

1895

PREMLALL
MULLICK
v.
SUMBHOONATH
ROY.

2. That the Receiver do proceed to pass his final accounts and on satisfaction of what may be due to him, and, on being sufficiently indemnified as to any engagements properly entered into by him during his management of the estate, he do make over possession to the Administrator-General.

3. That the costs of the Administrator-General, of the Receiver and of the plaintiff in the present application be paid out of the estate by the Receiver, and that such costs be taxed as between attorney and client. If however possession of the estate is made over to the Administrator-General before the costs are paid, then the Administrator-General will pay the costs. I can make no order at present on Mr. Woodroffe's application on behalf of the executor-defendants. They may however have liberty to make such application on a future occasion as they may be advised.

Attorneys for the Administrator-General of Bengal: Messrs. Carruthers & Co.

Attorney for Prem Lall Mullick: Babu Gonesh Chunder Chunder.

Attorney for the Receiver: Babu Lakshmi Narain Khettry.

Attorney for the Executors: Babu Kedarnath Mitter.

APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Gordon.

BARODA KANTA CHATTAPADHYA (PLAINTIFF) v. JATINDRA
NARAIN ROY AND ANOTHER, MINORS, BY THEIR CERTIFICATED
GUARDIAN GURU PADO MUKHOPADHYA (DEFENDANTS.) *

Hindu law—Widow—Mesne profits payable under a decree against a Hindu widow and other defendants—Subsequent suit for contribution against the widow by one of the defendants from whom the whole amount of mesne profits had been realized—Sale in execution of decree—Rights of the auction-purchaser.

M, widow of *N*, a Hindu, and *K* (brother of *N*) jointly brought a suit against *C*, her sons and others, for recovery of possession of certain property which had devolved upon *N* and *K*, by inheritance, obtained a decree and were put into possession. *G*, one of the sons of *C*, subsequently brought a suit against *M* and the legal representatives of *K* then deceased, and

* Appeal from Appellate Decree No. 1810 of 1893, against the decree of R. H. Anderson, Esq., Officiating District Judge of Moorsshedabad, dated the 14th June 1893, reversing the decree of Babu Debendra Chundra Mookerjee, Munsif of Berhampore, dated the 9th of January 1893.

1895
July 10.

also against *J* (to whom *K* had sold a portion of the property after the decree), and obtained a decree with mesne profits for his share of the same property. *G* then sold the decree to *R*, who executed it for mesne profits against *J* alone, and realized the entire decretal amount from him. *J* thereupon brought two suits for contribution against *M* and the legal representatives of *K*, on account of the mesne profits payable by them, according to their respective shares, and obtained decrees. In execution of one of these decrees passed against *M* he sold the property in suit belonging to the estate of *N*, and purchased a moiety of it himself. In a suit on the death of *M* by the reversionary heirs of *N* to recover possession of his share of the property, in which his widow *M* had only a life-interest, on the allegation that only her life-interest and not the entire estate passed :

Held, that the suit for contribution brought by *J* was a suit to recover a debt due by the estate. The amount of the debt in the shape of mesne profits had been decreed against *M* and others, as representing the estate of *N* and *K*, and it was not therefore a personal debt of *M*. That being so, the purchaser at the auction sale took the entire estate and not merely the qualified interest of the widow.

Jugul Kishore v. Totendro Mohun Tagore (1) referred to.

THE facts of the case, for the purpose of this report, are sufficiently stated in the judgment of the High Court.

Babu *Harendra Narayan Mitter* (for Babu *Promotha Nath Sen*) for the appellant.

* Babu *Sreenath Das* and Babu *Saroda Churn Mitter* for the respondents.

Babu *Harendra Narayan Mitter*.—The question is whether the personal interest of the widow or the absolute estate passed by the sale in execution of the decree obtained in the contribution suit by *Jiban Gopal*. In the first place the liability of the widow in possession to pay the mesne profits decreed to *Girish Chunder* arose out of her own enjoyment of the estate. The widow having enjoyed the profits of the estate was personally liable to satisfy the claim for mesne profits. The decree for mesne profits could not therefore bind the whole estate, and the execution issued in the subsequent contribution suit cannot affect more than the personal interest of the widow. In the second place, even conceding that the decree for mesne profits being part of the decree for recovery of possession obtained by *Girish Chunder* against *Manikmoni*, the widow, while defending the estate, and not merely her personal interest, was binding on the inheritance, I submit the

1895

BARODA
KANTA
CHATTA-
PADHYA
v.
JATINDRA
NARAIN ROY.

