

no issue on that point in the trial Court. The inconvenience to a party resulting from such practice is not an answer to the plea that a written requisition is necessary. As I have said we are not concerned in this case with the rights of the parties on the requisition put in after the suit was filed.

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

FAWCETT, J.:—I concur. There are no doubt some equities in favour of the plaintiff, arising out of the correspondence between the parties prior to the suit, and the practice of the Company in not insisting on written requisitions. But equities cannot prevail against the express terms of the Statute, and that seems to me to be a complete answer to the contention of the plaintiff in the plaint that he was entitled to a supply for the new premises without any written requisition of the kind in question. The two lower Courts have, in my opinion, rightly decided that question; and, as that is the main basis of the plaintiff's suit, I think we can only dismiss his appeal with costs.

*Decree confirmed.*

J. G. R.

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## APPELLATE CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and  
Mr. Justice Kincaid.*

MANJAYA SANNAYA SHANBHAG AND ANOTHER (ORIGINAL PLAINTIFFS),  
APPELLANTS *v.* SHESHGIRI SHAMBHULING UPADHYA AND OTHERS  
(ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

*Hindu Law—Widow's estate—Surrender—Surrender must be to the whole  
body of reversioners of the same degree.*

<sup>o</sup> Second Appeal No. 372 of 1922.

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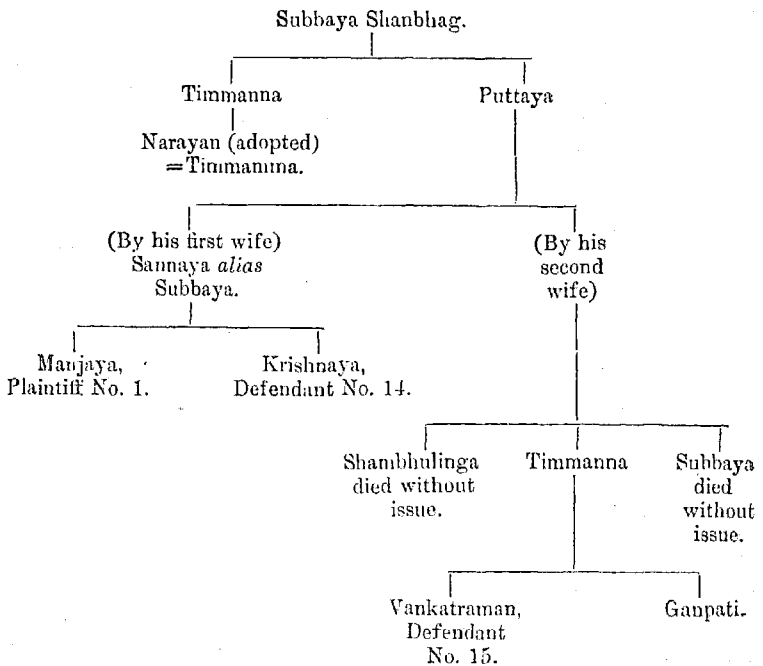
v.

The doctrine of surrender by a Hindu widow cannot be extended to a case where the surrender has in fact been made by the widow in favour of one of the reversioners and not all the reversioners of the same degree.

SECOND appeal against the decision of V. M. Ferrers, District Judge of Kanara, confirming the decree passed by R. Baindur, Subordinate Judge at Honavar.

Suit to recover possession.

The plaintiff sued to recover possession of their one-fourth share in the plaint lands; the plaintiff No. 1 claimed as the reversionary heir of one Narayan, and plaintiff No. 2 was an alienee from plaintiff No. 1. For the purpose of establishing his claim plaintiff No. 1 relied on the following pedigree of the family:—



The lands in suit had fallen to the share of Narayan Timmanna. His widow Timmamama alienated it in favour of Shambhulinga, son of Puttaya, on November 1873, for a consideration of Rs. 3,000. In 1874,

Shambhulinga passed two sale deeds alienating portions of the property in favour of third persons. In 1877, he passed three other sale deeds which were attested by Sannaya alias Subbaya, the step-brother of Shambhulinga. The alienees obtained possession of these properties and continued in possession during the life-time of Timmamma. Timmamma died on April 19, 1913.

Thereafter, Manjaya, the plaintiff, Krishnaya (defendant No. 14) and Venkatraman (Defendant No. 15), who were the actual reversioners after Narayan, claimed to get the sale transactions set aside on the ground that they were effected by the widow of Narayan without any legal necessity.

