

become the duty of the Subordinate Judge to take up and try the question of valuation and his decision also would be final, and therefore there would be a final decision that the suit could not be maintained in the Moonsiff's Court, and also a decision equally final that the suit could not be maintained in the Subordinate Judge's Court, which would lead to a practical absurdity and the greatest inconvenience.

The result of this decision is that the appeal will be dismissed with costs; the respondent will be allowed full costs, both in this Court and before the Division Bench.

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[APPELLATE CIVIL.]

*Before Mr. Justice Bayley and Mr. Justice Ainslie.*

MUSSAMAT SURAJ BANSI KUNWAR (ONE OF THE DEFENDANTS) v.  
MAHIPAT SING (PLAINTIFF).\*

1871  
June 6.

*Suit by a Reversioner—Declaratory Decree—Cause of Action.*

A. brought a suit against C. and D., alleging that he was an heir expectant upon the death of B., a Hindu widow in possession of an estate, and as such sought for a declaration of title, and to have a certain conveyance of this estate said to have been executed by C. in favor of D. set aside as affecting A.'s future interest, without charging any act of waste or injury to the property which might affect his rights as reversioner. *Held*, that A. had disclosed no cause of action against C. and D. see also 15 B. L. R. 78.

THE plaintiff in this case sued as heir to his uncle for a declaration of his title to, and to set aside a kobala of a certain share in an estate, said to have belonged to one Nando Lal, deceased, executed by one Champa Kunwari and others, dated 25th March 1867. The plaintiff alleged that his ancestor, one Sheoburn Sing, purchased the property in suit, on the 25th July 1828, *benami*, or in the name of, one Bitburn Sing, and had effected a mutation of name in his favor, but himself held possession of it; that after the death of Sheoburn Sing, his sons remained in possession; that Nando Lal, one of the sons, died,

\* Special Appeal, No. 290 of 1871, from a decree of the Subordinate Judge of Bhagulpore, dated the 4th December 1870, reversing a decree of the Moonsiff of that district, dated the 18th May 1870.

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leaving a widow, who had succeeded him ; that Champa Kunwari, daughter, and Dwarka Sing, minor, grandson of Ritburn Sing, had executed the aforesaid kobala in favor of one Ratu Sahi, at the instigation of two other persons, Prasad Sing and Janki Sing, who the plaintiff alleged, were desirous of obtaining possession of the share in suit. The plaintiff, therefore, sought for a declaration of his title to the estate of his deceased uncle Nando Lal, and that this alienation was void.

The vendees, under the kobala in question, denied the plaintiff's title ; alleged that Ritburn Sing was the real proprietor and in possession ; that after his death his heirs continued to hold the estate, and that Champa Kunwari and Dwarka Sing being duly in possession, had sold the share in question.

The wife of Nando Lal, deceased, declared that she had nothing whatever to do with the estate of Ritburn Sing.

On the evidence, the Moonsiff found that the plaintiff had failed to establish his title ; that Ritburn Sing was not a benami dar but real proprietor ; and that he and his heirs had been in possession. He accordingly dismissed the plaintiff's suit.

The plaintiff appealed, and the decision of the Moonsiff was reversed, and the plaintiff obtained the declaratory decree he had prayed for. The defendants then appealed specially to the High Court.

Mr. C. Gregory (with him Baboo Durga Das Dutt), for the appellants, contended that the plaintiff had disclosed no cause of action, his suit being to set aside certain alienations of a share in an estate (in which he had no present subsisting interest or possession) as affecting some probable future right of his in the same. On the plaintiff's own showing, the widow of Nando Lal was in possession, the act complained of was one committed by strangers, who it was not alleged had in fact in any way dealt with the property so as to cause any injury to it, therefore the plaintiff had no ground for instituting this suit. So long as the widow was in possession, the plaintiff could not sue ; and in this case, it was never contended that the widow had done anything causing waste. Upon the plaintiff's own case, therefore, he was out of Court—*Mussamat Pran-*

*puttee Koer v. Lalla Futteh Bahadoor Sing (1) and Nabin Chandra Chuckerbutty v. Iswar Chandra Chuckerbutty (2)*

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Baboo *Nilmadhab Sen*, for the respondent, contended, that upon the evidence it was proved as a fact that Sheoburn Sing and his heirs were in possession, and on the death of Nando Lal his widow was in possession of his share as tenant-for-life, and that Ritburn was a mere benamidar, which decision of fact could not be set aside in special appeal; and that the mere fact of the widow of Nando Lal being in possession would be no ground for setting aside a decision as to title as against the defendant in this suit, particularly as in the Courts below the defendant had contested the suit on the merits, and did not then raise the objection that there was no cause of action. He urged that the defendant ought not to be allowed to take this objection to the plaint for the first time on special appeal, after losing on the merits in the Court below.

Mr. *Gregory* was not called upon to reply.

The judgment of the Court was delivered by

BAYLEY, J.—In this case we think that the first and the second grounds of special appeal must prevail.

The facts are briefly these:—The plaintiff comes in as the reversioner of the widow of one Nando Lal, the son of Sheoburn Lal. He sued for the declaration of his title by setting aside a kobala dated the 25th March 1867 from one Mussamat Champa Kunwar, daughter of Ritburn Sing, and others, propounded by the defendant. The plaintiff does not sue for confirmation of possession, on the contrary his allegation is that his possession is undisturbed. It is also a fact that the widow of Nando Lal, the tenant-for-life, is in possession. The suit is not brought to set aside any alienation made by her, or any direct act of waste or injury to the property, which might affect the rights of the plaintiff as the widow's reversioner. What is pressed upon us by the respondent is that, although the name of Ritburn was used as that of the recorded proprietor of the pro-

(1) 2 Hay's Rep., 608.

(2) Case No. 460 of 1867; April 29th, 1868

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erty and his widow executed to the defendants the deed which is set up, still the real proprietor was Sheoburn, the father of Nando Lal, whose widow is the tenant-for-life; in other words, that the act of Ritburn's widow must be deemed no legal act, as the property was not Ritburn's at all; but Sheoburn's only. Now a Full Bench in the case of *Nabin Chandra Chuckerbutty v. Iswar Chandra Chuckerbutty* (1), and the late Chief Justice in the case of *Mussamat Pranputtee Koer v. Lalla Futteh Bahadoor Singh* (2), have held that a reversioner ought to sue not upon some contingent and uncertain right which may never accrue to him, but upon some positive right; and further that was a case of an alleged improper alienation by the widow herself. In the present case, however it is not pretended that there was any such alienation or any waste by the widow affecting the plaintiff as her reversioner. The mere execution of a deed or the registration of it as between strangers without any ulterior act directed against the plaintiff or his possession, or against the widow and her possession, can in no way give the plaintiff a cause of action at this stage. It would be contrary to all judicial rules to express any further opinion in the case, as we are asked to do, at the present stage of the litigation, and as the case at present stands before us. It must be left to the plaintiff when any real cause of action or reversionary right accrues to him to take such steps as he is then advised. As the case stands at present, we think the judgment of the lower Appellate Court must be reversed, and the plaintiff's suit dismissed as brought without any existing cause of action, and with all costs.

*Appeal allowed.*

(1) Case No. 460 of 1867 April 29th, 1868.

(2) 2 Hay's Rep., 698.