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32 C. 1036=1 C. L. J. 421.

confined to a share in the 4 kedars of land, and if the plaintiff has no joint interest in the other lands of the estate, and the plaintiff's vendor and some of the co-sharer defendants held between themselves the 4 kedars separately, as I gather from the judgment of the Munsif in suit No. 178 of 1900, there is nothing to prevent the plaintiff from instituting a suit in the Civil Court for partition of the said 4 kedars of land, without asking for a partition of the other lands of the estate. And it seems to me that the partition such as the plaintiff seeks for, could not have the effect of dividing the estate into two or more portions jointly liable for the revenue assessed on the entire estate, as stated in section 96 of the Regulation.

As already observed, the expression "imperfect partition" as defined in the Regulation, is only referable to a division of the *entire* estate and not to a specified portion thereof; and if it be so, it is obvious that, as expressed by Mr. Justice Brett, the present case is not covered by the Assam Land and Revenue Regulation. Had it not been for that Regulation, there could not be any doubt that the plaintiff would be entitled to maintain a suit for partition such as he has brought. It is clear that the Revenue authorities had no jurisdiction under the Regulation to grant the relief, which the plaintiff asks for; and I cannot persuade myself to hold that the Legislature intended that the plaintiff should have no relief even in the Civil Court.

The learned vakil for the appellant has raised before me a question which does not seem to have been raised either in the Courts below or before the learned Judges, who originally tried this appeal, that being one of *res judicata*. His argument is that, by reason of the judgment of the Court in Suit No. 178 of 1900, this suit for partition is barred. I do not think that at this late stage of the proceedings, this contention ought to be entertained. It will, however, be observed that the lower appellate Court in **[1050]** that very suit distinctly expressed the opinion that the plaintiff should have applied to the Revenue authorities for partition and that, in the event of their refusal to allow such partition, a civil suit would lie. It was in accordance with the opinion thus expressed that the plaintiff did go to the Revenue authorities for a partition, but such partition was refused and subsequently he brought the present suit.

For these reasons, I agree with Mr. Justice Brett in the conclusion that he has arrived at, the result being that this appeal is dismissed.

Appeal dismissed.

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32 C. 1051 (=9 C. W. N. 784=2 C. L. J. 50.)

[1051] ORIGINAL CIVIL.

Before Mr. Justice Harington.

ATUL KRISENA SIRCAR *v.* SANYASI CHURN SIRCAR AND ANOTHER.*

[13th June, 1905.]

Hindu Law—Will—Devise—Nature of estate devised—No presumption that it is of limited extent only.

Where a Hindu gave by will all his property moveable and immoveable to his mother with a direction to her to feed and clothe his widow so long as she should remain under her control.

***Held* that such a gift did not confer a less estate on the mother than would have been conferred had she been a male, *i.e.*, an absolute estate, and that a**

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bequest by the donee herself by will of all the properties so bequeathed was a good and valid bequest.

In Hindu law there is no presumption that a gift to a mother as such confers a limited estate only.

Such a presumption exists only in the case of a gift or devise of immoveable property to the wife.

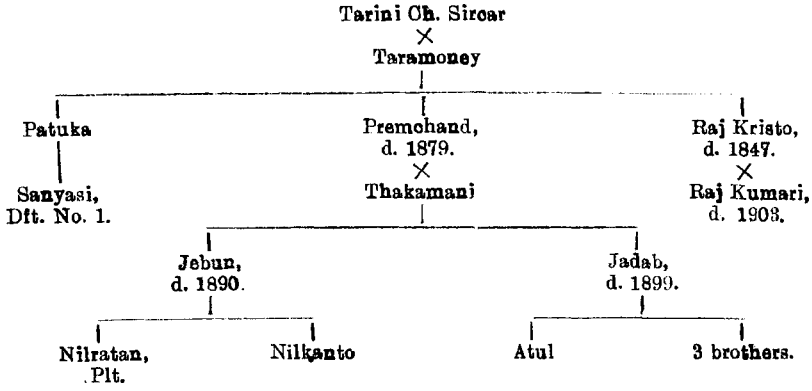
Mahomed Shamsul Huda v. *Shewakram* (1) and *Annaji Duttatraya* v. *Chandrabai* (2) distinguished and explained; *Mussammat Kollany Koer* v. *Luchmee Persad* (3) and *Bhobo Tarini Debya* v. *Peary Lall Sanyal* (4) followed.

