

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Luchmun Chunder Geer Gossain and another
v. Kalli Churn Singh and others on appeal
from the High Court of Judicature at Fort
William in Bengal; delivered 5th March
1873.*

Present :

SIR J. W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

The Appellants in this case were the Defendants in the suit below. The suit was brought against them by Kalichurn Singh on behalf of himself and as guardian of his minor brother Rajcoomar Singh, to recover certain property from the Defendants, upon the ground that it had descended to the Plaintiffs as the sons of Ubotar Singh, their deceased father. The Defendants set up in answer to that suit that they had purchased the property from Ulpa, the wife of the father, and that that property had been bought by Ulpa out of her own stridhun. The lower court found in favour of the Plaintiffs. Upon appeal the High Court reversed the decision as to one moiety of the property, namely, the share belonging to Kalichurn, upon the ground that he had represented that the property belonged to his mother Ulpa. It is admitted that the property was purchased under a deed of the 14th Assar 1262 from Taramonee Dasse, who was the putneedar. The purchase money was Rs. 3,200, and it was stated in the deed of sale to Ulpa that she and her heirs should have the power and

right to alienate by sale or gift the aforesaid durputnee rights, and to grant successive underleases thereof in putnee. It also contained the following clause : " I execute this durputnee " kubulah, having received the full amount of " the consideration money aforesaid from your " stridhun fund through your husband Ubotar " Singh by my husband." Nothing could be clearer on the face of that deed than that the property was purchased by Ulpa out of her own stridhun. The purchase being of a durputnee, a mutation of names would be effected in the sherishta of the putneedar, and that mutation would be into the name of Ulpa as the owner of the property by purchase. It has been contended at the Bar that Ulpa had no power to sell this property, even if it had been her own stridhun, inasmuch as it is laid down that a wife cannot sell immovable property which has come to her from her husband as her separate property. The deed of sale, however, does not represent that the immovable property conveyed by the deed had been given to Ulpa by her husband, but that Ulpa was the purchaser of the immovable property by means of movable property, namely, the Rs. 3,200 which were her stridhun. According to the authority which has been cited by Mr. Bell from Macnaghten's Treatise on Inheritance, the Rs. 3,200 being the wife's stridhun were disposable according to the wife's pleasure. The passage from Macnaghten is at page 40. This is the passage :—" It may be here " observed that the Hindoo law recognises the " absolute dominion of a married woman over her " separate and peculiar property, except land " given to her by her husband, of which she is " at liberty to make any disposition at pleasure." Now, this deed represents that the Rs. 3,200 were her stridhun, of which, according to the authority cited, she was at liberty to make any disposition, and she did make a disposition of it by purchasing the property conveyed to her by the

deed for the Rs. 3,200. If the property was purchased by her with Rs. 3,200, her own stridhun, she had a right to sell that property to the Defendants, and she did sell it to them for a much larger sum than the Rs. 3,200, viz., for Rs. 12,000, the actual value which the Plaintiffs themselves have put upon it by the valuation of their suit. But it is said that although the property was purchased by means of Rs. 3,200 represented to be the stridhun of Ulpa, it was not really her stridhun, but that the Rs. 3,200 were advanced by the husband, and that the property was purchased by him in the name of Ulpa. It has been found by the court below, and also, on appeal, by the High Court, that the Defendants were *bonâ fide* purchasers of this property; that on the face of the deed it appeared that the property was purchased with the lady's stridhun, and that the husband during his lifetime had in every way, both publicly and privately, whenever he was called upon to make any representation on the subject, always represented that this was his wife's property. The Defendants having purchased the property from Ulpa *bonâ fide* for a valuable consideration, and for the full value of the property, it appears to their Lordships that it would be contrary to every principle of equity that they should be turned out of the property in favour of the heirs of the husband. The High Court held that the elder of the two Plaintiffs, the elder brother, was not entitled to recover his share of the property, inasmuch as he had lent himself to the representations which had been previously made by his father; and that having joined in a misrepresentation of the real state of facts, he was not at liberty to recover his share of the property, even though it might really have been the father's. But the learned Judges held that the minor brother was in a different position. One of the learned Judges says: "I think that the Principal "Sudder Ameen's decision should be confirmed,

“ for Rajcoomar ”—that is the younger brother—
“ occupies a very different position from that of
“ Kalichurn, and cannot be concluded by any
“ statements made by Ubotar”—that is the
father—“ or by Ulpa. Indeed, Ubotar died long
“ before the Appellants purchased, and it is no-
“ where contended that they were induced to
“ come forward by any misrepresentation on the
“ part of the father, and by those of his mother
“ Rajcoomar would not be in any way bound.”
Mr. Justice Macpherson says :—“ I do not think
“ that the mere fact of Ubotar’s and Ulpa’s
“ having given out that the property was the
“ property of Ulpa alone, is sufficient to prevent
“ the minor from having his rights declared in
“ this suit. The minor certainly is not bound by
“ the representations made by his mother.” Now
although the minor could not be bound by the
representations made by his mother, if he really in-
herited this property from his father, still the
question is, whether he was not estopped by the
representations of his father in his lifetime, from
saying that this property was his father’s, and
consequently that it had descended to him. It
is said that the misrepresentations were made by
the widow when she sold the property after the
father’s death, but were there not misrepresenta-
tions also made by the father in his lifetime ? If the
property were purchased by him, and the Rs. 3,200
which were paid as the purchase money were the
property of the father, did he not represent and hold
out to the world that the property was purchased
out of the Rs. 3,200, which were the stridhun of
his wife ? That was a misrepresentation of the
father by means of which the widow after his
death was enabled to sell the property. It was said
that the minor would not be bound by the acts of
the father before his death. Suppose the father
had actually sold this property to the mother, and
had made a misrepresentation by a deed of sale,
would not the minor son have been bound by that
deed, although the father might have had some

