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[214] APPELLATE CIVIL.

Before Mr. Justice Brett, and Mr. Justice Mitra.

DURGA NATH PRAMANIK *v.* CHINTAMONI DASSI.*

[25th August, 1903].

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Hindu Law—Dayabhaga—Joint property—Partition—Widow—Moveable property—Reversioner, rights of—Waste, prevention of—Bill quia timet—Injunction—Receiver.

A Hindu widow, governed by the Dayabhaga School, has in regard to moveable property inherited by her from a male, the same powers and is subject to the same restrictions in respect of management and alienation, as immoveable property similarly inherited by her.

Cossinaut Bysack v. *Hurroscondry Dossee* (1), *Thakoor Deyhee* v. *Rai Baluk Ram* (2) and *Bhugwandeen Doobey* v. *Myna Baee* (3) referred to.

A Hindu widow, governed by the Dayabhaga School, inheriting her husband's share in joint properties, is entitled to claim partition of the properties, both moveable and immoveable, as against her husband's co-parceners; but if there be a reasonable apprehension of waste by her of the moveable properties allotted to her share, sufficient provision should be made in the final decree for partition, for the prevention of such waste, to safeguard the interests of the reversioners. The remedy of the latter is not necessarily confined to a subsequent suit for injunction or a *bill quia timet.*

Soudaminey Dossee v. *Jogesh Chunder Dutt* (4), *Janoki Nath Mukhopadhya* v. *Mothuranath Mukhopadhya* (5), *Cossinath Bysack Hurrosoondery Dossee* (6) and *Bepin Behari Moduck* v. *Lal Mohun Chattopadhya* (7) referred to.

Biswanath Chandra v. *Khantomani Dasi* (8), *Hurrydoss Dutt* v. *Rungunmoney Dossee* (9) and *Hurrydoss Dutt* v. *Uppoornah Dossee* (10), distinguished.

[Ref. 13 C. W. N. 611=9 C. L. J. 421; 2 I. C. 641; 16 I. C. 471; Foll. 12 I. C. 591.]

APPEAL by the defendant, Durga Nath Pramanik.

Pranhari Pramanik, husband of the plaintiff Chintamoni Dasi, and Harinath Pramanik, father of the defendant, were two [215] uterine brothers possessed of considerable joint property. Harinath, who was the elder brother, predeceased Pranhari, who then became the *kurta* of the joint family. Pranhari died on the 8th December 1901, leaving the plaintiff as his sole heiress. It appears that shortly after that, a certificate under Act VII of 1889 for the collection of debts due to the deceased Pranhari, was taken out in the joint names of the plaintiff and the defendant.

The present suit was instituted by the plaintiff on the 29th May 1902, for possession of her 8-anna share in all the joint moveable and immoveable properties, after partition where possible, the properties consisting of (i) zemindaris and other immoveable properties in the districts of Rajshahi and Pubna, (ii) currency notes, gold, silver and other valuable articles belonging to a business at Nattore, (iii) bonds, and (iv) decrees. The suit was valued at 2 lakhs of rupees and instituted in the Court of the Subordinate Judge at Rajshahi.

The defendant contended that the suit had been instituted under the evil advice of Srinath Shaha, the plaintiff's father, and other people

* Appeal from Original Decree, No. 161 of 1903, against the decree of Jogendra Nath Mitra, Subordinate Judge of Rajshahi, dated May 11, 1903.

(1) (1819) 2 Morley's Dig. 1898.
(2) (1866) 11 Moo. I. A. 139.
(3) (1867) 11 Moo. I. A. 487.
(4) (1877) I. L. R. 2 Cal. 262.
(5) (1883) I. L. R. 9 Cal. 580.
(6) (1826) Clarke's Rules and Orders (Appx.) 91.
(7) (1885) I. L. R. 12 Cal. 209.
(8) (1871) 6 B. L. R. 747.
(9) (1851) 2 Sevest 657.
(10) (1856) 6 Moo. I. A. 433.

