

first sale was on the 5th of July 1852 upon a decree made in a suit under the provisions of Regulation VIII of 1831 for arrears of rent due in respect of a talook other than that which was sold, and the interest of the widow was sold under Act IV of 1846.* The second sale was on the 7th of August 1865 in execution of a decree in a suit on a bond given by the widow on account of arrears of rent.

1875

MOHIMA
CHUNDER ROY
CHOWDHRY
v.
RAM KISHORE
ACHARJEE
CHOWDHRY.

The defendants, among other things, contended that as they had purchased the talooks at public sales under decrees for arrears of rent, the plaintiff was not entitled to claim the property.

The Court of first instance decided that by the sales not only the interest of the widow but the property itself passed, and dismissed the plaintiff's suit.

On appeal, the Judge observed that the lower Court ought to have tried the question whether there was legal necessity on the part of the widow to incur the debts for which the sales were made, and referring to the ruling in *Teluck Chunder Chuckerbutty v. Muddon Mohun Brahmin Joogee* (1), he said that that

(1) *Before Mr. Justice Dwarkanath Mitter and Mr. Justice Hobhouse.*

The 11th December 1869.

TELUCK CHUNDER CHUCKER-
BUTTY (DEFENDANT) v. MUDDON
MOHUN BRAHMIN JOOGEE AND
ANOTHER (PLAINTIFFS)*

*Hindu Widow—Sale for Arrears of
Rent—Widow's Rights and Inter-
ests—Misjoinder—Objection taken for
first time on Special Appeal.*

Arrears of rent due to a zemindar by a Hindu widow in possession of her husband's property are not a personal debt of the widow; and on a sale of the property taking place in execution of a decree against the widow for such arrears, in a suit under Act X of 1859, the purchaser acquires the property absolutely, and not merely the rights of the widow.

THE plaintiffs sued as heirs of one Mohesh Chunder Jogee, their maternal uncle, to recover certain parcels of land, which were in the possession of Ooday Tara, the widow of Mohesh Chunder. The defendants, among other things, stated that 4 annas of the property had been sold by Mohesh Chunder himself to the first defendant, from whom Taranauth Paulit, one of the defendants, had purchased it; further, that the rest of the property had been sold in execution of decrees, some of which it appears were decrees for debts, and some for arrears of rent, against Ooday Tara, the widow, and Ram Doorga and Nobo Doorga, the sisters of Mohesh Chunder and mothers of the plaintiff, among whom, by an ikrinama, the property had been divided in certain shares.

* Special Appeal, No. 1812 of 1869, against a decree of the Officiating Additional Judge of Zilla Backergunge, dated the 10th May 1869, reversing a decree of the *Sudder Ameen* of that district, dated the 19th March 1869.

1875
 MOHIMA CHUNDER ROY CHOWDHRY
 v.
 RAM KISHORE ACHARJEE CHOWDHRY.

“ judgment lays it down broadly that rent due cannot be regarded as a Hindu widow’s personal debt.” He accordingly dismissed the appeal.

The first Court decreed the claim of the plaintiffs,—except as to a portion of the property which had been purchased by one of the defendants at a sale in execution of a decree for rent, under Act X of 1859,—holding that the sale by Mohesh Chunder to Taranauth Paulit had not been proved; that the widow had no right to part with the property or divide it with the mothers of the plaintiffs; and that the sales in execution of the other decrees could only affect the rights of the widow and the sisters of Mohesh.

From this decision, both parties appealed. The Judge dismissed the appeal of the defendants, agreeing with the first Court in the reasons given for its decision, and holding that sales under the decrees were invalid, unless necessity was shown for the debts, for which the decrees were passed.

The defendant Telack, who had bought part of the property from a purchaser at a sale under a decree for rent, appealed from the Judge’s decision on two grounds: first that there was misjoinder of parties; secondly, that the sale being under a decree for rent, the purchaser acquired the property itself, and not merely the rights of the widow.

Baboo Ashootosh Chatterjee, Amerendro Nath Chatterjee and Jadub Chunder Seal for the appellant.

The respondents did not appear.

