

degree of fairness, and efficiency, and which gets rid of a good deal of formality, and delay, I have no objection to this inquiry being described as summary. But if it fulfils the conditions I have mentioned, instead of being inferior, it would actually be superior to the ordinary method of a suit. I do not suppose, I do not think there is any reason for supposing, that an inquiry made under Rule 4 of Order XL would in any material degree be either less fair or less efficient than a trial such as takes place in an ordinary suit. Once having arrived at the conclusion that a suit will not lie, that suffices for the purpose of this case, in which it is unnecessary to do more than express an opinion. For if a suit is hereafter presented, and I doubt whether it will be, it will of course be at once either rejected or dismissed by the Court to which it is presented. It is, therefore, quite superfluous for us to deal with the matter under section 115 of the Code of Civil Procedure: even if to do so were not open to the objection that it would be setting at naught the pronouncements which from time to time we have ourselves made, as to the scope of section 115. I agree, therefore, to the order proposed by my Lord the Chief Justice.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

SITARAM RAVAJI BHOSLE AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v. KHANDU MAIRALA SHINDE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Hindu Law—Alienation—Gift by a Hindu widow—Alienation voidable, not void—Mortgagee cannot dispute the validity of alienation—Reversioners alone can dispute the validity of grant.

* Second Appeal No. 567 of 1918.

1920.

SHRINIWAS
v.
M. C. WAZ.

1920.

March 10.

1920.

SITARAM
v.
KHANDU.

The plaintiffs who were the donees from a Hindu widow sued to redeem the land in the possession of the defendants as mortgagees. The defendants contended that the alienation in favour of the plaintiffs was void after the widow's death.

Held, that the alienation was only voidable, not void and the mortgagee had no *locus standi* to resist the claim of the person who on the face of it had a perfectly good title to equity of redemption granted by a Hindu widow, and the only person who could dispute the validity of such a grant was the reversioner.

Raja Modhu Sudan Singh v. Rooke⁽¹⁾, referred to.

Jagannath Vithal v. Apaji Vishnu⁽²⁾, considered.

SECOND appeal against the decision of J. H. Betigiri, First Class Subordinate Judge, A. P., at Satara confirming the decree passed by V. R. Kulkarni, Second Class Subordinate Judge at Vai.

Suit for redemption.

The land in suit originally belonged to one Laxman ; after Laxman's death his son Hari became owner of the same. Hari died without any issue leaving his mother Gopai as his sole heir.

In 1858, Gopai mortgaged the land to one Krishnai (predecessor-in-title of the defendants Nos. 9 to 11) for Rs. 40. In 1863, Gopai conveyed the land to Laxman Vithuji and four others by way of gift.

On Gopai's death the plaintiff as the heirs of the donees sued to redeem the mortgage of 1858.

The defendant contended, *inter alia*, that the plaintiff land belonged to Krishnai, that she mortgaged the same with possession to them ; that they had no knowledge of the deed of gift and the same was void ; that the suit was barred under Article 134 of the Limitation Act.

⁽¹⁾ (1897) L. R. 24 I. A. 164. ⁽²⁾ (1868) 5 Bom. H. C. R. (A. C. J.) 217.

The Subordinate Judge found that deed of gift by Gopai was proved but relying on *Jagannath Vithal v. Apaji Vishnu*⁽¹⁾, and *The Collector of Masulipatam v. Cavalry Vencata Narrainapah*⁽²⁾ held that the deed did not convey to the donee the widow's equity of redemption. He, therefore, dismissed the plaintiff's suit.

1920.

SITARAM
v.
KHANDU.

On appeal, the First Class Subordinate Judge, A. P., confirmed the decree.

The plaintiffs appealed to the High Court.

B. J. Desai with *K. N. Koyaji*, for the appellants :— The transaction was not a gift, but a conveyance for consideration which was the maintenance of the widow. It has been proved by our books of accounts that the widow was actually maintained according to the condition of the document. Secondly, whether it was a gift or a conveyance for consideration, it could only be impeached by reversioners. The mortgagees cannot dispute the alienation. The lower Courts have relied upon *Jagannath Vithal v. Apaji Vishnu*⁽¹⁾ and *The Collector of Masulipatam v. Cavalry Vencata Narrainapah*⁽²⁾. But in *The Collector of Masulipatam v. Cavalry Vencata Narrainapah*⁽²⁾ the Crown was contesting the validity of the alienation as a reversioner in the absence of heirs. In *Rajah Modhu Sudan Singh v. Rooke*⁽³⁾ the Privy council has laid down that an alienation by a Hindu widow is not void, but only voidable, and does not absolutely come to an end at her death, if the reversioners do not dispute it. *Jagannath Vithal v. Apaji Vishnu*⁽¹⁾ is no longer good law.

D. A. Tuljapurkar, for the respondents :—The lower Courts have held the widow's alienation to have been a gift and that is a question of fact. A gift by a Hindu

⁽¹⁾ (1868) 5 Bom. H. C. R. (A. C. J.) 217. ⁽²⁾ (1861) 8 Moo. I. A. 529.

⁽³⁾ (1897) L. R. 24 I. A. 164.

1920.

