possession, however adverse against Rangubai, cannot be regarded as adverse against the plaintiff. The suit therefore is in time.

The result is that the appeal is allowed, the decree of the lower Court is set aside and the suit must be remanded to the trial Court to be heard out and decided according to law.

The appellant must have his costs of this appeal.

This judgment disposes also of Second Appeal No. 988 of 1916.

KEMP, J. :—I agree that Article 141 does not apply to the facts of this case, and assuming that the possession of the defendants was adverse to Kashibai, still I consider that no adverse possession runs against the plaintiff until the death of Rangubai on the 17th January 1903. The suit is therefore within time.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Marten.

DODBASAPPA RAMLINGAPPA NARGUND AND OTHERS (ORIGINAL DEFENDANTS NOS. 1-4), APPELLANTS *v.* BASAWANEPPA SHIVLINGAPA SINTRE (ORIGINAL PLAINTIFF), RESPONDENT*.

1918.

Febzuary 28

Hindu wido —Alienation by widow without necessity—Acceleration of widow's interest in favour of one of the next reversioners—Consent of all reversioners necessary.

A Hindu widow who had two daughters made a gift of the whole of her husband's property to one of them without the consent of the other. Afterwards she adopted the plaintiff. The plaintiff having sued to recover the property :—

Held, that the plaintiff was entitled to recover the property, inasmuch as the surrender of the entire estate of the widow in favour of one of the two persons constituting the next reversion without the consent of the other was not valid.

*Second Appeal No. 102 of 1916.

1918.

DODBASAPPA RAMLINGAPPA v. BASAWANEPPA.

SECOND appeal from the decision of L. C. Crump, District Judge of Belgaum, confirming the decree passed by G. V. Kalkot, Subordinate Judge at Bail Hongal.

Suit to recover possession of property.

One Shivlingappa, who owned the property in dispute, had a wife named Chinava and two daughters named Nilava and Gangava. After his death, his widow Chinava made a gift of the whole of her husband's property to Nilava, without the consent of Gangava. Afterwards, Chinava adopted plaintiff as son to her husband.

The plaintiff sued to recover possession of the property free from the gift. Nilava having died was represented by her sons (defendants Nos. 2-4) and her husband (defendant No. 1).

The lower Courts decreed the claim.

The defendants appealed to the High Court.

G. S. Mulgaonkar (for *T. R. Desai*), for the appellants:—The widow Chinava has in this case transferred the whole of her interest in her husband's property to one of her daughters. The transaction amounts to acceleration of her estate. She is competent to do so: *Behari Lal* v. *Madho Lal Ahir Gyawal*[1]. The question as to the quantum of the reversioners' consent is *res integra*. An alienation no doubt requires the consent of the whole body of reversioners, as it evidences *bona fides* of the transaction. Assuming that acceleration also requires such consent, here the other sister Gangava herself admits that she gave her consent. The following cases were referred to : *Bajarangi Singh* v. *Manokarnika Bakhsh Singh*[2] ; *Pilu* v. *Babaji*[3] ; *Debi Prosad Chowdhury* v. *Golap Bhagat*[4] ; *Moti Raiji* v. *Laldas Jebhai*[5].

[1] (1891) L. R. 19 I. A. 30.
[2] (1907) L. R. 35 I. A. 1.
[3] (1909) 34 Bom. 165.
[4] (1913) 40 Cal. 721.
[5] (1916) 41 Bom. 93.

A. G. Desai, for the respondent :—It has been found as a fact that Gangava did not consent to the alienation. The alienation cannot therefore hold good until it is shown that all the reversioners have given their consent.

SHAH, J. :—The facts material to the point arising in this second appeal are briefly these. One Shivlingappa died leaving a widow, Chinava, and two daughters Nilava and Gangava surviving him. The widow made a gift of the property inherited by her from her husband to Nilava on the 8th December 1910. She subsequently adopted the present plaintiff on the 14th December 1911.

The plaintiff sued to recover the property given to Nilava by way of gift from her heirs, who were the defendants. The defendants contended that Nilava had acquired an absolute and indefeasible title to the property before the adoption.

The trial Court held that the gift was not binding on the plaintiff and decreed the plaintiff's claim. The lower appellate Court confirmed the decree of the trial Court.

The point raised in the appeal before us relates to the validity of the gift.

It is not disputed that the alienation by way of gift cannot be supported on the ground of legal necessity.

It is urged, however, on behalf of the appellants that the gift being of the entire estate of the widow in favour of one of the two next reversioners, it accelerates the estate of the next heir and is valid on that ground. It is also contended that the gift was made with the consent of the other next reversioner Gangava.

On behalf of the respondent it is urged that the gift does not relate to the entire estate of the widow, that Gangava never consented to the gift, that the consent

1918.

