APPELLATE CIVIL.

Before Tek Chand and Hilton JJ.

MAHNA SINGH AND ANOTHER (PLAINTIFFS) Appellants

versus

THAMAN SINGH AND OTHERS (DEFENDANTS) Respondents.

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July 22.

Civil Appeal No. 3099 of 19

Custom—Alienation—by widow—Ancestral or self-acquired property—purchase by a widow, in conjunction with her husband's collaterals, of land which had once belonged to the common ancestor—gift by widow of that property—status of collaterals to challenge the alienation.

A, the common ancestor of the parties, mortgaged certain land by conditional sale to B. The latter brought a suit for foreclosure and the suit ended in a compromise under which a decree for possession as owner was passed in his favour in respect of a part of the mortgaged land. B subsequently resold the decreed land to the descendants of A and the widow of a predeceased son of A in equal shares. The widow admittedly paid her share of the purchase money by raising it on unsecured loans from third parties. The creditors, however, subsequently obtained mortgages from her partly of portions of the purchased land and partly of land which she had inherited from her husband. The question for decision was whether the property so acquired by the widow was her self-acquisition and could therefore be alienated by her.

Held, that the resale by B having been found to be a genuine transaction, the land could no longer be held to be ancestral *qua* the collaterals of her husband, and they had no *locus standi* to control her dealings with it.

Sri Ram v. Ramji Das (1), and *Nabia* v. *Mst. Fatto* (2), followed.

Sri Ram Jankiji Birajman Mandir v. *Jagdamba Prasad* (3), and *Tadiboyina Peda Punnayya* v. *Debbakutti Kattamma* (4), referred to.

(1) 59 P. R. 1909.
(2) 2 P. R. 1910.
(3) (1921) I. L. R. 43 All. 374.
(4) (1915) 29 I. C. 184.

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Sardar v. *Pir Muhammad* (1), and *Mokha* v. *Dhan Singh* (2), distinguished.

Second appeal from the decree of Lala *Chuni Lal, Additional District Judge, Ferozepore, dated the 31st August 1925, modifying that of* Lala *Sawan Mal, Junior Subordinate Judge, Ferozepore, dated the 26th May 1924, by declaring that the gift in question made by defendant No. 2 in favour of defendant No. 1 shall not affect plaintiff's reversionary rights in respect of one third of 107* kanals *17* marlas

BADRI DAS, for Appellants.

JAGAN NATH BHANDARI and KAHAN SINGH, for Respondents.

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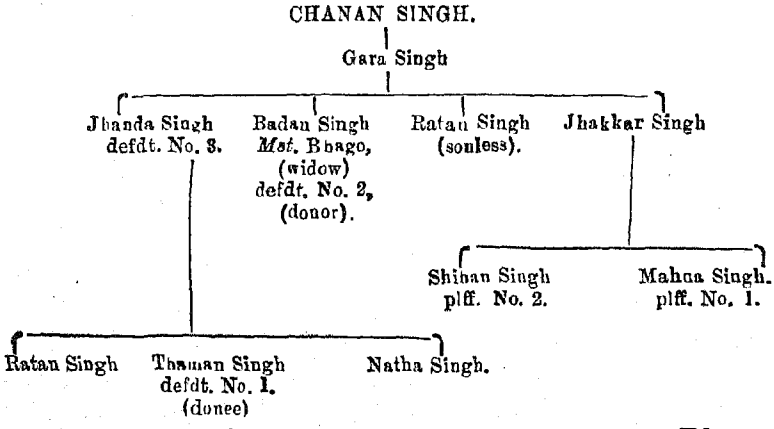
TEK CHAND J.—In order to understand the facts of this case, it is necessary to refer to the following pedigree table :—



On the 12th of March 1923 *Mussammat* Bhago, widow of Badan Singh, executed a deed of gift in favour of Thaman Singh, defendant No. 1, in respect of her one-third share in 1,236 *kanals* and 15 *marlas* of land which she held jointly with Jhanda Singh

(1) 3 P. L. R. 1901. (2) (1921) 63 I. C. 719.

and the sons of Jhakkar Singh. Shortly afterwards the plaintiffs who are the sons of Jhakkar Singh, instituted a suit for declaration that the gift was ineffectual against their reversionary rights, as the land comprised in the gift was ancestral *qua* them and the deceased husband of *Mussammat* Bhago. The Sub-Judge found that out of the land gifted 76 *kanals* only was proved to be ancestral. He accordingly decreed the suit *qua* plaintiffs' one-half share in 76 *kanals* and dismissed it with regard to the rest. On appeal by the defendants the learned District Judge has found that one-third of 107 *kanals* and 17 *marlas* was ancestral and has modified the decree of the trial court by declaring that the gift shall not affect the reversionary rights of the plaintiffs in respect of that area. The plaintiffs have preferred a second appeal to this Court and contend that the whole of the land comprised in the gift was ancestral and that they should have been given a decree in respect of it.