SITARAM
v.
KHANDU.

widow of the equity of redemption is altogether invalid : *Jagannath Vithal v. Apaji Vishnu*⁽¹⁾. The mortgagee stands in the shoes of the reversioner and can dispute the alienation.

MACLEOD, C. J. :—The plaintiffs sued to redeem the plaintiff land. They claimed as the heirs of the donees of one Gopai. She purported to make a deed of gift, Exhibit 40, in favour of one Laxman and others of the equity of redemption in 1863. The defendant claims under a mortgage from one Krishnai. The plaintiff's suit has been dismissed on the ground that Gopai could not convey to any one more than the right to redeem the mortgage during her lifetime. But it appears to me that the decision of the Privy Council in the case of *Raja Modhu Sudan Singh v. Rooke*⁽²⁾ concludes the question regarding the nature of the widow's alienation. It is perfectly valid until it is set aside. In other words it is only voidable, not void. The question is who are the persons who are entitled to dispute the validity of such a grant. Clearly the reversioners. In this case the defendant, mortgagee, resists the attempt of Gopai's representatives to redeem the mortgage, on the ground that the gift of the equity of redemption was void. In my opinion the mortgagee in a case like this has no *locus standi* to resist the claim of the person who on the face of it has a perfectly good title to the equity of redemption granted by a Hindu widow, and the only person who can dispute the validity of such a grant is the reversioner. It does not matter to the mortgagee who pays him off. Of course in this case it has been found in the trial Court that the mortgagee has been paid off long before the date of this suit on taking accounts under the Dekkhan Agriculturists' Relief Act, and therefore, naturally the defendants are anxious to

⁽¹⁾ (1868) 5 Bom. H. C. R. (A. C. J.) 217. ⁽²⁾ (1897) L. R. 24 I. A. 164.

resist the plaintiff's claim. In my opinion they are not the persons who could do so, and therefore, the appeal succeeds, and the plaintiffs are entitled to the relief they sought. As it has been found that the mortgage has long been paid off, the plaintiffs would then be entitled to recover possession of the plaint land. The appellants to have the costs in this Court and the Court below. In the trial Court they must pay the mortgagee's costs.

HEATON, J. :—I agree. The Subordinate Judge who heard the first appeal founded his decision on the case of *Jagannath Vithal v. Apaji Vishnu*⁽¹⁾. I am not quite sure what the Subordinate Judge supposed was the effect of the decision on which he relied. If he supposed the effect of that decision to be that a gift by a widow is absolutely inoperative, that it is a thing forbidden by law, and therefore, a thing which can have no legal effect, then I think either he misunderstood the judgment in *Jagannath Vithal's case*⁽²⁾; or else that judgment is no longer in accordance with what is well understood to be the law in this part of India. The law as now understood is that a widow who takes a life-interest in her husband's property has an interest which she can dispose of. She can bargain with it. She can sell it, mortgage it, or give it away. But it is only a life-interest, and she cannot do more than finally give or sell or convey her life-interest except in special circumstances. But a life-interest she can dispose of, and it follows from this fact supplemented by what was said by the Privy Council in the case of *Raja Modhu Sudan Singh v. Roolce*⁽³⁾, that not only does a widow convey her life-interest, but she conveys something that may become a permanent interest, unless it is claimed by somebody competent to claim it. The next reversioner, for example, on the widow's death

1920.

 SITARAM
 S.
 KHANDU.

⁽¹⁾ (1868) 5 Bom. H. C. R. (A. C. J.) 217. ⁽²⁾ (1897) L. R. 24 I. A. 164.

1920.

SITARAM
v.
KHANDU

can get an alienation declared to be no longer of any validity. But any one dealing with a widow, and taking her interest in the property, does acquire an interest in that property, and acquires an interest that does not automatically cease to exist merely because the widow dies. It may come to an end as the result of proceedings taken by the reversioner, or possibly in other ways but it does not automatically cease. Indeed it continues until it is put an end to in some regular and legal way.

In this case the plaintiffs acquired such an interest, or rather their predecessors acquired such an interest. It was in fact a right to redeem a mortgage. Now that right did not automatically cease to exist on the death of the widow, and it has never been put an end to in a legal and regular way, and therefore, it still exists, and therefore, I agree in the order proposed by my Lord the Chief Justice.

Decree reversed.

J. G. R.

CRIMINAL REFERENCE.

Before Mr. Justice Shah and Mr. Justice Hayward.

EMPEROR v. YELLAPPA RAMANGOWDA *.

1920.

March 16.

Indian Forest Act (VII of 1878), Section 75, clause (c), Rule 2 †—Growth of sandalwood trees on occupancy lands subsequent to survey settlement—

* Criminal Reference No. 62 of 1919.

† The rule runs as follows :—

RULE 2.—No person shall cut, lop, or in any way injure, appropriate or remove any tree, or any loppings thereof, which is the property of Government grown or growing on lands belonging to or in the occupation of private persons; or knowingly or wilfully permit or abet the cutting, lopping or injuring or appropriating or removing of the same by any other person, without having first obtained the permission of the Collector, or in the case of teak, blackwood or sandalwood trees, of the Conservator of Forests.