

LACHHAN KUNWAR AND OTHERS (PLAINTIFFS) v. MANORATH RAM
(DEFENDANT) :

P. C.^s
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LACHHAN KUNWAR AND OTHERS (PLAINTIFFS) v. ANANT SINGH
(DEFENDANT).

November 20.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Limitation Act (XV of 1877)—Adverse possession—Hindu widow—Reversionary heirs.

A Hindu proprietor died, leaving a widow, and also a son, who died, leaving a widow, a few years after his father, whose widow, either during the son's lifetime, or on his death, took possession of the property left by the father, and remained in possession till she died, having held it for about seventeen years. This she did notwithstanding the claim of the son's widow, whose suit against her for the property was dismissed, on the ground of limitation, in 1875. Before her death she transferred part of the property by gift, and was said to have transferred another part by will. On a question as to the capacity in which she had taken and retained possession, it was found that she had done so absolutely and without any assertion of a right, which she had not, to a widow's estate.

Suits by the reversionary heirs, whom the son's widow joined, were held barred by limitation, on the ground that the possession taken had been adverse to them. Not only was any claim, through the deceased son, barred, but the rights of the reversionary heirs also, the possession by the father's widow not having been shown to be that of the limited interest of a widow.

APPEALS from decrees (21st April 1890) of the Judicial Commissioner, reversing a decree (31st December 1888) of the District Judge of Sitapur, and a decree (3rd January 1889) of the same Judge.

The first of these suits was filed on the 21st March 1888. Both were brought by the same plaintiffs, of whom the first was Lachhar Kunwar, daughter-in-law of Mangal Singh, who died in 1858, leaving a son, Pahlad Singh, husband of Lachhan. He died in 1861. Mangal Singh also left a widow, Jit Kunwar, who died on the 11th September 1887. With Lachhan were joined as plaintiffs two alleged nephews of Mangal Singh, found by the first Court to be his reversionary heirs. The first suit was brought to recover from Manorath Ram a one-sixth share, or thok, of a pattidari village, Bhamini, in the Sitapur District. This had been transferred by gift to Manorath by Jit Kunwar on the 26th

^s Present: LORDS WATSON, HOBHOUSE and SHAND, and SIR R. COUCH.

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June 1886, and the plaintiff claimed on the ground that she had had no title to make the transfer.

The second suit was brought on the 6th February 1888, to recover 203 bighas of land, forming village Jogipur, with mesne profits, on the avoidance of a will put forward by the defendant, Anant Ram, as having been executed by the same widow, Jit Kunwar, in his favour. It was agreed that the evidence recorded in the first case should be taken as evidence in the second, in which only in reference to the will should separate evidence be taken. In the result, the decision of both suits turned upon the same question, *viz.*, whether the law of limitation was applicable so as to bar the suit against each defendant; the Appellate Court below having dismissed both upon the ground that they were so barred. This depended on the character in which Jit Kunwar, who had taken possession after the death of her husband, had acted in so doing: whether she had asserted an absolute title in herself, or had obtained possession as widow for life only. It was also questioned, on this appeal, whether the rights of the reversionary heirs were extinguished by Jit Kunwar's possession having lasted for more than twelve years, even although it might have been adverse to the son, Pahlad, and although those who claimed through him might be barred. There was no averment, and there was no evidence, that any necessity, such as would justify a widow's alienation, had existed; and an alleged custom for a widow to alienate was disproved.

The District Judge's judgment was in favour of the second and third plaintiffs as reversionary heirs of Mangal Singh; and to the extent that Lachhan should retain possession of 103 Bighas of Jogipur (the plaint setting forth that she already held the same as gazaradar, for maintenance) his judgment was in her favour also. He referred to a suit brought without success by the latter against Jit Kunwar in 1875, in which it was found as a fact, by the Commissioner, that Pahlad had never been in possession of his father's estate. He added:—

“Pahlad's mother, therefore, must have been in possession immediately on the death of her husband, as his widow; and her son having died a year after his father without obtaining possession of the estate, she continued to hold the estate in trust as the widow.”

For this reason, he held—

“that Jit Kunwar could not possibly have had power to alienate the estate, which she so held in trust for the heirs of Mangal Singh.”

On appeals by the two defendants, the Judicial Commissioner reversed this decision. He could not concur in the finding of the District Judge that Jit Kunwar, the widow, was a trustee for her husband's heirs. He found no evidence of her having accepted that position or of a trust having been created. On the contrary, he found that Jit Kunwar, without having a title to possession, had obtained it without any. His reasons may be further expressed as follows :—

Lachhan was entitled to succeed to a widow's estate in her husband's property. She never got possession of it. Jit Kunwar, who had no title to it, took the estate, and held possession till her death, about seventeen years afterwards. In 1875 Lachhan did attempt to assert her right to possession as Pahlad's widow, but her suit was dismissed, on the ground that it was barred by limitation. It followed, therefore, that the possession of Jit Kunwar was adverse to the rightful heir, and that she, by virtue of this adverse possession, acquired by prescription an absolute title to the estate; her title, so acquired, extinguishing not merely the title of Lachhan, but also that of the reversioners expectant on the death of the latter.

The Judicial Commissioner dismissed both suits.

The plaintiffs filed these appeals.

