

Manmatha Nath Sett Vs. Gobindalall Sett and ors.

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Court : Kolkata

Decided On : Jan-05-1938

Reported in : AIR1939Cal135

Appellant : Manmatha Nath Sett

Respondent : Gobindalall Sett and ors.

Judgement :

Lort-Williams, J.

1. The plaintiff sues for a declaration of the rights of the parties to this suit in the estate of one Debendra Mohan Sett, for discovery of that estate, for possession, partition, accounts and other reliefs. (His Lordship after giving the relevant pedigree proceeded.) Kristo Mohan Sett was a Hindu governed by the Dayabhaga. He died leaving a widow Prembutty Dassi, a daughter, and two sons Rajkumar and Brojo Kumar who inherited his property in undivided equal shares. Rajkumar died leaving a widow Moni Dassi and two sons, Debendra and Nripendra, who inherited the half share of their father Rajkumar. Nripendra died unmarried and his estate vested in his uncle Brojo Kumar. Debendra died intestate and childless in 1854, leaving as his sole heiress his widow Kristo Kamini, then aged about 11 years. In 1855, by her mother as guardian and next friend she filed a bill of complaint in the Supreme Court, asking for partition of the estate of Kristo Mohan Sett, and alleging that she had been excluded from all benefit. A

preliminary decree was made in 1866, whereby it was found that she was entitled to a fourth share in his estate and half share in the estate of her father-in-law Rajkumar.

2. Subsequently, the matter was compromised and after an inquiry by the Master and after he had decided that an offer of Rs. 70 per month was not beneficial to the infant plaintiff but that Rs. 100 would be, a consent decree was passed in 1857, whereby it was decreed that Rs. 100 per month should be paid to Kamini for life, in respect of her claim for maintenance against the estate of Debendra. Brojo Kumar died in 1865, leaving two sons, Purnagendra and Sujendra. Having transferred part of his property to Purnagendra during his lifetime, he left his remaining property to Sujendra, who in 1866 executed a deed of settlement of all his property for the benefit of himself and his creditors. In 1868 Kamini instituted a suit against Purnagendra and Sujendra and others to set aside the consent decree of 1857 on the ground of fraud, collusion and suppression of facts, and to proceed with the preliminary decree for partition of 1856. This suit also was compromised on the terms that in consideration of the payment by Purnagendra to the plaintiff of a sum of Rs. 4000 and also a sum of Rs. 2000 for arrears of maintenance from November 1866 to June 1868 at the rate of Rs. 100 per month, and the payment of Rs. 100 per month for her future maintenance during the term of her natural life to be a charge upon the estate, and her costs, and the costs of the other defendants, and others payments, including a supply to the plaintiff of certain offerings to a family idol or in default thereof Rs. 16 per months Kamini would execute a conveyance of her right, title and interest, in the estate of Debendra, to Purnagendra for the individual use and benefit of him and his heirs, and assigns for ever.

3. Further, it was expressly provided that the decree was to be without prejudice to the rights of the defendant Sujendra. Accordingly, in the same year Kamini executed a conveyance in the terms agreed upon. It is to be observed that her estate was the limited estate of a Hindu widow and that at that time Purnagendra and Sujendra were the next joint reversionary, heirs to the estate of Debendra. Purnagendra died in 1869, leaving a widow and four sons, Soshi, Girija, Kailash and Shama. Soshi died in 1890 leaving a widow Nandarani and three sons

Kanailal, Gobindalat and Muttylal, In 1893 a deed of conveyance was executed by Kamini, Sujendra. Girija, Kailash, Shama and Nandarani as administratrix of Soshi, which recited inter alia, that in 1868 Kamini had conveyed to Purnagendra her right, title and interest to. the estate of Debendra as his widow an heiress, and that Purnagendra during his lifetime and thereafter his representatives, had been in possession of the said estate and that, subject to that conveyance, Kamini was entitled to the hereditaments thereby to be assured for all the estate and; interest therein of a Hindu widow, and that Sujendra was the sole heir in immediate reversion to Debendra, expectant on the death of Kamini. The deed provided, for the absolute sale by Kamini and Sujendra to Girija, Kailash, Shama and Nandarani, of their interests in the estate of Debendra, in consideration of a sum of Rs. 5000 and a monthly sum of Rs. 165 during her natural life to be paid to Kamini, and a monthly sum of Rs. 300 during his natural life to be paid to Sujendra, Kamini and Sujendra each covenanting for herself and himself and not the one or the other of them.