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with the object of enabling her to transfer all the moveable properties and cash that she might obtain on partition, in any way she liked, and thereby extinguishing the reversionary right of the defendant; that the profits of the properties were amply sufficient to enable the plaintiff to pass her life comfortably as a Hindu widow, and that she was not accordingly entitled to have the properties partitioned; and that even if she was so entitled, the properties could not be partitioned unless a proper provision was made safeguarding the reversionary right of the defendant. The defendant also applied to be appointed receiver of the properties pending the litigation. Under the order of the High Court, the Nazir of the District Judge's Court was appointed receiver of the estate *pendente lite*.

The immoveable properties situate in the District of Pubna not having been orginally included by the plaintiff in the plaint, the Subordinate Judge held, on the 16th February 1903, that the suit with that defect was not maintainable, but allowed the plaintiff to amend the plaint so as to include the said properties. Previously to this, on the 1st July 1902, the defendant had applied that an issue might be framed to the effect:— If the plaintiff is entitled **[216]** to the partition prayed for, on what terms is she to get it? The then Subordinate Judge (Babu K. C. Mozumdar) held that an issue in this form did not arise in the case.

The preliminary decree for partition was passed on the 11th May 1903, directing a partition of the properties stated in the plaint as amended to be made into two equal parts and the plaintiff to get one part.

Dr. *Rash Behari Ghosh* (Babu *Golap Chandra Sarkar* and Babu *Mohini Mohan Chakravarti* with him), for the appellant, contended that the plaintiff was not entitled to claim partition of the assests of ancestral trading business and to obtain possession of moveables, without giving any kind of security to protect the interest of the appellant. Some of the properties could not be partitioned. The plaintiff was a mere puppet in the hands of others, and there was a reasonable apprehension that the properties would not be safe in her hands without security. The following authorities were referred to: *Guru Prosad Roy* v. *Nafar Das Roy* (1), *Soudaminey Dossee* v. *Jogesh Chunder Dutt* (2), *Mohadeay Kooer* v. *Haruk Narain* (3), *Janoki Nath Mukhopadhya* v. *Mathuranath Mukhopadhya* (4), *Bepin Behari Moduck* v. *Lal Mahun Chattopadhya* (5), *Narasinha* v. *Venkatadri* (6), *Hurrydoss Dutt* v. *Uppoornah Dossee* (7), *Hurrydoss Dutt* v. *Rungunmoney Dossee* (8), Macnaghten's Considerations on Hindu Law, pp. 36, 93, 97: Mayne's Hindu Law and Usage, s. 648; Story's Equity Jurisprudence, 2nd Eng., Ed., Ch. XX (as to *Bills quia timet*); Land Acquisition Act, 1894, s. 32; *Sheo Ratan Rai* v. *Mohri* (9). On the questions relating to the incidents of partition raised, reference was made to *Punchanan Mullick* v. *Shib Chunder Mullick* (10), *Hemadri Nath Khan* v. *Ramani Kanto Roy* (11), *Srimohan Thakur* v. *Macgregor* (12) and *Balaram Bhaskarji* v. *Ramchandra Bhaskarji* (13).

[217] *The Offg. Advocate-General* (Mr. *L. P. Pugh*) Babu *Kissori Lall Sarkar*, Dr. *Ashutosh Mookerjee* and Babu *Hira Lal Sanyal* with

(1) (1869) 3 B. L. R. (A. C.) 121.
(2) (1877) I. L. R. 2 Cal. 262.
(3) (1882) I. L. R. 9 Cal. 244.
(4) (1883) I. L. R. 9 Cal. 580.
(5) (1885) I. L. R. 12 Cal. 209.
(6) (1885) I. L. R. 8 Mad. 290.
(7) (1856) 6 Moo. I. A. 433.
(8) (1851) 2 Sevest, 657.
(9) (1899) I. L. R. 21 All. 354.
(10) (1887) I. L. R. 14 Cal. 835.
(11) (1897) I. L. R. 24 Cal. 575.
(12) (1901) I. L. R. 28 Cal. 769.
(13) (1898) I. L. R. 2 Bom. 922.