[Fol. 33 Cal. 947=10 C. W. N. 695=3 C. L. J. 502; 34 I. C. 375=1 Pat. L. J. 16; Ref. 35 Cal. 896; 23 M. L. J. 223=16 M. L. T. 230=1912 M. W. N. 861=10 I. C. 139.]

ORIGINAL SUIT.

This was a suit for the construction of certain wills and for a declaration of the plaintiff's title to certain premises and to Government securities, for partition accounts and other relief, under the following circumstances.

[1052] The pedigree below will show clearly the relationship of the parties :—



Tarini Charan Sircar died many years ago leaving a widow, Taramoni Dasi and 3 sons—Patuka, Premchand and Raj Kristo. The last named, who became the absolute owner of, among other properties, an undivided one-third share of the family property in Calcutta (and it is with regard to this share that the dispute arose between the parties) died about October 1847, leaving him surviving a widow, Raj Kumari Dasi, his mother Taramoni Dasi and two elder brothers.

By his will he bequeathed to his mother all his moveable and immoveable property in these terms—"I give unto you my property consisting of a 5 annas 7 gandas share of moveable and immoveable properties and mercantile and so forth concerns and my share of Company's papers in the same proportion and appoint you my sole executrix." Then followed a direction to feed and clothe his widow so long as she remained under the control of the executrix with further directions, if she left the family dwelling house. Taramoney Dasi accordingly took possession of the estate and remained in possession thereof until her death, which took place in 1865. By her will in turn she devised

(1) (1874) L. R. 2 I. A. 7.
(2) (1892) I. L. R. 17 Bom. 503.
(3) (1875) 24 W. R. 395.
(4) (1897) I. L. R. 24 Cal. 646, 651.

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32 C. 1051=9 C. W. N. 784 =2 C. L. J. 80.

and bequeathed the abovementioned property and certain securities she held in right of and under the will of Raj Kristo to her executor Premchand Sircar, her surviving son, upon trust for Raj Kumari **[1053]** Dasi, the widow of Raj Kristo, with remainder after her death to her grandsons in equal shares with a clause of representation to any deceased grandson. Premchand Sircar, the executor above-named, died in August 1879, leaving two sons—Jebun Kristo and Jadab Kristo, and having by his will directed that his widow, the defendant Thakamoni Dasi, should be executrix to the estate of his brother's widow and should keep the estate in her own hands and pay the rents, profits and interest to Raj Kumari Dasi. Jebun Kristo, one of the sons, died in 1890 leaving two sons, Nilrutton Sircar and Nilkanto Sircar (plaintiffs Nos. 5 and 6). The other son, Jadub Kristo, died in 1899, leaving four sons, who are plaintiff's Nos. 1, 2, 3, 4, in this action. Patuka Charan, the brother of the testator Raj Kristo, died in 1863, leaving one son, Sanyasi Charan, the defendant, and Raj Kumari Dasi, the widow of Raj Kristo, died in 1903.

The plaintiffs now sued for partition alleging that, under the will of Raj Kristo, Taramoney Dasi took an absolute estate and that they were entitled after the death of Raj Kumari to share in the estate as representing the interests of two of her grandsons. The defendant Sanyasi Charan contended that Taramoney Debi merely acquired a life-interest in the estate, and that on her death the same devolved upon Raj Kumari Dasi as a Hindu widow, and that on her death in 1903 he became entitled thereto as reversionary heir to Raj Kristo Sirkar.

Mr. *B. C. Chakravarti* (with him Mr. *S. K. Mullick*) for the plaintiffs. The gift to Taramoni Dasi confers an absolute estate : it is a gift without limitation of any kind. There is nothing in Hindu law to show that where there is a gift to a female, not the wife of a testator, there is any presumption that the gift is only for life and not an absolute gift. It is only is the case of a gift to a wife by will or *inter vivos* and without express words creating an absolute estate that such a presumption can be said to exist : *Chundermoney Dossee* v. *Hurry Dosee Mitter* (1) and *Mussammat Kollany Koer* v. *Luchmee Persad* (2). In the present case, if the donee had been a male, he would have taken an absolute estate. It is submitted the same thing takes place where the donee **[1054]** is as here a female, namely, the mother of the donor. Gifts of this nature have been held to confer an absolute estate in many cases, *Srimati Pabitra Dasi* v. *Damudar Jana* (3), *Bhobe Tarini Debya* v. *Peary Lal Sanyal* (4), *Raj Narain Bhadury* v. *Ashutosh Chuckerbutty* (5).

Mr. *B. C. Mitter* (Mr. *S. P. Sinha* and Mr. *K. P. Basu* with him) for the defendant Sanyasi.