4. At this time, Sujendra was the sole next reversionary heir to the estate of Debendra. In 1894 Sujendra filed a suit against Girija, Kailash, Shama, Nandarani, the sons of Soshi and Kamini, to set aside the conveyance. He alleged that his signature thereto had been obtained by fraud, that it had been well known to the defendants that he was a man of no education and addicted to habits of reckless intemperance and had been indulging in a life of utter profligacy and debauchery, with the result that for long past his intellect had become hopelessly impaired and he had been incapable of exercising a sound and reason, able judgment, or any judgment at all, in regard to any matter of business. Further, he alleged that in 1893, the defendants other than Kamini had sent an agent to accompany him on a holiday, who had encouraged him to drink and to borrow money from the defendants for that purpose, that on his return the defendants had invited him to their garden house along with prostitutes, and while there and in a state of intoxication, his signature was obtained to the deed of conveyance.

5. This suit also was compromised, and by consent in 1895 it was decreed that the suit be withdrawn as against the infant and Kamini; that Girija, Kailash, Shama and Nandarani do convey to Sujendra certain properties at No. 19, Darmahatta

Street and No. 15, Jora Bagan Street, Calcutta for life, with remainder to his sons Anukul, Lalmohan, Monmotho and Hiralal, their heirs and assigns for ever absolutely; that the conveyance of 1893, so far as it related to the payment of a life annuity of Rs. 300 a month to Sujendra, be cancelled, but except as aforesaid the conveyance was valid. No conveyance was executed in terms of the decree but Sujendra was put into possession of the property which was valued subsequently at Rupees 1,41,000. Sujendra's eldest son Anukul had died in 1891, leaving a son Satish, but he received no benefit under the terms of the decree. Sujendra died in 1895 when his sons came into possession of the property by the decree. Anukul died in 1907 and Lal Mohan in 1905, Soshi, Kailash and Shama died prior to 1912. Kamini died on 17th March 1924 at the age of 81. Therefore at that time, Girija, Monmotho and Hiralal were the next joint reversionary heirs to the estate of Debendra, in the absence of the transfers effected in 1868, 1893 and 1895, or in case such transfers were not binding upon them. Girija died without issue in 1930, leaving a will which his executors have not yet proved. In case of intestacy his nephew Gobindalal, the son of Soshi, is his heir-at-law.

6. The present suit was filed on 4th June 1931. In his written statement Gobindalal states, inter alia, that, the conveyance of 1893 was by way of family settlement, and has been acted upon for over 38 years by all parties interested in the estate in question. That ever since then his branch of the family has been in possession of the properties conveyed and the plaintiff's claim is barred by the law of limitation and adverse possession; that the plaintiff and his brothers accepted the consent decree of 1895 by taking possession through their mother and natural guardian of the properties conveyed to Sujendra after his death; that the present suit is barred by the principle of res judicata. Further, he states that in 1900 Monmotho, Hiralal, Anukul and Lal Mohan partitioned the properties conveyed to Sujendra amongst themselves, to the exclusion of their nephew Satish, and subsequently Lal Mohan and Anukul sold their shares, being the entirety of No. 15, Jorabagan Street, to strangers and Hiralal sold part of his; that they have all dealt with the property in various ways, therefore they are estopped from challenging the decree. For similar reasons, Girija's legal representatives are estopped; that the plaintiff and Hiralal were added as parties in certain land acquisition cases concerning the property conveyed to Girija and the others, and contended unsuccessfully that the land was

debutter, and made no other claim. The judgment in these cases therefore, he alleges, is binding upon them.

