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CHAGANLAL
NAKERLAL
c.
THE PRESIDENT,
THANA
MUNICIPALITY

Nauvati J.

higher compensation on the acquisition of the land. That a corporation should exceed its powers for such a purpose is to my mind sufficiently improper to support a finding against it in this suit. For these reasons I am satisfied that all the ingredients necessary for the plaintiff to succeed in the suit have been made out. [The rest of the judgment is not material for the purposes of this report.]

Decree reversed.

B. G. R.

APPELLATE CIVIL.

Before Mr. Justice Baker and Mr. Justice Nauvati.

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September 17.

GHANCHI PARSHOTTAM BAHACHARDAS (ORIGINAL PLAINTIFF), APPELLANT
v. GHANCHI KESHAVLAL DALPATRAM (ORIGINAL DEFENDANT),
RESPONDENT.*

Hindu Law—Widow—Adopted son—Suit between widow and adopted son—Compromise decree—Life interest in immoveable property awarded to widow—Death of adopted son—Daughter inheriting property—On daughter's death widow taking property as her heir—Will by widow, validity of.

Bai Ujam, a Hindu widow, adopted a son B. Dispute having arisen between B and his adoptive mother, he brought a suit against her. The suit ended in a compromise decree by which Bai Ujam was given a life interest in the immoveable property mentioned in the compromise decree. B, his wife, and his daughter, all pre-deceased Bai Ujam whereupon Bai Ujam succeeded to the rights of B as heir of B's daughter who survived her father and mother. Bai Ujam made a will in favour of defendant. After her death plaintiff sued the defendant praying for a declaration that the will made by Bai Ujam in respect of the property acquired under the compromise decree was void and inoperative as made by a Hindu widow and claimed possession of the plaintiff property as the reversionary heir of Bai Ujam's husband.

Held, that the nature of the interest which Bai Ujam took in the property under the compromise decree between her and her adopted son was not analogous to a Hindu widow's estate; and since she inherited the property as the heir of B's daughter, which taken in conjunction with the rights which she already possessed under the compromise decree, she became absolute owner of the property and was entitled to dispose of it by will.

*First Appeal No. 40 of 1926.

Massumal Bhagbutti Dace v. Chowdry Bholanath Thakoor,⁽¹⁾ relied on.

Balwant Singh v. Joti Prasad⁽²⁾; *Lallu v. Jagmohan*,⁽³⁾ and *Chunilal v. Bai Mulli*,⁽⁴⁾ referred to.

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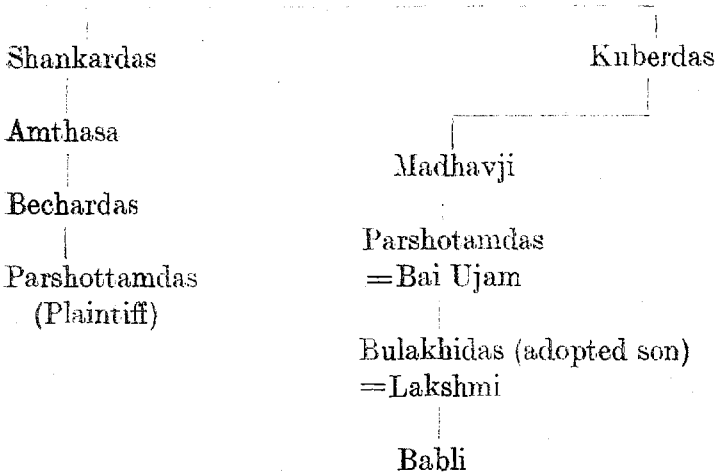
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FIRST APPEAL against the decision of J. N. Bhat, Joint First Class Subordinate Judge at Ahmedabad.

Suit for declaration.

The following genealogical table explains the relationship set up by plaintiff :

Bechar Dhanji



Parshottam Madhavji died in 1890. He left considerable moveable and immoveable property which on his death passed to his widow, Bai Ujam.

Bai Ujam adopted her brother's son, Bulakhidas, in 1904, while he was a minor. In 1908 when Bulakhidas reached majority he filed a suit in the First Class Subordinate Judge's Court at Ahmedabad, to restrain Bai Ujam from collecting rent and for accounts. The suit terminated

⁽¹⁾ (1875) L. R. 2 I. A. 256.

⁽²⁾ (1918) 40 All. 692.

⁽³⁾ (1896) 22 Bom. 409.

⁽⁴⁾ (1899) 24 Bom. 420.