1895

BARODA
KANTA
CHATTERJEE
v.
JATINDRA
NARAIN ROY.

suit in which the execution issued, though arising out of the claim for mesne profits, being one for contribution, was purely a personal action against the widow, and only her personal interest passed. The nature of the suit should only be looked at in determining the question whether the entire estate or the qualified interest of the widow passed. See *Jugul Kishore v. Jotendro Mohun Tagore* (1). Even if the original foundation of the liability be such as to bind the estate, the suit for enforcing such liability should be expressly framed for the purpose of binding the estate, otherwise the whole estate could not pass. See *Kistomoyee Dassee v. Prosunno Narain Chowdhry* (2), *Nugender Chunder Ghose v. Kaminee Dossee* (3), *Mohima Chunder Roy Chowdhry v. Ram Kishore Acharjee Chowdhry* (4), *Baijun Doobey v. Brij Bhookun Lall Awasthi* (5), *Kristo Gobind Majumdar v. Hem Chunder Chowdhry* (6), and Mayne's Hindu Law and Usage, 5th ed., p. 739.

The Judge has taken an erroneous view of the law. The case of *Jugul Kishore v. Jotendro Mohun Tagore* (1) referred to in his judgment is distinguishable. The cause of action there was not against the widow personally. She only represented her husband's interest in the suit against the family. Moreover the sale took place in execution of the decree for mesne profits in the suit in which the widow was representing her husband's estate, and not in execution of a subsequent personal decree against the widow as in the present case.

Babu *Saroda Churn Mitter* for the respondents.—The case is not really distinguishable from the case of *Jugul Kishore v. Jotendro Mohun Tagore* (1). All the members of the family were defending the suit brought by Girish Chunder. The widow Manikmoni with other members of the family were defending the estate and not merely her personal interest; and the mesne profits were debts due by the estate in her possession. The nature of the debt was not changed because the debt by the estate was realized by a contribution suit. The execution sale passed the whole estate and not merely the widow's life-interest.

Babu *Harendra Narayan Mitter* in reply.

The judgment of the Court (NORRIS and GORDON, JJ.) was as follows:—

(1) I. L. R., 10 Calc., 985.

(2) 6 W. R., 304.

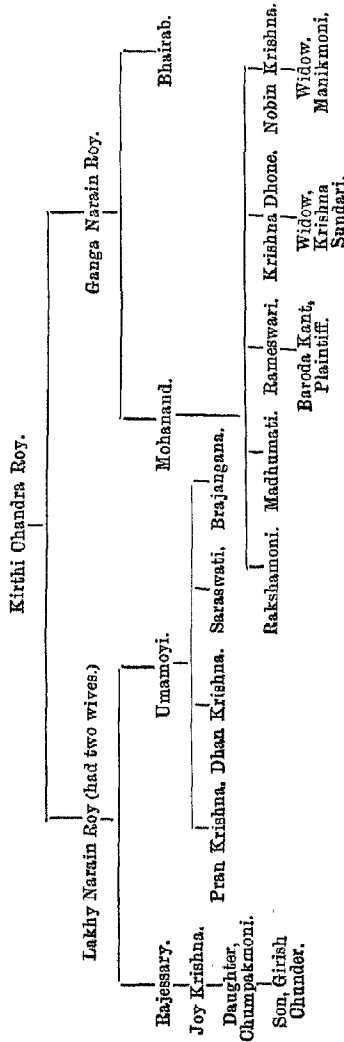
(3) 11 Moo. I. A., 241.

(4) 15 B. L. R., 142; 23 W. R., 174.

(5) I. L. R., 1 Calc., 133; L. R. 2 I. A., 275. (6) I. L. R., 16 Calc., 511.

The property which is the subject-matter of this suit formed part of the estate of Kirthi Chandra Rai which descended in the usual course to his grandsons Pran Krishna and Dhan Krishna.

The following genealogical table explains the descent :—



1895
 BARODA
 KANTA
 CHATTA-
 PADHYA
 v.
 JATINDRA
 NARAIN ROY.

1895

BARODA
KANTA
CHATTA-
PADHYA
v.
JATINDRA
NARAIN ROY.

