

man, if free to act as he chose, would consent to record in writing the part of the agreement which if unqualified would deprive him for ever of his land, and to leave to the uncertainties of oral testimony the promise to return the sale-deed if the money were paid within three months. The proposition has only to be stated to raise a strong feeling that the man who is shown to have acted in this way cannot have been acting of his own free will.

It was urged that the plaintiff should be required at least to pay Rs. 1,700 to the first defendant and not merely Rs. 1,400, as the second defendant admitted that he had received his Rs. 300 from the first defendant through the plaintiff, but the Courts below have found that it is not proved that the first defendant supplied the money to pay defendant No. 2. The District Judge indeed doubts whether defendant No. 2 was paid at all, and points out that as no bond has been returned, the plaintiff is in no way protected. The second defendant has not been made a party to this appeal or to the appeal to the District Court, and will, therefore, not be bound by any decree which we may pass. Consequently as it is not proved that the plaintiff has been discharged of this debt to defendant No. 2, we cannot revise the decision of the Courts below on this point.

We vary the decrees of the Courts below by allowing the plaintiff three months from this date within which he may pay the sum of Rs. 1,400 to the first defendant, and in other respects we confirm those decrees with costs.

*Decree varied.*

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Ranade.*

VINAYAK VITHAL BHANGE AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* GOVIND VENKATESH KULKARNI (ORIGINAL PLAINTIFF), RESPONDENT.\*

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July 31.

*Hindu law—Widow—Alienation by widow of land inherited from her husband—Reversioner—Consent of reversioner to alienation—Subsequent claim by son of consenting reversioner to set aside alienation.*

One Govind Bhagwant died, leaving him surviving a widow Radhabai, a sister Bhimabai and her son Venkatesh. Radhabai alienated to the defendant

\* Second Appeal, No. 201 of 1900.

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five plots of land inherited by her from her deceased husband. Two of them (Nos. 495 and 496) were sold with the consent of Venkatesh to defray the expenses of his marriage. The sale-proceeds were received by Venkatesh and the sale-deed was attested by him. The other three plots (Nos. 497, 498 and 499) were relinquished by Radhabai in favour of the defendant, as she was unable to pay Government assessment. The plaintiff was the son of Venkatesh and was born after these transactions. After the sale and relinquishment in favour of the defendants, Bhimabai died, then Venkatesh, and in 1889 Radhabai died. In 1897 the plaintiff brought the present suit as reversionary heir of Govind Bhagwaut against the defendant to recover possession of the five plots of land alienated to him by Radhabai.

*Held*, that the sale of the two plots Nos. 495 and 496 by Radhabai to the defendant was good, and the plaintiff was not entitled to recover them. The consent given by Venkatesh, the plaintiff's father who was at the time the only male reversioner in existence, validated the sale.

As to the remaining three plots (Nos. 497, 498 and 499) the plaintiff was entitled to recover them. There was no consent given, or legal necessity for their alienation proved.

SECOND appeal from the decision of C. H. Jopp, District Judge of Ahmednagar, amending the decree of Ráo Sáheb S. N. Sathye, Subordinate Judge of Karjat.

Suit by reversioner for possession of certain land.

The land in question had belonged to one Govind Bhagwaut, who died childless in 1857, leaving him surviving his widow Radhabai, a sister Bhimabai and a nephew (Bhimabai's son) Venkatesh.

Radhabai succeeded to her husband's property, and in 1862 she sold two plots (Nos. 495 and 496) of the land in question to the defendant in order to raise money for the marriage of the abovementioned Venkatesh, her deceased husband's nephew. Venkatesh gave his consent to the sale, but there was no evidence that Bhimabai, his mother, had consented. Venkatesh in fact received the sale-proceeds and attested the sale-deed. In 1864 Radhabai transferred the remaining three plots of land (Nos. 497, 498 and 499) to the defendant. No consent was given to this transaction.

Bhimabai died in 1869 and Venkatesh died in 1877, leaving the plaintiff his son and heir. Radhabai died in 1889.

In 1897 the plaintiff brought this suit for possession of the said land, alleging that he was the reversionary heir of Govind Bhagwant and had become entitled to the property on the death of Radhabai, Govind's widow. He sought to set aside the sale and transfer of the lands by Radhabai to the defendant on the ground that it was made by her without legal necessity and could only have effect during her life.