7. These facts may be taken to be admitted. They have not been denied and no witnesses have been called on other side. It is not denied that the plaintiff and his brothers have dealt with the property in various ways, and have, at all material times, treated it as their own. Lal Mohan sold his share in 1902, and in 1903 Anukul sold part of his for Rs. 45,000. In 1916 Hiralal sold his share for Rs. 45,000 and in 1935 the plaintiff, Monmotho, brought a number of suits for rent of his share of the property. But he has not parted with any of the property representing his share, and the portion of the estate of Debendra to which Sujendra's sons would be entitled as actual reversioners would obviously be greater than what they got as a result of the decree of 1895. Counsel appeared for the executor defendants but could not be heard, because his clients had not taken out probate. He remained and watched the proceedings on their behalf. The following issues were formally raised:

1. Is the suit maintainable?
2. Is this suit tarred by the principles of res judicata?
3. Is this suit barred by limitation?
4. Have the plaintiff and the defendant Hiralal Sett acted upon the conveyance dated 7th October 1893 and the decree dated 25th April 1895 in Suit No, 370 of 1894 and have they confirmed the same?
5. Are the plaintiff and the defendant Hiralal Sett estopped from challenging the said consent decree and the said conveyance?
6. Was the said conveyance dated 7th October 1893 by way of family settlement as mentioned in para. 12 of the written statement of Gobinda Sett? 7(a) Are the transfers effected by the conveyance dated 7th December 1868 and 7th October 1893 the result of any fraudulent device as alleged in para 11 of the plaint? (b) Are the said transfers void and inoperative? (c) Are they binding on the actual reversioners.

8. Was the conveyance dated 7th October 1893 made without legal necessity?
 9. Was Sujendra fraudulently induced to compromise the said Suit No. 370 of 1894 as alleged in paragraph 12 of the plaint.
 10. Has the entirety of the interest of Girija Bhusan Sett in various properties obtained by him under the conveyance dated 7th October 1893 and also by inheritance from his father and his brother Kailash Bhusan and Shama Bhusan been transferred by the documents mentioned in para. 24 of the written statement of Gobinda Lal Sett?
 11. Are Girija and or his legal representatives estopped from claiming any right to the estate of Debendra Mohan Sett by virtue of such transfer?
 12. Does Ex. 'A' to the plaint correctly, set out the properties belonging to the estate of Debendra Mohan Sett?
 13. Were the G. P. Notes of the face value of Rs. 59,000 purchased with moneys awarded to Sm. Nandarani Dassi as representing the estate of Soshi Bhusan Sett?
 14. Are the award by the land acquisition Collector and the judgment of the land acquisition Judge made in respect of the said compensation money binding on the actual reversioners of Debendra Mohan Sett including the plaintiff and Hiralal Sett?
 15. Is the suit bad for non-joinder of parties by reason of the facts mentioned in paras. 20 and 21 of the written statement of Gobinda Lal Sett?
 16. Have the defendants Lalit Mohan Basak and Lall Mohan Dhar in their capacity as executors of Girija Bhusan Sett or otherwise, or either of them, any interest in any one of the properties in suit or any part thereof?
 17. To what relief, if any is the plaintiff entitled
8. But the only issues which substantially have been argued and which have to be decided are, whether the decrees and conveyances of 1868, 1893 and 1895 or

any of them, amounted to a valid transfer of the whole estate of Debendra, and if not whether the plaintiff is disqualified either by estoppel or otherwise from challenging them. The first of these questions depends upon the powers of alienation of a Hindu widow, the nature of her estate, and the nature of the interest of a reversioner. In Bengal, the estate of a Hindu widow is a limited or restricted estate. The interest of the heir of the last full owner, called the reversioner, who would be entitled to succeed to the estate on the death of the widow if he be then living, is an expectant not vested interest, a spes successionis or mere chance of succession within the meaning of Section 6, T.P. Act of 1882. Nowadays therefore, it cannot be transferred, nor can it be relinquished. Such a transfer is a nullity. But prior to the passing of that Act it may well be that such transactions would be valid : *Mt. Binda Kuer v. Lalta Prasad* ; *Talby v. Official Receiver* (1888) 13 A.C. 523 per Lord Mcnaghien at page 543.

9. A Hindu widow is not a tenant for life, but is owner of the property inherited by her, subject to certain restrictions on alienations and to devolution of, the estate at her death upon the next heir of the last full owner. She has absolute power of disposal over the income of the property during her life. But a valid transfer by her of the corpus of immovable property so inherited, that is to say a transfer not liable to be set aside at the instance of an actual reversioner, can be made only where it can be shown that (a.) there was legal necessity or (b) the alienee after enquiry honestly believed that there was necessity or (c) there was such consent of the next reversioners as would raise a presumption that the transaction was proper one. Such consent must be of such reversioners as may fairly be expected to be interested to dispute the transaction, *Rangaswami Gounden v. Nachiappa Gounden* (1918) 5 A.I.R. P.C. 196, or (d) there was a surrender of her whole interest in the whole estate to the next reversioners, or a transfer of the whole estate to a stranger with the consent of the next reversioners.