Mr. *Herbert Corvell*, for the appellants, contended that, on the evidence, it must be taken that Mangal Singh's widow, Jit Kunwar, claimed as heir to her husband in priority over the widow of her son, who, according to the view of the District Judge, and according to that of the Commissioner in 1875, had never obtained possession. It could hardly be that she came in as a trespasser. After her husband's death under-proprietary rights, as against the talukdar, were granted to her; and she obtained sub-settlement rights. She managed and protected the estate, acting in all respects as if she had been holding a widow's estate. Out of that estate she paid the marriage expenses of Lachhan's daughter. Also Lachhan received from her an apportionment of land sufficient for her maintenance. Upon all these facts it was submitted

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that Jit Kunwar had not held a possession adverse to the reversionary heirs, but that she held the limited estate of a Hindu widow, and that their right of inheritance remained, notwithstanding her attempted alienation. If the decision in 1875 established that Lachhan's claim was barred, the right of the reversionary heirs of Mangal Singh stood on a different ground. The claim preferred in 1875 was that of Pahlad's widow, brought against his father's widow, and seeking to establish a widow's estate, in her stead. If that claim was extinguished by the effect of section 28 of Act XV of 1877, it still remained open to the reversionary heirs to contend that, on the death of the widow of Mangal, they had, for the first time, become entitled to succeed; that Jit Kunwar had not by her possession, although that had been prolonged, and of the origin stated, acquired an absolute ownership; and that she had not, as against them, acquired a title by non-claim, they not having had any claim till her death; also that her alienations were beyond her powers. Reference was made to *Board v. Board* (1); *Doe d. Human v. Pettet* (2). [LORD WATSON referred to *Lyell v. Kennedy* (3), observing that the facts here did not make that authority applicable.]

Mr. J. D. Mayne, for the respondents, was not called upon.

Their Lordships' judgment was delivered by

SIR R. COUGH.—These appeals arise out of two suits brought by the appellants, Lachhan Kunwar and Narind Singh and Munno Singh, now deceased, the one against the respondent Anant Singh and the other against the respondent Manorath Ram. The suits were for the recovery of certain property claimed to have been the ancestral property of Mangal Singh. Mangal Singh died in 1859, leaving a widow, Mussummat Jit Kunwar, and a son, Pahlad Singh. Pahlad Singh died in 1861, leaving a widow, the appellant, Lachhan Kunwar. The other plaintiffs in the suits claim to be the reversionary heirs, both of Mangal Singh and of his son Pahlad Singh.

The case as stated in the plaints is that Jit Kunwar, the widow of Mangal Singh, as a Hindu widow, got possession of the property in dispute, as well as of other property, for her lifetime,

(1) L. E., 9 Q. B., 48.

(2) 5 B. and Ald., 223.

(3) L. R., 14 Ap. Ca. (H. L.), 437.

without power of alienation, and that a deed of gift and a will made by her of the property in question are void against the reversioners. It is clear upon the evidence that Jit Kunwar, if she did not get possession of the property during the life of her son, Pahlad, about which there may be some doubt, certainly got possession of it on the death of Pahlad, and remained in possession up to the time of her death, which took place in 1887.

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In or before 1875 Lachhan Kunwar brought a suit against Jit Kunwar to recover possession of the property in dispute and of the other property. The result of that suit was that a decree was made by the Deputy Commissioner of Sitapur in 1875 in favour of Lachhan Kunwar. That decree was reversed by the Commissioner in the same year, and the suit was dismissed on the ground that it was barred by the law of limitation.

The contention before their Lordships has been that Jit Kunwar did not take possession of the property in question, claiming an absolute title therein, but that all she did was to take possession, asserting a title as a widow; and the question in these appeals really is in what capacity she took possession. If she took possession absolutely and without any qualification, her possession would be a bar to the title of all persons who could claim as succeeding to the property on the death of Mangal. There is no direct evidence of any statement by Jit Kunwar at the time she took possession, or subsequently, that she took it as a Hindu widow, but it is sought to be inferred from various documents and statements that she must have taken it in that capacity. In the judgment of the Deputy Commissioner in 1875 Jit Kunwar's defence is referred to as stating that she pleaded by her agent that Mangal was succeeded by her to the exclusion of his son, and that she had been in sole possession of the property ever since Mangal's death in 1858 or 1859. A statement by her at that time that she took possession to the exclusion of Mangal's son cannot be reconciled with the contention now put forward that she took possession as widow. The son having the title, she could not take possession excluding him, unless she intended to take an adverse possession, a possession to which she was not in any way entitled; and that appears to have been the view of the Commissioner who dismissed that suit.

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The judgment of the Judicial Commissioner now appealed from puts this point which is one of fact very clearly. He says: "It is further evident that Mussamat Jit Kunwar treated the estate always as being her own absolute property The estate she held was that of an absolute full proprietor; and not the limited estate of a Hindu widow." And again he says: "On the contrary, all the undeniable facts indicate that the position taken up by Mussamat Jit Kunwar was that she *only* was entitled to succeed to the property." Their Lordships do not find in these proceedings anything to lead them to doubt the correctness of this finding of the Judicial Commissioner; and that being the case the suit would be barred by the law of limitation, as it was held to be in the action of 1875. The contention that although it might be barred as against the son and all persons claiming under him, the effect was only to extinguish those rights, and to let in the rights of any persons who would claim as reversionary heirs of Mangal does not appear to their Lordships to be supported by authority, nor is it tenable, unless it were clearly shown that when Jit Kunwar took possession she professed to do it as claiming only the limited estate of a widow. In this case it appears very clear in their Lordships' judgment, that she did not take possession in that way. She seems to have had some reason for asserting an absolute title in herself on the death of her husband, though it does not clearly appear what that reason was.

Their Lordships, looking at what has been proved in the case, are of opinion that the decision of the Judicial Commissioner was clearly right, and that both appeals should be dismissed, and they will humbly advise Her Majesty accordingly. The appellants must pay the costs of these appeals.

Appeals dismissed.

Solicitors for the appellants: Messrs. *Walker and Rowe*.

Solicitor for the respondents: Mr. *W. Buttle*.

C. B.
