Privy Council Appeal No. 133 *of* 1913; *Allahabad Appeal No.* 34 *of* 1911.

Jhandu - - - - - - - - *Appellant,*

v.

Tarif, since deceased, and others - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN PROVINCE, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD OCTOBER 1914.

Present at the Hearing:

LORD DUNEDIN. SIR JOHN EDGE.
LORD SHAW. MR. AMEER ALI.

[*Delivered by* LORD DUNEDIN.]

One Sukhram was an owner of property and died. He left behind him a lady named Musammat Imiriti, who was supposed to be his legal widow, having been married in the Karao form of marriage. If she was his legal widow she was entitled to the life enjoyment of the property which Sukhram left.

In 1904 four persons called Kehri, Kallu, Nihal, and Mir Singh raised an action against this lady alleging that they were the representatives of Sukhram. They further alleged that she was not a legal widow at all, and that accordingly they were entitled to possession of Sukhram's property. They were cast in that action because they failed to produce a proper pedigree which showed that they were in the degree of relationship which would entitle them to succeed even if their allegations against the lady were true.

[86] J. 383. 125.—11/1914. E. & S.

The present plaintiff is a person of the name of Jhandu who, admittedly, in the pedigree is one degree further off from Sukhram than Mir Singh, who is still alive. He raised the present action on precisely the same averments as Mir Singh and the others raised their action in 1904, that is to say, he averred that Musammat Imirti was not a real widow, but was, as he described it, a Bhatni widow with whom Sukhram had illicit connection and who lived with him as a kept woman. He therefore asked for possession of the property. It seems that after 1904, but before the institution of the present suit, Musammat Imirti made a conveyance of part of the lands to certain third parties. The Subordinate Judge gave judgment in the plaintiff's favour, disregarding the fact that in no supposition could the plaintiff ever be entitled to immediate possession for which he asked, owing to the fact that Mir Singh was still alive and was a degree nearer than the plaintiff.

The High Court set aside that judgment and dismissed the suit holding that it was impossible for the plaintiff to get what he asked, because, in any event, Mir Singh, under the present circumstances, would cut him out.

An appeal has been taken to their Lordships' Board, and the learned Counsel for the appellant really gave up at once any idea of insisting on the relief which the plaintiff asked for and which he got from the Subordinate Judge, because he admitted that the widow being alive he could not possibly get possession. That of course is tantamount to an admission that she is a real widow and not, as put in the plaint, a kept woman. But he has pressed their Lordships to turn the pleadings round and to give him a declaration that this conveyance by

the widow to these third persons was bad as an absolute conveyance, and was only given as for the period of her own life.

Now it is the fact that a reversioner in India may have a declaration from a Court to the effect that a conveyance by the person presently in possession is only good for the life of that person and is not good as an absolute conveyance of the property against the reversioners. But it is perfectly well settled that that declaration will only be given to persons who stand in a certain relationship. It was laid down by this Board in the case which has been quoted of *Rani Anund Koer* v. *The Court of Wards* (8 L.R.I.A., 14), " that the right to bring such " a suit is limited, and, as a general rule, " belongs to the presumptive reversionary heir." It is quite true that the Board indicated that, in certain cases, the nearest reversionary heir might have precluded himself in some way by his own act or conduct from suing—as by collusive action with the widow—and in that case a reversioner in a more remote degree might be allowed to prosecute the suit. The argument that was addressed to the Board was that this was such a case, because Mir Singh having brought the suit in 1904, and failed through producing a false pedigree, he never could sue again.

There are two reasons either of which is sufficient to prevent that argument prevailing. The first has already been indicated, namely, that the relief asked for here was possession of the property, and that the declaration now sought for can scarcely be spelt out of the pleadings at all. But there is another objection which is equally fatal, and it is this. In 1904, when Mir Singh brought his suit, this deed of conveyance by the widow was not in existence, and therefore it is impossible to say that Mir

Singh has, by his conduct in raising an action in 1904, precluded himself from challenging by way of declaration the deed which at that time was not in existence.

Their Lordships will therefore humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

JHANDU

v.

TARIF, SINCE DECEASED, AND OTHERS.

DELIVERED BY LORD DUNEDIN.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.