

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Jugol Kishore v. Maharajah Jotindro Mohun Tagore and others (Nos. 51 of 1881 and 2 of 1882), from the High Court of Judicature, at Fort William, in Bengal; delivered March 13th, 1884.*

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Present:

LORD BLACKBURN.  
SIR BARNES PEACOCK.  
SIR ROBERT P. COLLIER.  
SIR RICHARD COUCH.  
SIR ARTHUR HOBHOUSE.

THEIR Lordships are of opinion that the decision of the High Court is correct, and that it ought to be affirmed.

The suits out of which these Appeals arise relate to the share in certain joint family property which belonged to Norendro Chandra, deceased.

The Defendants claim through a sale in execution of a decree against Sharodamoyi, the widow of Norendro, who had succeeded to his share.

The Plaintiff claims under a purchaser at a sale after the death of Sharodamoyi of the alleged interest of Behari Lall, as reversionary heir of Norendro in the said share, in execution of a decree against Behari Lall.

The main question in the case is, as stated by the Chief Justice in delivering the judgement of the High Court, "whether, under the sale of  
" the right, title, and interest of Sharodamoyi in  
" her share of the family property, the whole  
" inheritance in that share passed to the pur-  
" chaser, or only the widow's interest subject to

“ the right of the reversionary heir to succeed to “ the property at her death.” If the whole inheritance passed under the sale in execution of the decree against Sharodamoyi, then the Plaintiff is not entitled to succeed. If, on the other hand, the only interest that was sold under that decree was the qualified interest, which is usually called the widow’s estate, then the reversionary heir was not bound by it, and the claimants under the purchase at the sale in execution of the decree against him are entitled to succeed.

The suit in which the decree against the widow Sharodamoyi was obtained was brought by Unamoyi, who was the daughter of Bhoirub Chandra. She brought a suit against the other members of the joint family to recover the share of the property which belonged to her father, who in his lifetime was a member of the joint family. Bhoirub having died without parting with his interest, Umamoyi, as his daughter, became entitled to his share of the property; but some of the members of the joint family set up that Bhoirub, before his death, had executed a hibanamah by which he conveyed his share to them. Sharodamoyi and the other members of the joint family, including Behari Lall, were made co-defendants. The record is very defective in many respects. It includes a number of valuations and other documents which are wholly unnecessary for the purposes of this case, and it omits many documents which were very important to be looked at. Sharodamoyi, though made a party to the suit, did not appear. Other members of the family appeared, and set up as a defence to the suit that Bhoirub Chandra had conveyed his share by the hibanamah. The First Court dismissed the suit, holding that the hibanamah was a genuine document. Upon appeal to the Sudder Court, that Court held that the hibanamah was not a valid document or binding upon

Umamoyi as the daughter of Bhoirub Chandra ; and they reversed the decision of the First Court, and decreed that Umamoyi should recover her share of the property, together with mesne profits and the costs of the suit. It was urged in the course of argument that Sharodamoyi never received those mesne profits ; but it is unimportant whether she did receive them or not. She was made a party to the suit and did not appear. The other Defendants appeared and set up a defence, and it was by reason of that defence that the principal part of the costs in the suit were incurred. Sharodamoyi not having appeared, she was not represented at the trial, but the case was tried *ex parte* against her upon the evidence which was produced by the other members of the family. Upon that defence the Sudder Court gave a decree against all the Defendants. If in the execution of that decree Umamoyi had attached and sold the right, title, and interest of all the other members of the family, although one portion of it was represented by the widow, the whole property would have passed to the purchaser. The reversionary interest of Behari would have passed although the share of Norendro was represented by the widow. If that would have been the case if the execution had been against the whole property, why should not it be so when the execution was against only the widow's share of the property ? The First Judge held that under the execution against Sharodamoyi the reversionary interest of Behari Lall could not have been sold. He was quite right in that respect, because Behari Lall during the widow's life had no reversionary interest to sell ; but it was a strong reason why when the sale was against the widow, who represented her deceased husband's share, the whole interest in the estate should pass under it. It was held in the Shivagunga case, that although a widow has for some purposes only a

partial interest, she has for other purposes the whole estate vested in her; and that in a suit against a widow in respect of the estate the decision is binding upon the reversionary heir. Their Lordships, in that case, 9 Moore's Indian Appeals, page 604, say: "Assuming her,"—that is the widow,—“to be entitled to the zemindari at all, “the whole estate would for the time be vested “in her absolutely for some purposes, though in “some respects for a qualified interest.”

A difficulty was caused by section 249 of Act VIII. of 1859, which enacted that the proclamation of a sale in execution shall declare “that the sale extends only to the right, title, “and interest of the Defendant in the property “specified therein.” In the case of a widow it is necessary that the proclamation shall make that statement. But then there are many cases in which when the right, title, and interest of the widow is sold the whole interest in the estate passes. In other cases the whole interest does not pass. The case depends upon the nature of the suit in which the execution issues. There are many authorities to that effect. It is unnecessary to recapitulate them,—they are referred to by the Chief Justice in his judgement in the High Court. If the suit is simply for a personal claim against the widow, then merely the widow's qualified interest is sold, and the reversionary interest is not bound by it. If, on the other hand, the suit is against the widow in respect of the estate, or for a cause which is not a mere personal cause of action against the widow, then the whole estate passes. In many of the cases, although the right, title, and interest of the widow had been sold, the whole interest in the estate was held to have passed and the reversionary heir to be bound by it.

In the case referred to, which is reported in the 2nd Law Reports, Indian Appeals, page 275,

Baijun Doobey and others v. Brij Bhookun Lall Awusti, it was held that only the widow's qualified estate passed by the sale in execution. That was a suit brought against a widow for arrears of maintenance. It was stated in the judgement that the maintenance was a charge upon the inheritance; but the Judicial Committee held that the claim against the widow was for a personal debt due by the widow; although the maintenance might be a charge upon the inheritance, still the widow whilst in possession of the estate had received the profits and failed to pay the maintenance. The arrears created a personal claim against the widow, for which she was personally liable. The Judicial Committee held that the suit was to enforce the personal liability of the widow, and consequently that the execution in that suit passed merely the widow's interest.

Their Lordships think that upon the authorities referred to by the Chief Justice the Court was at liberty to look to the judgement to ascertain what was sold under the right, title, and interest of the widow. Looking to that in the present case, their Lordships are of opinion that not only the widow's right but the whole interest in the estate passed under the sale in execution of the decree.

Under these circumstances their Lordships will humbly advise Her Majesty to affirm the decrees of the High Court; and the Appellant must pay the costs of these Appeals.

