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 MUSSAMUT
 AMIRAN
 v.
 MUSSAMUT
 ASIRUN.

In this view of the case I would reverse the decision of the Judge, and remand the case to the Judge to be tried, as it was tried in the Court of first instance, on the merits. The case is therefore remanded for trial with reference to this judgment under section 15 of the Letters Patent.

Before Mr. Justice Kemp and Mr. Justice Glover.

SHEWAK RAM ROY *alias* DURGA PRASAD (PLAINTIFF) v.
 SYAD MOHAMMED SHAMSUL HODA AND RANI DHAN
 KOWER (DEFENDANTS).*

Declaratory Decree—Reversioner—Alienation by Hindu Widow—Relief.

A suit lies by a reversioner to declare that an alienation by a Hindu widow will not be binding upon him after her death.

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A suit is not to be dismissed on the ground that the plaintiff seeks to set aside such alienation, but the Court will grant him such relief as he is entitled to.

Baboo *Amar Nath Bose* and *Tulsi Das Seal* for appellant.

Messrs. *A. T. T. Peterson* and *R. E. Twidale* for respondent

See also 13
 B. L. R. 230.

KEMP, J.—This is a suit, the substantial object of which is to have a deed of conveyance by one Rani Dhan Kower, dated 13th of November 1854, declared to be not binding as against the plaintiff beyond the life-time of Dhan Kower. The plaintiff has asked to have the deed of sale cancelled, but it does not follow that because he has asked too much, the Court will refuse to give him that relief which he may be entitled to.

The plaintiff claims as reversionary heir to Harnarayan. The defendant Dhan Kower is the alienor, the defendant Moulvi Shamsul Hoda is the alienee.

The Judge disposes of the suit by observing that there is no sufficient reason for making a declaratory decree, inasmuch as the alienation which took place 14 years ago may be as effectually questioned on the death of Rani Dhan Kower, whenever that

* Regular Appeal, No. 246 of 1838, from a decree of the Judge of Patna, dated the 1st September 1868.

vent may take place as now ; that it is by no means certain whether the plaintiff will be able to question the alienation when the succession opens out to him on the death of the alienor. The Judge then quotes certain rulings in the cases of *Baboo Matilal v. Rani of Maharaj Bhoopsing* (1), *Phulchand Lall v. Rughubuns Sahai* (2) *Kenaram Chuckerbutty v. Denonath Panda* (3) *Puree Jan Khatun v. Bycuntchunder Chuckerbutty* (4), *Brinda Dabee Chowdrain v. Parilal Chowdhry* (5), in support of his opinion that the suit of the plaintiff is premature, and dismisses it with costs.

We are of opinion that the suit of the plaintiff has been dismissed on insufficient grounds.

The first case quoted by the Judge is to the effect, that in suits where no substantial relief is sought, the Court ought to be particular in giving a declaratory decree. In this suit a substantial relief is sought. A reversioner can, during the life-time of the alienor, commence a suit to declare that a conveyance is not binding upon him beyond the life of the alienor. The relief sought for is plain and substantial, *viz.* that the deed of conveyance be declared to be not binding upon the plaintiff beyond the life-time of the alienor. It is of course in the discretion of the Court to make a declaratory decree or to refuse to do so, but this discretion must be guided by reason and not be arbitrary.

A plaintiff asking for a declaratory decree must show that some act has been done which is hostile to or invades his right. In this case the act of Dhan Kower clearly invades and is hostile to the plaintiff's rights as a reversioner, and a suit during the life-time of the alienor will most clearly lie. This has been ruled by the Full Bench in their decision in the case of *Gobindmani Dasi v. Shamlal Bysak* (6). The other cases alluded to by the Judge refer to suits to set aside Thackbust awards which did not invade the rights of the plaintiff in those suits.

(1) 8 W. R., 64.

(2) 9 W. R., 108.

(3) 9 W. R., 323.

(4) 9 W. R., 380.

(5) 8 W. R., 460.

(6) Case No. 79 of 1862; April, 7th, 1864.

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SHENAK RAM.

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MED SHAMSUL

HODA AND

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In the case of *Mussamut Pranputty Koer v. Lalla Futteh Bahadoor Singh* (1), cited by the Judge, there had been no alienation by the widow, but a simple declaration made by her in a *Warasatnama*, which of course was no evidence against the reversioner and could not bind him. We are therefore of opinion that under the ruling of the Full Bench quoted above, this suit will lie.

The plaintiff may not be entitled to ask to have the deed cancelled, but he is competent to ask for a declaration that it is not binding upon him beyond the life of the alienor.

Before Mr. Justice Kemp and Mr. Justice Glover.

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GOPAL DAS (PLANTIFF) v. SHEIKH SYAD ALI AND OTHERS
(DEFENDANTS.)*

Bill of Exchange—Notice of Dishonor.

In an action brought in the district of Patna against the indorser and acceptors of bills of exchange, after a part payment by the acceptors no objection having been taken as to the misjoinder of defendants, and the Judge having omitted to find whether the indorser had received notice of dishonor or not, *Held*, the case must be remanded to ascertain, first, whether notice had been given within reasonable time, and if not, whether thereby the indorser had been injured or exposed to material risk of injury; and, secondly, whether (English law not being applicable to the case) by the usage of merchants at Patna, a part payment by the acceptors and receipt by the plaintiff discharged the indorser from liability.

Mr. *G. C. Paul* and Baboos *Mahes Chandra Chowdhry* and *Ramesh Chandra Mitter* for appellant.

Messrs. *R. E. Twidale* and *C. Gregory*, and Munshi *Mahomed Yusaff* for respondents.

* Special Appeal, No. 666 of 1869, from a decree of the Judge of Patna, dated the 21st December 1868, reversing a decree of the Subordinate Judge of that district, dated the 16th July 1868.

(1) 2 Hay, 608.