MUSAMMAT PHOOL KUER

v.

MUSAMMAT PEM KUER AND ANOTHER.

1952

April 24

PANDIT MADAN MOHAN

v.

MUSAMMAT PEM KUER AND ANOTHER.

[MEHR CHAND MAHAJAN, CHANDRASEKHARA AIYAR and VIVIAN BOSE JJ.]

Hindu law—Widow—Surrender to next reversioner and stranger—Validity—Compromise by widow—When binding on reversioner.

(1) (1918) 27 C.L.J. 532.

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A relinquishment by a Hindu widow of her estate in favour of the next reversioner and a stranger in equal moieties is not a valid surrender under Hindu law. A valid surrender cannot be made in favour of anybody except the next heir of the husband.

Mummareddi Nagireddi v. *Pitti Durairaja Naidu* [1951] (S.C.R. 655) followed.

It is competent to a Hindu widow to enter into a compromise in the course of the suit *bona fide* in the interest of the estate and not for her personal advantage and a decree passed on such a compromise will be binding on the reversioner. The question whether a compromise is a *bona fide* settlement of a disputed right between the parties depends on the substance of the transaction and in order that it may bind the estate it should be a prudent and reasonable act. [On the facts their Lordships held, agreeing with the High Court, that the compromise in the present case was neither prudent nor reasonable so far as it affected the interests of the estate and of the ultimate reversioners and that it was not, therefore, binding on the reversioners.]

Ramsumaran Prasad v. *Shyam Kumari* (49 I. A. 342), *Mohendra Nath Biswas* v. *Shamsunnessa Khatun* (21 C.L.J. 157) and *Imrit Kunwar* v. *Roop Narain Singh* (6 C.L.R. 76) followed. *Mata Prasad* v. *Nageshar Sahai* (52 I.A. 393) distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 29 and 30 of 1951. Appeals from the judgment and decree dated 26th October, 1943, of the High Court of Judicature at Allahabad (Verma and Yorke JJ.) in First Appeal No. 48 of 1938 arising out of the judgment and decree dated 6th August, 1937, of the Court of the Additional Civil Judge at Agra in Suit No. 30 of 1936.

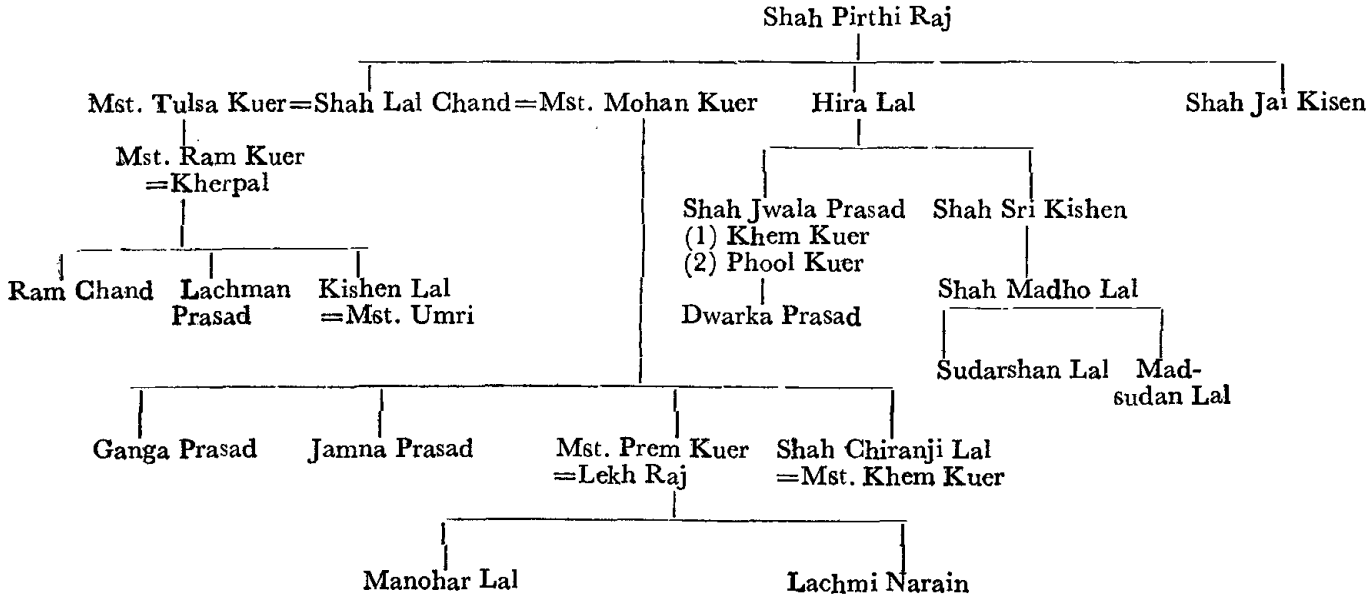
M. C. Setalvad and *Kirpa Ram* (*K. B. Asthana,* with them) for the appellant in Civil Appeal No. 29 of 1951.