The defendants pleaded that the sale of the first two plots (Nos. 495 and 496) was made by Radhabai for legal necessity and with the consent and for the benefit of the plaintiff's father Venkatesh; that the sale was, therefore, effectual; and as to the remaining plots (Nos. 497, 498, 499) that Radhabai had transferred them to the defendants because she was unable to pay the assessment.

The Subordinate Judge awarded the plaintiff's claim.

On appeal the Judge found that legal necessity for the sale by Radhabai was not proved; that there was no evidence that Bhimabai had consented to the sale; and that the consent of Venkatesh did not validate the sale. He held that the plaintiff was entitled to recover the property, but that he must pay the defendants the money expended in improving plots Nos. 495 and 496. He accordingly amended the decree.

The defendants appealed to the High Court.

*Vinayak V. Ranade* for the appellants (defendants):—The sale by Radhabai was valid. There was a legal necessity for it. She required money for the marriage of the plaintiff's father Venkatesh, who was her nephew,—that is, her husband's sister's son. At that time Venkatesh was the only male reversionary heir in existence. Further, the sale was effected with his knowledge and consent. The plaintiff, who is the offspring of the marriage for which the money was required, cannot now impugn the sale. The very fact that the plaintiff's father, who was interested in the property, consented to the sale raises a presumption that the transaction was a fair one and justifiable under Hindu law—*Raj Lukhee Debia v. Gokool Chunder Chowdhry* <sup>(1)</sup>.

*Mahadeo V. Bhat* for the respondent (plaintiff):—The plaintiff does not claim the property through his father, but he claims it

(1) (1869) 13 M. I. A., 200, 228; 12 Cal. W. R., 47.

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in his own right as the reversionary heir of Govind after the death of his widow Radhabai. The consent given by the plaintiff's father for the sale of the two plots cannot make the sale valid because at that time plaintiff's mother Bhimabai was alive and she was the reversionary heir. If Radhabai had predeceased Bhimabai, the latter would have been entitled to the property, and she would have taken it absolutely, being the sister of the last male holder. In such case the consent of the plaintiff's father would have been of no avail to the defendants. Further, the performance of the marriage of plaintiff's father was not a legal necessity. Plaintiff's father was not a member of Radhabai's husband's family.

[JENKINS, C. J.:—Plaintiff owes his existence to that marriage, and can you now attack the sale on the ground that there was no legal necessity for it?]

Next we contend that as Bhimabai was the reversionary heir at the time of the sale, her consent ought to have been taken. When there are several reversionary heirs, the consent of all such heirs is necessary to validate an alienation by a widow—*Varjivan v. Ghelji* <sup>(1)</sup>. It does not always happen that one reversionary heir gets the property through another prior reversionary heir, and it is this circumstance that makes the consent of all the reversioners necessary. The right of a reversioner comes into existence only after the death of the widow of the last male holder. His consent to an alienation may raise a presumption in favour of its propriety, but there must be also legal necessity for it. The Judge has found that there was no such necessity for the sale, and we contend that this is a finding of fact.

JENKINS, C. J.:—The point for decision in this appeal is the validity of an alienation by a widow as against the reversioner, who became entitled on her death. The material facts may be shortly stated.

Govind Bhagwant died many years ago, leaving a widow Radhabai, a sister Bhimabai, and nephew Venkatesh. Bhimabai's son Venkatesh afterwards became the father of the plaintiff. Radhabai succeeded to her husband's property, which comprised

(1) (1881) 5 Bom., 563.

the lands in suit, and in 1862 and 1864 she sold these lands to the defendants. To the sale of that portion which consists of Nos. 495 and 496 Venkatesh consented; to the sale of the three remaining numbers—497, 498 and 499—no consent was given.

I will first deal with Nos. 495 and 496. The defence as to them is, that they were sold for legal necessity, and with the consent and for the benefit of Venkatesh. The plea of legal necessity has been rejected by both Courts, but the consequence flowing from Venkatesh's consent under the peculiar circumstances of the case has not been adequately considered. The circumstances are, that when the sale was effected, Venkatesh, so far as appears, was the only male kinsman, and the sale was effected to raise the necessary funds for Venkatesh's marriage, which resulted in the birth of the present plaintiff. Though Venkatesh was the nearest and in fact the only male relative of Radhabai at the time of the alienation, still he was not the next reversionary heir; his mother Bhimabai was; and it is this which gives rise to the difficulty in this case, for the lower Appellate Court was unable to find that Bhimabai's consent was given.

