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order the Bhuttacharjees are unable now to take out execution of this portion of the decree, which they state they have reserved in their own hands.

I concur therefore with the Chief Justice in reversing the decision of the Principal Sudder Ameen, and in disallowing the application for execution.

Before Mr. Justice Loch and Mr. Justice Markby.

1869 May 14.

GURU PRASAD ROY AND OTHERS (DEFENDANTS) *v.* NAFAR DAS ROY AND SURJANARAYAN ROY (PLAINTIFFS.)*

Gift for life to Childless Hindu Widow—Mesne Profits—Stridhan.

A Hindu by a deed dated in 1840 gave his daughter, a childless widow, an estate for life in certain property; with remainder on her death to his brother's grandsons; the daughter was put in possession, was dispossessed in 1858, and died in 1862. Under the terms of the deed the property then went to the survivor of the two grandsons who, in 1864, sold his rights and interests in the property. In 1865, the purchaser brought a suit, and recovered possession from the defendants. His representatives now sued for mesne profits of the property from 1860 to 1865.

Held, that the plaintiffs were not entitled to mesne profits which had accrued due but were uncollected in the life-time of the daughter; that such mesne profits would go to her heirs, who would alone be entitled to them.

Baboos *Mahendra Lal Seal* and *Sham Lal Mitter* for appellants.

Baboo *Mahini Mohan Roy* for respondents.

THE facts in this case sufficiently appear in the judgmemt of

LOCH, J.—In this case we find that Bramamayi was a childless widow, and as such, not entitled to succeed to the property in question. But her father, Madhab Kishor, under a *hibba* dated the 8th Kartik 1247 (1840), transferred the property to her, to be enjoyed by her during her life; and on her death, to go to his brother's grandsons, Ram Charan and Ram Dayal. From the terms of the *hibba*, it appears that Bramamayi was put in pos-

* Special Appeal, No. 2345 of 1868, from a decree of the Officiating Judge of Moorshedabad, dated the 30th May 1868, modifying a decree of the Principal Sudder Ameen of that district, dated the 30th September 1867.

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session of the property in the life-time of her father; and among other terms of the *hibba*, she was to support him while he lived; and after his death, to perform his funeral ceremonies, &c., &c. It appears that Bramamayi was dispossessed in 1265 (1858), and died in 1269 (1862). On her death, the right to the property went under the terms of the *hibba* to Ram Charan, Ram Dayal having died in the meantime. Ram Charan sold his rights and interests in the property to the plaintiff's husband in 1271 (1864) and he brought a suit to recover possession from the defendants, and obtained a decree on the 23rd March 1865.

The plaintiff now sues for mesne profits of this property from 1267 (1860) 1272 (1865). The first Court gave a decree for mesne profits for a period subsequent to the death of Bramamayi, but declined to give a decree for mesne profits which became due during her life-time, holding that the mesne profits must be considered in the light of *stridhan*, to which her heirs only would be entitled. On appeal, the lower Appellate Court held that, though Bramamayi neglected to recover the estate from the defendants, yet the wasilat, like any rent which accrued due had the estate remained with her, would have gone to Ram Charan under Madhab Kishor's *hibba*, and it therefore reversed the order of the first Court.

In special appeal it is urged that the lower Appellate Court is wrong in giving this decree for wasilat to the plaintiff; and looking at the mode in which the property came to Bramamayi, and the manner in which she held it, we are disposed to think that this contention is good, and the heirs of Bramamayi are alone entitled to claim these mense profits due for the period of Bramamayi's life, and we therefore set aside the order of the Judge with regard to mense profits during the life-time of Bramamayi, and decree this appeal with costs.

MARKBY, J.—I am entirely of the same opinion. The only point that is urged before us is as to the right of the plaintiff in this suit to recover wasilat for the period during which the defendant was in wrongful possession in the life-time of Bramamayi. It is to be observed that neither Bramamayi nor Ram Charan from whom the plaintiffs purchased, claim any

rights as heirs of Madhab Kishor. All the rights they held, which the plaintiffs claim as purchasers, were derived from the *hibbanama*. Therefore the question must be determined according to the construction put upon the *hibbanama*. Whether therefore if, under the ordinary law of inheritance, Bramamayi had succeeded to the estate of Madhab Kishor, and after Bramamayi's death Ram Charan had succeeded to the estate as the heir of Madhab Kishor, the right to the rent which had accrued but was not collected in the life-time of Bramamayi, would have gone to Ram Charan with the estate, is altogether beside the question. The question before us is simply this, whether that would be so under the terms of the *hibbanama*. Now I must admit that it seems to me extremely probable that a Hindu, in disposing of his property, would on such a matter as this follow generally the ordinary rules of inheritance, and that he would be very likely to confer on Bramamayi only such rights as would be taken by a woman, as heiress, in the same position. But this, though probable, appears to me not to have been done. Upon the best consideration that I can give to the construction of the *hibbanama*, I am disposed to think that the property would go to Bramamayi absolutely during her life-time, with all the rents and profits that would arise out of it. Under this view of the case, I must hold that the accumulations made by Bramamayi out of the rents and profits of the estate during her life-time, must be considered in the light of *stridhan*, and as such would go to her heir, instead of the heir of Madhab Kishor; and the same, I think, would be the case with uncollected, as with collected rents. Therefore, the purchaser from Ram Charan would take no interest in those uncollected rents. Under this view of the case, I agree that the decree of the Judge for wasilat for the period during the life-time of Bramamayi, must be set aside, and his appeal be decreed with costs.