

APPELLATE CIVIL.

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

1923.

January 25.

SUDDAPPA BIN MAHALINGAPPA AND ANOTHER (ORIGINAL DEFENDANTS),
APPELLANTS v. PANDURANG VASUDEV CHATE (ORIGINAL PLAINTIFF),
RESPONDENT^a.

Hindu law—Widow—Mortgage—Improvement by mortgagee—Reversioner setting aside mortgage—Payment to mortgagee for improvements—Mortgagee's right to remove improvements.

Where a reversioner seeks to set aside a mortgage effected by a Hindu widow he must pay the mortgagee for the improvements effected by him on the mortgaged property. In any event, the mortgagee is entitled to take away the improvements.

Vrijbhukandas v. Dayaram^(a), distinguished.

SECOND appeal from the decision of F. W. Allison, District Judge of Bijapur, varying the decree passed by R. S. Savanur, Subordinate Judge at Bagalkot.

In 1887, one Laxmibai, a Hindu widow, mortgaged a shop to a predecessor of the defendants. After the mortgage, the defendants re-built the shop at a cost of Rs. 2,200. Laxmibai died in 1905.

The plaintiff sued in 1917 as a reversioner to recover possession of the shop.

The Court of first instance held that the mortgage by Laxmibai was not valid beyond her life-time. It directed the plaintiff to recover possession of the shop, but gave the defendants liberty to remove the building erected by them.

On appeal, the District Judge also was of opinion that the mortgage was not binding on the plaintiff; but held that the plaintiff was entitled to recover possession of the shop as it stood.

The defendants appealed to the High Court.

A. G. Desai, for the appellants.

G. N. Thakor, with *R. A. Jahagirdar*, for the respondent.

^a Second Appeal No. 37 of 1922.

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MACLEOD, C. J. :—The only question in this appeal is whether this case is exactly similar to the case of *Vrijbhukandas v. Dayaram*⁽¹⁾ so that the plaintiff reversioner could be held entitled to recover the property in the condition in which it was when the widow died. The trial Court directed that the plaintiff should recover possession of the land, on which the shop in suit stood, with liberty to defendants forthwith to commence to remove their building, the removal to be completed within one year from the date of the order.

This decision was reversed by the appellate Judge who directed the plaintiff to recover possession of the shop as it stood. The widow when she mortgaged the property without necessity agreed that the mortgagee should practically rebuild the shop, which, at the time of the mortgage, was in a ruinous condition. It seems to us difficult to see how under the principles of Hindu law or any principles of equity, the reversioner can seek to get possession of the property, with the shop standing on it, without making any compensation to the person who built the shop or to his successor. It seems to us that the facts in *Vrijbhukandas v. Dayaram*⁽¹⁾ are entirely different, and that the question which we have to decide here is whether on general principles the mortgagee should lose the benefits of the money he spent on the building with the consent of the widow, or whether the reversioners are entitled to the whole of the benefit. Clearly if there had been a sale by the widow, which would be voidable against the reversioner, the reversioner would be bound to pay the purchaser the amount by which the value of the property had been enhanced by improvements effected by him. That was decided in *Kidar Nath v. Mathu Mal*⁽²⁾. There the respondent, on the death of a Hindu

(1) (1907) 32 Bom. 32.

(2) (1913) 40 Cal. 555.

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widow, brought a suit as the next heir of her husband to set aside an alienation, made by the widow in favour of the appellant. The Chief Court allowed the alienee Rs. 1,400 which represented half the expenditure by him on the property. The appellant contended that he was entitled to what he had spent. The Privy Council decided that that was not the right principle on which to assess the amount payable to the alienees as compensation, as in such cases it should always be borne in mind that the amount of the expenditure made had occasionally very little to do with the real issue, which was, to what extent had enhancement of the subject matter been produced.

That is the issue and we cannot agree with the contention of Mr. Thakor that the judgment of the Privy Council does not uphold the principle that compensation to an alienee from a Hindu widow may be awarded in certain circumstances.

In the next place, we cannot see how the position of the mortgagee who improves the property with the consent of the widow can be distinguished, so as to prevent an equity in his favour from arising. The only question to our mind is to what extent has that equity been established.

If the successful reversioner is not prepared to compensate either wholly or in part the mortgagee for what he has spent on the property, then we think the mortgagee is entitled to remove what he has placed on the property at his own expense. We think, therefore, that the decree of the trial Court was the proper one to make in this case, and that decree must be restored with costs in this Court and the Court below.

Appeal allowed.

R. R.