Now there can be no question that apart from legal necessity a widow can validly alienate land that has devolved on her from her husband with the consent of the reversioner. The basis on which this rests is a matter of controversy: the High Court of Calcutta on the whole appears to favour the view that the consent derives its effect from the power supposed to reside in a widow of accelerating, by the surrender of her own interest, the interests of the reversioners. It is impossible not to feel some difficulty as to this doctrine: for it would seem to rest on the application to a Hindu widow's estate of the English doctrine of the merger of a particular estate, with a result that the devolution of a property according to law is influenced by the acts of those who are simply in the possible line of succession.

The other view is that the consent of the persons interested to oppose the transaction evidences its propriety, if not its actual necessity.

This has a parallel in the law relating to a widow's adoption under certain circumstances and it finds support in the texts,

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Thus Narada says: "When the husband is deceased, the deceased husband's kin are the guardians of his sonless wife; in the disposal and care of property, as well as in the matter of maintenance, they have full power. But if the husband's family be extinct, or contain no male, or be helpless, or there be no sapinda of his, then the kin of her own father are the guardians of the widow." I take this translation from Babu Golap Chandra Sarkar's valuable book on Hindu law at page 278. This text of Narada is cited in the Dayabhaga XI, 1, 64; and Jimutavahana adds: "In the disposal of property by gift or otherwise she is subject to the control of her husband's family after his decease and in default of sons."

This view has, too, in a measure the sanction of the Privy Council, seeing that it was put forward as an explanation of the greater power vested in a widow by virtue of the reversioner's consent. In *The Collector of Masulipatam v. Cavalry Vençata* <sup>(1)</sup> it was said: "The exception in favour of alienation with consent may be due to a presumption of law that where that consent is given the purpose for which the alienation is made is proper." Again, in *Raj Lukhee Debia v. Gokool Chander Chowdhry* <sup>(2)</sup> it was said: "Their Lordships do not mean to impugn the authorities, &c., which lay down that a transaction of this kind may become valid by the consent of the husband's kindred, but the kindred in such cases must be generally understood to be all those who are likely to be interested in disputing the transaction."

✓ Turning, then, to Bombay, the High Court here appears to have accepted this view rather than that which finds favour in Calcutta. The case of *Varjivan v. Ghelji* <sup>(3)</sup> illustrates this very forcibly, and also throws a light on another consideration which arises in this case. There a Hindu widow, with the consent of her daughter, sold property inherited from her husband. The daughter at the time was the next reversionary heir, and, according to the doctrine which prevails in this Presidency, if she succeeded, would take an absolute estate. Yet it was held that her concurrence was of no avail to the purchaser. The ground

(1) (1860) 8 M. I. A., 500 at p. 551.

(2) (1869) 13 M. I. A. at p. 228.

(3) (1881) 5 Bom., 563.

of the decision is to be found in the following part of the judgment :—

“ Now it may be taken as well established that the consent of heirs will render valid an alienation by a widow under circumstances which would otherwise not justify it. It was so held by the Privy Council as far back as the case of *Cossinath Bysak v. Hurroosoondree Dossee* ; but the question, who are the heirs whose consent will thus render the alienation indefeasible, has led to much conflict of decision. The principle, however, upon which that question is to be answered has, we apprehend, been laid down by the Privy Council in the case of *Raj Lukhee Debia v. Gokool Chunder*. Their Lordships say : ‘ They do not mean to impugn the authorities, &c., which lay down that a transaction of this kind may become valid by the consent of the husband’s kindred, but the kindred in such cases must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and one justified by Hindu law.’ In the present case, the plaintiffs, although distant heirs, were the heirs presumptive of Narotam at the time of the sale, entitled to succeed in the event of Vakhat dying before her mother without issue, and as such, clearly interested in disputing the sale. Nor can the mere concurrence of Bai Vakhat, albeit the nearest in succession (having regard to the state of dependence in which all women are supposed by Hindu law to have their being) be regarded as affording the slightest presumption that the alienation was a justifiable one.”

