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invalid as against the heirs did not become valid because of a change in the tenure of the estate after his life interest had terminated. Though the estate devised comes into existence on the death of the testator under a will, the beneficial interest is created in favour of the devisee in the lifetime of the watandar and stands so long as it is not revoked by the testator during his lifetime. The alienation, therefore, by will by a watandar during his lifetime would be valid beyond the term of his natural life if it is in favour of a watandar of the same watan.

I think, therefore, that the view taken by both the lower Courts is correct, and this appeal must be dismissed with costs.

Decree confirmed.

B. G. R.

APPELLATE CIVIL.

Before Mr. Justice Patkar.

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July 3

TUKARAM VITHU SHEDGE (ORIGINAL PLAINTIFF), APPELLANT, *v.* YESU KOM MARUTI KORE AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Gift by widow to stranger—Consent of next reversioner—Gift not validated by consent as against other reversioners.

Under Hindu law a gift by a widow of the whole or part of an estate in favour of a stranger is not validated by the consent of the next reversioner as against the eventual reversioners or the adopted son.

Bajrangi Singh v. *Manokarnika Bakhsh Singh*,[1] distinguished.

SECOND Appeal against the decision of A. Montgomerie, District Judge of Satara, reversing the decision of B. C. Patil, Joint Subordinate Judge, Islampur.

Suit to recover possession of property.

One Vithu Ganu died leaving him surviving a widow, Paru, and a daughter, Yesa.

On or about September 4, 1915, Paru made a gift of the whole property of Vithu to one Maruti, who was the husband of Yesa, with the consent of Yesa and the next

*Appeal No. 1048 of 1927 from Appellate Decree.

[1] (1907) 30 All. 1 : L. R. 35 I. A. 1.

male reversioner, one Balu Rama, who was the nephew of Vithu Ganu.

On or about December 31, 1924, Paru adopted one Tukaram to her deceased husband.

Tukaram filed a suit against Paru and Yesa alleging that they were wrongfully in possession of the property of Vithu and prayed *inter alia* for a declaration that the said deed of gift be declared to be invalid.

The Subordinate Judge held that the deed of gift conveyed only 2 acres and 10 gunthas out of 5 acres and 7 gunthas of the Survey No. 273 owned by Vithu; that the consent of the daughter (defendant No. 2) and Bala was not proved; that even if the gift be taken as of the entire estate made with the consent of the reversioners, it could not be supported on the theory of surrender. He, therefore, declared that the deed of gift was not binding on the plaintiff and decreed possession.

On appeal, the District Judge held that the consent of the reversioners was proved and relying on *Bajrangi Singh* v. *Manokarnika Bakhsh Singh*[1] held that the gift was validated by their consent. The plaintiffs' suit was accordingly dismissed.

The plaintiff appealed to the High Court.

Diwan Bahadur *G. S. Rao*, with *P. B. Gajendragadkar*, for the appellant.

G. N. Thakor, with *D. A. Tulzapurkar*, for respondent No. 1.

PATKAR, J. :—This appeal raises an important question of law as to whether a gift by a Hindu widow of property inherited by her from her husband is valid on account of the consent of the next reversioner.

The plaintiff sues as the adopted son of Vithu Ganu to recover possession of the property alienated by his

[1] (1907) 30 All. 1, s. c. L. R. 35 I. A. 1.

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widow defendant No. 1 by way of gift in favour of her son-in-law with the consent of her daughter, defendant No. 2.

The learned Subordinate Judge held that the consent of the daughter was not proved, that the gift made even with the consent of the reversioner was not binding on the adopted son and, therefore, allowed the plaintiff's suit setting aside the gift by the widow in favour of her son-in-law.

On appeal, the learned District Judge, relying on the decision of the Privy Council in *Bajrangi Singh* v. *Manokarnika Bakhsh Singh*,[1] held that the alienation by a Hindu widow, whether for necessity or not, is validated by the consent of the next reversioner, and, therefore, dismissed the plaintiff's suit.

It is urged on behalf of the appellant that the decision of the Privy Council in *Bajrangi Singh's* case[1] related to the sales effected by the widow for valuable consideration and assented to by the reversioners, and that, according to the decision of this Court in *Pilu* v. *Babaji*,[2] the operation of the principle validating the sale by the widow on account of the consent of the next reversioners is limited to transfers for consideration and cannot be extended to voluntary transfers by way of gift.

