

APPELLATE CIVIL.

*Before Hon'ble Mr. R. F. Rampini, Acting Chief Justice, and Mr.
Justice Ryves.*

PULIN CHANDRA MANDAL

v.

BOLAI MANDAL.*

1908
June 23.

*Hindu Law—Widow's estate—Alienation of portion of estate without
legal necessity—Consent of next reversioner.*

Alienation by a Hindu widow of a portion of her husband's estate, without legal necessity, but with the consent of the next reversioner, is valid.

Marudamathu Nadan v. Srinivasa Pillai(1) discussed and not followed.

Behari Lal v. Madho Lal Ahir Gayawal(2) explained.

Radha Shyam Sircar v. Joy Ram Senapati(3) distinguished.

Nobokishore Sarma Roy v. Hari Nath Sarma Roy(4), *Hem Chunder Sanyal v. Sarnamoyi Debi*(5), *Vinayak Vithal Bhangre v. Govind Venkatesh Kulkarni*(6), *Bajrangi Singh v. Manokarnika Baksh Singh*(7) and *Annada Kumar Roy v. Indra Bhusan Mukhopadhyaya*(8) followed.

SECOND APPEAL by the plaintiffs, Pulin Chandra Mandal and another.

Sree Nath Mandal and Loke Nath Mandal were brothers. The former left a widow, who had a daughter and a grandson (daughter's son). Out of 16 *bighas* of land left by Sree Nath, his widow, daughter and daughter's son sold 4 *bighas* to defendant No. 4, the consideration being Rs. 100, the amount of dower, which would otherwise have been payable by the daughter's son on his marriage with the daughter of defendant No. 4. The plaintiff-appellants sued for possession of the land in question, on

* Appeal from Appellate Decree, No. 674 of 1907, against the decree of C. E. Pittar, District Judge of Murshidabad, dated 8th January 1907, confirming the decree of Birendra Kumar Datta, Munsif of Kandi, dated 3rd July, 1906.

(1) (1898) I. L. R. 21 Mad. 128.

(5) (1894) I. L. R. 22 Calc 354.

(2) (1891) I. L. R. 19 Calc. 236;

(6) (1900) I. L. R. 25 Bom. 129.

L. R. 19 I. A. 30.

(7) (1907) I. L. R. 30 All. 1;

(3) (1890) I. L. R. 17 Calc. 896.

I. R. 35 I. A. 1.

(4) (1884) I. L. R. 10 Calc. 1102.

(8) (1907) 12 C. W. N. 49.

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the allegation that the *kobala* in favour of defendant No. 4 was executed without consideration or legal necessity, and was not valid beyond the lifetime of the widow of Sree Nath Mandal. The plaintiffs, on the death of the daughter and the daughter's son, have become the reversionary heirs of Sree Nath, their father's brother. It was agreed on both sides that the marriage of a daughter's son was not a legal necessity.

The Munsif dismissed the suit. On appeal, another contention of the appellants was raised, viz., that the conveyance of a part of the estate was invalid. The District Judge agreed with the Munsif and dismissed the appeal.

Babu Ram Chandra Majumdar for the appellants. The Full Bench case of *Nobokishore Sarma Roy v. Hari Nuth Sarma Roy*(1) is in my favour. There cannot be a relinquishment of a part of the estate: *Behari Lal v. Madho Lal Ahir Gayawal*(2). The words used in that case were "whole estate" and not "portions of estate."

[RAMPINI A. C. J. It only meant the estate, which was transferred, should get vested at once in the grantee].

The case of *Bajrangi Singh v. Manokarnika Bakhsh Singh*(3) does not touch the point at issue in this case. In that case the whole estate was alienated and the consent was given after all the sales had been completed. There is no case of this Court, which deals with alienation of part.

[*Babu Ashu Tosh Mukherji* for the respondent pointed out the case of *Hem Chunder Sanyal v. Sarnamoyi Debi*(4)]

That is an *obiter dictum*. In *Marudamuthu Nadan v. Srinivasa Pillai*(5) it has been held that alienation of a part is voidable.