On the death of Pran Krishna and Dhan Krishna their mother Umamoyi succeeded, and on her death the property devolved on Krishna Dass and Nobin Krishna, and on their demise without issue Nobin's widow, Manikmoni, succeeded to his share of the estate, and Krishna's widow, Krishna Sundari, and his sisters, Rukshamoni and Modhumati, succeeded to his share under a will left by him. In 1863 Krishna (who survived Nobin) and Manikmoni brought a suit against Saraswati, Brajangan, Chumpakmoni, and her sons, to recover possession of the property left by Pran and Dhan Krishna, obtained a decree and were put in possession, and subsequently Krishna sold a portion of the property to Jiban Gopal. In 1872, after Krishna's death, Girish Chunder, one of the sons of Chumpakmoni, sued Manikmoni, Krishna Sundari, Rakshamoni, Madhumati, and Jiban Gopal to recover possession of one-third of the property left by Pran and Dhan Krishna, alleging that he had not been properly represented in the suit against his mother in 1863. He obtained a decree in the Appellate Court for the share claimed with mesne profits and costs. He then sold the decree to Ramnath Roy, father of the defendants, who executed it for mesne profits against Jiban Gopal alone, and realized the entire decretal amount from him. Subsequently Jiban Gopal brought two suits for contribution against Krishna Sundari, Manikmoni, Rakshamoni and Madhumati and obtained decrees, and in execution of one of these decrees, No. 52 of 1883, he sold the property in suit and purchased a moiety of it himself. The other half was purchased by Ramnath, who subsequently bought the moiety purchased by Jiban Gopal, and thus became the sole owner of the property in suit. Manikmoni died in Assin 1291 B. S. Plaintiff is the son of Nobin Krishna's sister, Rameswari, and he has brought this suit as reversionary heir of Nobin Krishna to obtain possession of his share of the property, in which his widow Manikmoni had a life-interest, on the allegation that only her life-interest and not the entire estate passed at the sale in execution of Jiban Gopal's decree. The main ground of defence was that the decree obtained by Jiban Gopal was for a debt due by Nobin's estate and not for a mere personal debt of the widow, and that in execution the whole estate was liable to be sold, and that it was sold and passed to the purchasers. Th

Munsif gave the plaintiff a decree. His reasons are given in the following passage of his judgment :—

1895

“ I am decidedly of opinion that the suit which was brought by Manikmoni and Krishna Dass for declaration of right of inheritance to the properties left by Dhan Krishna and Pran Krishna, was one in which Manikmoni represented her husband, Nobin Krishna. They were successful. A portion of the property so obtained by them was successfully recovered by Girish Chunder, *viz.*, one-third, and the two-thirds still either remain in their hands, or in the hands of their successors and vendees and putnidars. It was, however, neither Girish nor his assignee who caused sale of the properties, but it was in connection with the contribution decree obtained by Jiban Gopal, one of the judgment-debtors, that Manikmoni's property was sold. Here the suit was between a creditor and a debtor, and Manikmoni does not appear to me as representing her husband Nobin Krishna, so that, although the former part of the litigation is on all fours with the cases reported in the 7th and 10th Indian Law Reports, Calcutta, the latter portion is quite different. I am therefore of opinion that a widow's interest only passed and not the whole inheritance of Nobin Krishna. The property of Manikmoni was sold in execution of a decree in a suit between a creditor and a debtor.”

BARODA
KANTA
GHATA-
PADHYA
v.
JATINDRA
NARAIN ROY.

On appeal the District Judge reversed the Munsif's decision. He observes :—

“ It seems to me clear enough that Manikmoni, not only in the suit to recover the property from Brajangana and others, but in all the subsequent litigation which arose out of that suit, was representing her husband's estate and had not merely a personal interest [*Jugul Kishore v. Jotendro Mohun Tagore* (1)]. She was defending not only her own but the reversioner's interests when she sued Brajangana and others. She was doing the same when she defended the suit brought by Girish Chunder, and therefore, I think, the decree for *wasilat* was clearly one which bound the estate and not only Manikmoni personally. In fact, the reversioners, we know, have benefited by the suit brought against Brajangana, Saraswati and others, for they have obtained what Manikmoni then succeeded in recovering *minus* what Girish Chunder succeeded afterwards in depriving her of. Girish Chunder's suit clearly arose out of the suit by which, as I have just shown, the reversioners have benefited.”

And further on the Judge says : —

“ The question really is, was the suit against Manikmoni merely for a personal claim against her or against her in respect of the estate or for a cause of action which was not a mere personal cause of action. *Jugul Kishore v. Jotendro Mohun Tagore* (1). The decree for *wasilat* was given in a suit in which Manikmoni was defending, and it seems properly defending, not only her own but the reversioner's interest. If

1895
 BARODA
 KANTA
 CHATTA-
 PADRYA
 v.
 JATINDRA
 NARAIN ROY

Girish Chunder or his assignee Ramnath Roy had sold the property in suit in execution of the decree for *wasilat*, I fail to see how only Manikmoni's life-estate would have been sold. Then what difference does it make when Manikmoni, being jointly liable with Jiban Gopal and Krishna Dass for the whole of the *wasilat*, was sued by Jiban Gopal for contribution, on the ground that he had had to pay all the *wasilat*? Surely the character of the claim against Manikmoni was not changed; all that was done was to fix the amount of her share of the *wasilat*."