On behalf of the respondent it is contended that the deed of gift in favour of the son-in-law must be considered to be a surrender of the widow's interest in favour of the daughter, defendant No. 2, and that the alienation of the entire estate is validated by the consent of defendant No. 2, the next reversioner.

The learned Subordinate Judge in the course of the judgment held that the property alienated in favour of the son-in-law did not comprise the whole of the estate

[1] (1907) 30 All. 1, s. c. L. R. 35 I. A. 1. [2] (1909) 34 Bom. 165.

belonging to the deceased, and therefore, the alienation could not be supported on the principle of surrender by a Hindu widow. It appears that only two acres and ten gunthas in Survey No. 273 were included in the deed of gift whereas the deceased Vithu was the owner of five acres and seven gunthas. It is urged on behalf of the respondent that Survey No. 273 was one of the several numbers given in gift to the son-in-law, and formed the subject-matter of the present suit, and that the description of the area of two acres and ten gunthas in Survey No. 273 was due to inadvertence or mistake, and that as a matter of fact in the present suit the whole area of five acres and seven gunthas is sought to be recovered from defendant No. 1 and her daughter defendant No. 2 who is in possession of the property as the heir of her husband. I agree with the contention on behalf of the respondent that the area of two acres and ten gunthas mentioned in the deed of gift was a misdescription, and that the deed of gift really operated on the whole of the property of the deceased.

The deed of gift in this case being in favour of the son-in-law and not in favour of the daughter cannot be considered to be a surrender of the widow's estate in favour of the daughter, the next reversioner. In *Behari Lal* v. *Madho Lal Ahir Gyawal*[1] Lord Morris observed (p. 32) :—

"... it may be accepted that, according to Hindu law, the widow 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."

According to the decision in *Rangasami Gounden* v. *Nachiappa Gounden*[2] an alienation by a widow of her deceased husband's estate may be validated if it can be

[1] (1891) L. R. 19 I. A. 30 at p. 32. [2] (1918) L. R. 46 I. A. 72 at p. 84.

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shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation. The deed of gift being in favour of the son-in-law, the only question arising in the case is whether it can be validated by the consent of the daughter, the next reversioner.

It is urged on behalf of the respondents relying on the decision in the case of *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy*,[1] and Mulla's Hindu Law, 6th Edition, pages 187 and 204, that a gift by the widow of the whole of the property can be validated by the consent of the next reversioner. In *Bajrangi Singh* v. *Manokarnika Bakhsh Singh*[2] the alienations were deeds of sale for consideration in favour of the son-in-law consented to by the whole body of the next reversioners. Their Lordships of the Privy Council began by referring to the cases of *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah*,[3] and *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry*,[4] in support of the principle that an alienation by a Hindu widow may be validated by the consent of her husband's kindred and that the kindred in such case must be understood to be all those who are likely to be interested in disputing the transaction, and that there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and one justified by Hindu law. They discussed the different views taken by the different High Courts. The Allahabad High Court in *Ramphal Rai* v. *Tula Kuari*[5] took the extreme view that the consent of the reversioners would not validate the alienation as binding on the actual reversioner in the absence of necessity justifying the alienation. The Calcutta High Court,

(1) (1884) 10 Cal. 1102.
(2) (1907) L. R. 35 I. A. 1.
(3) (1861) 8 Moo. I. A. 529.
(4) (1869) 13 Moo. I. A. 209 at p. 228.
(5) (1883) 6 All. 116.

on the other hand, in *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy*,[1] held that if the consent of the reversioner was adequate the eventual reversioner could not challenge the transaction. The decision of the Madras High Court in *Marudamuthu Nadan* v. *Srinivasa Pillai*,[2] which in effect followed the Calcutta view, was referred to. The Bombay view arrived at in *Vinayak* v. *Govind*[3] was subsequently considered. In that case Sir Lawrence Jenkins found it impossible not to feel some difficulty with regard to the doctrine accepted by the High Court of Calcutta that the consent derives its effect from the power supposed to reside in a widow of accelerating by the surrender of her own interest the interest of the reversioners, and accepted the other view that the consent of the persons interested to oppose the transaction evidences its propriety, if not its actual necessity. Ranade J. in the same case observed (p. 139) :—

"The Bengal theory that the widow's interest was a life-interest, and that her surrender or release of that interest to the next reversioner accelerates his obtaining the full title, has never met with much acceptance on this side of India."

