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money allowance, or whether a portion of the landed property be assigned to her for her life in lieu of maintenance.

The result is that the appeal of the defendants Nos. 1 and 2 succeeds to the extent of reversing the lower Court's finding that as to three-fourths of the estate of Raj Coomar Chowdhry there was intestacy, and its order that the widow obtain 3-16ths share on partition be set aside.

The widow's appeal must be dismissed, excepting only that she is to get suitable accommodation assigned to her in the Barakuti.

The plaintiff-respondent will pay the costs of appellants.

Appeal 171 *allowed in part.*
Appeal 231 *dismissed.*

C. D. P.

Before Mr. Justice Prinsep and Mr. Justice Rampini.

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RADHA SHYAM SIRCAR (PLAINTIFF No. 1) *v.* JOY RAM SENAPATI AND OTHERS (DEFENDANTS) AND OTHERS (PLAINTIFFS NOS. 2 AND 3).*

Hindu Law—Alienation—Alienation by Hindu widow of a portion of her estate with consent of some of the reversioners—Suit by other reversioners to set aside alienation.

The principle enunciated by the Full Bench in the case of *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy* (1) is not applicable to a case where some only of the reversioners have consented to an alienation by the widow, and where therefore only a portion of the widow's estate has been alienated.

IN this case the plaintiffs alleged that the zemindari of mouzah Pandia belonged to one Joy Narain Ghose who died, leaving a widow, named Avimani Dasi, and that Avimani Dasi succeeded to the property as his heiress, and remained in possession thereof till the 13th November 1884, when her death took place; that the defendants Nos. 2, 3, 4, and 5 were at the time of her death the only reversionary heirs of her husband alive, and as

* Appeal from appellate decree No. 259 of 1889, against the decree of J. B. Worgan, Esq., Judge of Cuttack, dated the 18th of December 1888, affirming the decree of Baboo Radha Krishno Sen, Subordinate Judge of Cuttack, dated the 5th of January 1887.

(1) I. L. R., 10 Calc., 1102.

such, they became entitled to the property, the share of the defendants Nos. 2 and 3 being 8 annas, and that of the defendants Nos. 4 and 5 also 8 annas; that the defendants Nos. 4 and 5 sold their share to the plaintiffs by a kobala executed on the 23rd April 1885 for a consideration of Rs. 1,975, and accordingly the plaintiffs applied for the registration of their names under Bengal Act VII of 1876, and also demanded rents from the ryots of the zemindari; and that the defendant No. 1, acting in collusion with the defendants Nos. 2 and 3, induced the ryots not to pay rent to the plaintiffs, alleging that he had purchased an 8-annas share of the zemindari from Avimani Dasi on the 8th June 1880. The plaintiffs impeached this sale as being beyond the power of Avimani Dasi, who, they alleged, was in possession of the property as a life tenant only, and on the ground that there was no legal necessity which justified her in making the alienation. They therefore sued to set it aside and to recover possession of an 8-annas share of the zemindari with mesne profits from the date of their purchase.

The defendants Nos. 4 and 5 admitted that they had sold an 8-annas share of the zemindari to the plaintiffs on the date and for the consideration alleged by the plaintiffs.

The defendant No. 1 alleged that the purchase set up by the plaintiffs was not a *bonâ fide* transaction, but one made in collusion with the defendants Nos. 4 and 5, who were, moreover, never in possession of the property; that Avimani Dasi executed a kobala of an 8-annas share of the zemindari in his favour on the 8th June 1880; that the kobala was executed to enable Avimani to meet certain necessary expenses as maintenance, religious rites, Government revenue, &c., and was therefore made for legal necessity; that to this kobala defendants Nos. 4 and 5 were subscribing witnesses and therefore consented to it, and they had also signed their names as witnesses to a petition filed by Avimani Dasi before the Subdivisional Officer of Kendrapara in which she consented that the name of the defendant No. 1 should be registered in respect of the 8-annas share of the zemindari sold to him. This defendant submitted that the defendants Nos. 4 and 5 were estopped by their conduct from setting up any right to the property in dispute, and that their sale to the plaintiffs was of no effect against his purchase.