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him), for the respondent, contended that the question as to the distinction between moveables and immoveables could not be raised in appeal, as no issue was framed on this point. The plaintiff had ownership of both the moveables and immoveables, and she could not be restrained in anticipation of a contingency which has not happened. The interests of the reversionary heir cannot be safeguarded in carrying out the actual partition and cannot be provided for in the preliminary decree. The following authorities were also referred to; *Biswanath Chandra* v. *Khantomani Dasi* (1), *Cossinaut Bysack* v. *Hurrosoondry Dossee* (2).

BRETT AND MITRA, JJ. Harinath and Pranhari were two brothers joint in food, worship and estate, and governed by the Dayabhaga School of Hindu Law. They were joint owners of various immoveable and moveable properties and had an ancestral money-lending business at Nattore. Harinath died first and the defendant Durganath is his only son. Durganath remained joint with his uncle Pranhari. The latter died on the 8th December 1901 sonless, leaving him surving his widow, the plaintiff, and his nephew, the defendant. Under the Dayabhaga School of Law the widow succeeded as his sole heiress and legal representative.

Shortly after the death of Pranhari there was a dispute between the parties with reference to an application to collect the debts due in respect of his share of the family property. This was in February 1902, and it was followed by the present suit for partition which was instituted on the 29th May, 1902.

The plaintiff originally claimed partition of some of the family properties excluding the properties in Districts other than Rajshahi. The defendant objected to the claim for partial partition. On the 16th February 1903, the Subordinate Judge held that a suit for partial partition was not maintainable. The plaintiff then applied for amendment of the plaint by inclusion of the properties originally excluded, and the amendment was allowed. [218] The defendant took an exception to the order permitting the amendment of the plaint, but it has not been pressed before us and very properly. The amendment did not change the character of the suit, and there was no impropriety in the exercise of the discretion of the Court.

The main contention in the lower Court related to the right of a Hindu widow to claim partition of joint property as against her late husband's co-parceners, and the Subordinate Judge decided in favour of the plaintiff. The contention has been repeated before us in a limited form. Dr. Rash Behary Ghose for the defendant-appellant confined his argument to moveable property including the assets of the family trading business, and he insisted that even if partition were allowed, the right of the defendant as an after-taker of the share of the property that may be allotted to the plaintiff should be sufficiently protected, and that she should be effectually prevented from wasting it.

Jimutavahana makes no distinction between moveable and immoveable property inherited by a female as heiress of a male relative. She has the same powers and is subject to the same restrictions as regards management and alienation (Dayabhaga, Chapter XI, Section 1). Sreekrishna is equally clear (Dayakrama Sangraha, Chapter I, Section 2); and this view of her rights and liabilities has always been adopted

(1) (1871) 6 B. L. R. 747. (2) (1819) 2 Morley's Dig. 198.

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in Bengal; see *Cossinaut Bysack* v. *Hurrosoondry Dossee* (1). In *Thakoor Deyhee* v. *Rai Baluk Ram* (2) and *Bhugwandeen Doobey* v. *Myna Baee* (3), the want of distinction between the two classes of property was accepted as firmly established under the Bengal School of law.

It is also well settled in this Province that a Hindu widow obtaining by inheritance her husband's share in joint property is entitled to separate possession by partition with her co-parceners, unless there be a bar on equitable grounds: *Soudaminey Dossee* v. *Jogesh Chunder Dutt* (4) and *Janoki Nath Mukhopadhya* v. *Mothura Nath Mukopadhya* (5).

We, therefore, concur with the Subordinate Judge that the plaintiff is entitled to have separate possession of her share of the **[219]** joint family properties, moveable and immoveable, and that they should be partitioned as directed by him.