My proposition is that if there are no words of limitation and no words to indicate that the devise to the female is of an absolute estate, there is a presumption that it is for life only. Before the Hindu Wills Act the general trend of the cases was to the view that a mere bequest to a female conferred a life-estate only and that in construing gifts of such a nature the ordinary notions and wishes of Hindus with regard to the devolution of property should be taken into consideration : *Mahomed Shamsul Huda* v. *Shewakram* (6), *Srimati Soorjemoney Dasi* v. *Denobundoo Mullick* (7), *Srimati Rabatty Dosee* v. *Sib Chunder Mullick* (8). There is

(1) (1880) 5 C. L. R. 557.
(2) (1875) 24 W. R. 395.
(3) (1871) 7 B. L. R. 697.
(4) (1897) I. L. R. 24 Cal. 646.
(5) (1900) I. L. R. 27 Cal. 44, 51, 54.
(6) (1874) L. R. 2 I. A. 7.
(7) (1857) 6 Moo. I. A. 526.
(8) (1857) 6 Moo. I. A. 1.

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a deep rooted prejudice amongst Hindus against females holding any other than a life-interest in property. In Hindu Law in the absence of express words showing such an intention, it is an established rule that a devise to a female does not confer an estate of inheritance, but carries only a life-estate or a widow's estate as understood by Hindu Law: *Koonj Behari Dhur* v. *Premchand Dutt* (1), *Annaji Duttatraya* v. *Chandrabai* (2) is to the same effect. In the latter case the gift was to the mother of the donor *Hirabai* v. *Lakshmibai* (3) supports my proposition. *See also Agin Bindh Upadhya* v. *Mohan Bikram Shah* (4), *Hari Lal Pran Lal* v. *Bai Rewa* (5). In *Bhobo Tarini Debya* v. *Peary Lal Sanyal* (6), Banerjee, J. dealt with the question, but his language is very guarded and the portion referred to amounts to no more than an *obiter dictum*. The case of *Mussammut Kollany Koer* v. *Lachmee Persad* (7) is merely an authority for the proposition that [1055] where the gift to a female is an absolute one it does not confer a widow's estate. See also Mayne on Hindu Law, 6th Edition, p. 509, as to the presumptions in gifts of this kind.

There are no authorities exactly in point with the exception of the Bombay decision and *Mahomed Shamsul Huda* v. *Shewakram* (8), which is the basis of all the subsequent decisions. From the will itself in this case, however, it may be gathered that the estate was intended to be a limited one only.

Mr. *S. K. Mullick* in reply. The case of *Annaji* v. *Chandrabai* (2) on which the other side rely has been distinguished by Farran, C. J. in *Anandabai* v. *Rajaram* (9). See also *Ram Narain Singh* v. *Peary Bhagat* (10) and *Ramasami* v. *Papaya* (11).

HARINGTON, J. The plaintiffs in this suit ask for a declaration of their title to certain premises and to certain Government securities; construction of the wills of Raj Kristo Sircar and Taramoney Dasi; partition and accounts. One Tarini Charan Sircar died many years ago, leaving a widow Taramoney Dasi, who died in 1865, and three sons—Patuka, Premchand and Raj Kristo. Patuka died in 1863, leaving Sanyasi Charan (defendant No. 1) his son and heir.

Premchand died in 1879, leaving his widow Thakomoney (defendant No. 2) and two sons Jeebun Kristo and Jadub Kristo the latter died in 1899 leaving four sons, who are the first four plaintiffs in the suit: the former died in 1890, leaving two sons (plaintiffs Nos. 5 and 6). The seventh plaintiff is the transferee from Jeebun's younger son (plaintiff No. 6).

Raj Kristo, the third son of Tarini and Taramoney, died in 1847 leaving a widow, Raj Kumari Dasi, who died in 1903 without issue.

The dispute between the parties relates to Raj Kristo's one-third share of the family property.

The plaintiffs allege that Raj Kristo devised his share to Taramoney by will; that Taramoney devised it to Premchand in [1056] trust for Raj Kumari for life with remainder to her grand children, Sanyasi Charan, Jeebun and Jadub absolutely.

The defendants contend that Raj Kumari took a Hindu widow's estate in the share of her deceased husband Raj Kristo, that on her death in 1903 it devolved on Sanyasi Charan as reversionary heir to Raj Kristo.