secret understanding with the mother that it was purchased in her name benamee for the father? It appears to their Lordships that there was a misrepresentation by the father in allowing the property to be taken by the wife under a deed of sale, representing that the purchase money was her stridhun, and in all his acts, both public and private, during his lifetime, representing that the property was his wife's. After that representation on the part of the father, his heirs were no more entitled to recover than the father would have been in his lifetime. The heirs were as much bound by the misrepresentations made by the father, as the father would have been if the wife in his lifetime had actually sold the property to a *boná fide* purchaser. In such case the father could not have recovered the property from the purchaser; and it appears to their Lordships that the minor claiming by descent from the father is equally bound by those misrepresentations, and that he cannot as heir to the father, set up that that property belonged to the father, when the father could not in his own lifetime, under similar circumstances, have set up that the property belonged to him.

But, then, it is contended that the pleadings in this case have not raised the real question in dispute. The suit was brought to set aside an illegal deed of sale executed by the Defendant No. 2, the mother. It is thus stated: "The parties have been left by Ubotar Singh deceased, the father of your petitioner Plaintiff No. 1. That on the 14th Assar 1262 B.S. he had acquired the durputnee rights of the said mehals, from their putneedar Taramonee Dasse, the wife of Kashinath Shaha, for a consideration of Rs. 3,200, and that having then acquired a lease of the same, in the name of the Defendant No. 2, he continued to hold and enjoy them both in the Sudder and Mofussil," and that afterwards he died and that this property descended to his two

sons. Now the Defendants had purchased under a deed representing that this property had been purchased out of the wife's stridhun. They knew nothing as to the real facts of the case; they stated what they believed the facts to be, taking the facts as they were represented at the time of the purchase. They believed the deed which represented that the purchase money was the wife's stridhun, and they believed the representations which had been made by the husband in his lifetime. In answer to the plaint, which says that the property was the husband's, and that he died possessed of this property purchased in the name of his wife, they say: "Ulpa Burmoneeah
" acquired through her husband Ubotar Singh,
" a durputnee settlement of the disputed mehal
" from the putneedar thereof, Taramonee Dassee,
" on payment of a bonus of Rs. 3,200 out of
" her own 'stridhun' funds." They stated in their defence what they found represented upon the purchase deed of the wife. They merely stated what they were led by the representation to believe, namely, that the property was purchased by means of the stridhun funds of the wife, and that, consequently, it did not pass to the sons upon the death of their father, but that the wife having purchased the property out of her stridhun was entitled to sell it. It appears, then, to their Lordships that the pleadings were sufficient to raise the question. Then the issues were raised and they are to be found at page 138 of the record. "Is it true that the
" Ubotar Singh, the late father of the principal
" Plaintiffs acquired the durputnee of the dis-
" puted property in the name of the Defendant
" No. 2 with his own funds, and remained in
" possession of the same during his lifetime, or
" that the durputnee was obtained by the said
" defendant with her own 'streedhun' and she
" herself held possession of it?" If the Defendants were entitled to avail themselves of the estoppel in consequence of the misrepresentation

of the husband they are entitled to use that estoppel as matter of proof, and they use it to prove that the durputnee was not purchased out of the father's own property, but that it was obtained by the mother, Ulpa, with her own stridhun, and that she herself held possession of it. So they prove the issue on their part by means of the estoppel. The written statement is the only pleading of the Defendants in this case. There is no pleading now in India by way of confession and avoidance. It was not necessary, therefore, to plead the estoppel on the part of the heirs arising from the misrepresentation of the father. The Defendants allege the facts as they find them represented in the deed which was their title deed. They go to trial upon those facts, and they put in evidence the misrepresentations of the father and the title deed founded upon those misrepresentations as proof of their case, which was that the property was purchased out of the separate estate of the wife.

Under these circumstances, their Lordships are of opinion that the High Court ought to have reversed the decision of the lower court, not only as regards the share of the elder brother, but also as to the share of Rajcoomar, and they will humbly recommend to Her Majesty that the decree of the High Court be reversed as to the share of Rajcoomar, that the decrees of both the lower courts be reversed as to the share of Rajcoomar, and as to the costs in respect of that share, and that the suit be dismissed as to that share, and that the Respondents do pay to the Appellants the costs in both the lower courts calculated on the value of that share, and also the costs of this Appeal, and that the said decree of the High Court be affirmed as to the share of the Plaintiff Kalli Churn and as to the costs calculated upon the valuation of that share.

