

Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of (1) Munshi Karim-ud-din, deceased (now represented by Musammat Mumtaz Begam and others) : (2) Dwarka Prasad and others : (3) Baldeo Charan : (4) Baldeo Singh, deceased (now represented by Raghbir Singh and another) and others : and (5) Musammat Mazhar Fatima and others v. Kunwar Gobind Krishna Narain and another (Privy Council Appeals Nos. 41 to 45 of 1907), from the High Court of Judicature for the North-Western Provinces, Allahabad ; delivered the 1st July, 1909.

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

SIR ANDREW SCOBLE.

[*Delivered by Sir Andrew Scoble.*]

The five actions in ejectment, which have been consolidated for the purposes of these Appeals, all raise the same question. The Plaintiffs (the present Respondents) in each case are the sons of Rani Mewa Kunwar, deceased; and the Defendants (the present Appellants) severally claim as purchasers from one Jai Chand Rai, who, in his turn, claimed to have become entitled to the property sold, in satisfaction of a decree obtained by him against the same

Rani Mewa Kunwar, for money advanced by him to her mother for family purposes. The point for decision is whether Rani Mewa Kunwar conveyed to Jai Chand Rai an absolute, or only a daughter's, estate in the villages in suit.

It is unnecessary to enter into the earlier history of this family, as it will be found summarized in the Judgment of this Committee in the case of *Rani Mewa Kuwar v. Rani Hulas Kuwar* (L. R. 1 I. A. 157). For the purposes of these Appeals it is sufficient to state that, disputes having arisen as to the succession to the estate of one Raja Ruttun Singh, Rani Mewa Kunwar's grandfather, a compromise was effected between the rival claimants, the terms of which were embodied in an agreement dated the 21st July, 1860. Under this agreement, the property being treated "as if it were one rupee," a share of $7\frac{1}{2}$ annas was awarded to Khairati Lal, his grandson, a share of $4\frac{1}{4}$ annas to his granddaughter Rani Mewa Kunwar, and a share of $4\frac{1}{4}$ annas to her sister, Rani Chittar Kunwar. As to the effect of this agreement their Lordships observe that it "assumes that the parties were severally claiming by virtue of some right of inheritance the property of the Raja Ruttun Singh; that there were questions between them which might disturb the rights which each claimed; and it was better instead of a long litigation to settle these rights (p. 164). . . . The compromise is based on the assumption that there was an antecedent title of some kind in the parties, and the agreement acknowledges and defines what that title is" (p. 166).

For the purposes of the present Appeals, it is necessary to enquire what was the "antecedent title" of Rani Mewa Kunwar and her sister to the property of their grandfather, which is

disclosed by the agreement. In it they are described as the daughters of Kunwar Daulat Singh, and their title must be taken to have been derived through him, notwithstanding the fact that he predeceased his father. This was the view taken by Mewa Kunwar herself, when she successfully claimed to take by survivorship the share of her sister, who died on the 13th April, 1866, on the ground that the property in suit descended from Daulat Singh through his widow to his daughters. It is, at all events, clear that whatever may have been the original imperfection of Daulat Singh's title, that imperfection was *pro tanto* cured by the agreement, which secured to his daughters a considerable portion of the family estate.

Assuming, then, that the daughters took a share in their grandfather's property under the agreement in right of their father, what was the nature of the estate which so devolved upon them? Mr. Cowell, for the Appellants, argued that they took absolutely, and that the property, in their hands, must be treated as self-acquired. Mr. De Gruyther, for the Respondents, contended that they took only a daughter's estate, that is to say, a life interest. This was the view adopted by the learned Judges of the High Court at Allahabad, who say in their Judgment—

It is to us perfectly clear that the title which Mewa Kunwar and her sister claimed, and which was the title by virtue of which they took the 8½ annas of the property under the agreement with Raja Khairati Lal, and by virtue of which Mewa Kunwar subsequently defeated her sister's husband, was that they, as daughters of Daulat Singh, were entitled to succeed to a daughter's estate in his property on the death of their mother as a single heir, with a right of survivorship *inter se*.

