

Before Mr. Justice Kimp and Mr. Justice Markby.

ABHIRAM DAS (ONE OF THE DEFENDANTS) v. SEIRAM DAS AND
OTHERS (PLAINTIFFS.)*

1869
Aug. 25

*Grounds of Action—Second Suit—Splitting of Cause of Action—Hindu
Law—Hindu Widow—Unchastity—Divesting of Property.*

A plaintiff is bound to include in his plaint all the grounds upon which his suit is based. A second suit upon a different ground, which existed before the commencement of the first suit, would not be allowed, as it would be splitting the cause of action.

Unchastity in a Hindu widow does not divest her of property which has become vested in her after the death of her husband.

Baboo *Purnu Chandra Shome* for appellant.

Baboo *Anukul Chandra Mookerjee* and *Bhawani Charan Dutt* for respondents.

MARKBY, J.—I have no doubt whatever that this special appeal must be allowed. There has already been a suit between the same parties, the object of which was to recover possession of property which had been in the possession of two widows, as widows of their husband, and had been sold to the defendants, special appellants before us. A month after that first suit was dismissed, a fresh suit (the present one) was instituted by the plaintiff, the only difference between the two suits being, as is stated to us, that whereas in the first suit the plaintiff alleges that the two widows were dead, in the present suit he admits that one of them is alive, but alleges that the *kobala* was fraudulent, and that the widow is unchaste. Now, with regard to the fraud in the *kobala* itself, I think that was a matter which the plaintiff was bound to include in his former suit, for it would be distinctly splitting his cause of action if he was allowed to take that ground now for the first time. If the plaintiff was allowed to take this ground, and fail upon it, he would most probably bring suit after suit on different grounds not at first taken,

* Special Appeal, No. 1260 of 1869, from a decree of the Judge of East Burdwan, dated the 15th April 1869, reversing a decree of the Moonsiff of that District, dated the 23rd October 1868.

1869

and there would be no end to the litigation. It is clear there-
ABHIRAM DAS fore that he was bound to include in the first suit all the grounds
 v.
SRIRAM DAS. against the validity of the sale, which were then existing.

With regard to the ground of unchastity, it may be possible that the alleged unchastity may have occurred subsequently to the dismissal of the first suit; but even if it was so, according to a decision of the Appellate Court, *Matungini Dabi v. Joykali Dabi* (1), which I believe has not yet been published, mere unchastity on the part of a widow does not divest her of property which has once become vested in her; and therefore we could not send back the case for an inquiry of fact based on a bad ground of law. I think therefore that the decision of the lower Appellate Court should be reversed, and the plaintiff's suit dismissed with costs in the Courts below and in this Court.

KEMP, J.—I am of the same opinion. I have not seen the decision referred to of the Appellate Court, which lays down the law to be that a Hindu widow is not deprived of her right of inheritance owing to unchastity, and therefore I do not wish to give any opinion upon that point. I concur in decreeing the special appeal, on the ground that in the former suit all existing causes against the legality of the alienation by the widow should have been stated, and insisted upon, otherwise another suit might be brought for the same property on the ground, for instance, that there was no legal necessity for the sale, and there would be no end to the fresh allegations under which different suits might successively be brought. I therefore concur in dismissing the plaintiff's suit with costs in all the Courts.

(1) Unreported.