Taking this, then, as the view of this Court, has there been in this case a sufficient consent to validate the sale ? Had the Judge been able to find that Bhimabai assented, it is conceded that this question would have to be answered in the affirmative, but the District Judge, leaning perhaps towards the side of caution, was unable to find her consent established. But what difference does the absence of her consent make ? The concluding portion of the passage I have just read from the judgment in *Varjivan’s* case shows that it would make no difference ; for if Bhimabai’s assent in this case could not be “ regarded as affording the slightest presumption that the alienation was a justifiable one,” obviously the absence of that consent is absolutely immaterial. So that it comes to this : whether Venkatesh’s consent was not alone enough, for if not, then it was beyond the range of possibility to obtain a sufficient consent to validate the sale.

Now the value of a consent in this connection, and its effective results, must, as it appears to me, be measured by reference to

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all the circumstances of the case, and what do we find are the circumstances here? They are, in my opinion, of a very special character: as I have already shown, Venkatesh was the only male reversioner, and the only male kinsman then in existence. Therefore, he was the sole male interested in disputing the transaction, and the only person whose consent could operate to raise any presumption. The occasion for the sale no doubt was to supply the funds required for Venkatesh's marriage, but then it was this very marriage to which the plaintiff owed his being, and without which he would not have been in existence to make this claim. It is true Venkatesh did not survive Radhabai; had he done so, clearly the plaintiff's claim must have failed; and it is no doubt the fact that the plaintiff, as events turned out, was the reversioner who succeeded: but for all that I think that the circumstances of the case are of so special a character that the consent given by Venkatesh sufficed to validate Radhabai's sale.

Therefore, I would, as to Nos. 495 and 496, reverse the decree of the lower Court and dismiss the claim.

In the case of Nos. 497, 498, 499, no consent was given or legal necessity proved; therefore, as to them I would not interfere with the decree of the lower Court. Costs will be in proportion throughout.

RANADE, J.:—The dispute in this case involves a rather nice point of law regarding a reversioner's right to question a sale effected by a Hindu widow, and the extent and the operation of the law of estoppel by conduct. The five lands in dispute first belonged to one Govind Bhagwant Dorle, who died in 1857, without leaving any children but only his widow Radhabai and his sister Bhimabhai. Radhabai in 1862 sold two of the lands to defendant No. 1 for Rs. 150, and in 1864 she transferred the khata of the other three lands to the same defendant. The respondent-plaintiff is the son of Venkatesh, who was the son of Bhimabai. Bhimabai died in 1869. Her son Venkatesh died about 1877, and Radhabai died in 1889.

In 1897 respondent-plaintiff brought this present suit to set aside the sale and transfer effected by Radhabai as having been made without legal necessity and without right, as her interest

in these lands extended only for the term of her own life. For the defence it was urged that the sale was effected for legal necessity, and with the consent and for the benefit of plaintiff's father Venkatesh who attested the deed of sale. This consent and attestation estopped the plaintiff from questioning the sale. As regards the other three lands it was urged that Radhabai transferred the khâta, as she could not pay the assessment, and that defendants took them up and were in adverse possession ever since 1864. Defendants further contended that they had spent large sums on improvements.

The Court of first instance found (1) that plaintiff was the reversionary heir of Radhabai and her husband; (2) that the sale and transfer did take place, but the sale was made without legal necessity, and the transfer without consideration; (3) in the case of all the five lands, defendants had only acquired Radhabai's life-interest, and the sale and transfer did not hold good after her death; (4) as regards the alleged legal necessity, the first Court found that the statement in the deed of sale about plaintiff's father's marriage, being the purpose for which the money was required, was not true, and that the recital did not prove itself. It was further held (5) that even if the money had been advanced for the marriage of Venkatesh, the occasion did not constitute a legal necessity, as the marriage of a sister's son did not conduce to the spiritual welfare of the husband and did not constitute a pious purpose recognised by the law. Further, it was held (6) that though plaintiff's father had attested the deed of sale, the attestation did not amount to his consent to the alienation, and this attestation did not constitute the concurrence of all the heirs which the law requires; that Bhimabai, the nearest reversioner, did not consent, and plaintiff's father was not presumptive or expectant heir at the time (1862); and (7) his consent did not estop the plaintiff, as he claimed as reversioner in his own right, and not through his father or grandmother, Bhimabai, who both died before Radhabai; (8) plaintiff's claim was not barred, as it was brought within twelve years from the death of Radhabai; (9) as regards the alleged improvements, the Court held that defendants were not entitled to claim their value. Plaintiff's claim was accordingly decreed.

