Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Syed Nurul Hossein and others v. *Sheosahai Lal, from the High Court of Judicature at Fort William in Bengal; delivered* 21*st May* 1892.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD HANNEN.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The suit in this appeal was brought by the Respondent against the wife of the Appellant Syed Nurul Hossein, Mussammat Bibi Saidan, who died pending the appeal, and is represented by the present Appellants. The plaint prayed for the determination and adjudication of the right of the Plaintiff to and for possession of mouza Bhada Khord, pergunnah Pachlakh, said to be acquired by Dwarka Lal, great-grandfather of the Plaintiff and husband of Mussammat Parbati Koer, with his ancestral money. Dwarka Lal died in 1819, intestate and childless, leaving Parbati Koer his widow, who entered into possession of his estate. On the 30th May 1865 Parbati Koer, described as widow and heiress of Babu Dwarka Das deceased, executed a mokhtarnama, by which she appointed Parsotim Das, described therein as son of the late Juggernath Pershad deceased and her own adopted son, her

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general mokhtar, with power to alienate or sell any moveable or immoveable properties for any consideration. On the 15th May 1868 Parsotim Das executed a deed of sale, by which, in consideration of Rs. 9,575, he sold the whole of the mouza Bhada Khord to Mussummat Bibi Saidan absolutely. He is described in the deed as "general mokhtar and executor under the will "dated the 6th June 1853, and adopted son of "Mussummat Parbati Koer, widow of Babu "Dwarka Das deceased, by virtue of a general "power-of-attorney," and the deed contains the following passage, "My client, the vendor, and "her heirs and representatives, and I as mokhtar, "who am the general mokhtar, adopted son, and "executor under the will of the vendor, and my "heirs and representatives have now no claim, "right, demand, or contention in respect to the "property sold and the said consideration money "against the vendee and her heirs and represen-"tatives. I as mokhtar have made a general "renunciation of the same. Such renunciation "is legal and valid."

Parbati Koer died on the 21st June 1879. The heir of Dwarka Lal, or Dwarka Das as he was sometimes called, then entitled to succeed to his estate, was Lokenath, the grandson of Dindyal Ram, the paternal uncle of Dwarka Lal. Lokenath died on the 21st September 1881, leaving Parsotim Das, who was the grandson of Behari Lal his paternal uncle, and the Respondent and his five brothers, who were great grandsons of Behari Lal, surviving him. On the death of Lokenath a dispute arose between Parsotim and the Respondent and another person as to the right to succeed to his estate, the Respondent claiming to do so on the ground of Lokenath having brought him up as his son. Petitions for a certificate under Act 27 of 1860 were presented by the parties, and pending the decision of the

case a compromise was come to, which is stated in a petition to the Court dated the 18th February 1882 of the Respondent and Parsotim. A division was thereby made of the estate, and the material part for the present suit is in the 4th paragraph. That states that Parsotim Das "has "and shall have nothing to do with anything "that may be acquired" by means of a suit which had been instituted by Lokenath to obtain possession of another mouza which had been sold, "or any other case instituted by virtue of the "right of inheritance to the estate of Dwarka "Lal, but that Sheosahai Lal *alias* Matru Lal "alone shall derive benefit or suffer losses from "the same." The first Court properly decided that the Plaintiff was not the heir to Lokenath. They also held that he could not have any right, in consequence of the relinquishment of Parsotim Das in his favour, to recover possession of the property in dispute, on the ground that he executed all the documents relating to the alienation by Parbati Koer, that it was made with his full consent, and as the reversionary heir of her husband he could not sue to have it set aside and recover possession from the purchaser, and also that the relinquishment was collusive. The suit was accordingly dismissed.

The Plaintiff appealed to the High Court, which decided upon the evidence that the instrument of compromise was executed for a *bonâ fide* purpose, and was not collusive. Their Lordships think this decision cannot be questioned. The High Court pointed out that, on the death of Parbati Koer, Lokenath, as the next heir, succeeded to the property, and that the first Court was in error in thinking that Parsotim was the reversionary heir of Dwarka Lal. They said they were of opinion that the first Court was in error in holding that the

effect of the admission in the bill of sale would be to deprive Parsotim of the right which, as heir of Lokenath, he had of questioning the validity of the bill of sale. They also held that there was no proof of any necessity that would sanction the sale, and reversed the decree of the first Court, making a decree for possession by the Plaintiff of the property claimed, except a small portion which the Plaintiff admitted the Defendant was not in possession of. From this decree the present appeal was brought, and it has been heard *ex parte*.