[*Babu Ashu Tosh Mukherji* cited *Vinayak Vithal Bhangre v. Govind Venkatesh Kulkarni*(6).]

(1) (1884) I. L. R. 10 Calc. 1102.

(2) (1891) I. L. R. 19 Calc. 236;

L. R. 19 I. A. 30.

(3) (1907) I. L. R. 30 All. 1; L. R. 35 I. A. 1.

(4) (1894) I. L. R. 22 Calc. 354.

(5) (1898) I. L. R. 21 Mad. 123.

(6) (1900) I. L. R. 25 Bom. 129.

That case was decided on a different principle, viz., that alienation made with the consent of the three reversioners was presumed to be for legal necessity. In *Radha Shyam Sircar v. Joy Ram Senapati*(1) it was held after a consideration of the case of *Nobokishore Sarma Roy v. Hari Nath Sarma Roy*(2) that alienation of part of a widow's estate is not valid.

[RAMPINI A. C. J. In that case some of the reversioners only consented.]

Read passages from Dayabhaga and Mayne's Hindu Law and Usage.

Babu Ashu Tosh Mukherji for the respondent. *Nobokishore Sarma Roy v. Hari Nath Sarma Roy*(2) is in my favour. There is no distinction between an alienation of a part or of the whole. *Hem Chunder Sanyal v. Sarnamoyi Debi*(3) is directly in point and not an *obiter*. So is *Bajrangi Singh v. Manokarnika Bakhsh Singh*(4). The Full Bench case of *Marudamuthu Nadan v. Srinivasa Pillai*(5) wrongly construed the Privy Council case of *Behari Lal v. Madho Lal Akir Gayawal*(6). The Privy Council case did not relate to the relinquishment of a life estate. If it were so, a judgment would have been unnecessary. *Radha Shyam Sircar v. Joy Ram Senapati*(1) has no application, as consent was not the basis of the judgment. See also *Annada Kumar Roy v. Indra Bhusan Mukhopadhyaya*(7).

Babu Ram Chandra Majumdar in reply. There are really no cases of this Court directly in point. The last case cited for the respondent(7) is not in point. There only some of the reversioners sued for their share of the property. It did not deal with alienation of part.

Cur. adv. vult.

RAMPINI, A. C. J. AND RYVES J. The question contested before us in this second appeal is whether the alienation by a Hindu widow of a portion of her husband's estate without

(1) (1890) I. L. R. 17 Calc. 896.

(2) (1884) I. L. R. 10 Calc. 1102.

(3) (1894) I. L. R. 22 Calc. 354.

(4) (1907) I. L. R. 30 All. 1;

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(5) (1898) I. L. R. 21 Mad. 128.

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legal necessity, but with [the consent of the next reversioner, is valid or not, or whether an alienation by a Hindu widow in such circumstances is valid only, if she alienates the whole of her husband's property. The judge in the Court below has decided that the widow may alienate a portion of her husband's property, if the next reversioner consents. The appellant's pleader contends that this view is incorrect and that, unless the Hindu widow alienates the whole of her husband's property and so, as it were, surrenders the whole of her interest in the whole of her husband's property, the alienation is invalid. The learned pleader for the appellants has cited the following cases in support of his view viz., *Behari Lal v. Madho Lal Ahir Gayawal*(1), *Marudamuthu Nadan v. Srinivasa Pillai*(2), *Radha Shyam Sircar v. Joy Ram Senapati*(3). By the other side, the cases of *Nobokishore Sarma Roy v. Hari Nath Sarma Roy*(4), *Hem Chunder Sanyal v. Sarnamoyi Debi*(5), *Vinayak Vilhal Bhanje v. Govind Venkatesh Kulkarni*(6), *Bajrangi Singh v. Manokarnika Bakhsh Singh*(7) and *Annada Kumar Roy v. Indra Bhusan Mukhopadhyaya*(8) have been relied on.

