

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussummat Lachhan Kunwar and others v. Anant Singh, and on the Appeal of Mussummat Lachhan Kunwar and others v. Manorath Ram, from the Court of the Judicial Commissioner of Oudh, Lucknow, delivered 20th November 1894.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD SHAND.

SIR RICHARD COUCH.

[Delivered by Sir Richard Couch.]

THESE Appeals arise out of two suits brought by the Appellants, Lachhan Kunwar, and Narind Singh, and Munnu Singh now deceased, the one against the Respondent Anant Singh and the other against the Respondent Manorath Ram. The suits were for the recovery of portions of certain property claimed to have been the ancestral property of one Mangal Singh. Mangal Singh died in 1859, leaving a widow, Mussummat Jit Kunwar, and a son, Pahlad Singh. Pahlad Singh died in 1861, leaving a widow, the Appellant, Lachhan Kunwar. The other Plaintiffs in the suits claim to be the reversionary heirs, both of Mangal Singh and of his son Pahlad Singh.

The case as stated in the plaints is that Jit Kunwar, the widow of Mangal Singh, as a Hindu widow, got possession of the property in dispute, as well as of other property, for her life-time without power of alienation, and that a deed of gift and a will made by her of the property in question are void against the reversioners. It

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is clear upon the evidence that Jit Kunwar, if she did not get possession of the property during the life of her son Pahlad, about which there may be some doubt, certainly got possession of it on the death of Pahlad, and remained in possession up to the time of her death, which took place in 1887.

In or before 1875 Lachhan Kunwar brought a suit against Jit Kunwar to recover possession of the property in dispute and of the other property. The result of that suit was that a decree was made by the Deputy-Commissioner of Sitapur in 1875, in favour of Lachhan Kunwar. That decree was reversed by the Commissioner in the same year, and the suit was dismissed on the ground that it was barred by the law of limitation.

The contention before their Lordships has been that Jit Kunwar did not take possession of the property in question, claiming an absolute title therein, but that all she did was to take possession asserting a title as a widow; and the question in these appeals really is in what capacity she took possession. If she took possession absolutely, and without any qualification, her possession would be a bar to the title of all persons who could claim as succeeding to the property on the death of Mangal. There is no direct evidence of any statement by Jit Kunwar at the time she took possession, or subsequently, that she took it as a Hindu widow, but it is sought to be inferred from various documents and statements that she must have taken it in that capacity. In the Judgment of the Deputy-Commissioner in 1875 Jit Kunwar's defence is referred to as stating that she pleaded by her agent that Mangal was succeeded by her to the exclusion of his son, and that she had been in sole possession of the property ever since Mangal's death in 1858 or 1859. A statement by her at that time that she took possession to the exclusion of Mangal's son,

cannot be reconciled with the contention now put forward that she took possession as widow. The son having the title, she could not take possession excluding him unless she intended to take an adverse possession, a possession to which she was not in any way entitled; and that appears to have been the view of the Commissioner who dismissed that suit.

The Judgment of the Judicial Commissioner now appealed from puts this point, which is one of fact, very clearly. He says:—"It is further evident that Mussammat Jit Kunwar treated the estate always as being her own absolute property. . . . The estate she held was that of an absolute full proprietor, and not the limited estate of a Hindu widow." And again he says:—"On the contrary, all the undeniable facts indicate that the position taken up by Mussummat Jit Kunwar was that she *only* was entitled to succeed to the property." Their Lordships do not find in these proceedings anything to lead them to doubt the correctness of this finding of the Judicial Commissioner; and that being the case the suit would be barred by the law of limitation, as it was held to be in the action of 1875. The contention that although it might be barred as against the son and all persons claiming under him, the effect was only to extinguish those rights, and to let in the rights of any persons who would claim as reversionary heirs of Mangal does not appear to their Lordships to be supported by authority, nor is it tenable unless it were clearly shown that when Jit Kunwar took possession she professed to do it as claiming only the limited estate of a widow. In this case it appears very clear, in their Lordships' judgment, that she did not take possession in that way. She seems to have had some reason for asserting an absolute title in

herself on the death of her husband, though it does not clearly appear what that reason was.

Their Lordships, looking at what has been proved in the case, are of opinion that the decision of the Judicial Commissioner was clearly right, and that both Appeals should be dismissed, and they will humbly advise Her Majesty accordingly. The Appellant must pay the costs of these Appeals.