Their Lordships of the Privy Council in *Bajrangi Singh's* case[4] preferred the view of the High Court of Calcutta to that of the Allahabad High Court. Their Lordships have not expressed any opinion as to the view of the Bombay High Court that the consent of the next reversioners merely raises a presumption that the transaction is a fair and proper one. It would, therefore, follow that the extreme view of the Allahabad High Court that under no circumstances could the consent of the reversioners validate an alienation by the widow was not accepted by their Lordships of the Privy Council.

[1] (1884) 10 Cal. 1102.
[2] (1898) 21 Mad. 128.
[3] (1900) 25 Bom. 129.
[4] (1907) L. R. 35 I. A. 1.

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The Calcutta High Court in a subsequent decision of the Full Bench in *Debi Prosad Chowdhury* v. *Golap Bhagat*[1] considered all the authorities bearing on this question and laid down four propositions as follows (p. 752) :—

" To uphold an alienation by a widow of her deceased husband's estate where she is his heir it should be shown—(i) that there was legal necessity, or (ii) that the alienee, after reasonable enquiry as to the necessity, acted honestly in the belief that it existed, or (iii) that there was such consent of the next heirs as would raise a presumption, either of the existence of necessity, or of reasonable inquiry and honest belief as to his existence, or (iv) that there was a consent of the next heirs to an alienation capable of being supported by reference to the theory of the relinquishment of the widow's entire interest and consequent acceleration of the interest of the consenting heirs. Where any one of the first three positions is established, the alienation may be of the whole or any part of the husband's estate; but where the fourth alone is proved, then the alienation must be of the whole."

The question was again considered fully by the Privy Council in *Rangasami Gounden* v. *Nachiappa Gounden*.[2] and the result of consideration was summarised at page 84 as follows :—

" (1) An alienation by a widow of her deceased husband's estate held by her may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a bona fide surrender, not a devise to divide the estate with the reversioner. (2) When the alienation of the whole or part of the estate is to be supported on the ground of necessity, then if such necessity is not proved aliunde and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners as might fairly be expected to be interested to dispute the transaction will be held to afford a presumptive proof which, if not rebutted by contrary proof, will validate the transaction as a right and proper one."

The consent of the reversioner as validating an alienation has been considered in its different aspects in various decisions, first, as binding the consenting reversioner or those claiming under him, and, secondly, as binding not only the consenting reversioner but also the actual reversioner or the adopted son to whom the succession opens. The theory of consent operating against the consenting reversioner or persons claiming under them

(1) (1913) 40 Cal. 721 at p. 752. (2) (1918) L. R. 46 I. A. 72.

on the ground of election to treat the transaction as valid, if not on the ground of estoppel, has been accepted in the cases of *Akkawa* v. *Sayadkhan Mithekhan*,[1] *Fateh Singh* v. *Thakur Rukmini Ramanji Maharaj*[2] and *Ramakottayya* v. *Viraraghavayya*.[3] The consent of the next presumptive reversioner validating the alienation in favour of a stranger as against the actual reversioner is based by the Calcutta High Court on the theory of acceleration of the next reversioner's interest by the surrender of the widow's estate, but is viewed differently by the Bombay High Court as raising an inference as to the fairness, justification and necessity of the transaction.

As regards the theory based by the Calcutta High Court on the acceleration of the next heir's interest accompanied by the widow's relinquishment in his favour, it has now been established by the decision in *Debi Prosad Chowdhury* v. *Golap Bhagat*[4] that the relinquishment must be of the whole of the property. The view as to complete surrender of the whole of the widow's estate is accepted by the Privy Council in *Rangasami Gounden* v. *Nachiappa Gounden*,[5] where the argument as to the partial surrender of the widow's estate was negatived on the ground that in order to effect a surrender there must be a complete effacement, an effacement which in other circumstances is effected by actual death or by civil death, and that there cannot be a widow who is partly effaced and partly not so, and further if mere consent, as such, of the reversioner could validate alienation, then the rule as to total surrender would be an idle rule, and, secondly, mere consent could only validate on the theory that the reversioner, together

[1] (1927) 51 Bom. 475, F. B.
[2] (1923) 45 All. 339 at p. 351, F. B.
[3] (1928) 52 Mad. 556, F. B.
[4] (1913) 40 Cal. 721 at pp. 750, 751.
[5] (1918) L. R. 46 I. A. 72 at pp. 80, 82.