(1) (1880) I. L. R. 5 Cal. 684.
(2) (1892) I. L. R. 17 Bom. 503.
(3) (1886) I. L. R. 11 Bom. 576, 578.
(4) (1902) I. L. R. 30 Cal. 20, 33.
(5) (1895) I. L. R. 21 Bom. 376.
(6) (1897) I. L. R. 24 Cal. 646.
(7) (1875) 24 W. R. 395.
(8) (1874) L. R. 2 I. A. 7.
(9) I. L. R. 22 Bom. 984.
(10) I. L. R. 9 Cal. 830.
(11) I. L. R. 16 Mad. 466.

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If the plaintiffs are correct Raj Kristo's one-third is divisible into thirds of which the first four plaintiffs get one-third representing as Jadub's share ; the other plaintiffs get one-third representing Jeebun's share and the defendant Sanyasi Charan gets one-third.

If the defendant is correct Raj Kristo's one-third share goes to Sanyasi Charan absolutely.

There is no dispute about the wills.

That made by Raj Kristo is in these terms addressed to Taramoney:—

"I give unto you my property consisting of a 5 annas 7 gundas share of moveable and immoveable properties and mercantile and so forth concerns, my share of Company's papers in the same proportion and appoint you my executrix."

Then follows a direction to feed and clothe the widow (Raj Kumari) as long as she continues under the control of the executrix with a proviso that if she resides elsewhere she is to have Rs. 508 on account of food and raiment.

It is contended by the defendant that these words only confer a life-estate on Taramoney and that on Taramoney's death, Raj Kumari took the estate she would have taken had Taramoney's life-interest not been interposed, *i.e.*, that of a Hindu widow in Raj Kristo's share.

If the gift in this will had been to a man it would have conferred an absolute estate : if it had been made by a testator to his widow it would have conferred an estate for life. The question is what estate it confers, being a gift from a son to his mother?

The plaintiff rests his proposition that a bequest to a female is presumed to be a gift for life, unless by express words or necessary implication an absolute estate is expressed to be conveyed, on two cases. The first, *Mahomed Shumsul* v. *Shewakram*, (1) was [1057] decided by the Judicial Committee in 1874. In that case there was in the will an out and out gift by the testator to his son's widow, but the will also contained a direction that the daughters of the donee should be heirs. It was held on the construction of the whole will that the son's widow took a life-estate subject to the daughters succeeding her either as heirs of herself or as heirs of the original testator. This case therefore does not support the plaintiff's proposition as their Lordships did not hold that the presumption was that an out and out gift to a daughter-in-law only conferred a life-estate, but that the reference to the daughters of the donee indicated that the testator only intended to give a life-estate.

The other case, *Annaji Duttatraya* v. *Chandrabai* (2), was a case in which it was held that a deed a gift of a house made by an adopted son to his adoptive mother for her maintenance conferred only a life-estate, notwithstanding that it contained the expression : "The house is wholly yours." The Court laid down the proposition that in the absence of express words shewing such an intention "a gift to a woman does not confer an absolute estate of inheritance, which she is unable to alienate." The authorties cited to support this proposition are both cases in which the gift was to the widow of the donor and are not authorities for the wider proposition that the rule applicable in the case of a gift to a widow is to be extended so as to apply to a gift to any female.

On the other hand it is laid down in the case of *Mussamut Kollany Koer* v. *Luchmee Persad* (3) that no such rule exists in Hindu Law, and

(1) (1874) L. R. 2 I. A. 7.
(2) I. L. R. 17 Bom. 503.
(3) 24 W. R. 395.

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there is also direct authority of Banerjee, J. in the case of *Bhobo Tarini Debya* v. *Peary Lal Sanyal* (1) for the proposition that the presumption is limited to the case of a gift of immoveable property to the wife.

Moreover, if the dominant desire of a Hindu is to retain his property in his own family, the reason which might prevent his giving a childless widow an absolute estate in his property would not operate in the case of a lady in Taramoni's position.

[1058] A childless widow might be tempted to benefit by her will her own blood relations at the expense of her husband's family, but there is no reason to suppose that Taramoney, any more than any male member of the family, would desire to disinherit her own children or grandchildren.

In my opinion there is no presumption that the gift to Taramoney in the will of Raj Kristo confers a less estate than would have been conferred had Taramoney been a male, *i.e.*, an absolute estate.

Next it is argued that the will has all along been treated as a dead-letter, and that Raj Kumari having been in possession since Taramoney's death as a Hindu widow, has barred the plaintiff by the creation of an adverse title. The principal documentary evidence on this point is to be found in certain arbitration proceedings, which took place in the year 1889, in which in the agreement to refer to arbitration it is asserted, and in the award it is found by the arbitrators that Raj Kumari's interest was that of a Hindu widow in the share of her deceased husband.