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The defendants Nos. 2 and 3 relied on the collusive nature of the purchase set up by the plaintiffs on the same grounds as the defendant No. 1. They admitted the execution of the kobala by Avimani Dasi, though they denied that there was any legal necessity for the alienation. They, as well as the defendant No. 1, denied any obstruction of the plaintiffs in realizing rent, and that there was any cause of action against them.

The issues material to this report were:—

1. Were the defendants Nos. 4 and 5 in possession of an 8-annas share of the zemindari, and did the plaintiffs purchase the same from them in good faith by a kobala dated 23rd April 1885 for a consideration of Rs. 1,975?

5. Did Avimani Dasi convey an 8-annas share of the property in dispute to the defendant No. 1 by a kobala dated the 8th June 1880 for legal necessity?

6. Did the defendants Nos. 4 and 5 record their assent to the said sale, and are they and the plaintiffs estopped from disputing it?

A supplemental issue raised the question—"Are the plaintiffs entitled to an 8-annas share or any part of the property in dispute under the purchase set up by them?"

The Subordinate Judge found that the defendants Nos. 4 and 5 were not in possession of the 8-annas share when they purported to sell it to the plaintiffs, and that the plaintiffs' alleged purchase was a collusive transaction. On the 5th and 6th issues he found that the defendants Nos. 4 and 5 did consent to the kobala given by Avimani Dasi to the defendant No. 1 of the 8th June 1880, and he upheld that deed, and made a decree dismissing the suit.

On appeal the Judge confirmed this decision. There was no finding by either Court as to whether or not there was any legal necessity for the alienation by Avimani Dasi.

The plaintiffs appealed to the High Court.

Dr. *Rash Behary Ghose* and Baboo *Monomotho Nath Mitter* for the appellants.

Dr. *Troilokyanath Mitter* for the respondent, defendant No. 1.

Baboo *Mon Mohun Dutt* for the respondents, defendants Nos. 2 and 3.

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

The plaintiffs are the purchasers of an 8-annas share in certain property from the defendants Nos. 4 and 5, who, together with the defendants Nos. 2 and 3, inherited the entire property as heirs of Joy Narain Ghose on the death of his widow Avimani Dasi.

It appears that Avimani Dasi sold an 8-annas share to the defendant No. 1. The plaintiffs' vendors, who ordinarily would inherit an 8-annas share of the estate of Joy Narain Ghose, are found by both the lower Courts to have never been in possession of their share. Since Avimani's death it has been held by defendant No. 1 in respect of the half-share bought by him, and by defendants Nos. 2 and 3 in respect of the remainder by right of inheritance. The plaintiffs now sue to recover possession as against the defendant No. 1, the purchaser from Avimani, and the defendants Nos. 2 and 3, who were co-heirs with their vendors, and are charged with having colluded with the defendant No. 1 in keeping the plaintiffs out of possession. The primary object of the suit undoubtedly was to have it declared that the sale by Avimani was not a sale of an absolute title in consequence of her having only a life-interest as a Hindu widow. But as we regard the suit, its object was also to obtain, by reason of the purchase from two out of the heirs of Joy Narain Ghose, whatever share in his estate up to a half share was inherited by the vendors of the plaintiffs. If there were any doubt as to this being the object of the suit, it is set at rest by the supplementary issue which has been drawn up in the course of the trial by the Subordinate Judge.

Neither of the Courts has found whether the sale by Avimani of an 8-annas of the property in dispute was a valid sale for legal necessity in accordance with Hindu law. The Courts concurrently have found against the purchase by the plaintiffs, holding that no consideration passed, and that in fact it was not a real transaction; and this finding has been arrived at notwithstanding that the vendors have themselves admitted the receipt of consideration.

We are of opinion that, having regard to the nature of the suit and the admission of the vendors, this point did not properly arise. The Subordinate Judge seems to have attached undue weight to the fact that the vendors of the plaintiffs were out of possession, and

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to have considered with this fact the nature of the transaction. But such purchases are not uncommon and are recognized by law, which has provided in the law of limitation a special limitation for a suit by a private purchaser to recover possession of immoveable property sold when the vendor was out of possession.