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with the widow, represented the whole estate, but that is impossible unless the reversioner has a vested interest, whereas it is settled that he has only a *spes successionis*. It would follow, therefore, that even on the Calcutta view the alienation must be of the whole estate if it could be validated by a consent, and that a partial alienation could not be validated by consent, but a partial alienation with the consent of the next reversioner could be validated and held binding on the actual reversioner if the presumption of legal necessity or a reasonable inquiry and belief raised by such consent is not rebutted by more cogent proof.

The view of the Calcutta High Court based on the acceleration of the widow's estate by virtue of the consent of the widow is not accepted by the Bombay High Court in *Vinayak* v. *Govind*,[1] where Sir Lawrence Jenkins felt difficulty as to the doctrine and Ranade J. expressed the view that the Bengal theory never met with much acceptance in Bombay. Sir Lawrence Jenkins observed (p. 133) :—

> "The High Court of Calcutta on the whole appears to favour the view that the consent derives its effect from the power supposed to reside in a widow of accelerating, by the surrender of her own interest, the interests of the reversioners. It is impossible not to feel some difficulty as to this doctrine."

Ranade J. observed (p. 140) :—

> "Apparently the Bengal view of surrender or release has been approved also by the Allahabad High Court . . . but not in Bombay, where the view taken by the Privy Council has been followed and the assent of all such reversioners is necessary as establishing the propriety and fairness of the alienation."

The case of *Varjivan Rangji* v. *Ghelji Gokaldas*[2] where a sale made by a widow and daughter conjointly in the absence of legal necessity was set aside at the instance of the actual reversioner was considered in the case of *Vinayak* v. *Govind*.[1] The consistent and uniform view of the Bombay

[1] (1900) 25 Bom. 129.

[2] (1881) 5 Bom. 563.

High Court has been that the consent of the next reversioner or of those persons who are likely to be interested in disputing the transaction is sufficient to raise an inference that the transaction is a fair one and one justified by Hindu law. The Privy Council in *Bajrangi Singh* v. *Manokarnika Bakhsh Singh*[1] and *Rangasami Gounden* v. *Nachiappa Gounden*[2] have not overruled the Bombay view. On the other hand, it was held that an alienation by a widow of her husband's estate may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners, and that where the alienation is of the whole or part of the estate if necessity is not proved and if the alienee does not prove inquiry on his part, the consent of such reversioners as might be fairly expected to dispute the transaction will be held to afford a presumptive proof which, if not rebutted by contrary proof, will validate the transaction as a right and proper one. In *Rangasami's* case[2] their Lordships of the Privy Council have discussed the previous judgment of the Board in *Bajrangi Singh's* case[1] and observe at page 83 that the previous judgment affirmed the Calcutta as against the Allahabad rule, but did not particularise on what exact ground the alienation was supported. In *Bajrangi Singh's* case[1] there were three successive alienations in favour of the son-in-law and amounted to an alienation of the whole of the immoveable property, but the fact that the widow was also possessed of moveable property was overlooked, but all the alienations were, however, made for purposes of necessity. The dictum in *Bajrangi Singh's* case[1] that the sons were held bound by the consent of their fathers was doubted on the ground that the eventual reversioner does not claim through the

[1] (1907) L. R. 35 I. A. 1. [2] (1918) L. R. 46 I. A. 72.