In order to appreciate the questions of law involved in the case it is necessary to give the history of the land in question. It appears that originally the whole of the gifted land formed part of the estate of Gara Singh, the common ancestor of the parties. In 1882 Gara Singh mortgaged by way of conditional sale 1,601 *kanals* and 8½ *marlas* with certain *Aroras*. In 1901 the *Arora* mortgagees sued to foreclose the mortgage and impleaded the four sons of Gara Singh as defendants. This suit ended in a compromise on 13th of March 1901, when a decree for possession of 1,120 *kanals* was passed in favour of the *Aroras* as owners. The decree-holders were duly entered in the revenue records as proprietors of the land decreed, but their efforts to take possession of the whole of the

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land appear to have been resisted for a time by the sons of Gara Singh. Some time between 1901 and 1907 Badan Singh died childless and his estate was inherited by his widow, *Mussammat* Bhago. On the 11th of December 1907 a sale-deed was executed by the *Aroras* reselling the decreed land for Rs. 15,400 to Jhanda Singh, *Mussammat* Bhago and the sons of Jhakkar Singh, in equal shares. It was recited in the sale-deed that out of the consideration Rs. 2,000 had been paid in cash to the vendors on the 11th of November 1907, when the agreement to sell the land had been entered into, and that the remaining Rs. 13,400 was paid in cash before the Sub-Registrar at the time of registration. It was urged on behalf of the plaintiffs-appellants that this transaction was not in reality a resale of the land by the *Aroras* to the descendants of Gara Singh but was merely a recognition by the former of the proprietary title of the original mortgagors, which they had never in fact lost. It was also alleged that the amount stated to have been paid at registration was returned shortly afterwards. On these allegations it was contended that the land being originally ancestral of the descendants of Gara Singh continued to retain that character till the date of the gift in question. This contention was rejected by both the courts below, who found that under the decree of 1901 the *Aroras* had become full owners of the land and that they retained ownership till the resale of 1907, which was a genuine transaction. Mr. Badri Das does not impugn the correctness of these findings which are binding on us in second appeal and on which the land could no longer be held to be ancestral, *Sri Ram* v. *Ramji Das* (1).

(1) 59 P. R. 1909.

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The learned counsel, however, assails the right of *Musammat* Bhago to make the gift in question on another ground. He accepts as correct the finding of the learned District Judge that *Mussammat* Bhago had raised her share of the consideration for the purchase of 1907 partly by mortgaging to third parties the purchased land and partly by mortgaging portions of the land which she had inherited from her husband Badan Singh. He urges that in this finding and having regard to the circumstance that her co-vendees allowed her to join in the purchase simply because she was the widow of Badan Singh, the property purchased cannot in law be treated as her self-acquisition but must be held to have become a part of her husband's estate. This question was not raised in this form in the plaint or in the trial court, but as it appears to have been argued before the learned District Judge and no fresh evidence is necessary to decide it, we have allowed both counsel to address us on it.

It is common ground that *Mussammat* Bhago contributed Rs. 5,133-5-4 towards the purchase price as her one-third share of Rs. 15,400. This sum she appears to have raised in the first instance on unsecured loans from third parties. But on the day on which the sale deed was registered one of the creditors obtained a mortgage from *Mussammat* Bhago partly of a portion of the land which she had inherited from her husband and partly of certain fields out of the land purchased. The other creditors also got their loans secured in a similar manner within a few months of the purchase. An analysis of the evidence discloses that in this way she raised Rs. 6,064 in all, of which Rs. 2,410 approximately

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was secured against her husband's estate and the rest against the purchased land. It has not been shown in what proportion the Rs. 5,133 paid at the registration was distributed over the amount raised from these two sources, nor is it clear how she spent the additional Rs. 931.