DODBASAPPA RAMLINGAPPA v. BASWANEPPA.

of a female reversioner cannot be treated as a valid consent, and that the gift in favour of one of the two reversioners cannot be supported on the ground of the acceleration of the reversion.

It is clear that Mr. Desai's contention as to the entire estate not being the subject-matter of the gift must be disallowed. In the lower Courts the case has been dealt with on the footing that the gift related to the entire estate of the widow. The provision in the deed of gift as to the maintenance of the widow is not obligatory and it does not detract from the gift. It is clear that for the purpose of this case the deed must be taken to relate to the whole of the widow's estate.

As regards the consent of Gangava, it is clear that it was not pleaded in the lower Courts. The plea raised in the lower Courts was that Nilava alone was the next reversioner. That plea has been disallowed, and it is common ground now that the next reversioners at the date of the gift were the two daughters. The alleged consent is supported by the statement of Gangava ; but the trial Court disbelieved her altogether, and it was not suggested in the lower appellate Court that the view of the trial Court was wrong. The contention as to Gangava's consent must be disallowed, and Mr. Mulgaonkar's argument as to the validity of the gift must be considered on the footing that Gangava did not consent to the gift.

It seems to me that the surrender of the entire estate of the widow in favour of one of the two persons constituting the next reversion without the consent of the other cannot be accepted as valid.

In *Behari Lal* v. *Madho Lal Ahir Gyawal*[1] their Lordships of the Privy Council observe as follows :—"It may be accepted that, according to Hindu law, the widow

[1] (1891) L. R. 19 I. A. 30.

can accelerate the estate of the heir by conveying absolutely and destroying her life-estate. It was essentially necessary to withdraw her own life-estate so that the whole estate should get vested at once in the grantee. The necessity of the removal of the obstacle of the life-estate is a practical check on the frequency of such conveyances." As I understand these observations the withdrawal of the life-estate must be effective in order to accelerate the reversion. In my opinion there can be no effective withdrawal of the life-estate in favour of one of the heirs without the consent of the other. It would be open to the reversioner, who is not a consenting party, to sue to have the alienation of the entire estate without legal necessity declared as inoperative beyond the widow's life-time. It is clear that the right of the non-consenting reversioner cannot be prejudiced by such an alienation. In this case though the widow purported to convey her whole estate to Nilava, there was no effective withdrawal of the whole of her life-estate. Assuming that the gift would be valid as to a moiety, so far as Nilava's reversionary interest is concerned, the conveyance would have no effect for the purposes of acceleration, as the whole estate would not vest in Nilava. In the absence of the consent of Gangava it is clear that the gift in favour of Nilava cannot be supported as accelerating the reversion. The life-estate of the widow is not destroyed by such a conveyance.

In this view of the case it is not necessary to consider, and I wish not to be understood as expressing any opinion as to (*a*) whether a gift of the entire estate of the widow in favour of one of the two next reversioners with the consent of the other would be valid as accelerating the reversion; (*b*) whether the consent of a female reversioner can be treated as a valid consent like the consent of any male reversioner; and (*c*) whether

1918.

DODBASAPPA RAMLINGAPPA v. BASAWANEPPA.

any absolute conveyance in favour of the next reversioners involving a withdrawal by the widow of the whole of her life-estate is binding upon a subsequently adopted son.

I would, therefore, dismiss the appeal and confirm the decree of the lower appellate Court with costs.

MARTEN, J.:—The question in this second appeal is whether a Hindu widow entitled as such to her deceased husband's immoveable property can validly alienate the same or any part thereof to one of two reversioners voluntarily and without the consent of the other reversioner, so as thereby to deprive a subsequently adopted son of the right he would otherwise have to one moiety of the property in question. I say one moiety advisedly because by the footnote to the notice of appeal the appellants now limit their claim to one moiety of the property and do not now dispute the right of the adopted son to the other moiety.

The alienation relied on by the appellants is the deed, Exhibit 18. It was, I think, a voluntary alienation without consideration, and no question of legal necessity arises. It was in favour of only one of the two reversioners, viz., Nilava, through whom the appellants claim: and it is clear on the findings of fact in the Courts below that the consent of the other reversioner Gangava was not obtained to it, nor was Gangava in such a superior financial position as to admit of its being argued that Nilava was the sole reversioner.

What then was the legal effect of the deed, Exhibit 18? I assume in favour of the appellants, but without deciding the point, that the adopted son could in law be defeated by a prior surrender made by the widow to both the then reversioners and with their joint consent. On what basis then can a surrender by a widow be validated where there is no legal necessity,

but the reversioners' consent. According to the judgment of Sir Lawrence Jenkins in *Vinayak* v. *Govind*[1], which was quoted by the Judicial Committee in *Bajrangi Singh's case*[2] the basis on which the validity of such a surrender rests is a matter of controversy, for the Calcutta Courts appear to favour the view of acceleration, but the Bombay Courts prefer the view that consent evidences the propriety of the transaction, if not its actual necessity. According to *Pilu* v. *Babaji*[3] no voluntary transfer by way of gift can be valid, for there is no room for the theory of legal necessity. I need not however consider whether this latter decision can be reconciled with the decision of the Privy Council in *Bajrangi Singh's case*[2] but will assume in favour of the appellants that it cannot be.