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In appeal the District Judge agreed with the first Court in holding that no legal necessity for the alienation was proved. He, however, differed from the first Court in holding that plaintiff's father had consented to the alienation, but not Bhimabai, his grandmother, and that plaintiff's father's consent did not validate the alienation of the two lands sold. As regards the improvements the District Judge held that defendants were entitled to recover their value from the plaintiff. He accordingly amended the decree of the lower Court and granted possession of the lands after plaintiff had paid to the defendants the value of the improvements made.

In second appeal before us, the principal point raised was that legal necessity was proved for the alienation of the two lands sold, and that the consent of plaintiff's father validated the alienation made before the plaintiff was born, and this consent of his father bound the plaintiff, and estopped him from disputing the alienation. So far as the contention in appeal rests on the allegation of legal necessity, the concurrent findings of both Courts must be accepted as final, and it must be held that Radhabai was under no legal necessity when she sold two of the lands and transferred the other three.

The question at issue in appeal is thus confined to the legal consequence of the assent of Venkatesh showed by his attestation of Radhabai's deed of sale. This question did not arise in the Court of first instance, which held that the attestation did not signify consent and was not binding on the plaintiff who sued in his own right as reversioner at the time of Radhabai's death. The lower Appellate Court, however, held it proved that the attestation taken along with other circumstances did indicate that Venkatesh consented to the alienation. Not only was he present when the deed was executed, but he received the purchase-money which was given to him for the expenses of his own marriage. He was at the time the only male relative of Radhabai alive. He was twenty-three years old and was performing kulkarni's work himself. The Courts below have not noticed the fact, but it appears that Venkatesh not only attested the deed of sale, but he attested also the sarkatnāma, Exhibit 94, of 2nd July, 1862, and the rajināma, Exhibit 92, of 9th July, 1864, and Radhabai sold to him

her kulkarni vatan in 1871, Exhibit 95, just as she sold or transferred these five lands to defendant. These are the circumstances to which the lower Court apparently referred as justifying the conclusion that Venkatesh, who was the only male reversionary heir of Radhabai, assented to the out-and-out sale of these lands to defendant. The District Judge admits that Venkatesh would have been estopped from denying the alienation himself, but he thinks plaintiff was not so estopped. He gives two reasons for this view: first, that Bhimabai's concurrence was not proved and her concurrence along with Venkatesh was necessary to validate the sale; and second, as Venkatesh died before Radhabai he never had a vested interest in the property, while plaintiff, who survived Radhabai, obtained such interest, not as Venkatesh's son, but as Govind's reversionary heir. Both these reasons do not seem to me to be very cogent. Bhimabai must have been agreeable to Venkatesh's desire to secure the help for his marriage, and Venkatesh must have acted as the male head of his family. The consent of the kindred necessary to validate a widow's alienation no doubt requires that all the kindred should join who are interested to dispute the transaction—*Raj Lukhee Debia v. Gokool Chunder Chowdhry*<sup>(1)</sup>. The concurrence must be such as to raise a presumption that the alienation was proper, and for justifiable purposes. The Bengal theory that the widow's interest was a life-interest, and that her surrender or release of that interest to the next reversioner accelerates his obtaining the full title, has never met with much acceptance on this side of India. Our leading case—*Varjivan Rangji v. Ghelji Gokaldas*<sup>(2)</sup>—lays down that the consent must be of all the kindred, but this does not mean that every single member who is a kindred must actually join in the conveyance. In *Phool Chund Lall v. Rughoobuns Suhaye*<sup>(3)</sup>, the consent of the next male heir after the widow was held sufficient. The Privy Council decisions commencing with *The Collector of Masulipatam v. Cavalry Vencata*<sup>(4)</sup>, *Raj Lukhee Debia v. Gokool Chunder Chowdhry*<sup>(5)</sup> and the other cases noted in Mayne's Hindu Law,

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(1) (1869) 13 M. I. A., 209.

(3) (1868) 9 Cal. W. R., 108.

(2) (1881) 5 Bom., 563.

(4) (1864) 8 M. I. A., 529.

(5) (1869) 13 M. I. A., 223.

