this very tenancy and the terms of the Cess Act that a co-sharer tenant is liable to pay cess to the plaintiff does not alter the position. This will at best show that the previous decisions were erroneous. This cannot in my opinion, affect the application of res judicata. The case would have been different if the legislature had passed a new enactment in the meanwhile. When a legislature passes a new enactment the law is altered and the rights of parties are changed but Mr. Justice Foster did not lay down any new law. He only considered the conditions of the tenancy and the law applicable. Therefore, the view of law taken by him in another proceeding cannot prevent the operation of the rule of res judicata. To perpetuate an error is no doubt an evil, but the rule of res judicata is based on a very sound principle that there should be an end to litigation.

I, therefore, agree with my Lord the Chief Justice that the appeal should be allowed.

Appeal allowed.

APPELLATE CIVIL.

1929.

August, 5.

Before Das and Rowland, JJ.

NAIKA URAON

v.

BUTNA URAON*

Hindu Law—ghardamad—elements necessary to constitute the status.

Under the Hindu law the most important elements of fact which are necessary to constitute the status of a *ghardamad* are *first*, that there must be the definite intention on the

*Appeal from Appellate Decree no. 633 of 1928, from a decision of Babu Kshetra Nath Singh, Subordinate Judge of Ranchi, dated the 10th January, 1928, revising the decision of Babu Sadhu Charan Mahanti, Munsif of Ranchi, dated the 23rd April, 1927.

1929.

NAIKA URAON. v. BUTNA URAON.

part of the parties that that status should be acquired, and *secondly*, that the person adopted as a *ghardamad* should, in the same way as a Hindu who is adopted as a son, definitely forego his title to succeed to any property of his natural father.

Appeal by plaintiff no. 2.

The facts of the case material to this report are stated in the judgment of Rowland, J.

Shiva Shankar Prasad, for the appellant.

C. M. Agarwala (with him *S. K. Mazumdar*), for the respondents.

ROWLAND, J.—The only question for decision in this appeal is whether there is an error of law in the finding of the lower appellate court that Mahadeva, the father of the appellant, was not *ghardamad* of Musammat Nandia. The suit was brought to establish title to both bhuinhari and rajhas lands, the plaintiff claiming that his father had got them as a *ghardamad*. As regards the bhuinhari lands, the findings of both the lower courts being adverse, no second appeal has been filed in this court. It was probably recognised that to do so was hopeless, the law being clear that title in bhuinhari land does not pass through a female line and is not acquired by a *ghardamad*. The appeal, therefore, relates only to the rajhas land.

It is contended for the appellant that the lower appellate court has actually found all the elements of facts which are necessary to constitute the status of a *ghardamad*. It has been found that Musammat Nandia had no son; it has been found that Mahadeva resided at Nandia's house and it has been found that he was the husband of Nandia's daughter Musammat Champa. Those are not, in my opinion, all the elements required to constitute the status of *ghardamad*. There are two points which to my mind are the most important to any of which regard is to be had in determining whether the legal position

of a *ghardamad* has been acquired;—one is that there must be the definite intention on the part of the parties that that status should be acquired and another is that the person adopted as a *ghardamad* should, in the same way as a Hindu who is adopted as a son, definitely forego his title to succeed to any property of his natural father. The learned lower appellate court has not found either of these points in favour of the appellant. He has definitely held that there was no adoption of Mahadeva as *ghardamad* and it appears from the facts as stated in the judgments that Mahadeva did retain the raiyati land which came to him from his natural father.

In the result the appeal fails and is dismissed with costs.

DAS, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Fazl Ali and Dhavle, JJ.

1929.

August, 6.

RAM RATAN PRASAD

v.

BANARSI LAL.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *sections* 144, 151 *and Order XXI, rule* 90—*execution—sale set aside under Order XXI, rule* 90—*judgment-debtor, application by, for restitution—section* 144, *whether applies—restitution, inherent power of the Court to order—section* 151—*order whether appealable as a decree—District Judge entertaining incompetent appeal—second appeal, whether lies to the High Court.*

*Appeal from Appellate Order no. 28 of 1929, from an order of Mr. Jyotirmay Chatterji, District Judge of Saran, dated the 21st November, 1928, reversing an order of Brahmadeo Narayan Singh, Munsif of Chapra, dated the 8th August, 1928.