The defendants Nos. 1 to 13 contended *inter alia* that Timmamma sold the suit property to her husband's reversioner and the other reversioners were consenting parties; that the plaintiff was, therefore, estopped from disputing the validity of the sale transactions and that the claim was barred by limitation.

Defendants Nos. 14 and 15 supported the plaintiff's claim.

The Subordinate Judge held that there was no legal necessity for the sale by Timmamma, but dismissed the suit on the ground that the attestation of the sale deeds by Sannaya was sufficient to raise an inference that the alienations were effected with the consent of the next reversioners.

On appeal, the District Judge confirmed the decree.

The plaintiff appealed to the High Court.

*H. C. Coyajee*, with *G. P. Murdeshwar*, for the appellants.

*G. S. Mulgaonkar*, for respondents Nos. 1 to 3, 5, 7—9, 12 and 13.

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*D. R. Ugrankar*, for heirs of respondent No. 14.

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SHAH, AG. C. J.:—The genealogical table showing the necessary relationship is given at page 3 of the print. One Subbaya had two sons, Timmanna and Puttaya. Timmanna adopted as his son one Narayan. Narayan died before 1873, leaving a widow Timmamma. In 1873 the four sons of Puttaya, the brother of Timmanna, one named Sannaya *alias* Subbaya by his first wife, and three named Shambhulinga, Timmanna and Subbaya, by his second wife, were alive. In 1873 Timmamma, the widow of Narayan, alienated the whole of her estate to Shambhulinga. Shambhulinga afterwards sold these properties to different persons by different sale deeds. Three of the sale deeds executed in 1877 by Shambhulinga in favour of the purchasers from him were attested by Subbaya, the step-brother of Shambhulinga. These alienees obtained possession of these properties and continued in possession until the death of Timmamma in April 1913. At the time of her death the reversioners were the two sons of Subbaya, namely, Manjaya and Krishnaya, and Venkatraman, the son of Timmanna as shown in the pedigree. Ganpati, the brother of Venkatraman, had died before that date. Manjaya filed the present suit in 1919 as a reversioner claiming possession of these properties on the ground that the alienation made by the widow in favour of Shambhulinga was not for legal necessity and ceased to be operative on the death of the widow. The transferee of his interest joined with him as plaintiff No. 2.

The defendants are several alienees from Shambhulinga and the two other reversioners, namely, Krishnaya and Venkatraman. The defence of the alienees was that the sale by the widow to Shambhulinga was for legal necessity and with the consent of all the reversioners at the date of the sale.

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The trial Court raised several issues. Two of them are material for our present purpose. Issue no. 4 was : "Were the alienations for legal necessity?" The finding was in the negative. Issue No. 11 was : "Is it proved that the alienations in question were made with the consent of the next reversioners?" The learned Judge was satisfied that the alienation by the widow in favour of Shambhulinga was not for legal necessity, but he came to the conclusion that it was with the consent of all the brothers of Shambhulinga including Sannaya and that it was for their common benefit. This conclusion is based upon the circumstance that Sannaya attested three of the sale deeds passed by Shambhulinga to the purchasers from him. It appears from the judgment of the trial Court, and it cannot be disputed, that there is no other evidence in the case either with regard to the consent of all the reversioners at the date of the alienation by the widow or that this alienation was for the common benefit of all the then reversioners. It is not suggested in the present case that there was any consent of the actual reversioners, that is, of the plaintiff and defendants Nos. 14 and 15, who were the reversioners when the reversion opened. The trial Court dismissed the suit with costs on the ground that in view of his findings, the transaction by the widow was to be treated as acceleration of the reversion and as the surrender of the entire estate for the benefit of all the then reversioners although in the name of Shambhulinga alone.

The plaintiffs appealed to the District Court and the learned District Judge accepted in its entirety the view taken by the trial Court and confirmed the decree of that Court.