K. N. Agarwal for the appellant in Civil Appeal No. 30 of 1951.

C. K. Daphtary (*G. C. Mathur,* with him) for the respondents in both the appeals.

1952. April 24. The Judgment of the Court was delivered by MAHAJAN J.

MAHAJAN J.—The dispute in this appeal concerns the zemindari and house properties last owned by Shaha Chiranji Lal who died at a young age on the 14th May, 1913, leaving him surviving a widow, Mst. Khem Kuer, and his mother Mst. Mohan Kuer, besides a number of collaterals, indicated in the pedigree table below :—



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Mst. Khem Kuer, the young widow of Shah Chiranji Lal, was murdered on the 28th August, 1919, and Mst. Mohan Kuer, the mother, died on the 5th December, 1932. Mst. Prem Kuer, the respondent in the appeal, claiming herself to be the heir to Shah Chiranji Lal as his sister, brought the suit giving rise to this appeal in the court of the civil judge, Agra, against amongst others, Mst. Phool Kuer, the present appellant, for recovery of possession of the properties of Shah Chiranji Lal and mesne profits.

Mst. Prem Kuer joined her half-sister Mst. Ram Kuer and their sons as plaintiffs along with herself. In the array of defendants were impleaded Mst. Phool Kuer and Mst. Khem Kuer, widows of Shah Jwala Prasad and Shah Madho Lal and his sons and a host of others as transferees of the properties.

The main defence to the suit was that Shah Jwala Prasad and Shah Madho Lal were recognized to be the owners and heirs to the entire estate of Shah Chiranji Lal by Khem Kuer and Mohan Kuer in a family settlement arrived at between the parties in suit No. 120 of 1915, that by virtue of this family settlement the estate of the deceased was vested in them subject to the life estates of the two women and that the plaintiffs who came to be recognized as reversioners by the Hindu Law of Inheritance (Amendment) Act, II of 1929, were not entitled to claim it. It was further pleaded that on the death of Khem Kuer in 1919, Mohan Kuer surrendered the estate in favour of Jwala Prasad and Madho Lal and they took possession of it as owners and the plaintiffs who subsequently became statutory heirs in 1919 could not be allowed to question the surrender and reopen the succession which could not remain in abeyance.

The learned additional civil judge who tried the suit, dismissed it holding that the compromise of 1915 was a *bona fide* settlement of a *bona fide* dispute and was binding as a family settlement being for the benefit of the estate, that Mohan Kuer surrendered the estate validly in favour of Jwala Prasad and Madho

Lal and they entered into possession of it after the death of Khem Kuer. Some of the transferees who had been impleaded as defendants compromised the suit with the plaintiffs and that part of the suit was decided according to the terms thereof between those parties.

Mst. Prem Kuer preferred an appeal to the High Court of Judicature at Allahabad against the decree dismissing her suit. The High Court by its judgment dated the 26th October, 1943, allowed the appeal, reversed the findings of the learned additional civil judge on the above issues and decreed the plaintiffs' suit with costs. Some of the transferee-defendants compromised with the plaintiffs-appellant in the High Court and the appeal was decided in terms thereof in their favour.