In second appeal the learned pleader for the plaintiff, while conceding that in the previous litigation Manikmoni represented her husband's estate, and that in execution of Girish Chunder's decree the whole estate was liable to be sold to satisfy the decree for mesne profits, strongly contended that this was not sufficient. He argued that Jiban Gopal ought to have framed his suit for contribution in such a manner as to show that he intended to bind the whole estate and not to make a mere personal demand against the widow, and in support of this proposition he referred us to the cases of *Baijun Doobey v. Brij Bhookun Lall Awusti* (1), *Kistomoyee Dasse v. Prosumo Narain Chowdhry* (2), *Nugender Chunder Ghose v. Kaminee Dossee* (3), *Kristo Gobind Majumdar v. Hem Chunder Chowdhry* (4), *Mohima Chunder Roy Chowdhry v. Ram Kishore Acharjee Chowdhry* (5), and to Mayne's Hindu Law and Usage, 5th edition, p. 739. On the other hand, the learned pleader for the respondents relied on the case of *Jugul Kishore v. Jotendro Mohun Tagore* (6), which he contended is not distinguishable from the present case. We have considered the authorities cited and the arguments addressed to us, and we are of opinion that the learned District Judge has taken a correct view of the law in this case. We think the principle enunciated in the case of *Jugul Kishore v. Jotendro Mohun Tagore* is the principle which is applicable to the present case. In their judgment in that case their Lordships of the Privy Council say: "The case depends on the nature of the suit in which execution issues. There are many authorities to that effect. It is unnecessary to recapitulate them; they are referred to by the Chief Justice in his judgment in the High

(1) I. L. R., 1 Cal., 133; L. R., 2 I. A., 275.

(2) 6 W. R., 304.

(3) 11 Moo. I. A., 241.

(4) I. L. R., 16 Cal., 511.

(5) 15 B. L. R., 142; 23 W. R., 174.

(6) I. L. R., 10 Cal., 985.

Court. If the suit is simply for a personal claim against the widow then merely the widow's qualified interest is sold and the reversionary interest is not bound by it. If, on the other hand, the suit is against the widow in respect of the estate, or for a cause which is not a mere personal cause of action against the widow, then the whole estate passes. In many of the cases, although the right, title and interest of the widow had been sold, the whole interest in the estate was held to have passed and the reversionary heir to be bound by it." 1895

BARODA
KANTA
GHATTA-
PADHYA
v.
JATINDRA
NARAIN ROY.

The suit for contribution brought by Jiban Gopal was a suit to recover a debt due by the estate. The amount of the debt in the shape of mesne profits had been decreed against Manikmoni and others as representing the estate of Nobin Krishna and Krishna Dass, and it was not, therefore, in our opinion, a personal debt of Manikmoni, that is to say, a debt contracted by her for which she was personally liable. We do not think that the character of the debt was changed merely because Jiban Gopal paid the whole of the mesne profits and then brought a suit to recover the amount from the other judgment-debtors. He paid the whole of the mesne profits and he then sued to recover these mesne profits from Manikmoni and others. In this view we are of opinion that the cases cited by the learned pleader for the appellant are not strictly applicable to the present case, and that the decision of the Privy Council in the case of *Jugul Kishore v. Jotendro Mohun Tagore* (1) does apply.

The appeal fails and is dismissed with costs.

S. O. G.

Appeal dismissed.

Before Mr. Justice Pigot and Mr. Justice Stevens.

CHINTAMONY DASSI (DEFENDANT) v. BAGHOONATH SAHOO
(PLAINTIFF.) *

1895
June 3.

Appeal—Civil Procedure Code (Act XIV of 1882), sections 108, 591—Ex parte decree—Order setting aside ex parte decree.

The words "affecting the decision of the case" in section 591 of the Civil

* Appeal from Appellate Decree No. 1340 of 1894, against the decree of Babu Hurro Gobind Mookerji, Subordinate Judge of Bhagalpur, dated the 21st of May 1894, reversing the decree of Babu Debendra Nath Roy, Munsif of Bhagalpur, dated the 7th of October 1893.

(1) I. L. R., 10 Calc., 985.