

expressed is in accordance with the decision of this Court in *Surat Lal Chowdhery v. Lala Murlidhar* (1). The truth would appear to be that the transferee of a non-transferable occupancy holding, whether he takes by kabala from the original tenant or whether he acquires the property by purchase under a mortgage decree, has a very precarious right, for he cannot force himself upon the landlord as a tenant without the latter's consent.

For these reasons I think that this appeal must be dismissed with costs.

ADAMI, J.—I agree.

S. A. K.

Appeal dismissed.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

SURAJ BALLI SINGH

v.

TILAKDHARI SINGH.*

1927.

Nov., 17.

Hindu law—widow, interest acquired by, by adverse possession. whether forms her stridhan—test to be applied.

An interest acquired in a property by a Hindu widow by adverse possession is her stridhan and is not an accretion to her husband's estate unless it is shown that she took adverse possession of the property as representing her husband's estate.

Jugmohan Singh v. Prayag Narayan (2), followed.

Musammat Lajwanti v. Safa Chand (3), explained.

*Appeal from Appellate Decree no. 952 of 1924, from a decision of Babu Kamla Prasad, Subordinate Judge, 1st Court, of Muzaffarpur, dated the 15th April, 1924, confirming the decision of Babu Jadunath Sahay, Munsif, 2nd Court, of Muzaffarpur, dated the 31st July, 1923.

(1) (1919) 4 P. L. J. 362.

(2) (1925) 6 Pat. L. T. 206.

(3) (1925) 6 Pat. L. T. 1, P. C.; 51 I. A. 171.

1927.

Appeal by the plaintiffs.

SURAJ BALLI
SINGH
v.
TILAKDHARI
SINGH.

This was an appeal by the plaintiffs, who claimed possession of certain properties as the reversionary heirs of one Ishar Dayal. The defendants first party took a conveyance of the property in dispute from Musammat Mulasbati Kuer, the widow of Ishar Dayal. It was contended on behalf of the plaintiffs that the property in dispute formed a part of the estate of Ishar Dayal, and, as the conveyance was without any legal necessity, it was not binding on them and they were entitled to possession.

The defence was that the plaintiffs were not the reversionary heirs of Ishar Dayal, that the property in dispute did not belong to the estate of Ishar Dayal, that Ishar Dayal left a brother Gobind Singh who was joint with him, and that on the death of Ishar Dayal, Gobind took the entire share by survivorship, that on the death of Gobind, the widow of Ishar Dayal took possession of the property although she had no right to do so, and that the right of the reversioners arose immediately on the death of Gobind to take possession of the property; and as Gobind died more than 12 years before the date of the suit, the possession of the widow became adverse to the reversioners and they could not claim possession of the property.

The trial Court found that the deed of sale by the widow to the defendants first party was for legal necessity and that the plaintiffs were estopped from disputing the validity of the sale. It accordingly dismissed the suit.

On appeal the Subordinate Judge was of opinion that it was not necessary to inquire as to whether the sale was for any legal and valid necessity. He referred to the fact that admittedly Gobind, who was, according to the case of the plaintiffs, separate from Ishar Dayal, had an eight annas share in the property. He found that Gobind died sometime before 1894, and immediately on his death, Musammat Hulasbati Kuer

took possession of Gobind's eight annas share and she got herself registered in the Land Registration Department. Her possession of Gobind's share became adverse to the rightful heirs of Gobind and such possession lasted for more than 12 years before the suit, and therefore Hulasbati had acquired a valid title by adverse possession so far as the eight annas share of Gobind was concerned. Therefore, as Hulasbati Kuer had an absolute interest and not merely a widow's estate in the eight annas which belonged to Gobind, the sale to the defendants first party of 1 anna 15 gundas was a valid sale because she had more than 1 anna 15 gundas in her absolute right in the village and that it did not necessarily follow that this 1 anna 15 gundas came out of the estate of Ishar Dayal. The Subordinate Judge accordingly dismissed the appeal.

S. K. Mitra, for the appellants.

Nirsu Narayan Singh and *B. P. Singh*, for the respondents.

KULWANT SAHAY, J., (after stating the facts set out above, proceeded as follows:)—In this second appeal it is contended that, assuming that Hulasbati Kuer took the eight annas of Gobind by adverse possession and acquired an absolute estate, such acquisition of an absolute estate must be treated to be an accretion to her husband's estate, because it is contended that as a widow she could not, by adverse possession, acquire any property for herself, and whatever property she did acquire by adverse possession would be an acquisition to her husband's estate. Reference has, in this connection, been made to the decision of the Privy Council in *Musammatt Lajwanti v. Sofa Chand* (1). What was decided in that case was that "the Hindu widow is not a life-renter but has a widow's estate, that is to say a widow's estate in her deceased husband's estate. If possessing as a widow she possesses adversely to any one as to certain parcels, she does not acquire the parcels as stridhan but she makes them good to her husband's estate."

(1) (1925) 6 P. L. T. 1 P. C.; 51 I. A. 171.

1927.

SURAJ BALLI
SINGH
v.
TILAKDHARI
SINGH.

1927.

SURAJ BALLI
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TILAKDHARI
SINGH.KULWANT
SAHAY, J.

Now what their Lordships meant by this passage was that if the widow as representing her husband's estate, and she for certain purposes fully represents her husband's estate, encroaches on certain property in her capacity of a widow and as representing her husband's estate, then the interest that she would acquire by adverse possession of such parcel of land would be an accretion to her husband's estate. Their Lordships did not say that the widow could not under any circumstance acquire any property for herself while holding her husband's estate. The decision of the Privy Council in *Musammatt Lajwanti v. Sofa Chand* (1), above cited was considered by a Division Bench of this Court in *Jagmohan Singh v. Prayag Narayan* (2), and their Lordships there held that when a Hindu widow is in possession of any property by adverse possession, then the property would become her stridhan, and it was only if the property is held in possession by a Hindu widow claiming as the widow of her deceased husband, then the property becomes an accretion to her husband's estate. It is clear, therefore, that, unless it is shown that she took adverse possession of Gobind's share as representing her husband's estate, the interest she acquired by adverse possession would be her stridhan and would not be an accretion to her husband's estate. There is absolutely nothing to show that she took adverse possession of Gobind's share as representing her husband's estate. The learned Subordinate Judge was clearly right in holding that at the date of the conveyance to the defendants first party the widow had an absolute interest in an eight annas share and the sale of 1 anna 15 gundas to the defendants first party was a valid sale.

This appeal is dismissed with costs.

MACPHERSON, J.—I agree.

S. A. K.

Appeal dismissed.

(1) (1925) 6 P. L. T. 1 P. C.; 51 I. A. 171.

(2) (1925) 6 P. L. T. 206.