Two main points which are in controversy in this appeal and require consideration, are:—

1. Whether the compromise in suit No. 120 of 1915 amounts to a family settlement and binds the plaintiff-respondent, and,

2. Whether the surrender by Mst. Mohan Kuer was a valid surrender under Hindu law.

In order to appreciate the respective contentions of the parties, it is necessary to set out shortly in chronological order the history of the events which has resulted in this controversy.

As already stated, Shah Chiranji Lal died on the 14th May, 1913, leaving considerable movable and immovable property. At the time of his death, his widow Khem Kuer was about eleven years old and his mother Mohan Kuer was about 53 years old. The two reversioners, Shah Jwala Prasad and Shah Madho Lal, made an application for mutation of names of the estate in their favour claiming it on the basis of a will alleged to have been made by Shah Chiranji Lal on the 13th May, 1913, a day before his death. On the 10th of September, 1913, an application was made by Mohan Kuer for herself and as guardian of Khem Kuer challenging the genuineness of the will and claiming

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that the estate of the late Shah Chiranji Lal should be mutated in their names. Notice of this application was given to the two reversioners but they thought it prudent not to appear and to contest the contentions raised by the two ladies, with the result that the inheritance of the late Chiranji Lal was mutated in the name of the widow as sole heir under the guardianship of Mohan Kuer by an order dated the 28th October, 1913. The reversioners had also made applications in pending suits for getting themselves impleaded as legal representatives. Mohan Kuer applied for the removal of their names and for substitution of the name of the widow and of herself in those cases. Pending decision of these matters, on the 11th May, 1915, suit No. 120 of 1915 was filed by Jwala Prasad and Madho Lal on the basis of the alleged will of the 13th May, 1913. On the same day an application was made for the appointment of a receiver and an interim order appointing a receiver was passed by the court. On the 18th May, 1915, Mohan Kuer for herself and as guardian of the minor widow made an application praying for the discharge of the receiver. By an order dated the 23rd September, 1915, the receiver was discharged and it was held by the civil judge that the plaintiffs had no *prima facie* case and that the will propounded by them was a suspicious document. On the 18th December, 1915, suit No. 120 of 1915 was compromised between the parties. This compromise is in the following terms:—

"1. The plaintiffs relinquish their claim for possession over the estate of Shah Chiranji Lal.

2. The defendants shall have all those rights to the estate of Shah Chiranji Lal, which she had as a Hindu widow according to law. After the death of the two Musammats, the plaintiffs in equal shares and, after them, their heirs, who might have the right of survivorship one after the other, shall be the owners of the estate of Shah Chiranji Lal.

3. The name of Mst. Mohan Kunwar defendant against one half of the property in lieu of maintenance, shall continue.

4. Mst. Mohan Kunwar and Mst. Khem Kunwar shall have power to do anything they might choose with the entire income from the movable and immovable property, cash, ornaments, amount of decrees and documents, household goods and other movables, which they might have in their possession. The plaintiffs or anyone else shall have no power to interfere or to ask for rendition of accounts.

5. In case Mohan Kunwar defendant dies first, Mst. Khem Kunwar shall, as a Hindu widow, become the owner in possession of the entire property, of which Mst. Mohan Kuer might have been in possession in any way, subject to the provisions of condition No. 4. In case Mst. Khem Kuer defendant dies first, Mst. Mohan Kuer shall as a Hindu widow, become the owner in possession of the entire property of which Mst. Khem Kuer might have been in possession in any way, subject to the provisions of condition No. 4."

In accordance with the terms of this compromise suit No. 120 of 1915 was dismissed. In the proceedings that were pending for substitution of names the court on the 22nd December, 1915, ordered that Khem Kuer and Mohan Kuer be impleaded as legal representatives of the late Shah Chiranji Lal.

On the 2nd September, 1918, Khem Kuer brought a suit against her mother-in-law Mohan Kuer for a declaration to the effect that she alone was the lawful heir of Chiranji Lal and was the owner of the property, mentioned in schedule A and that the defendant had no concern with it. This suit was compromised between the parties on the 22nd April, 1919. Mohan Kuer agreed that Khem Kuer's suit be decreed. Khem Kuer undertook to look after Mohan Kuer in every way and if she desired to live separately from her, she agreed to pay her a sum of Rs. 3000 per annum by way of maintenance.