The plaintiff, however, has only a Hindu widow's estate and has a restricted right as regards the disposition of the *corpus*. The defendant in his written statement asked the Court that if a partition were directed, his interest as that of a presumptive heir to the plaintiff's husband, might be safeguarded by a proper provision to that effect. On the 23rd June 1902, the following issue was framed for decision :—" 2nd. Is the plaintiff entitled to a partition of the properties in dispute?" On the 30th June, the defendant applied for amendment of that issue by the addition of the words, "if so, on what terms." The application was refused by the then Subordinate Judge, Babu Kailash Chandra Mozumdar. The Subordinate Judge, who afterwards tried the case, has not expressed any opinion on the point. There are, however, ample materials on the record to enable us to decide the question without a remand for the purpose.

The position of a widow in a joint Hindu family under the Dayabhaga School in relation to her husband's co-parceners is peculiar. It is the result of the latest development of Hindu law. But Jimutavahana, while laying down that " the wife shall obtain her husband's entire share" (Chapter XI, Section I, 8), was not prepared to give her complete independence and emancipate her entirely from the control of her husband's male relations. He quotes the text of Catyayana (Chapter XI, Section I, 56) and says : " Let her enjoy her husband's estate during her life abiding with her father-in-law and others of her husband's family" (Chapter XI, Section I, 57). In paragraph 64, he quotes the following text of Narada :—" When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property and care of herself..., they have full power ; " and he concludes by saying that " in the disposal of property by gift or otherwise she is subject to the control of her husband's family." The Hindu instinct is against her complete independence and the texts enjoin that she should be under perpetual tutelage. As she has only the right to enjoy the usufruct and cannot alienate the *corpus* without necessity or the consent of her husband's kinsmen, they are placed in the position of her guardian and their rights as **[220]** after-takers are thus sufficiently protected. These are no doubt moral injunctions, but practical effect has always been attempted to be given to them so far as circumstances at the present time allow.

(1) (1819) 2 Morley's Dig. 198.
(2) (1866) 11 Moo. I. A. 139.
(3) (1867) 11 Moo. I. A. 487.
(4) (1877) I. L. R. 2 Cal. 262.
(5) (1883) I. L. R. 9 Cal. 580.

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In *Cossinaut Bysack* v. *Hurrosoondery Dossee* (1), Lord Gifford, in affirming the decision of the Supreme Court at Calcutta, is reported to have said : " In the contest for possession of property between her (a Hindu widow) and the relations of her husband, she is entitled to the possession of the property, but that she is only entitled to enjoy it, according to the rights of a Hindu widow, which rights it appears to me to be absolutely impossible to define." No question, however, such as has been raised before us was raised in that case, and it was not contended that before possession of the moveables was made over to her, the Court should make a provision for the protection of the future rights of the after-takers, the reversioners.

In *Biswanath Chandra* v. *Khantomani Dasi* (2), some of the observations in the judgment of Paul, J., may favour the contention that a Hindu widow is entitled to uncontrolled possession of her sonless husband's estate including moveables ; but Norman, C. J., in appeal, rested his judgment on the laches of the reversioner not making an application in time to prevent the widow from taking away unconditionally the money deposited in Court. It would seem that, if a proper application had been made in time, necessary conditions might have been imposed on the widow.

In *Soudaminey Dossee* v. *Jogesh Chunder Dutt* (3), Pontifex, J., while directing a partition between the plaintiff, a Hindu widow, and her co-parceners, observed that in every such case the Court should see that the interest of the reversioners is sufficiently protected. Similar observations are made in *Janoki Nath Mukhopadhya* v. *Mothura Nath Mukhopadhya* (4) and *Bepin Behari Moduck* v. *Lalmohan Chattopadhya* (5), though in each of these cases partition was allowed.

[221] The learned Advocate-General, on behalf of the plaintiffs-respondent, has contended that she is entitled in this suit to obtain uncontrolled possession of her share of the moveables as well as the immoveables, but if a case approaching to spoliation were afterwards made out from her conduct in the use of the property in her possession, subsequent to partition, the defendant might be entitled to sue for an injunction restraining waste by her. He has further contended that the contingency which would entitle the defendant to bring such a suit, which is in the nature of a *bill quia timet*, has not happened, and there is no reasonable apprehension of waste by her.