But the parties to this arbitration were Sanyasi, Thakamoney and Raj Kumari ; so it is not binding on the plaintiffs, who were neither parties to it nor are claiming a title through any party.

It is said that Jeebun explained the agreement, and therefore had notice that Raj Kumari was setting up a title inconsistent with the will. I am not at all satisfied that this was the case. Jeebun is dead and cannot be called. I am not prepared to find on a vague statement that he explained the agreement to Raj Kumari, that he had notice that such claim was being set up.

Two applications by Raj Kumari for registration of her name have been put in, made in July 1877, in one of which she described herself as owner "by inheritance" and in the other she described the property as "paternal," and it is said that in a certain land acquisition case she obtained the capital compensation money, whereas, if the terms of Taramoney's will were adhered to, the trustee should have had the capital.

The oral evidence does not amount to much: the elder of the two witnesses is only 45 and cannot be expected to know what happened to the property on Taramoney's death 40 years ago. There is some evidence that separate collections were made **[1059]** by Raj Kumari, but there is no evidence which would justify me in finding that either Jeebun or Jadub, who knew that under the will Raj Kumari was entitled to the beneficial interest of Raj Kristo's share, had any notice that she claimed the larger interest of a Hindu widow. In my opinion no statements as to the interest she claimed not brought to the remainder man's knowledge can affect his right, or make her possession of the share to which she was beneficially entitled under the will adverse to him.

So far from there being substantial grounds for saying the trust was treated as of no effect, it is to be observed that Taramoney having devised the share to Premchand in trust for Raj Kumari for life with remainder to her grandchildren—Premchand in his turn gave by his will the same

(1) I. L. R. 24 Cal. 651.

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32 C. 1651=9 C. W. N. 784 =2 C. L. J. 50.

directions to Thakamoney for carrying out the trust. These provisions indicate that the trust was not treated as a dead-letter.

In my opinion the remainder men were never barred.

The result is that there must be judgment for the plaintiffs : the devise in favour of the grandchildren must be given effect to. The share of Raj Kristo (including the Government paper) must be divided into three shares, of which the first four plaintiffs will be entitled to one share, the next three to one share, and the defendant Sanyasi Charan to the remaining share.

I think Thakamoney as the trustee of the estate was rightly made a party. As she has not contested the case, her costs must be paid out of the property which has to be divided. The costs of the plaintiffs must be paid by the defendant No. 1.

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32 C. 1060 (=9 C. W. N. 847=2 C. L. J. 396).

[1060] APPELLATE CIVIL.

Before Mr. Justice Harington and Mr. Justice Mookerjee.

GIRWAR SINGH *v.* SIRAMAN SINGH.*

[16th June, 1905.]

Suit for damages, maintainability of, in the Civil Court—Slander—Words spoken not defamatory to the person bringing the action.

A suit for damages for an alleged slander will not lie in the Civil Court at the instance of any person, when the words complained of are neither defamatory of him nor have they caused him any injury.

Per Harington, J. **A witness is not entitled to claim privilege for a slanderous statement wantonly made, which is neither an answer to any question addressed to him in examination or cross-examination, nor has any connection at all with the case under trial.**

[Appl. 4 C. L. J. 390.]

SECOND APPEAL by the plaintiff Girwar Singh.

This appeal arose out of an action for damages brought by the plaintiff against one Siraman Singh.

The allegation of the plaintiff was that one Nathuni Singh instituted a criminal case against one of his (plaintiff's) tenants and in that case the said defendant Siraman Singh was examined as a witness on behalf of the complainant ; that in the course of cross-examination the defendant without any cause whatever in open Court in the presence of many respectable people stated that the (plaintiff's) sister was in the keeping of a *Kayestha*, and that these words were uttered maliciously, damaged his position in society and caused mental distress to him.

The defence *inter alia* was that the alleged slanderous words not being *per se* actionable and no damage having been proved, the plaintiff was not entitled to recover damages.

[1061] The Court of First Instance decreed the plaintiff's suit.

On appeal to the Subordinate Judge the decision of the First Court was set aside and the plaintiff's suit was dismissed.

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* Appeal from Appellate Decree No. 1778 of 1903 against the decree of Rajendra Kumar Bose, Additional Subordinate Judge of Bhagalpur, dated the 1st of July 1903, reversing the decree of Dandadhari Biswas, Munsif of Monghyr, dated the 28th of February 1903.