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consenting reversioner and also on the ground of authority to the contrary. In *Bajrangi Singh's* case[1] the alienations in favour of the son-in-law were for necessity and could be supported on that ground. In *Rangasami's* case[2] the deed was executed by the widow Marakammal in favour of the next reversioner and not in favour of a stranger. The first proposition at page 84 refers to an alienation in favour of a reversioner, and it would be validated if it was a surrender of the whole estate. In *Rangasami's* case[2] the alienation in favour of the next reversioner was not for consideration or necessity but was a deed of gift. Being not a deed of gift of the whole estate in favour of the reversioner, it could not be validated on the ground of surrender under the first proposition, and being a deed of gift " it could not be held to be evidence of alienation for value for purposes of necessity " under the second proposition. But their Lordships of the Privy Council have not overruled the Bombay view taken in *Vinayak* v. *Govind*.[3] Their Lordships of the Privy Council cannot be assumed to have decided that an alienation of the estate in favour of a stranger with the consent of the reversioner may be split up into two transactions one of surrender of the widow's estate in favour of the reversioner and a contemporaneous alienation by the reversioner in favour of the stranger. The inclusion of the alienation of the whole estate in the second proposition at page 84 in *Rangasami Gounden* v. *Nachiappa Gounden*[2] is opposed to any such assumption.

In the present case the gift in favour of the son-in-law was in respect of the whole of the estate, but the cases relating to alienations in favour of strangers with the consent of the next reversioners were all cases of

[1] (1907) L. R. 35 I. A. 1. [2] (1918) L. R. 46 I. A. 72.
[3] (1900) 25 Bom. 129.

alienations effected by the widow for valuable consideration and assented to by the reversioners. According to the Bombay view the consent of the reversioner would raise a presumption that the transaction is justified by necessity and a proper one. The presumption would clearly apply to alienations for consideration and would not apply to gifts made by the widow without any consideration. In *Pilu* v. *Babaji*[1] it was held that the general principle prohibiting a Hindu widow's alienation otherwise than for legal necessity is relaxed in cases where the consent of the whole body of reversioners who would be interested in disputing the transaction has been obtained, and the reason for the relaxation of this rule, according to the Bombay High Court, is that the consent of the persons who would be interested in disputing the transfer affords good evidence that the transfer was in fact made for justifying cause, that is, for legal necessity, and it was, therefore, held that if that was the reason of the rule, its operation must ordinarily be limited to transfers for consideration, and cannot appropriately be extended to voluntary transfers by way of gift, where there is no room for the theory of legal necessity. In *Ramkrishna* v. *Tripurabai*[2] it was held that the consent of the nearest reversioner to an alienation made by a Hindu widow is not always sufficient in every case to validate the alienation. In certain cases, the consent of the nearest reversioner has a double aspect not merely as raising a presumption as to the propriety of the alienation but also as raising an estoppel against persons claiming under that reversioner. The same view was taken by the Allahabad High Court after the decision of *Bajrangi Singh's* case[3] in *Abdulla* v. *Ram Lal*,[4] where it was held that a gift of her deceased husband's

[1] (1909) 34 Bom. 165.
[2] (1911) 13 Bom. L. R. 940.
[3] (1907) L. R. 35 I. A. 1.
[4] (1911) 34 All. 129.

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estate made by a Hindu widow in possession thereof as such widow to her sisters's son was invalid and could not be rendered operative by the consent of the next reversioner.

The result, therefore, is that the gift in the present case is in favour of the son-in-law and cannot be considered to be a surrender in favour of the next reversioner. It is merely an alienation without necessity and without consideration in favour of the son-in-law and not in favour of the next reversioner. Therefore, the theory of surrender cannot be invoked in supporting the transaction as the surrender must be to the next reversioner. When the alienation is of the whole or part of the estate by the widow in favour of a stranger for consideration, the consent of the next reversioner raises a presumption that the transaction is justified by necessity and is a right and proper one. The gift of the whole or part of an estate in favour of a stranger is not validated by the consent of the reversioner. The gift may be binding on the consenting reversioner on the ground of estoppel as held in *Basappa* v. *Fakirappa*,[1] or on the ground of election according to the cases already referred to. But the eventual reversioner or the adopted son would not be bound by the gift of the whole or part of the estate made by the widow with the consent of the next reversioner.

I think, therefore, that the view taken by the learned Subordinate Judge is right and that taken by the learned District Judge is erroneous. I would, therefore, reverse the decree of the lower appellate Court and restore that of the Subordinate Judge with costs of this appeal and of the lower appellate Court on the respondents.

Decree reversed.

K. S. S.

[1] (1921) 46 Bom. 292.