Khem Kuer did not live long after her having become owner of the entire estate of her husband under the terms of this compromise. As stated already, she was murdered on the 28th August, 1919. The estate

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thus became vested in Mohan Kuer both according to Hindu law as well as in accordance with the terms of the compromise of the 18th December, 1915. It is alleged that either on the fourth or the thirteenth day after the death of Khem Kuer, Mohan Kuer when asked about the mutation of the estate, said that she had no concern with it and had relinquished it and had devoted herself to worship. On the 15th September, 1919, an application bearing the signature of Mohan Kuer in Hindi was presented by her mukhtar Chaturbhuj in the court of the subordinate judge at Agra, praying that the sale certificate in suit No. 1919 (*Shah Jwala Prasad* v. *Rai Bahadur Shah Durga Prasad*), be prepared in the names of Shah Jwala Prasad and Shah Madho Lal, for they were the heirs in possession of the properties of Shah Chiranji Lal. This application (Exhibit N-31) contains the following recital:—

"Mst. Khem Kuer died on the 28th of August, 1919. I do not want to take any proceedings in my own name. Shah Jwala Prasad and Shah Madho Lal are the *subsequent heirs* and it is in their names that all the mutation proceedings etc. are being taken in the revenue court. They have been made the heirs in possession of the entire property and an application has been filed in their names in this court for preparation of the sale certificate. This petitioner has got no objection to the preparation of the sale certificate in their names, for they are the heirs and are in possession of the property."

The sale certificate was prepared accordingly. On the 16th September, 1919, Jwala Prasad and Madho Lal applied for mutation in respect of the lands relating to mauza Somra in the court of the tahsildar of Etmadpur. In column 5 of this application (Exhibit A-14) it was alleged that they were entitled to mutation by right of inheritance. Similar applications were made in respect of other villages also. (Vide Exhibit 128 etc.). Mutations were entered in all the villages on the basis that both of them were heirs in equal shares to the property of the deceased, though according to Hindu law, Shah Jwala Prasad alone was the

next heir. During the course of the mutation proceedings one Chintaman, general attorney of Shah Jwala Prasad was examined on the 11th October, 1919, and he stated that Mst. Khem Kuer died on the 28th August, 1919, that Shah Jwala Prasad and Shah Madho Lal were her heirs in equal shares, that Mohan Kuer was the mother-in-law of the deceased and she did not want her name to be recorded and had made relinquishment in favour of Shah Madho Lal and Shah Jwala Prasad in the civil court on the 15th September, 1919. Chaturbhuj, general attorney of Mohan Kuer was examined in the same proceedings on the 27th October, 1919, and he stated that Mohan Kuer did not want her name to be recorded in place of the name of the deceased, that she had no objection to the entry of the names of Shah Jwala Prasad and Shah Madho Lal, that she had sent him for making that statement. He admitted the relinquishment filed by Mohan Kuer in the civil court with respect to the property of Mst. Khem Kuer but he was not able to state when that relinquishment had taken place. The tahsildar after recording these statements ordered the mutation of names in favour of the two reversioners (Exhibit M-2).

On the 22nd November, 1919, the two reversioners Shah Jwala Prasad and Shah Madho Lal, having entered into possession of the estate after the death of Khem Kuer made a gift of property of the value of about Rs. 50,000 in favour of the sisters of Shah Chiranji Lal by means of two deeds of gift. (Vide Exhibit M-16). These gift deeds contain the following recitals:—

"Shah Chiranji Lal deceased was the owner of Katariha estate in which besides other villages the villages specified below were also included, and as he had no issue after his death Mst. Khem Kuer became his heir as a Hindu widow of a joint family subject to Mitakshara school of law. On her death we the executants who were entitled to become the absolute owners of the estate of Shah Chiranji Lal according to Shastras became the absolute owner of the entire property