We are of opinion that the view of the learned District Judge is correct and that a Hindu widow may validly alienate a portion of her husband's share in property with the consent of the next reversioner. There would seem to be no reason, why she should not do so; or why to make a valid alienation she must convey or surrender the whole of her husband's property. The only direct authority for such a view is to be found in the judgment of the Madras High Court in *Marudamuthu Nadan v. Srinivasa Pillai*(2), in which the two former judgments of the Court to the contrary effect are overruled; but the decision in this case would seem to be based on a mistaken interpretation of the rule laid down by their Lordships of the Privy Council in *Behari Lal v. Madho Lal Ahir Gayawal*(1), viz., that the surrender must be absolute and complete and that the whole estate

(1) (1891) I. L. R. 19 Calc. 236;
 L. R. 19 I. A. 30.

(2) (1898) I. L. R. 21 Mad. 128.

(3) (1890) I. L. R. 17 Calc. 896.

(4) (1884) I. L. R. 10 Calc. 1102.

(5) (1894) I. L. R. 22 Calc. 354.

(6) (1900) I. L. R. 25 Bom. 129.

(7) (1907) I. L. R. 30 All. 1.

L. R. 35 I. A. 1.

(8) (1907) 12 C. W. N. 49.

should be withdrawn. This does not, we think, mean that the husband's whole property must be alienated. It only means that the whole estate of the widow in the husband's property must be withdrawn and that she cannot retain any interest in it. In the case of *Radha Shyam Sircar v. Joy Ram Senapati*(1) some of the reversioners only consented to the alienation and for this reason it was held to be invalid as being an alienation of only a part of the Hindu widow's interest. The case reported in the footnote at page 900 shows that this was the meaning of this judgment. The case of *Behari Lal v. Madho Lal Ahir Gayawal*(2) has been considered by the District Judge in his judgment and, we think, must be interpreted in the way in which, while alluding to Mr. Justice Subramania Aiyer's judgment in *Marudamuthu Nadan v. Srinivasa Pillai*(3), we have indicated it should, in our opinion, be construed.

On the other hand, the Full Bench decision in the case of *Nobo Kishore Sarma Roy v. Hari Nath Sarma Roy*(4), broadly lays down that:—"under the Hindu law current in Bengal a transfer or conveyance by the widow upon the ostensible ground of legal necessity, such transfer or conveyance being assented to by the person, who at the time is the next reversioner, will conclude another person not a party thereto, who is the actual reversioner upon the death of the widow, from asserting his title to the property." The Full Bench make no distinction between an alienation of the whole or of a part of the property. Then in the case of *Hem Chunder Sanyal v. Sarnameyi Debi*(5) it has been expressly said:—"The widow may convey to the reversioner or to a third party with the consent of the next reversioner, the whole or any portion of the estate and the transferee will acquire an absolute interest." It is objected that this is an *obiter dictum*, but it is the view of a distinguished Hindu lawyer. The case of *Vinayak Vithal Bhangé v. Govind Venkatesh Kulkarni*(6) is a direct authority for holding that a Hindu widow may validly alienate portions of her husband's

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(1) (1890) I. L. R. 17 Calc. 896.

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• (6) (1900) I. L. R. 25 Bom. 129.

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property with the consent of the next reversioners. The case of *Bajrangi Singh v. Manokarnika Bakhsh Singh*(1) is also an authority for this view. In this case portions of the husband's property were alienated on different occasions between 1872 and 1875. The subsequent consent of the reversioners, though given in 1877 and 1878, was held to validate the alienations. Again in *Annada Kumor Roy v. Indra Bhusan Mukhopadhyaya*(2) the alienation by a Hindu widow of the half share of her husband's property in favour of the then reversioner was held to be legal and valid.

The consensus of authority is accordingly in favour of the view taken by the learned District Judge.

We dismiss the appeal with costs.

Appeal dismissed.

S. M.

(1) (1907) I. L. R. 30 All. 1; L. R. 35 I. A. 1. (2) (1907) 12 C. W. N. 49.