On the above facts I fail to see how the mere circumstance that a major portion of the consideration was raised on the security of the purchased property can have the effect of curtailing the power of disposition of the widow-vendee over the whole or a proportionate part of that property. It is conceded that this money had been raised without any assistance from the husband's estate, but it is argued that though the consideration was hers she had been allowed by her husband's collaterals to join in the purchase by reasons of her being his widow, and, therefore, the property must be deemed to be subject to the same incidents as that inherited from her husband. In my opinion this argument is devoid of force and I have no hesitation in rejecting it. I do not know of any such provision of Customary or Hindu Law, and none was cited before us in support of this contention. On the other hand, we find rulings to the effect that where a widow in possession of her husband's estate acquires adjoining property through the exercise of a right of pre-emption, which she had by reason of her ownership of that estate, the property so acquired is presumed to be her self-acquisition, if no part of the pre-emption money was paid out of the husband's estate, *Sri Ram Jankiji Birajman Mandir* v. *Jagdamba Prasad* (1). Similarly it was held by the Madras High Court in *Tadiboyina Peda Pun-*

(1) (1921) I. L. R. 43 All. 374.

nayya v. *Debbakutti Kattamma* (1), that where a woman purchased certain immoveable property and paid the purchase money by mortgaging the same and subsequently redeeming it, the property so acquired was her *stridhana*. To this extent the case for the appellants is clearly untenable and must fail.

As regards the remainder of the consideration there is in the first place no clear proof that the whole of the amount raised by *Mussammat* Bhago on mortgages of her husband's estate was in fact applied towards payment of the purchase price of the land in question. Secondly assuming that it was so, there seems to be no reason why the reversioners should be entitled to control her dealings of the acquired property. This contention was rejected in *Nabia* v. *Mst. Fatto* (2), in the case of a male proprietor governed by Customary law, and I cannot see why a different result should follow in the case of a widow. Mr. Badri Das has, however, challenged the soundness of this ruling and has urged that the rule laid down in it was not followed in *Sardar* v. *Pir Muhammad* (3), and *Mokha* v. *Dhan Singh* (4). The facts of both these cases were, however, peculiar and they cannot be taken as having laid down any principles of general application. In *Sardar* v. *Pir Muhammad* (3), ancestral property belonging to a male proprietor had been compulsorily acquired under the Land Acquisition Act and with the amount of compensation awarded to him he had purchased forthwith other property and it was held that the property so acquired must be considered to be ancestral *qua* his collaterals. It is obvious that considerations which

(1) (1915) 29 I. C. 184.
(2) 2 P. R. 1910.
(3) 3 P. L. R. 1901.
(4) (1921) 63 I. C. 719.

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prevail in cases of compulsory acquisitions by Government cannot apply to cases of voluntary alienations by a limited owner.

In *Mokha* v. *Dhan Singh* (1) it was found as a fact that the act of one of the co-sharers in selling his share in a joint *khata* and simultaneously investing the sale proceeds in purchasing the share of another co-sharer in the same *khata* was such that the whole transaction partook of the nature of an exchange and consequently the property acquired by him in this manner was held to be impressed with the same character as that which he had alienated. There can be no doubt that on this finding no other decision was possible. The learned Judges, who decided that case, however, took care to point out that they should not be understood as laying down that "wherever fresh land was bought with the proceeds of the sale of ancestral land that new land became ancestral." It is also noteworthy that in that case no reference was made to the earlier ruling in *Nabia* v. *Mst. Fatto* (2).

As stated already, I cannot see why the fact that the alienor is a widow and not a male proprietor should make any difference as to the applicability of the principle underlying *Nabia* v. *Mst. Fatto* (2). In the case of a male proprietor who holds ancestral land, as in the case of a widow in possession of her husband's estate, the powers of the owner for the time being to alienate immoveable property are limited and in either case it is equally open to the next reversioner to have an unnecessary alienation set aside, though it is true that the nature of justify-

(1) (1921) 63 I. C. 719. (2) 2 P. R. 1910.

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ing necessity in the two cases is different. In both cases, the successful reversioner will be entitled to take possession of the alienated property after the death of the alienor, but in neither case does he (in the absence of special circumstances) possess the right to follow the proceeds of the alienation in the hands of the alienor or to seek to enforce his reversionary rights against any investment which he or she might have made therewith. In my opinion, the remedy of the plaintiffs was to impugn the mortgages of her husband's estate, effected by *Mussammat* Bhago in 1907-08, and not to restrain her dealings with the property acquired by her.

Lastly it was urged that in making this purchase from the *Aroras*, *Mussammat* Bhago had the intention of making the acquired property a part of her husband's estate, but we do not find any allegation, much less proof, of any such intention on the record.

In my judgment the learned District Judge came to a correct conclusion in holding that the appellants had no right to contest the gift in so far as it related to the property which had been acquired by *Mussammat* Bhago by virtue of the sale of 11th of December 1907.

The appeal fails and I would dismiss it with costs.

HILTON J.—I agree.

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A. N. C.

Appeal dismissed.