In the appeal before us it is contended that the lower Court erred in applying the doctrine of acceleration to this case. It is further contended that the inference

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drawn by the lower Court as to the consent of Subbaya is not justified as it is exclusively based upon the circumstance that he attested some of the sale deeds in 1877. As both the Courts have found that there was no legal necessity, it is not necessary to deal with that part of the case. It may be accepted that the alienation by Timmamma in favour of Shambhulinga in 1873 cannot be justified on the ground of necessity. It is also common ground that there is no consent of the actual reversioners. The consent of the whole body of reversioners at the date of the alienation would afford presumptive evidence of necessity but would not estop the actual reversioners from disputing the alienation unless the consenting reversioners themselves were the actual reversioners at the date when the reversion fell due. This position is made clear in *Rangasami Gounden v. Nachiappa Gounden*<sup>(1)</sup>. Their Lordships considered *Bajrangi Singh's case*<sup>(2)</sup> and stated the effect at page 86 of the report in *Rangasami Gounden v. Nachiappa Gounden*<sup>(3)</sup>. The only ground, therefore, that remains to be considered is whether the lower Courts were right in applying the doctrine of acceleration to this case. It is an admitted fact that the alienation was in favour of Shambhulinga alone. There is hardly any justification for the inference which the lower Courts have accepted that it must be taken to be for the benefit of all the four reversioners at the date of the alienation. It is based upon the only circumstance that Subbaya attested the sale deeds by Shambhulinga in 1877. The essentials of a valid surrender by a Hindu widow of her estate are stated in *Rangasami Gounden v. Nachiappa Gounden*<sup>(4)</sup>. A Hindu widow can renounce in favour of the nearest reversioner, if there be only one, or of all the reversioners nearest in degree, if more than one,

<sup>(1)</sup> (1918) L. R. 46 I. A. 72:  
42 Mad. 523.

<sup>(2)</sup> (1907) L. R. 35 I. A. 1:  
30 All. 1.

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at the moment, and the surrender must be of the whole estate. In the present case the alienation in question related to the whole estate but it was in fact a surrender in favour of one of the reversioners and not all the reversioners of the same degree. At the date of alienation there were four reversioners of the same degree and it is not possible in my opinion to extend the doctrine of surrender by a Hindu widow in the manner in which the lower Courts have extended it. No authority is cited in support of the proposition that the surrender to one of the reversioners is equivalent to a surrender to all the reversioners, if it is for the benefit of all the reversioners. Assuming, however, that the doctrine can be extended in that way we have to consider whether the inference drawn by the lower Courts is justified. It appears to us that it was open to the trial Court to draw an inference that the attestation by Subbaya to the documents in question was with knowledge of the contents of those documents. But it was hardly open to that Court to draw from that circumstance the further inference that he was a consenting party to the alienation by the widow in 1873. It may be said, however, that when he came to know in 1877 that Timmamma had alienated her property to Shambhulinga, he acquiesced in that position. Even then the further finding that in 1873 the alienation in favour of Shambhulinga was for the benefit of all the four reversioners at the time is purely conjectural and is based on no evidence. There is no valid surrender of her estate by the widow in this case.

We may mention that the three reversioners take the estate equally. There is no question of claiming through their fathers in the present case as reversioners, and, therefore, though their shares have not been accurately stated in the plaint, it must be made clear that all the three are entitled equally to the estate.

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We allow the appeal, reverse the decree of the lower appellate Court and pass a decree for possession in favour of the plaintiffs, the heir of defendant No. 14, and defendant No. 15 against the other defendants. Plaintiffs should get their costs throughout from defendants other than the heir of defendant No. 14 and defendant No. 15. The heir of defendant No. 14 and defendant No. 15 should bear their own costs throughout.

We make no order as to mesne profits prior to this date under the circumstances of this case. This is rather a hard case for the alienees and we think that the justice of the case will be met by allowing mesne profits from the date of this decree until the delivery of possession or the expiration of three years whichever event first occurs.

Mesne profits to be determined by the trial Court under Order XX, Rule 12.

*Decree reversed.*

J. G. R.

### APPELLATE CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice,  
and Mr. Justice Kincaid.*

1924.

August 26.

BHAGWANDAS RANGILDAS (ORIGINAL PLAINTIFF), APPELLANT v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT<sup>2</sup>.

*Indian Forest Act (VI of 1878), section 84—Indian Contract Act (IX of 1872), sections 74, 75—Recovery of penalty due under a forest contract—Rescission of contract—Compensation.*

Section 84 of the Indian Forest Act (VII of 1878) applies to a particular penalty provided in the contract for a breach of a condition as to the contractor performing or abstaining from any act, and cannot be applied generally to all the consequences of a rescission of the contract under the terms thereof. The proper measure of compensation, if any, payable in such a case must be

<sup>2</sup> First Appeal No. 98 of 1922.