

presumed, from the length of time during which the plaintiff and his predecessor have held this land, that they must have held under a patta, and there is nothing illegal in the presumption that the plaintiff's vendor had a maurasi right, which he was capable of transferring to the plaintiff. The first Court has also found, and the Subordinate Judge on appeal has concurred in that finding, that the defendant had not proved his case that the land was *patit*. Both the points taken by the special appellant therefore fail.

Two cases have been referred to by the pleader for the special appellant—*Shiu Dayal Puri v. Thakur Mahabir Prasad* (1), and *Ramdham Chuckerbutty v. Srimati Komal Tara* (2)—which show that the mere fact of possession for a number of years is not sufficient to prove a mokurrari title. Nobody supposes that mere possession for eight, ten, or even twenty years would be sufficient to create a mokurrari title; but that is not the point on which the lower Courts have gone. They have presumed the fact of the maurasi holding from the fact of the land having been in the possession of the same family on continuous payment of rent to the zemindar for nearly a hundred years.

The special appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Kemp and Mr. Justice Glover.

BISTOBEHARI SAHOY (PLAINTIFF) v. LALA BIAJNATH PRASAD AND OTHERS (DEFENDANTS).*

1871

June 14.

Hindu Law—Alienation by Widow—Suit by Reversioner for Declaration of Right—Cause of Action.

A., a Hindu widow, obtained a loan of a sum of money by mortgage of a certain parcel of property belonging to her husband. The mortgagee obtained

See also
15 B.L.R. 154.

*Special Appeal, No. 48 of 1871: from a decree of the Judge of Patna, dated the 2nd November 1870, confirming a decree of the Subordinate Judge of that district, dated the 2nd July 1870.

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a decree, and in execution thereof caused the property to be sold. In a suit by A.'s daughter's son, the next reversionary heir, for a declaration that the sale was invalid as against him, the lower Appellate Court held that there was no cause of action.

Held, in special appeal, that the existence of a cause of action depended upon whether the widow incurred the debt under legal necessity; and the case was remanded for trial of that question.

This was a suit for a decree declaratory of the right of the plaintiff as reversioner to the property left by his maternal grandfather, and that a sale of that property was invalid against him. The plaint stated that his maternal grandfather died, leaving considerable real and personal property, and leaving a widow, two daughters, and the plaintiff, his grandson; that the widow succeeded to the property, and that without any legal necessity and while capable of maintaining herself from out of the income of the estate in her possession, she mortgaged the property in dispute; that the mortgagees obtained a decree, and had caused the property to be sold, and the same had been purchased by Munshi Haraklal. Hence the suit for "protection of his future interest in the state of his late grandfather, so far as it was affected by the sale in execution of the decree against his grandmother."

The defendant Munshi Haraklal set up, *inter alia*, that it was unknown whether the plaintiff would survive his maternal grandmother or not, that the suit for declaration of his right as reversioner would not lie, and that the debt was incurred under legal necessity.

The Subordinate Judge held that there was no legal necessity which could under the Hindu law warrant a Hindu widow to bind the estate of her deceased husband, and accordingly passed a decree, declaring that the sale passed only the life-estate of the widow, and that the purchaser was entitled to retain possession of the property during the life-time of the widow.

On appeal, the Judge held that the plaintiff had alleged no cause of action; that the defence set up by the defendant, that the sale passed an absolute right to the property, did not cure the defect; and that the sale of the right and interest of a Hindu widow was no cause of action. He accordingly dismissed the suit.

Baboos *Mahes Chandra Chowdhry* and *Hem Chandra Banerjee* 1871
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Baboos *Debendranarayan Bose* and *Munshi Mahomed Yusuff* v. LALA BHAJ-
for the respondents. NATH PRASAD.

The judgment of the Court was delivered by

GLOVER, J.—The plaintiff in this case sues for a declaration of his right to certain ancestral property as next reversionary heir, and also to have it declared that a sale of that property made in execution of a decree, in which the defendant became the purchaser, was invalid as against him the reversioner. The property in suit originally belonged to one Pariagnarayan, who died leaving a widow, Bhagwani, and two daughters, Krishna Pyari and Lachmi Pyari. The plaintiff in this case is the son of the eldest daughter of Pariagnarayan, Krishna Pyari, and consequently the grandson of Pariagnarayan.

It appears that the widow Bhagwani on the 15th of March 1858 took a loan of Rs. 15,000 from three persons, Ramanath, Bhiku, and Bulatun, on a zuripeshgi of the property now in dispute. Ramanath assigned his interest in the zuripeshgi to one Mannu Lal, who, not being able to get possession of his share, brought a suit against the widow to recover the money advanced by him: he got a decree; and in execution of it, the sale, which is now the subject of dispute, took place on the 3rd August 1869. The plaintiff's object is to have it declared that that sale is, as against him, the reversioner, an illegal sale, not having been made for any of those necessities which the Hindu law allows. The substantial defence was that there were such necessities, and that the sale was therefore a good sale.

The Court of first instance decreed for the plaintiff. The Subordinate Judge considered that no necessity had been proved, and that the sale was not binding on the reversionary heir; he made an order, therefore, to the effect that possession under the sale should last only during the widow's life-time. The Judge on appeal, without going into the merits of the case, decided that the plaintiff had no cause of action, and that his suit ought never to have been registered. He held that, as only the

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right, title, and interest of the widow Bhagwani passed at the auction-sale, and that such right, being the right of a Hindu widow, was only a life-interest, the plaintiff was not in any way endamaged, and had no right to bring the suit. This decision appears to us wrong for the very simple reason that, whether the plaintiff had or had not a cause of action, on account of the execution sale, would depend entirely upon whether the widow had, at the time she incurred the debt which burdened her husband's estate, such necessity for incurring that debt as the Hindu law contemplates. If she had, and if such necessity had been established, her right and interest would have included the entire estate, which would have passed under the decree to the purchaser in execution; whilst if she had sold without such necessity, then all that would have passed under the sale would have been her life-interest; and before it could have been decided whether or not the plaintiff had a cause of action, it must first have been decided whether or not there was any legal necessity for the widow to incur the debt.

The case, therefore, must be remanded to the lower Appellate Court for a decision on this question. Costs to follow the result.

Appeal allowed.

[PRIVY COUNCIL.]

P. C.*
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 Feb. 7 & 8.

RAJENDRA NATH HALDAR (ONE OF THE DEFENDANTS) v.
 JAGENDRA NATH HALDAR (PLAINTIFF) AND OTHERS
 DEFENDANTS).

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT
 FORT WILLIAM IN BENGAL.

Will—Power to adopt, Proof of—Weight of Testimony—Handwriting.

By will dated in 1837, a testator directed his property to be held in a particular way, and gave his widow power to adopt. In 1848, she adopted a son under the will, with the knowledge of the members of the family, and the will was, for a period of twenty-seven years, generally recognized and acted on by

*Present:—THE RIGHT HON'BLE THE LORD JUSTICE JAMES, SIR JAMES W. COLVILLE,
 SIR JOSEPH NAPIER, AND SIR LAWRENCE PEELE.