With some hesitation, their Lordships have come to the conclusion that this is the correct view.

Turning now to the transaction between Rani Mewa Kunwar and Jai Chand Rai, upon which the title of the Appellants is based, it appears from the Judgment of this Committee already referred to (*ubi supra*, p. 160), that after the death of Raja Ruttun Singh,

questions arising out of this alleged conversion to Mahomedanism of the Rajah, and respecting the confiscation [of his estate in Oudh by the King of Oudh] were contested between the widows of the deceased Ruttun Singh and of his son, Daulat Singh ; and after their deaths, the controversies were renewed between Khairati Lal and Mewa Kunwar and her sister.

These controversies were put an end to by the agreement of the 21st July, 1860 ; but as Ruttun Singh died on the 14th September, 1851, the litigation lasted for nearly nine years, and as the estate was large, the expenses were correspondingly heavy. To meet these and other expenses, Sen Kunwar, Daulat Singh's widow, is alleged to have borrowed from Jai Chand Rai, in the six years from September, 1851, to October, 1857, sums amounting to Rs. 51,366—upon which Rs. 20,528 were due for interest—and to have executed in his favour a bond for Rs. 51,369 and a mortgage-deed for Rs. 20,525. In 1861, Jai Chand Rai brought a suit upon the mortgage-deed in the District Court at Bareilly, against Sen Kunwar's two daughters, Chittar Kunwar and Mewa Kunwar, which, on appeal to the Sadr Court at Agra, was decided in his favour, the learned Judges holding that there could be “no question then as to the validity of the consideration for which the deed in suit was executed,” and that the loans had not been exclusively made on account of the litigation between Raj Kunwar and Sen Kunwar in the British Courts, but it might “be reasonably believed that portions of it were applied to the recovery from attachment of Ratan

Singh's property in Lucknow, and to the maintenance of the family in a style suited to their social position and antecedents." It should be mentioned that, although Mewa Kunwar did not contest this claim, it was hotly contested by Chittar Kunwar upon every possible ground, and that there was no appeal against this decision.

In 1865, Jai Chand Rai brought a suit in the Court of the Civil Judge at Lucknow claiming Rs. 96,368 as due upon the bond executed by Sen Kunwar in 1857. To this suit Chittar Kunwar and Mewa Kunwar were made defendants. Mewa Kunwar again admitted the claim, but Chittar Kunwar resisted it. She died, however, while the suit was pending, and eventually the full claim was admitted by Mewa Kunwar, who had inherited her sister's share, and a decree was passed accordingly. In satisfaction of this decree, Mewa Kunwar, with the sanction of the Court, assigned certain villages, including those in question in this suit, to the judgment creditor. In her petition to the Court, for permission to settle the claim in this way, she says that the judgment creditor is to "enter into possession as a proprietor like the petitioner," and it was suggested at the bar that this meant that he was to take her life-estate only; but as there is a previous statement in the same document that the villages to be transferred were "owned and possessed" by her, the more reasonable construction is that she intended to convey an absolute estate.

The question remains—Was the debt which was due to Jai Chand Rai a debt which, according to Hindu law, Mewa Kunwar was justified in paying? It was a debt which her mother, the widow of Daulat Singh, had incurred for family purposes, and of which the family had had the

benefit; for the result of the litigation, which could not have been carried on without borrowed money, was the compromise which secured to the family a large share of the estate. The preservation of the estate, and the costs of litigation for that purpose, are objects which justify a widow in incurring debt, and alienating a sufficient amount of the property to discharge it. Moreover, the general principle of Hindu law that he who takes the estate becomes liable for the debts of the estate, is especially applicable in a case like the present where, but for the debt, the estate would have been lost to the Respondents.

Mayne, Hindu Law (7th ed.), para. 327.

For these reasons, their Lordships will humbly advise His Majesty that these Appeals should be allowed, the Decrees of the High Court discharged with costs, and the Decrees of the Subordinate Judge in the five original suits restored.

The Respondents must pay the costs of the Appeals.