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of Shah Chiranji Lal by inheriting the estate from him. We obtained possession over everything and mutation of names also were effected in our favour from the revenue court in respect of all villages. Shah Chiranji Lal deceased had two sisters Mst. Ram Kuer and Mst. Prem Kuer and he had a desire during his lifetime to give them some property but owing to sudden death he could not himself fulfil his intention during his lifetime. We the executants accept this fact as desired by him. Besides this the mother of Shah Chiranji Lal also desires the same thing and it is our duty to fulfil the same, and to give property to the Musammats aforesaid is considered to be a pious and good act from the religious point of view. It is our duty also to respect their wishes and fulfil the same, so that the people of our caste and family might not think that after the death of Shah Chiranji Lal his wishes remained unfulfilled. Hence for the reasons set forth above and keeping in view the honour of the family and pious nature of the act we the executants while in a sound state of body and mind..... make a gift of the following villages in favour of the donees."

The donees subsequently made a number of transfers of the property gifted to them and in every respect the gift deeds were acted upon. Jwala Prasad, the presumptive reversioner, died in the year 1930.

In suit No. 49 of 1928 (same as No. 89 of 1929) one Pandit Rikh Ram had obtained a decree against Shah Madho Lal and his sons and they appealed against it to the High Court and also applied for postponement of the preparation of the final decree. Stay was ordered on the applicants furnishing security in the sum of Rs. 20,000 for future interest, costs, etc. On the 26th May, 1930, in compliance with the order of the High Court a security bond was executed by Shah Madho Lal and his sons as first party and by Mst. Mohan Kuer as second party, containing the following recitals:—

"After the death of Mst. Khem Kuer Mst. Mohan Kuer was to become the owner of the property with

limited interests as a Hindu mother, but she relinquished her inheritance and did not agree to accept any property. By means of a private arrangement, *i.e.*, a family arrnagement, it was decided as between Shah Jwala Prasad and Shah Madho Lal that they should be the owners of the property aforesaid in equal shares. Documents in that connection were registered. Thus Shah Madho Lal executant No. 1 is the exclusive owner of the property given below which is being pledged and hypothecated under this security bond. Executant No. 4, the second party, has, after hearing and understanding the contents of this security bond, joined in token of the veracity of the facts noted above so that in future she might not be able to take objection to it and so that she might have no objection of any sort to the security bond." (Executant No. 4 was Mst. Mohan Kuer).

On the 30th June, 1930, an affidavit bearing the thumb impression of Mst. Mohan Kuer was filed in the same proceedings containing the following statements:—

"I solemnly affirm and say that after the death of Mst. Khem Kuer I did not agree to accept property nor was I the heir and that I relinquished the entire property in favour of Shah Jwala Prasad who became the owner of the entire property which was in possession of Khem Kuer."

The Subordinate Judge expressed the view that the bond could not be held to have been executed by Mohan Kuer, she being a pardanashin lady. He declined to accept the deed as sufficient and valid security. On the 9th July, 1930, the High Court of Judicature at Allahabad dismissed the application for stay of proceedings.

On the 15th July, 1931, Mohan Kuer instituted suit No. 24 of 1931 in the court of the subordinate judge of Mathura against the widows of Shah Jwala Prasad, Shah Madho Lal and his sons and a number of transferees who had taken the property from these two reversioners. In para 8 of the plaint it was alleged

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that the plaintiff was an old pardanashin woman, was simple and of week intellect and illiterate, that on account of the murder of Mst. Khem Kuer, she was very terror-stricken and was full of sorrow and had no knowledge about her rights, that the third defendant and Jwala Prasad who wanted to get the property took undue advantage of the plaintiff's aforesaid condition and unlawfully entered into possession of the property left by Chiranji Lal deceased and caused the mutation of names in their favour. In para. 12 it was said that the defendants had got the thumb impressions of the plaintiffs on certain documents without telling her the contents of those papers, simply by saying that a decree for a considerable amount had been passed against the property and it was going to be sold in auction and that a security bond must be furnished for saving the property. She prayed for a decree for possession of the property in dispute in her favour against the defendants. During the pendency of this suit Mohan Kuer died on the 5th December, and on her death an attempt was made by the present plaintiffs to get themselves impleaded as her legal representatives but on the 9th October 1934 it was held that the claim of Mst. Mohan Kuer was of a personal character and the suit therefore could not proceed owing to abatement. It was, however, noted that the legal representatives could file a separate suit, if so advised. It is in consequence of this order that the suit out of which this appeal arises was filed on the 30th April, 1936.