10. On behalf of the defendants, learned Counsel has urged that the present case was one of transfer for legal necessity and not one of surrender. It was admitted by him that some small part of the estate of Debendra had been omitted from the conveyance and decrees. But, there is no evidence of necessity disclosed in the documents in this case and no other evidence was tendered. There is no mention

of necessity in the documents. On the contrary they disclose that the property was of such value as to afford an income ample for the maintenance of the widow and for all other necessary purposes. There is no evidence of pressure of any kind upon the estate. The next reversioners, Purnagendra and Sujendra, were well aware of these facts, and there is no evidence to show that they made any enquiry, and certainly not that they believed that there was any such necessity or pressure. Sujendra did not consent to the transfer in 1868, and though it is sufficient if such consent be given at a later date, for example, by his participation in the transfers of 1893 or 1895, there is nothing in the circumstances of such consent to raise a presumption that any of these transactions were proper ones. On the contrary, the documents disclose that their object was to divide the reversionary estate among the parties during the lifetime of Kamini, and to deprive those who might be the next reversioners and entitled to the estate of Debendra upon her death. In such circumstances the, reversioner's consent loses its probative value : Ramesh Chandra v. Sashi Bhusan (1919) 6 A.I.R. Cal. 603.

11. Moreover, Sujendra did not purport to consent to any alienation by Kamini, he purported only to convey his own right, title and interest, his spes successionis, and such a conveyance was invalid and nullity. But assuming that what Sujendra did in 1893 or 1895, was equivalent to consent to the alienation by Kamini, and was sufficient to raise a presumption of necessity, any such presumption is rebutted by the documents themselves. In the circumstances so disclosed, it cannot be suggested that the reversioner was one who might be expected to be interested to dispute the transaction, on the contrary his interest was to support them, though it has been held by the Patna High Court in, Ambika Prasad v. Chandra Mani Kuer (1929) 16 A.I.R. Pat. 289 that the presumption is not rebutted merely by the fact that the consenting reversioner received a substantial benefit under the terms of the alienation. But, in that case, there was some evidence of legal necessity and the case was decided mainly upon the question of onus of proof. The utmost effect of the transfer of 1868 was to transfer to Purnagendra the life estate of Kamini, of which she was fully entitled to dispose.

12. A surrender by a Hindu widow must be of her whole interest in the whole estate in favour of the next reversioner if only one, or all next reversioners, if more

than one, at the time of alienation. It must be a bona fide surrender, and not a device to divide the estate with the reversioner or reversioners. A sale of the estate for consideration cannot be regarded as a surrender : *Santi Kumar pal v. Mukundalal Mandal* : AIR1935 Cal20 . Such a surrender in Hindu law is founded upon the principle of the effacement of the widow, as if, by her Voluntary act she had brought about her own death and so accelerated the succession of the next reversioners : *Rangaswami Gounden v. Nachiappa Gounden* (1918) 5 A.I.R. P.C. 196. In later decisions of the Privy Council, *Mt. Bhagwant Koer v. Dhanukdhari Prasad Singh* (1919) 6 A.I.R. P.C. 75, *Sureshwar Misser v. Mt. Maheshrani Misrain* (1921) 8 A.I.R. P.C 107 and *Sitanna v. Virana* , an apparent exception to this principle seems to have been allowed in respect of a small provision made for the maintenance of the widow. But these were cases of compromise in the nature of family arrangement, or settlement of family disputes about doubtful claims. Moreover, the present case is clearly distinguishable, because Kamini obtained substantial benefits in addition to maintenance. It was held in *Ramgowda Annagowda v. Bhau Saheb* that a compromise in the nature of a family arrangement is binding on a reversioner who has been a party to and has benefited by the transaction, and upon his descendants claiming through him. That was a case of a consenting reversioner who survived the widow, and was the actual reversioner at the time of her death, but never sought to set aside any of her alienations. His descendants claimed under or through him and had no better title to succeed in the suit than he had. Their Lordships of the Privy Council expressly stated that it was not necessary to consider the question whether a spes successions could be validly sold, because the reversioner 'did not in fact either sell or agree to sell his reversionary interest'. He, consented to an alienation by the widow and thus ratified it.

