

APPELLATE CIVIL

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainslie.

1875

January 8. MOHIMA CHUNDER ROY CHOWDHRY (PLAINTIFF) v. RAM KI.
SHORE ACHARJEE CHOWDHRY AND OTHERS (DEFENDANTS).*

*Hindu Widow—Sale for arrears of Rent—Personal Decree against Widow—
Rent accruing after Husband's Death—Beng. Act VIII of 1869—Estoppel
—Remand.*

In execution of a decree in a suit under the provisions of Reg. VIII of 1831 against a Hindu widow for arrears of rent of a certain talook, the interest of the widow in another talook was sold in 1852 under Act IV of 1846; and in execution of another decree on a bond given by the widow for arrears of rent a third talook was sold in 1865. Both decrees were for arrears of rent which had accrued due after the death of the husband; and the suits were brought against the widow alone, the reversioner not being made a party. In a suit by the purchaser of the talooks from the reversioner against the purchasers at the execution sales to recover possession of the talooks, *held* that the plaintiff was entitled to recover. The decrees for arrears of rent were a personal debt of the widow, and not a debt against the estate of the deceased husband. Such decrees can be enforced by the sale of her interest only, except where the proceeding is one which authorizes the sale of the tenure under Beng. Act VIII of 1869. Even assuming them to be a charge on the husband's estate, the onus was on the defendants to prove that such charge was created by legal necessity, which they had failed to do.

Held also that where parties allow a suit to be conducted in the lower Courts as if a certain fact was admitted, they cannot afterwards, on special appeal, question it, and recede from the tacit admission.

THE plaintiff sued, as vendee of one Umbica Churn, to obtain possession of certain talooks, on the ground that by the sales which had taken place during the lifetime of Kantishuree, a Hindu widow, only her own life-interest in the property had passed. Umbica Churn being the person entitled to succeed to the property on her death as the next heir to her deceased husband Chundi Proshad.

The sales in question were made in execution of decrees. The

* Special Appeal, No. 510 of 1874, against a decree of the Judge of Zilla Mymensingh, dated the 16th December 1873, affirming a decree of the Additional Subordinate Judge of that district, dated the 17th of March 1873

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 Interests—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.