The learned Counsel for the Appellant took several objections to the judgment of the High Court. The first was founded upon the judgment of this Committee in *Eshenchunder Singh* v. *Shamachurn Bhutto and others* (11 Moore, I. A., 7), where it is said (p. 20) that the determinations in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made, and (p. 24) that the equities and ground of relief originally alleged and pleaded by the Plaintiff should not be departed from. Several cases were referred to as illustrating the application of this rule. Their Lordships fully affirm it, but the substance of the case in the plaint in this suit is that the sale by Parbati Koer was invalid beyond her interest in or power over the estate. The plaint, indeed, states that the Plaintiff was the heir of Lokenath, and so entitled to raise the question. He was not the heir, but it was proved that he had the right of the heir, and the Defendant was allowed to take the same objections as he might have taken if Parsotim had been the Plaintiff. Moreover, it may fairly be inferred from the judgment of the first Court that this objection was not taken at the hearing before it. If it had been, the plaint and the

issues might and ought to have been amended. It is very unlikely, if it was taken and was overruled, that there would be no notice of it in the judgments of either of the lower Courts. Their Lordships are of opinion that there is no weight in this objection.

The next objection was that no right passed from Parsotim to the Plaintiff by the solehnama or instrument of compromise; that property was not meant to be dealt with by it. The intention of the fourth paragraph, which has been quoted, appears to be that Parsotim should release or convey to Sheosahai his right of inheritance to the parts of Dwarka Lal's estate which had been sold by Parbati Koer, and for which one suit had been instituted and others might have to be. The words are sufficient to effect that intention, and to enable the Plaintiff to institute this suit.

The third objection was that Parsotim was estopped from bringing the suit by his execution of the deed of sale of the 15th May 1868, and consequently the Plaintiff was also estopped. The law in India on this matter is in "The "Indian Evidence Act, 1872." Section 115 of that Act says, "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." What then is the declaration or representation in the deed? Parsotim is described as general mokhtar and executor under the will, and adopted son of Parbati Koer, widow of Babu Dwarka Das deceased. The purchaser thus had sufficient notice to make it his duty to inquire as to what Parbati had power to sell. Parsotim says, "I have, as

" mokhtar, sold absolutely, without any re-
" servation, the whole of 16 annas milkiut and
" malguzari of mouzah Bhada Khord," and, in the passage which has been quoted, " I as mokhtar, " and my heirs and representatives have no claim, " right, demand, or contention, in respect to the " property sold, and I as mokhtar have made " a general renunciation of the same." There is no allusion to any right of Parsotim as heir of Dwarka Lal, which he was not, either then or when Parbati Koer died. The fair construction of the deed is that Parsotim, as agent, was only selling what his principal had power to sell. There is no representation that Parsotim was selling on his own account, and the Plaintiff is not denying the truth of any fact which is represented in the deed. The words "and my " heirs and representatives have now no claim, " &c." must be read with the context, and refer to the character of mokhtar. The transaction was the ordinary one of a sale by a Hindu widow, and their Lordships are of opinion that there was not any representation by Parsotim which would prevent the Plaintiff from bringing the present suit.

Lastly, the learned Counsel referred to the Indian " Transfer of Property Act, 1882," Section 43 of which says that " where a person " erroneously represents that he is authorized " to transfer certain immoveable property, and " professes to transfer such property for con-
" sideration, such transfer shall, at the option of " the transferee, operate on any interest which " the transferor may acquire in such property, " at any time during which the contract of " transfer subsists." This is not applicable. Parsotim did not represent that he was authorized to transfer any other interest than that of his principal, Parbati Koer, and he did not profess

to transfer any other. None of the objections to the decision of the High Court can, in their Lordships' opinion, be sustained, and they will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss the appeal.