

be taken that the Munsif in effect decided that he had jurisdiction to try the suit. The matter cannot be re-opened at this stage. The decree is not a nullity on account of want of jurisdiction and the appellant's ground fails though for reasons other than those mentioned by the learned District Judge.

The second question, namely, whether the decree as it stands is capable of execution, though decided by the learned Munsif in favour of the judgment-debtor, has not been finally decided by the learned District Judge. The decree is not before us, and it was not produced even before the learned District Judge. It cannot be laid down that a decree for future maintenance is always incapable of execution and a fresh suit is necessary. That would entirely depend upon the nature of the suit, the nature of the relief granted and the form of the decree. The decree not being before us and the question apparently having been left open by the learned District Judge the matter was not argued before us in detail and I do not wish to express any opinion on that part of the case.

In the result I agree with the order which my learned brother has passed in this case.

Appeal dismissed.

APPELLATE CIVIL.

Before James and Agarwala, JJ.

MUSAMMAT RAMJHARI KUER

v.

SHEONARAIN SINGH.*

Public Demands Recovery Act, 1913 (Beng. Act III of 1913), section 20—liability to pay cess, whether attaches to the estate of the proprietor—Hindu widow's estate, sale of—what passes to the purchaser.

1933.

MUSAMMAT
JAGTARAN
KUER

v.
MUSAMMAT
MUNDAR
KUER.

KHAJA
MOHAMAD
NOOR, J.

1933.

Dec. 21.

* Appeals from original decree nos. 108, 111 and 174 of 1929, from a decision of Babu Jatindra Nath Ghosh, Subordinate Judge of Muzaffarpur, dated the 28th February, 1929.

1938.

MUSAMMAT
RAMJHARI
KUER
v.
SHEONARAIN
SINGH.

The liability to pay cess is a mere personal liability, not attaching to the estate of the proprietor who has to pay it, and therefore the sale of a Hindu widow's estate under the Public Demands Recovery Act conveys only the widow's estate to the purchaser and not the reversion.

Baijun Doobey v. Brijhookan Lal Awasti(1), *Jiban Krishna Roy v. Brojo Lal Sen*(2) and *Shekuat Hossein v. Sasi Kar*(3), followed.

Appeal no. 108 by the plaintiff.

Appeal nos. 111 and 174 by the defendants.

The facts of the case material to this report are set out in the judgment of James, J.

S. M. Mullick, S. C. Mazumdar and B. P. Sinha, for the appellants in Appeal no. 108 and for the respondents in Appeals nos. 111 and 174.

S. N. Rai, for the appellants in Appeal no. 111.

K. P. Jayaswal and B. B. Saran, for the appellants in Appeal no. 174.

A. B. Mukharji and H. P. Sinha, for the respondents in Appeal no. 108.

JAMES, J.—The suit out of which these appeals arise was instituted by Musammat Ramjhari Kuer as daughter and heir of the late Musammat Uma Kuer in order to set aside several alienations made by or on behalf of Musammat Uma Kuer while she was in possession of the widow's estate. The plaintiff has joined in one suit alienations made to different persons; but she ought to have been required at the outset to sever her different causes of action. One result of the joinder has been that the unsuccessful defendants have been treated as jointly and severally liable for a larger amount of costs than would ordinarily be justified by the value of their interest, while the litigation has been unduly prolonged owing to the

(1) (1875) I. L. R. 1 Cal. 133; 2 I. A. 275.

(2) (1903) I. L. R. 30 Cal. 550, P. C.

(3) (1892) I. L. R. 19 Cal. 783.

1933.

necessity from time to time of substitution as one or other among the unwieldy mass of defendants died. The suit was in part decreed and in part dismissed by the Subordinate Judge. The plaintiff has appealed from that portion of his decision which is in favour of Sheonarain Singh and other defendants, while two sets of defendants have appealed from so much of the decision as sets aside the alienations made to them.

MUSAMMAT
RAMJHARI
KUER
v.
SHEONARAIN
SINGH.

JAMES, J.

* * * * *

[The rest of the judgment is not material].