13. In *Mt. Haridei v. Bhagwan Singh* (1919) 6 A.I.R. P.C. 27 it was expressly stated that the question whether the arrangement was binding upon the descendants of such a consenting party, could not be determined in that suit, and the case in *Kanai Lal v. Brij Lal* (1918) 5 A.I.R. P.C. 70 was a decision only against such a consenting party. In *Bahadur Singh v. Ram Bahadur* : AIR1928 All204 the High Court of Allahabad decided that where a reversioner is a party to a compromise and obtains some property under it, his sons, if they enter into

possession of the property after their father's death and enjoy possession of it in succession to their father, are estopped from repudiating the compromise and from claiming as reversioners. But, the facts of this case are obscure, and the sons do not appear to have been actual reversioners at the time of the suit. The compromise was apparently the result of a family dispute about ownership. Similarly, compromise in the nature of family arrangements which amount to bona fide settlement of disputes in respect of the estate, or compromise entered into by the widow bona fide for the benefit of the estate, may bind the reversioners, even though they were not parties thereto. They are deemed to be alienations induced by necessity or as being in a parallel position thereto. Similarly a compromise of a claim made by the next reversioner in respect of the estate, if it amounts to a family settlement which is prudent and reasonable, is binding on the whole body of reversioners : Mulla's Hindu Law, Edn. 8, pp. 206 and 207. All these cases arose out of bona fide family disputes about the ownership of property and were not mere devices to divide the estate between the widow and the next reversioners. In the recent case in *Mt. Binda Kuer v. Lalta Prasad* their Lordships of the Privy Council stated that it was doubtless, good that family disputes should be settled, and that those who agreed to settle should be held to their agreement. But, where the next reversioner had little chance of surviving the widow and bargained away the chances of his descendants in general in order to obtain for himself an immediate share in the estate, such an agreement called for no special favour from the Courts. A decree passed in a representative suit by one or more of the reversioners, on behalf, of and in the interest of all the reversioners, for the protection of the estate from injury or to prevent wrongful alienation, operates as *res judicata* and binds the whole body of reversioners. But none of the transactions in the present case was in the nature of such a suit. Such suits are allowed upon, the principle that a reversionary heir has a right to demand that the estate be kept free from waste and free from danger during its enjoyment by the widow, and may appeal to the Court for the conservation and just administration of the property. He does so in a representative capacity so that the corpus may pass unimpaired to those entitled to the reversion and the operation is justified by the consideration of keeping the estate intact for the person to whom, as reversioner, it shall ultimately and at the proper time be determined that the estate shall go :

Janaki Ammal v. Narayanaswami Aiyer (1916) 3 A.I.R. P.C. 117 at pp. 209 and 210.

14. Clearly in the present case there was no effacement of Kamini and no bona fide surrender. Still more clearly it was a device; or a series of devices to divide the estate with Purnagendra and his sons and Sujendra, who were all parties to one or other of the transactions. Sujendra's sons were not parties to any of them. None of these transactions purported to be surrender by Kamini in favour of the next reversioner or reversioners. They referred only to transfers of rights, title and interests in the estate of Debendra. That of 1868 could not be such a surrender because Sujendra, who was one of the next joint reversioners, was not a party to it, nor was there any effacement of Kamini. That of 1893 purported to be a sale of the rights, titles and interests of Kamini and Sujendra. As there was no surrender by Kamini to Sujendra, Sujendra had nothing to sell but his *spes successionis*; he did not purport to convey the corpus but only his expectant right, and there was no effacement of Kamini. By that of 1895, Girija and his brothers conveyed part of the property to Sujendra for his life, with remainder to four of his sons, and Sujendra relinquished his annuity of Rs. 300 a month.