Both the Courts have found that the defendants Nos. 4 and 5 consented to the sale by Avimani, and that as they were some of the reversioners who have subsequently inherited a share of the estate, representing the share so conveyed, the title of the defendant No. 1 was a good title as against them. This conclusion has been arrived at principally with regard to the rule laid down by a Full Bench in the case of *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy* (1); but in our opinion the principle enunciated by the Full Bench cannot be carried to this length, and cannot be applied to an alienation of only a portion of the widow's estate (2).

(1) I. L. R., 10 Calc., 1102.

(2) The same was decided in *Sristidhur Churamoni Bhuttacharjee* v. *Brojo Mohun Biddyaruton Bhuttacharjee*, appeal from appellate decree No. 881 of 1889 decided by PRINSEP and RAMPINI, JJ., on the 26th May 1890, in which the judgment was as follows:—

This is a suit brought by one claiming, on the death of Bhagiruthi, a Hindu widow, as heir, the estate of her husband, Sarthukram, to set aside two alienations made by her to the respondents. It appears that in respect of one of these alienations, one of the then reversionary heirs, Kanhai, signified his assent, not as a witness, but by affixing his name with the words "*memzoor shud*" which, we understand, mean '*approved*.' The other alienation is similarly subscribed by both the then reversionary heirs, Kanhai and his elder brother Narain, these two being sons of Jugdumba, daughter of Sarthukram and Bhagiruthi. It has been contended, on the authority of the judgment of the Full Bench in *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy* (1), that these alienations are valid. Both the reversioners who signified their assent to the alienations predeceased the widow, their maternal grandmother. One of them, Kanhai, who was the only assenting party to one of the alienations, it has been found, died a minor. The age of Narain, the elder, has not been found by the lower Courts, and therefore if it were necessary for a decision of the case as to the title of the [illegible] be bound to remand the suit for a proper finding. B[illegible]ands, we think that without a finding on this point the plaintiff should obtain a decree in full of his claim.

(1) I. L. R., 10 Calc., 1102.

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Numerous complications, which it is unnecessary to describe, would arise if it were possible that a Hindu widow having a life-interest could, during her life-time, convey a portion of the estate to some of the reversioners so as to give them a valid title and thus enable them to reconvey. It would be impossible for a widow to predicate who would at her death succeed to her husband's estate as his heirs so as practically to make a partition during her life-time, and retain a portion herself. The judgment of the Full Bench proceeded on the ground that by alienating property with the consent of all the reversioners she would be relinquishing in their favour, and thus accelerate the succession so as to enable them to convey, and that this would be the real effect of a conveyance by her with their consent. This principle would not apply to a case like that now before us.

It is open to some doubt whether the facts found by the District Judge would amount to a consent such as would confer an absolute

In the first place, we are of opinion that Kanhai being a minor, his consent would not make the alienation a valid alienation. It has been found by the lower Appellate Court that there was no legal necessity for this alienation, and, as this is a finding of fact, we are unable to question its correctness. As we have already stated in a judgment delivered in second appeal 259 of 1889, *Radha Shyam Sircar* v. *Joy Ram Senapati* (1) on the 8th instant, we are not inclined to extend the terms of the judgment of the Full Bench in *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy* (2) to an alienation made by a Hindu widow with the consent of only some of the reversionary heirs so as to bind their share in the ancestral estate.

The consent of the reversioners contemplated by the Full Bench is, in our opinion, such a consent as would be a valid consent, being given by persons themselves competent to execute a valid conveyance. Kanhai being a minor cannot be regarded as a competent person, and his death before the estate had fallen in by the death of his grandmother, a widow having only a life-interest, and before he had attained his majority, would prevent that alienation becoming absolute as against the heirs of Sarthukram at the death of the widow. The conveyance might be only voidable on his attaining majority, but his consent as a minor could not operate as against the heirs of Sarthukram's estate. No doubt, as has been pointed out by the respondent's pleader, the plaintiff-appellant could not be the heir of Kanhai and Narain, who up to their deaths were the reversionary heirs to Sarthukram's estate, and therefore he might not be one who as Kanhai's heir should

(1) *Ante*, p. 896.
(2) I. L. R., 10 Calc., 1103.