It was contended by the learned Attorney-General that the High Court on mere suspicions and unwarranted assumptions had found the main issues in the case aaginst the appellant and had erroneously held that the compromise in suit No. 120 of 1915 was not binding on the plaintiffs and that the surrender by Mohan Kuer was not valid surrender under Hindu law. After hearing the learned counsel at considerable length, we did not think it necessary to hear the respondent in reply, as in our opinion, the decision of the High Court on both the points was right.

On the point of surrender, the learned Attorney-General contended that the widow effaced herself and put both the reversioners in possession of the property half and half, and agreed to take Rs. 3,000 from them for her maintenance and that the fact of surrender was satisfactorily proved from the conduct of Mohan Kuer in allowing the estate to be mutated in the names of the reversioners and in allowing them to take possession of it, also by the different statements made by her and from the other documentary and oral evidence led in the case. Emphasis was laid on the statements contained in the application (Exhibit M-31), on the statement of her mukhtar Chaturbhuj, and on the recitals of the security bond and the affidavit, Exhibit P-30.

Whether Mohan Kuer effaced herself and surrendered the property, or whether she merely abandoned it, or whether she entered into an arrangement for the division of the estate between herself, the two reversioners and the daughters and their sons, it is not possible to predicate with any amount of certainty. No definite opinion can be offered on the question whether whatever she did, she did voluntarily after fully realizing the consequences of her act and whether as a pardanashin lady she had been properly advised on the matter or whether she merely acted on sentiment.

Considerable doubt is cast on the story of surrender set up by the defendants by the recitals in the two deeds of gift, dated 22nd November, 1919, extracted above. The donors did not base their title to the property either on the compromise of 1915 or on the surrender of Mohan Kuer of the year 1919 or on the will; on the other hand, they said that they had become owners of the property of Chiranji Lal by inheritance under Hindu law after the death of his widow. Both of them could not possibly inherit the property half and half under Hindu law. Moreover, there is no clear or definite evidence of either the time when the arrangement was made or of the terms thereof. The evidence on the these points is vague and

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unsatisfactory. It is completely wanting as to the arrangement under which Mohan Kuer became entitled to receive Rs. 3,000 from them.

The conduct of Mohan Kuer and the various statements by her no doubt do indicate that she cut off her connection with the bulk of the estate of Chiranji Lal after the death of the widow and received a sum of Rs. 3,000 from the reversioners and it is also clear that at her instance the reversioners gave property of the value of Rs. 50,000 to her daughters, but in the absence of any satisfactory evidence as to the precise nature of this arrangement it is not possible to conclude that the widow after fully realizing as to what she was doing and after proper advice effaced herself. In this connection the allegations made by her in the suit of 1931 cannot be altogether ruled out from consideration.

Assuming however for the sake of argument that Mohan Kuer purported to relinquish her estate in favour of Jwala Prasad and Madho Lal, in our opinion, the relinquishment cannot in law operate as an extinction of her title in the estate. The principle underlying the doctrine of surrender is that it cannot possibly be made in favour of anybody except the next heir of the husband. Vesting of the estate in the next reversioner takes place under operation of law and it is not possible for the widow to say that she is withdrawing herself from the husband's estate in order that it may vest in somebody other than the next heir of the husband. It was held by this court in *Mummareddi Nagi Reddi* v. *Pitti Durairaja Naidu*(1) that so far as the next heir is concerned, there cannot be a surrender of the totality of the interest which the widow had, if she actually directs that a portion of it should be held or enjoyed by somebody else other than the husband's heirs and that the position is not materially altered if the surrender is made in favour of the next heir with whom a stranger is associated and the widow purports to relinquish the estate in order that it may vest in

(1) [1951] S.C.R. 655.