15. All the cases of consent to which I have referred are clearly distinguishable from the present case, because as I have already pointed out Sujendra did not purport to consent to any alienation by Kamini; he purported only to convey his own right, title and interest. This was a contingent right, a mere *spes successionis*, and such a conveyance was void in law. I am satisfied therefore that none of these transactions amounted to a valid transfer or surrender of the estate of Debendra, that is to say they are *prima facie* liable to be set aside at the instance of an actual reversioner such as the plaintiff. It becomes necessary therefore to consider whether the plaintiff is disqualified either by estoppel or other, wise from challenging their validity.

16. It is to be observed at the outset that the plaintiff as actual reversioner, does not make his claim as heir of his father Sujendra but as heir of the last full owner, namely Debendra : Bahadur Singh v. Mohar Singh (1902) 24 All. 94. Until the death of Kamini he had no interest other than a *spes successionis*, and could not

know whether he would ever become an actual reversioner. Though he had a title to challenge the alienations at their inception, he need not do so, but was entitled to wait until the death of Kamini had affirmed his character. His dealings with the property, to which I have referred other than the rent suits, were made prior to the death of Kamini. At that time, he did not know whether he would ever be such a reversioner in fact as would give him a practical interest to quarrel with the alienations : Gounden's case? (supra). On the other hand, both the plaintiff and his brothers not only accepted the benefits of the decree made in 1895, but relied upon it to defeat the claims of their nephew Satish. The partition agreement made between them in 1900 dealt separately with that part of the property of Sujendra which he did not obtain under the decree. In that part of the property Satish shared, but he got no share of the property obtained as a result of the decree of 1895. Estoppel is defined in Section 115, Evidence Act, as follows:

When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

17. It is clear that in the circumstances of the present case there is no room for the doctrine of estoppel. But, as was stated in Gounden's case Rangaswami Gounden v. Nachiappa Gounden (1918) 5 A.I.R. P.C. 196 (supra), there is another view, which is not estoppel, but may be expressed as ratification. Their Lordships of the Privy Council described it as follows:

What it is based on is this. An alienation by a widow is not a void contract, it is only voidable : Bijoy Gopal v. Krishna Mahishi (1907) 34 Cal. 329. Now in all cases of voidable contracts there is a general equitable doctrine common to all systems, that he who has the right to complain must do so when the right of action is properly open to him and he knows the facts. If therefore a reversioner after he became in titulo to reduce the estate to possession and knew of the alienation, did something which showed that he treated the alienation as good, he would lose his right of complaint. This may be spoken of, though scarcely accurately, as

ratification. In some cases it has been expressed as an election to hold the deed good : *Raja Modhusudan Singh v. Rooke* (1898) 25 Cal. 1. But it is well settled that though he who may be termed a presumptive reversionary heir has a title to challenge an alienation at its inception, he need not do so, but is entitled to wait till the death of the widow has affirmed his character, a character which up to that date might be defeated by birth or by adoption. The present plaintiff raised these proceedings immediately after his title was confirmed. Of course something might be done even before that time which amounted to an actual election to hold the deed good.

18. Therefore the actual reversioner even if he be the son of the consenting reversioner is not bound by his father's consent. In *Vinayak v. Gobind* (1901) 25 Bom. 129, it was held by the Bombay High Court that the consent be given for a consideration and the son enjoys the benefit of it, he is bound. That case however appears to have been decided upon the ground of presumed necessity, or of estoppel, and the learned Judges expressly based their decision upon the very special circumstances of the case, namely that the: consenting reversioner was at the time of the alienation the only male reversioner, the absence of the consent of a female who was the next reversioner being held to be absolutely immaterial, and that the object of the alienation was to provide funds for the marriage of the consenting reversioner, to which marriage his son, the plaintiff, owed his being, and without which he would not have been in existence to make his claim. The reasoning of the learned Judges is difficult to follow and is based to some extent upon views expressed by the Bombay Court about the character of a Hindu widow's estate, which differs from the views expressed and decisions given by this Court, which have been approved by the Privy Council. The case in *Bahadur Singh v. Ram Bahadur* : AIR1928 All204 was decided on the ground of estoppel, though no facts were disclosed which would justify the application of that doctrine. Moreover the claimants do not appear to. have been the actual reversioners at the time of the suit. In *Mahadeo Prasad v. Matra Prasad* (1922) 9 A.I.R. All. 297 the Allahabad Court held that if the next reversioner at the time of an alienation made by a widow assents to the alienation neither he nor any one claiming through him, for example the reversioner's son, can dispute the validity. But this decision seems to, have been founded upon a misapprehension of a passage in the judgment of

the Privy Council in *Bajrangi Singh v. Manokarmika Baksh Singh* (1908) 30 All. 1 because as was pointed out by the Privy Council in *Gounden's case Rangaswami Gounden v. Nachiappa Gounden* (1918) 5 A.I.R. P.C. 196, (supra),

the idea of an eventual reversioner claiming through any one who went before him is opposed; both to principle and authority.