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with a compromise decree which in terms provided as follows :—

Bai Ujam should enjoy during her lifetime the houses bearing municipal Nos. . . . and should enjoy during her lifetime any rents realised therefrom . . . but after the death of Bai Ujam, plaintiff as owner of those houses may take them into possession . . . ; that Bai Ujam should enjoy two shops Nos. . . . during her lifetime and should receive the rent that may be realised during her lifetime . . . and plaintiff is the owner of the said shops after the death of Bai Ujam. Bai Ujam was entitled to enjoy in such a manner as she likes moveable property in her possession and plaintiff was not to cause any obstruction in that . . . Plaintiff is to take possession of the property mentioned above after the death of Bai Ujam . . . The plaintiff is the owner of the three houses bearing Municipal Nos. . . . and owner of the shops Nos. . . . ”

Bulakhidas died in 1916 leaving behind him his widow, Lakshmi, who died in December 1916, and a daughter, Babli, who died in January 1917. On Babli's death the rights in the property were inherited by Bai Ujam as Babli's heir.

On July 23, 1924, Bai Ujam willed away in favour of defendant the property that came to her under the consent decree and also the property which she inherited.

Bai Ujam died on August 15, 1924. After her death plaintiff sued for a declaration that he was the reversionary heir of Parshottam Madhavji ; that the will made by his widow Ujam in respect of the property that was acquired under the consent decree between her adopted son Bulakhidas and herself was void and inoperative as having been made by a Hindu widow and for possession of that property together with mesne profits and accounts and possession of the moveable property of Parshottam.

Defendant contended *inter alia* that Bai Ujam was competent to make the will and dispose of suit property because on Babli's death, Bai Ujam's limited rights of enjoyment were enlarged into rights of full ownership.

The Subordinate Judge held that by the consent decree Bai Ujam obtained only rights of residence and enjoyment of property during her lifetime and not a widow's interest in immoveable property ; that her rights under the consent

decree were merged into the rights of full ownership when she inherited the property as heir of her son's daughter, Babli, and that she became the full owner of the property as such heir. She was therefore competent to will away the property. Plaintiff's suit, therefore, was dismissed.

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Plaintiff appealed to the High Court.

H. V. Divatia, for the appellant.

G. N. Thakor, with *R. J. Thakor*, for the respondent.

BAKER, J.:—The plaintiff sued for a declaration that he is the nearest reversionary heir to one Parshottam Madhavji, that the will made by his widow Ujam in respect of the property she acquired under a consent decree between her adopted son Bulakhi and herself was void and inoperative as having been made by a Hindu widow, for possession of the immoveable properties described in the plaint and as acquired by the widow under the consent decree, together with mesne profits, and for accounts and possession of the moveable property of Parshottam. The First Class Subordinate Judge of Ahmedabad dismissed the suit. The plaintiff appeals.

The essential point in this case is a short one. On reference to the pedigree (given above) it would be found that the plaintiff is the great-great-grandson of one Bechar Dhanji, and Parshotamdas was his great-grandson. Parshotamdas died in 1890, and in 1904 his widow Bai Ujam adopted Bulakhidas. Bulakhidas died in August 1916, leaving behind him a widow Lakshmi, who died in December 1916, and an infant daughter Babli, who died in January 1917. Bai Ujam lived until August 15, 1924. After the adoption, on the adopted son Bulakhidas attaining majority, there were disputes between him and his adoptive mother, and he brought a suit against her. That suit ended in a compromise. By that compromise Bai Ujam was given a life interest in the immoveable property mentioned in the

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compromise, and an absolute interest in certain moveables. After her death, Bulakhidas as the owner, he was so described in the compromise, was to take possession of the property. But, as already pointed out, Bulakhidas, his wife, and his child all pre-deceased Bai Ujam, and therefore the rights of Bulakhidas came to Bai Ujam, who was his heir, and Bai Ujam made a will, which is not disputed, in favour of the present defendant. It is contended on behalf of the appellant that the interest of Ujam in the property was that of a Hindu widow, that therefore she had no right to dispose of it by will, and that on her death it reverts to her husband's estate, and would be inherited by his nearest reversioner, which the plaintiff claims to be. The sole point in the case, therefore, apart from the question of the plaintiff being the reversioner, is as to the nature of the interest which the widow Bai Ujam took in the property by reason of the compromise between her and her adopted son, and it has been strenuously contended by the learned advocate for the appellant that the interest of Ujam in the property is that of a Hindu widow. There could be no interest of that nature unless Bai Ujam inherited the property from her husband directly, or from her son on his death. In the present case, from the date of the adoption, the property vested in the adopted son, and Ujam had only the right of maintenance, and the rights which she acquired in this property are acquired by virtue of the compromise decree which is translated at p. 5. How possibly any question of a Hindu widow's estate can arise in these circumstances is not clear to me. As the learned Judge has pointed out in paragraph 22, the property which a mother gets by a compromise decree between her and her son has no analogy to a Hindu widow's estate, and the nature of the rights given to her under the decree can only be determined by reference to the terms of the decree. In the present case, where the adoption is recognised, the widow could only acquire a title to such property by way of grant from the

son, and not by way of any independent title as heir to her husband. The terms of the compromise decree have been set out in full at p. 5. In clause 1 it is declared that Bulakhi enjoys all the rights of an adopted son in the property. In the second clause, which deals with the immoveable property, it is made quite clear that the interest which is conferred upon the widow Bai Ujam is a life-estate, and that on her death the estate reverts to the adopted son. The adopted son was originally the owner. This is the case of a grant. He is not a reversioner. He has a vested interest which is transferable and inheritable, and on his death this vested interest will pass to his heirs, who are respectively his widow, his infant daughter and ultimately Bai Ujam herself, and therefore, as the Subordinate Judge has pointed out, all the rights which belonged to the adopted son as well as the rights which were given her by the compromise decree vested in her on the death of the last heir of Bulakhidas other than herself, and she became full owner of the property, and could dispose of it by will, as she has done.