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title on the vendee, even if defendants Nos. 4 and 5 represented the entire reversionary interest. We observe that the District Judge has not found, as the Subordinate Judge has found, that the defendants Nos. 4 and 5 participated in the consideration money paid by the defendant No. 1. Moreover, it has not been found, nor does it appear that the vendee, defendant No. 1, bought solely on the assurance of their consent so as to estop them; for the deed itself recites what was considered to be a legal necessity under the Hindu law and a sufficient cause for the alienation, and therefore to establish any title as against the heirs the vendee would be bound to prove that.

The case therefore depends upon the character of the sale by Avimani to the defendant No. 1. Both the Courts have overlooked the main point necessary for the consideration of this issue, that

represent him in any matter relating to his own estate, but we cannot admit that in a matter concerning Shartukram's estate any right flowing from the reversionary interest which was only inchoate and never arrived at maturity should pass away from the actual heirs of Sarthukram to one who could never succeed by inheritance to that estate. The consent given by Kanhai as a minor would not operate so as to exclude the plaintiff from the inheritance and pass Sarthukram's estate on the death of Kanhai, the survivor of the two brothers, to his heir and away from Sarthukram's family so as to give Kanai's heir the power of avoiding or ratifying the alienation. He would not be in a position to exercise his option for the benefit of Sarthukram's estate, because if he avoided the alienation the property would pass to the plaintiff. This shows that it would be impossible to extend to this case the principle upon which the Full Bench proceeded. The alienation, therefore, to which the minor, Kanhai, alone signified his approval is, in our opinion, invalid as against the plaintiff.

It has been next contended that although on this ground the alienation in respect of any share to which Kanhai might have a reversionary interest might be invalid in respect of that particular share, the share inherited by Narain would be bound by such alienation. This would of course depend upon his status as a major when he signified his consent. But, as has already been remarked, the lower Appellate Court has omitted to come to any finding in this respect. However, if for purposes of argument we assume that he was a major, the alienations even as to the share to which he was one of the reversionary heirs at that time, cannot be affirmed. We have already held to this effect in second appeal No. 259. The result therefore is that the alienations in this suit are, in our opinion, absolutely void after the death of Bhagiruthi, and the plaintiff is entitled to a decree with costs throughout, the decrees of the lower Courts being varied.

is to say, they have omitted to find whether the alienation was for legal necessity. The case must therefore be remanded to the lower Appellate Court in order that this point may be determined; and the District Judge will deal with it according to law, either deciding the case on the evidence on the record, or remitting it to the first Court. Should it be found that the sale by Avimani to the defendant No. 1 conveyed an absolute title in an 8-annas share, then it will be for the Court to consider whether the plaintiffs on the supplemental issue should receive a decree for a 4-annas share of the estate, which would represent the share inherited by their vendors. On the other hand, should it be found that the sale by Avimani conveyed only the life-interest of a Hindu widow, the plaintiffs will be entitled to a decree to recover the share now held by the defendant No. 1. Costs to abide the result.

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Case remanded.

J. V. W.

Before Mr. Justice Pigot and Mr. Justice Gordon.

SALIMATUL-FATIMA *alias* BIBI HOSSAINI (ONE OF THE DEFENDANTS) *v.* KOYLASHPOTI NARAIN SINGH (PLAINTIFF) AND OTHERS (REMAINING DEFENDANTS).*

1890 *May 14.*

Registration—Registered document, proof of.

Mere registration of a document is not in itself sufficient proof of its execution.

Kristo Nath Koondoo v. *Brown* (1) dissented from.

THIS was a suit to recover the sum of Rs. 2,431-10 for principal and interest due upon a mortgage-bond dated 6th Sraban 1288 F. S. (17th July 1881). The bond purported to have been executed in favour of the plaintiff Koylashpoti Narain Singh by one Ahmud Hosain as general agent of the defendant Salimatul-Fatima; and from the endorsement of registration, it appeared that it had been registered by Ahmud Hosain under a general power of attorney dated 19th August 1878. Salimatul-Fatima, who was a purda-nashin lady, in her defence pleaded that

* Appeal from appellate decree No. 1666 of 1888, against the decree of J. F. Stevens, Esq., Judge of Gya, dated the 21st May 1888, affirming the decree of Baboo Kali Prosunno Mukerjee, Subordinate Judge of Gya, dated the 13th of September 1887.

(1) I. L. R., 14 Calc., 176, at p. 180.