19. The doctrine of election is described in White and Tudor's leading cases in Equity (Edn. 9, Vol. 1, at page 373) as follows:

Election is the obligation imposed upon a party by Courts of Equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy, both. Every case of election therefore presupposes a plurality of gifts or rights with an intention express or implied of the party who has a right to control one or both that one should be a substitute for the other. The party who is to take has a choice, but he cannot enjoy the benefit of both.

20. It is clear therefore that the doctrine thus described or as described in Section 35, T.P. Act, can have no application to the facts of the present case. The plaintiff's, rights as actual reversioner did not exist prior to the death of Kamini. Up to then, all that he had was a *spes successionis*. Therefore until then he was not in a position to choose between inconsistent or alternative rights or claim, and no plurality of rights existed. Even if it could be argued reasonably that he elected to take a certainty for a contingency, all that he could; surrender was his *spes successionis*. He could not surrender his rights as actual reversioner, because they did not exist prior to the death of Kamini. Until he knew whether he would be an actual reversioner why should he be so foolish as to take any steps which would jeopardize his title to the property which he held by reason, of the decree of 1895. No choice was possible because no alternative right existed. The right of an actual reversioner to the estate of Debendra could not be such an alternative because they might never be his. Moreover, the property really came to him from his father. The stipulation made by his father, that he should have a life interest only with remainder to four of his sons, produced the same result as if he had stipulated for an absolute interest and afterwards had made a deed of gift or had

devised the property to his sons by will. It is to be observed that there was no conveyance to Sujendra in 1895, nor did he transfer or relinquish anything' because he had nothing to transfer or relinquish but his own spes successionis which he could not legally transfer or relinquish. Nor did he purport to transfer or relinquish his sons' rights. The most that could be argued' about ratification would be that the sons ratified the transfer or relinquishment of Sujendra's right, title and interest. What Sujendra got by the agreement became his; own property, and he was entitled to make whatever arrangements he liked about who should have it after his death, such as a, remainder to four only of his sons.

21. The case in *Ramesh Chandra v. Sashi Bhusan* (1919) 6 A.I.R. Cal. 603 is directly, in point. It was held that the actual reversioners are not estopped from suing to recover property alienated by the deceased widow of the full owner by the fact that their father as immediate reversioner had concurred in the alienation and this even when they had after the death of their father and before the death of the widow taken by inheritance land transferred by the widow to their father by way of gift. The result is that I am satisfied that the plaintiff is not prevented by estoppel or ratification or acquiescence or otherwise from challenging the validity of these alienations.

22. With regard to other issues raised, the land acquisition decision could not operate as *res judicata* with respect to the issues in the present case. In any case it could only affect that part of the property which it was sought to acquire, and the plaintiff was not party to those proceedings in his personal capacity but only as a *shebait*. The question in issue was whether or not the property was *debutter*. The issues in the present case could not have been raised in that case, because the plaintiff was not then and might never have been an actual reversioner, and he was not made a party thereof in his personal capacity. So far as can be ascertained from the documentary evidence and the arguments adduced, the properties belonging to the estate of Debendra are correctly set out in Ex. A to the plaint. No arguments were adduced upon, the remaining issues which were formally raised, but the conclusion arrived at with regard to estoppel would apply also to. Girija and his legal representatives. The suit is not bad on account of the non-joinder of the parties mentioned in paras. 20 and, 21 of the written statement

of Gobinda Lal Sett (Order 1, Rule 9, Civil P.C.) and this judgment affects only the rights and interests of the parties impleaded. The result is that there must be judgment in favour of the plaintiff in terms of prayers (a)(b)(e)(d) and (e) of the plaint with costs.

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