I now come to appeal no. 111. In 1908 Musammat Uma Kuer fell into arrears in payment of public cesses, which resulted in the issue of certificates and the sale of a portion of the estate under the Public Demands Recovery Act. The plaintiff sued for recovery of this property and her prayer has been allowed by the Subordinate Judge on the ground that nothing beyond the right, title and interest of Musammat Uma Kuer passed by the sale, which must be interpreted as meaning that the purchaser acquired nothing more than Musammat Uma Kuer's life interest in the property.

Mr. S. N. Roy on behalf of the appellants, who have purchased this property from the original auction-purchaser, argues that the sale, treated as a sale of the reversion, has been ratified by the plaintiff; and that in any event the sale for arrears of public cesses should be regarded as a sale of the property in respect of which the arrears were due, so that the whole interest, the life estate and the reversion should be held to have passed by it. There was litigation over this Court sale which began in the time of Musammat Uma Kuer and concluded after her death. Harinarain, the purchaser of the property with which we were concerned in appeal no. 174, found after he had acquired a one-anna share from the lady that she had mortgaged a two-annas share which included the property conveyed to him; and he was faced with the

1938.

MUSAMMAT
RAMJHARI
KUER
v.
SHENARAIN
SINGH.
JAMES, J.

necessity of losing his property or paying off the mortgage. He paid off the mortgage when the property was brought to sale by the mortgagee; and he then sued Paltan Singh and Musammat Ramjhari Kuer, the present plaintiff, for contribution. The one-anna share, part of which had already been transferred by the court sale, had been sold after the court sale to one Paltan Singh who according to Harinarain was a mere farzidar for Musammat Uma Kuer. Musammat Ramjhari Kuer by her written statement in that litigation attacked the whole transaction of purchase by Harinarain, but she subsequently prayed that she might be exempted from the suit on the ground that Paltan Singh was not a farzidar and that he was the person liable, if any was liable. It is suggested that this recognition by Musammat Ramjhari Kuer of the rights of Paltan Singh makes it impossible for her now to claim any title in herself to the one-anna share; but Mr. S. M. Mullick on behalf of the respondents points out that the transfer by Musammat Uma Kuer was valid during her life-time and that all that Musammat Ramjhari Kuer was seeking to was to shift the liability to pay off this mortgage debt from herself to the assignee of Musammat Uma Kuer's life estate. Musammat Ramjhari Kuer was not questioned on this matter when she gave evidence; and the petition is too vague and general in its terms to be treated as an admission of anything beyond the fact that Musammat Uma Kuer had purported to transfer the one-anna share to Paltan Singh. The purchaser Abhilak Thakur from whom the present appellants derived title was also a party to that litigation: but there is no admission anywhere by the plaintiff of any rights acquired by him. Paltan Singh had already sued the purchaser Abhilak Thakur for a declaration that the sale under the Public Demands Recovery Act was bad. In that litigation Musammat Uma Kuer was originally named as a defendant; but she was subsequently transferred to the category of plaintiffs. After her

death the present plaintiff was substituted; but there is nothing to indicate that she took any part in the litigation. The suit was dismissed by the trial court; and Paltan Singh appealed to the District Judge, and to the High Court, in each case making Musammat Ramjhari Kuer a respondent. The suit failed; but, as I have said, there is nothing to indicate that Musammat Ramjhari Kuer took any part in the litigation or that she made any admission of anybody's rights. Mr. S. M. Mullick on behalf of the respondent supports the finding of the learned Subordinate Judge that nothing but the life interest of the widow passed by the court sale. Mr. S. N. Roy suggests that the sale must be set aside before the purchaser can be ousted; but in this case, as the matter stands at present, the respondent is not attacking the sale itself, but is merely asking that proper effect may be given to it. Mr. S. M. Mullick now concedes that the sale was a perfectly valid sale and that title passed by it; but he argues that the only title which passed was title to the life interest of Musammat Uma Kuer. He does not, therefore, seek to set aside the sale but to enforce it in such a manner that it should have its legal effect and no more. Mr. S. M. Mullick cites first the decision in *Shekaat Hossein v. Sasi Kar*⁽¹⁾ in which it was held that cess due under the Bengal Cess Act of 1880 is only a personal debt and cannot be recovered from the property on which it is assessed, when such property belongs to a third person who may not be recorded as the proprietor in the Collector's land registers; that is to say, the estate of which the debtor is recorded as the proprietor is not itself burdened with the liability to cess, which is a personal liability, though of course if the person from whom cess is being recovered is the owner of the estate, the estate may be sold like any other property for the debt of its owner. Mr. S. M. Mullick then proceeds to demonstrate that a sale of a widow's estate in execution for a personal debt of the widow will convey

1933.