If then the validity of the alleged surrender in the present case depends on the consent of the reversioners, the appellants are out of Court, for Gangava did not consent to the alienation in favour of her sister Nilava; and it is not, and indeed could not be, suggested that there were any special circumstances here which would make it impossible strictly to enforce the rule that ordinarily the consent of the whole body of persons constituting the next reversion should be obtained: see *Bajrangi Singh's case*[2]. It is, therefore, unnecessary to consider and I express no opinion on the question which was discussed in *Pilu* v. *Babaji*[3] as to whether the consent of the female reversioners alone could suffice.

If on the other hand the appellants base their case on acceleration as in fact they did before us, then they have other difficulties to contend with. In the first place as Sir Lawrence Jenkins says in *Vinayak* v. *Govind*[4]: "It is impossible not to feel some difficulty

(1) (1900) 25 Bom. 129.
(2) (1907) L. R. 35 I. A. 1 at pp. 14, 15.
(3) (1909) 34 Bom. 165 at p. 169.
(4) (1900) 25 Bom. 129 at p. 138.

1918.

DODBASAPPA RAMLINGAPPA v. BASAWANEPPA.

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(4) (1900) 25 Bom. 129 at p. 133.

1918.

DODBASAPPA RAMLINGAPPA v. BASAWANEPPA.

as to this doctrine : (viz. acceleration) for it would seem to rest on the application to a Hindu widow's estate of the English doctrine of the merger of a particular estate, with a result that the devolution of a property according to law is influenced by the acts of those who are simply in the possible line of succession." Personally I share the difficulty in seeing how a widow can by a voluntary deed vest the estate of a contingent reversioner to the prejudice of an after-born reversioner where the contingency in question depends on the reversioner surviving the widow. I will however again assume in favour of the appellants but without deciding the point that the doctrine of acceleration is applicable in Bombay.

Turning then once more to the deed, Exhibit 18, it is clear that, on the face of it, it purported to convey the whole property to Nilava. But I fail to see how such an alienation could accelerate the interests of the other reversioner Gangava, for the deed does not purport to be, and was not intended to be, a surrender in favour of Gangava of any portion whatever of the property. Appellants' pleader was unable to advance any real argument in favour of that proposition, and in my judgment it is unsound.

We accordingly come to the last point, viz., that the deed operated as an acceleration of Nilava's contingent moiety. This was the only point seriously urged before us in the brief argument for the appellants. The answer to it is, I think, simple, viz., that the widow would thus retain her interest in the other moiety. Accordingly the alleged surrender would not satisfy the restriction laid down by the Judicial Committee in *Behari Lal* v. *Madho Lal Ahir Gyawal*[1] and requoted in *Bajrangi Singh's case*[2], viz., that the surrender

(1) (1891) L. R. 19 I. A. 30. (2) (1907) L. R. 35 I. A. 1.

should be absolute and complete and that the whole limited estate should be withdrawn, a restriction that would guard against the injurious result which would follow if the rule were not so qualified. That restriction negatives, I think, an acceleration of a fraction of the estate, and I may refer to *Radha Shyam Sircar* v. *Joy Ram Senapati*[1] ; *Pilu* v. *Babaji*[2] ; *Debi Prosad Chowdhury* v. *Golap Bhagat*[3] ; *Moti Raiji* v *Laldas Jebhai*[4] in support of the view I take. I, however, express no opinion as to whether *Moti Raiji* v. *Laldas Jebhai*[4] can be entirely reconciled with the decision of the Privy Council in *Bajrangi Singh's case*[5]. Apart from authority this restriction appears only reasonable for at the date of the deed, Exhibit 18, it would seem unfair to deprive Gangava without her consent or even her knowledge of her contingent interest in Nilava's moiety. Further, if a partition is to be effected out of Court, the consent of all should *prima facie* be obtained. In the present case I gather that Nilava predeceased her mother. Apart then from the adoption Gangava might in certain contingencies have succeeded to the whole property.

In the result, therefore, I would hold that the deed, Exhibit 18, was inoperative against the subsequently adopted son. Consequently in my judgment the appeal fails and ought to be dismissed with costs. I should perhaps add that as Gangava is not a party to this action, she will not technically be bound by its result.

Appeal dismissed.

R. R.

(1) (1890) 17 Cal. 896 at p. 901.
(2) (1909) 34 Bom. 165 at p. 170.
(3) (1913) 40 Cal. 721 at pp. 752, 753.
(4) (1916) 41 Bom. 93 at pp. 103, 106, 117.
(5) (1907) L. R. 35 I. A. 1.