both of them. Though in the written statements of the two sets of defendants different versions of the character of the arrangement were pleaded, the learned Attorney-General before us stated that the surrender by the widow was made both in favour of Jwala Prasad and Madho Lal in equal moieties. Madho Lal admittedly was not the next reversioner entitled to succeed to the estate. Thus the surrender of the totality of the interest of the widow was not made in favour of the next heir. That being so, it cannot operate as a valid surrender. If the surrender could be held a valid one, then obviously succession that had opened out in 1919 and vested in the next heirs could not be divested at the instance of the plaintiffs in the year 1932 on the death of Mohan Kuer, but in view of the invalidity of the surrender it has to be held that succession to Shah Chiranji Lal's estate opened in 1932 and the plaintiffs as next heirs were entitled to take it.

The next question for consideration is whether the compromise of 1915 entered into between Mohan Kuer as guardian of Khem Kuer, and the two reversioners who had claimed the estate on the basis of a will, was a *bona fide* family arrangement and thus binding on the ultimate reversioners, the plaintiffs. It is well settled that when the estate of a deceased Hindu vests in a female heir, a decree fairly and properly obtained against her in regard to the estate is in the absence of fraud or collusion binding on the reversionary heir, but the decree against the female holder must have involved the decision of a question of title and not merely a question of the widow's possession during her life (vide *Venayeck Anundrow* v. *Luxumeebaee*(1). This principle of *res judicata* is not limited to decrees in suits contested and it is competent to a widow to enter into a compromise in the course of a suit *bona fide* in the interest of the estate, and not for her personal advantage, and a decree passed on such compromise is binding upon the reversioner. The question whether the transaction

(1) (1861-1863) 9 M.I.A. 520.

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is a *bona fide* settlement of a disputed right between the parties depends on the substance of the transaction and in order that it may bind the estate it should be a prudent and reasonable act in the circumstances of the case. As observed by their Lordships of the Privy Council in *Ramsumran Prasad* v. *Shyam Kumari*(1), the true doctrine is laid down in *Mohendra Nath Biswas* v. *Shamsunnessa Khatun*(2), decided in 1914, and it is that a compromise made *bona fide* for the benefit of the estate and not for the personal advantage of a limited owner will bind the reversioner quite as much as a decree against her after contest.

That being so, we proceed to inquire whether the compromise in the present case is one that can be supported on these principles. In agreement with the High Court we are of the opinion that it cannot be so supported. Mohan Kuer in entering into the compromise on behalf of the minor widow never applied her mind to the interests of the ultimate reversioners. She entered into it for her own personal benefit and for the personal benefit of the minor widow in complete indifference as to what was to happen to the estate after their respective deaths. Under this compromise these two ladies got all the rights they had under Hindu law without sacrificing an iota of their property and then they agreed that after their death the plaintiffs in equal shares and after them their heirs shall be the owners of the estate of Chiranji Lal. It did not matter in the least to the two ladies what was to happen to the estate after their deaths and they were quite willing to let this estate go to the plaintiffs in the suit though one of them was a remote reversioner. The compromise therefore was made in the interest of the actual parties to the suit in complete disregard of the interests of the ultimate reversioners. The widows undoubtedly acted with reasonableness and prudence so far as their personal interest was concerned but further than that they did not see. The claim of the two plaintiffs in Suit No. 120 of 1916 was adverse to the interest of the

(1) (1922) 49 I.A. 342. (2) (1915) 21 C.L.J. 157.

reversion as they were claiming as legatees under the will. The widows while entering into the compromise safeguarded their personal rights only and thus in entering into it they only represented themselves and not the estate or the reversioners and surrendered nothing out of their rights, and it cannot be said that in the true sense of the term it was a *bona fide* settlement of disputed rights where each party gave up something of its own rights to the other. The plaintiffs got an admission from the widows in regard to the future succession of the estate that after their deaths they would succeed though they were not heirs in accordance with Hindu law. By this admission the widows lost nothing whatsoever. Those who lost were the ultimate reversioners and their interest was not in the least either considered or safeguarded. In these circumstances it seems to us that the compromise cannot be held to be a *bona fide* settlement or family arrangement of disputed rights and was entered into by Mohan Kuer for her personal advantage and of the advantage of Khem Kuer. The present case is analogous to the decision of the Privy Council in *Imrit Konwur* v. *Roop Narain Singh*(1). There in a dispute between a person claiming to be an adopted son of the previous owner and the widow and her daughters who would have title after her the widow gave up her daughters' rights in consideration of her receiving practically unimpaired what she could. Their Lordships held that such a compromise could not stand, as indeed it was not a compromise at all.