The learned advocate for the appellant has referred to two cases, *Sreemutty Rabutty Dossæ v. Sibchunder Mullick*⁽¹⁾ and *Ganpat Rao v. Ram Chandar*.⁽²⁾ Neither of these cases has any application, because in *Sreemutty Rabutty Dossæ v. Sibchunder Mullick*⁽¹⁾ the widow claimed as the representative of her husband, that is to say, any rights which she had she acquired from her husband, and not as in the present case by a grant from the adopted son who was the actual owner of the property. In *Ganpat Rao v. Ram Chandar*⁽²⁾ the dispute was between the brother and the brother's widow. The learned counsel for the respondent has relied on a case which is more like the facts of the present case than any other, *Mussumat Phagbutti Dæe v. Chowdry Bholanath Thakoor*,⁽³⁾ in which there was a deed somewhat

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⁽¹⁾ (1854) 6 Moo. I. A. 1.⁽²⁾ (1888) 11 All. 296.⁽³⁾ (1875) L. R. 2 I. A. 256.

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similar in terms to the present deed executed by an adopted son, as well as another one by the husband, and that was considered to be a family settlement giving the widow an estate for life with power to appropriate the profits as in the present case, and to the adopted son a vested remainder on her death. In that case the case quoted by the learned advocate for the appellant, viz., *Sreemutty Rabutty Dossee v. Sibchunder Mullick*,⁽¹⁾ has been distinguished on the ground I have already mentioned, that the widow in that case claimed in the character of heiress and legal personal representative of her deceased husband, and not, as in the present case, where the rights which the widow has flow from a grant by the adopted son and are not in any sense of the word derived from her deceased husband. The learned counsel for the respondent has further referred to *Balwant Singh v. Joti Prasad*,⁽²⁾ which is very similar to the circumstances of the present case, in which it was held that where an agreement has been entered into between an adopted son and his adoptive mother giving a life-estate to the adoptive mother, and the remainder to the adopted son, the interest of the son is not merely that of a contingent collateral Hindu reversioner, but he has a vested interest in the property of his adoptive father which he is competent to deal with, subject only to the previous life estate, and at p. 695, where the document is translated, it distinctly states that the right which was given to the adoptive mother was the right which a Hindu widow has over her husband's estate according to the Hindu law, and yet in spite of that it was held that the interest of the son amounted to a vested interest. The learned counsel for the respondent has further referred to the decisions in *Lallu v. Jagmohan*⁽³⁾ and *Chunilal v. Bai Muli*,⁽⁴⁾ as dealing with the question of vested interest. But I do not think there can be any reasonable doubt but that the view of the Subordinate Judge is right. This is not

⁽¹⁾ (1854) 6 Moo. I. A. I.

⁽³⁾ (1896) 22 Bom. 409.

⁽²⁾ (1918) 40 All. 692.

⁽⁴⁾ (1899) 24 Bom. 420.

a case in which the widow acquires her interests from her husband or from her son on his death, but she acquires it by a grant made by the absolute owner really for the purposes of maintenance, and the remaining rights in the property are vested in the owner, the adopted son, subject to the widow's life-interest. Now when the son dies, those rights pass to his heirs, and, as has already been shown, in this case, owing to a succession of deaths in the family, in 1917 these rights all came to the widow as the heir, and therefore taken in conjunction with the rights which she already possessed under the compromise decree, she became absolute owner of the property, and was entitled to dispose of it by will as she has done. It is not in any sense of the word property which she inherited from her husband to which her husband's reversioners, assuming that the plaintiff was the nearest reversioner, would succeed.

In these circumstances, the question of whether the plaintiff is the nearest reversioner, which the Subordinate Judge has found in the affirmative, although the evidence on that subject appears to be rather vague, loses all importance. The widow is justified in disposing of the property by will, and admittedly she has so disposed of it in favour of the defendant.

The question as to the moveables has not been raised in this Court. No Court-fee has been paid on that part of the claim. It is clear that under the compromise decree the widow was made absolute owner of the moveables, and was entitled to dispose of them in any way she liked.

The result is that the decree of the lower Court will be confirmed, and the appeal dismissed with costs.

NANAVATI, J. :—I agree, and have nothing to add.

Decree confirmed.

J. G. B.

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