

(4) (1898) I. L. R. 17 Bom. 690.

1927.

JAGDEO
SINGH
v.

MUSSAMMAT
RAJA KUEB.

JWALA
PRASAD, J.