MITTER, J.—On the first point taken by the pleader for the special appellant, we are of opinion that misjoinder of parties is not an objection which can be allowed to be taken at this late stage of the proceedings.

As to the second point, we think the contention of the special appellant is right. The zemindar obtained a decree for arrears of rent against the maternal aunt of the plaintiff, special respondent, who was then in possession of the estate as the legal heir and representative of her husband Mohesh Chunder, and in execution of that decree the properties which form the subject-matter of this special appeal, namely, a 7-anna share of plot No. 17 and plot No. 25, and a 3 annas and 15 gundas share of plot No. 22, were put up to sale, under the provisions of Act X of 1859, and purchased by the vendor of the special appellant. The lower Appellate Court seems to be of opinion that the effect of this sale was merely to transfer to the special appellant’s vendor, the life-interest which the widow possessed in the tenure. We think that this opinion is erroneous. The rent due to the zemindar cannot under any circumstances be treated as a personal debt of the widow; and if the zemindar thought it proper to put up the properties now in dispute for sale for the realization of that rent, after having obtained a decree for it in due course of law, the reversionary heir can have no right to come in after the death of the widow, and take back those properties from the hands of the purchaser. If the widow had contracted a debt to meet the zemindar’s demand for rent, and then alienated a part of her husband’s estate, for the satisfaction of that debt, the alienation would have been good and valid in law, and we do not see any reason why less effect is to be given to a decree passed by a Court of competent juris-

From that judgment, the plaintiff preferred a special appeal. Mr. *Evans* (with him Baboo *Mohesh Chunder Chowdhry*) for the appellants.

Baboo *Doorga Mohun Dass* for the respondents.

Mr. *Evans*.—The decrees under which these properties were sold were personal decrees against the widow, therefore nothing passed by the sale but the interest of the widow. One decree was on a bond for money borrowed for rent that accrued after the husband's death. It was held by Mitter, J., in *Teluck Chunder Chuckerbutty v. Muddon Mohun Brahmin Joojee* (1) that a sale under a decree for rent passes the estate: but there are special provisions by which the tenure itself may be brought to sale. In that case the decree may have been of that nature. A Hindu widow does not represent the estate of her deceased husband so as to bind the reversioners. If she allow the rent to fall into small arrears and then borrow, there is no "legal necessity." So in *Brijhookun Lall Awustee v. Mahadeo Doobey* (2), Ainslie, J.,

diction in execution of which decree certain properties belonging to the estate of the widow's husband were brought to sale and purchased by the special appellants' vendor.

Holding this view of the case, we are of opinion that the decision of the lower Appellate Court, so far as it relates to the properties mentioned above, must be reversed, and that of the first Court restored, with costs of this appeal and the costs of the lower Appellate Court.

(1) *Ante*, p. 143.

(2) *Before Mr. Justice Loch and Mr. Justice Ainslie.*

The 22nd March 1872.

BRIJHOOKUN LALL AWUSTEE
(PLAINTIFF) *v.* MAHADEO DOOBEY
AND OTHERS (DEFENDANTS).*

*Hindu Law—Maintenance of Widow
Charge on Estate of Husband—
Estoppel.*

A Hindu died leaving two sons, S and M, who became separate in estate. S died, leaving a son, K, who became a lunatic. M died, leaving a widow, N and two sons, B and C; and on his death, his sons B and C took possession of their father's estate, and entered into an agreement with their mother N to pay her Rs. 200 per annum for maintenance, and hypothecated some villages as security for due payment. B died, and C remained in exclusive possession of the property. After the death of C, his widows, R and D, and afterwards D alone, took possession of the estate. N sued D for arrears of maintenance accrued since the death of C, and obtained a decree. In execution of that decree, she attached the rights and interests of D in certain properties, but shedied before any sale took place. The plaintiff, the son of K, then obtained a certificate under Act XXVII of 1860 as representative of N. He was appointed a guardian of K, who was, in a suit brought by him before his insanity and before the death of N, declared, by a decree made in 1848, entitled to the estate of C as reversioner. The plaintiff executed the

* Regular Appeal No. 180 of 1871, against a decree of the Subordinate Judge of Zillah Gya, dated the 13th June 1871.