MUSAMMAT
RAMJHARI
KUER
v.
SHEONARAIN
SINGH.

JAMES, J.

(1) (1892) I. L. R. 19 Cal. 788.

1933.

MUSAMMAT
RAMJHARI
KUER
v.
SHEONARAIN
SINGH.

JAMES, J.

nothing more than the limited interest which the widow acquired on her husband's death. In *Jiban Krishna Roy v. Brojo Lal Sen*(¹), a tenure held by a limited owner was brought to sale for arrears of rent accruing after her father's death. The Judicial Committee held that the liability for rent should be regarded as the personal liability of the debtor and should not be regarded as attaching to the reversion. Again in *Baijun Doobey v. Brijbhookan Lal Awasti*(²) where a widow's estate had been sold in execution of a personal decree against her, it was held by the Judicial Committee that it was only the widow's estate that passed to the purchaser. Therefore it appears that if the liability to pay cess is a mere personal liability, not attaching to the estate of the proprietor who has to pay it, the sale of the widow's estate under the Public Demands Recovery Act conveyed only the widow's estate to the purchaser and not the reversion. In the Public Demands Recovery Act as amended in 1914 section 26 makes it clear that nothing passes by the sale beyond the right, title and interest of the judgment-debtor and this would appear to be a correct view of the law as it stood before the amendment of the Act in 1914, as has been held by the learned Subordinate Judge. It is suggested that when Musammat Uma Kuer purported to transfer the one-anna share to Paltan Singh after the court sale, she could not, on the hypothesis that her life interest had already been sold, have intended to convey to Paltan Singh anything but the reversion and Musammat Ramjhari Kuer has no locus standi to contest the court sale. But we do not know what was actually conveyed to Paltan; and indeed it would appear to be more likely that what was conveyed was the right to contest the validity of the sale, and that Musammat Uma Kuer had no idea of distinguishing between her life interest and the reversion. In any view of the matter, since Paltan Singh's family are

(1) (1903) I. L. R. 30 Cal. 550, P. C.

(2) (1875) I. L. R. 1 Cal. 133; 2 I. A. 275.

parties to the present suit and they make no claim, it cannot be said that the plaintiff is disqualified from claiming to recover this property.

I would affirm this part of the decision of the Subordinate Judge and dismiss the appeal with costs. For the purpose of assessment of costs in this Court and in the court below the hearing fee of Rs. 100 will be taken as the hearing fee.

The appeals are thus dismissed except that the decree of the Subordinate Judge must be amended so far as it describes the amount of costs to which each party is entitled and which each party is liable to pay.

AGARWALA, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Courtney Terrell, C.J. and Kulwant Sahay, J.

MAHADEO PRASAD SINGH

v.

JAGARNATH PRASAD.*

Estates Partition Act, 1897 (Ben. Act V of 1897), sections 77 and 99—estate held in common tenancy—bakasht lands held in severalty in pursuance of private partition—mukarrari of bakasht land in exclusive possession by one of the co-sharers without the concurrence of others—collectorate partition—mukarrari land allotted to other co-sharers—such co-sharers, whether entitled to take the land free of mukarrari—section 99, whether applicable—bakasht lands held by several proprietors, whether deemed to be land held in severalty—section 77—Patna High Court, decisions of, whether ought to be followed by subordinate courts in preference to decisions of other High Courts.

* Appeal from Appellate Decree no. 279 of 1930, from a decision of F. F. Madan, Esq., I.C.S., District Judge of Muzaffarpur, dated the 10th August, 1929, confirming a decision of Babu Priya Lal Mukherji, Munsif of Muzaffarpur, dated the 20th April, 1929.

1933.

MUSAMMAT
RAMJHARI
KUEER

v.

SHEONARAIN
SINGH.

JAMES, J.

1933.

Dec. 21.