The learned Attorney-General laid considerable emphasis on the decision of their Lordships of the Privy Council in *Mata Prasad* v. *Nageshar Sahai*(2). In that case the widow admitted the right of the reversioner under Act I of 1869 and agreed that succession will be governed by that Act. The reversioner agreed to let her remain in possession and undertook that he would not alienate the property during that period. The widow in that case was not constituted a full owner under Hindu law and she did not get her full rights

(1) (1880) 6 C.L.R. 76. (2) (1925) 52 I.A. 393.

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under the compromise but as a matter of concession was allowed to remain in possession by the reversioner and as a matter of fact she sacrificed her rights to a considerable extent and did not act for her personal benefit at all except to the limited extent mentioned above. In the circumstances of that case it was held that the compromise was a *bona fide* family settlement of disputed claims and was binding on the reversioners. In the present case the devolution of the property after the death of Chiranji Lal was agreed to be in accordance with Hindu law and that being so, the further devolution of the property after their death was no concern of the widows. That was a matter of law. The ultimate reversioners were stabbed in the back by the widow and such a compromise cannot be held to be binding on them. A large number of cases were cited before us in which compromises under different circumstances had been held to be binding on the reversioners. We consider that it is wholly unnecessary to examine those cases because the circumstances in which those compromises were made were quite different from the circumstances of the present case. Considering all the materials which were placed before us, we hold in agreement with the High Court that the compromise in the present case was neither prudent nor reasonable so far as it affected the interests of the estate and that of the ultimate reversioners and that being so, is not binding on the plaintiffs. For the reasons given above this appeal fails and is dismissed with costs.

Civil Appeal No. 30 *of* 1951

This is an appeal by one of the transferees and arises out of the same suit out of which arises appeal No. 29 of 1951. On the 13th June, 1928, Shah Madho Lal and his son Shah Madhusudan Lal executed a sale deed (Exhibit M-13) in favour of the appellant for the sum of Rs. 21,000. The transferee while adopting the defence taken by Madho Lal and by the heirs of Jwala Prasad, pleaded that he was protected by the provisions of section 41 of the Transfer of Property Act.

The High Court held that in cases where a person who has allowed another to occupy the position of an ostensible owner has a limited estate, the rule of section 41 applies only during the lifetime of the limited owner and is not available to protect transferees against the claim of the reversioners. A number of authorities were cited in support of this proposition. The learned counsel for the appellant was unable to displace this proposition. It is quite clear that the plea of section 41 of the Transfer of Property Act could only be raised against Mohan Kuer or her legal representatives but is not available against the plaintiff, Mohan Kuer having acquired a limited life estate. This contention is therefore rejected.

The learned counsel then contended that the plaintiff Pem Kuer had relinquished her rights in favour of her sons in 1933 and she had no *locus standi* to maintain the suit or to appeal against the decision of the trial judge as the title to the estate had vested in her sons. The plaintiffs had alleged in para. 13 of the plaint that the relinquishment was inoperative and void. The defendants did not dispute that allegation and it is not open to them at this stage to take up the plea which they could have taken in the trial court or in the appellate court. Even in the grounds of appeal to this court the point was not taken. If the point was taken at the proper stage the plaintiffs might well have proved that the relinquishment was no longer operative or they might have amended the plaint and put it in proper form.

The learned counsel adopted the arguments of the learned Attorney-General in the other appeal and for the reasons given therein these points are decided against him. This appeal therefore also fails and is dismissed with costs.

Appeals dismissed.

Agent for the appellant in Civil Appeal No. 29 of 1951 : *S. S. Shukla.*

Agent for the appellant in Civil Appeal No. 30 of 1951 : *P. C. Agarwal.*

Agent for the respondents in both : *Rajinder Narain.*