We, however, think that if a proper case has been made out, the defendant is entitled to relief in the present suit. A separate suit for injunction is unnecessary, and the object of such a suit may be gained in this suit. A multiplicity of suits is always undesirable, and there is nothing to prevent relief being given without a fresh suit. *Hurry Doss Dutt* v. *Rangunmoney Dossee* (6) and *Hurry Doss Dutt* v. *Uppoornath Dossee* (7) are authorities for the proposition that if a Hindu widow abuses her estate, she may be restrained by a *bill quia timet*, but they do not show that a *bill quia timet*, or a suit for injunction is the only means. The case of *Soudaminey Dossee* v. *Jogesh Chunder Dutt* (3) *and Janoki Nath Mukhopadhya* v. *Mothura Nath Mukhopadhya* (4) are ample authorities for the Court giving the same relief by way of injunction or appointment of a receiver in a suit for partition.

(1) (1826) Clarke's Rules and Orders (Appx.) 91.
(2) (1871) 6 B. L. R. 747.
(3) (1877) I. L. R. 2 Cal. 262.
(4) (1883) I. L. R. 9 Cal. 580
(5) (1885) I. L. R. 12 Cal. 209.
(6) (1851) 2 Sevest, 657.
(7) (1856) 6 Moo. I. A. 438.

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We have next to see whether the defendant has made out a case entitling him to relief in the way sought for in his defence. We have no doubt that there is a reasonable apprehension of waste of the moveable properties by the plaintiff as soon as she gets possession of them. Improper destruction of the property may fairly be anticipated from her present conduct. She is, as appears from the evidence, a tool in the hands of her paternal relations. Not only was the suit instituted too soon after her husband's death without sufficient cause and without any reasonable apprehension from the previous conduct of the [222] defendant, but she has been attempting to get immediate possession of the cash money, and has repeatedly shown her anxiety to avoid any investment either in Government promissory notes or mortgages, so that there may be no fetters to her misusing the *corpus*. A debtor during the course of the suit paid into the hand of the receiver appointed in the cause, a large sum of money in satisfaction of a debt. The defendant asked the Court to direct the money to be invested in Government promissory notes. The plaintiff objected to the investment. The defendant also asked for the investment of a sum of Rs. 60,000 in a mortgage of immoveable property, and considering the security there could be no reasonable ground for opposing the application. But the plaintiff would not have it. They both instituted a suit against a debtor for recovery of a debt. The plaintiff withdrew from the suit, and the Court was compelled to strike her name from the category of plaintiffs, and she was made a defendant. The suit was ultimately decreed against the debtor. We, therefore, think that it is very desirable that in the final decree in the suit sufficient provision should be made for the prevention of the misuse by the plaintiff of the cash, money and other moveables that may be allotted to her share. As regards the immoveable properties, however, no such direction is necessary.

We leave it to the lower Court to decide, after the allotment is made and after hearing the parties, what directions should be given for the protection of the future interest of the person who may be entitled to the property after her death. The direction of the Court will depend to a great extent on the nature and amount of property that the plaintiff may be declared entitled to, on actual partition. Such direction should be embodied in the decree.

It is also desirable that the receiver appointed in the cause or any other person who may be appointed in his place should continue to have custody and management until the final disposal of the case. Though the case is one for partition, it involves the dissolution and winding up of a trading business and the assets have to be realized. This would be most conveniently done by a receiver, and he should have custody and management until the assets are actually distributed after realization.

[223] The Rule issued at the instance of the defendant for the stay of proceedings in the lower Court and the application of the plaintiff in respect of the same matter, numbered 1605 and 1795 respectively, are not now necessary to be dealt with, and they are accordingly discharged.

We remit the case to the lower Court for proceeding with the partition and making a final decree in accordance with the directions given above.

Under the circumstances of the case each party should pay his and her costs of this appeal.

Case remanded.