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sec. 591, support the view that the consent of the reversioners must be of such kindred, the absence of whose opposition raises a presumption that the alienation was a fair and proper one. The consent of kindred in the matter of adoption in those provinces; where such consent is required, stands on the same footing—*The Collector of Madura v. Mootoo Ramalinga*<sup>(1)</sup>. The consent of every kinsman is not essential. There should be evidence of the assent of such kinsmen as suffices to show that the widow's act was *bona fide* and proper—*Karunabddhi Ganesh v. Gopala*<sup>(2)</sup>. Judging from this analogy, it is clear that Bhimabai's family was represented by its only male member Venkatesh, and his consent was the consent of every one interested in disputing the alienation. It is only on the theory of life-estates being surrendered in favour of reversioners that the assent of every possible expectant kindred would be necessary, but that view has been chiefly confined to Bengal, and there has been some conflict of opinion there as to how far the remoter reversioner is bound by the act of the next reversioner—*Ram Chunder v. Hari Das*<sup>(3)</sup>; *Behari Lal v. Madho Lal*<sup>(4)</sup>; *Hem Chunder v. Sarnamoyi Debi*<sup>(5)</sup>; *Raj Bullabh Sen v. Oomesh Chunder*<sup>(6)</sup>; *Noferdoss Roy v. Modhu Soondari*<sup>(7)</sup>; *Gopeenath Mookerjee v. Kally Doss Mullick*<sup>(8)</sup>; *Nobokishore Sarma Roy v. Hari Nath Sarma Roy*<sup>(9)</sup>; *Radha Shyam Sircar v. Joy Kām Senapati*<sup>(10)</sup>. Apparently the Bengal view of surrender or release has been approved also by the Allahabad High Court—*Bamphal Rai v. Tula Kuari*<sup>(11)</sup>, but not in Bombay, where the view taken by the Privy Council has been followed and the assent of all such reversioners is necessary as establishing the propriety and fairness of the alienation. The assent of Venkatesh represented both the assent of himself and Bhimabai, as their interests were common in this matter.

The question still remains whether in the event that had happened, *viz.*, that of Venkatesh and Bhimabai both dying before

(1) (1868) 12 M. J. A., 397.

(2) (1880) L. R., 7 I. A., 173.

(3) (1882) 9 Cal., 163.

(4) (1891) 19 Cal., 236.

(5) (1894) 22 Cal., 354.

(6) (1878) 5 Cal., 44.

(7) (1880) 5 Cal., 732.

(8) (1883) 10 Cal., 225.

(9) (1884) 10 Cal., 1102.

(10) (1890) 17 Cal., 896.

(11) (1885) 6 All., 116.

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Radhabai, and plaintiff alone surviving as her reversionary heir, the assent of Venkatesh was binding on the plaintiff. If, as the Judge held, it would have bound Venkatesh if he had survived, I see no reason why the plaintiff should not be estopped likewise. In the course of the arguments I suggested to the respondent's pleader what would have been the result if Radhabai had, instead of spending the money on Venkatesh's marriage, used it for building a house for Venkatesh, and plaintiff enjoyed the use of the house after Venkatesh. In such a case as this, would it have been open to plaintiff to question the sale by Radhabai and retain the house she built for Venkatesh out of the proceeds? There could be only one answer to such a question. In *Lachmun Chunder v. Kalli Churn Singh* (1), their Lordships held that where a husband represented during his life that certain property belonged to his wife, it was held that a purchaser from the wife could not be turned out by the heirs of the husband, who traced their title from the father and not the mother. In *Sarat Chunder Dey v. Gopal Chunder Laha* (2), their Lordships discussed the whole question of estoppel. They distinguished the case from *Hira Singh v. Ganga Sahai* (3) in which it was suggested that the chief ground in cases of estoppel is fraudulent misrepresentation. Besides fraud there may be an estoppel by negligence, where a third person is led to act by the negligent representation of any one. Besides negligence and fraud, estoppel may be by circumstances. In the case to which this report refers, A, as agent on behalf of his mother B, executed a mortgage in favour of C. Subsequently he succeeded as heir to his father, and questioned the mother's disposition on the ground that she had no interest, and it was held that A was estopped. The present case does not in all respects resemble the facts to which the Privy Council ruling referred, but the principle of the ruling seems applicable. Plaintiff, who was not even born when the alienation took place, seeks to set aside Radhabai's disposition which was effected for the benefit of plaintiff's father and to which his father gave his assent as representing the reversioner's family. He must, therefore, be held to be bound by the conduct of the father, even

(1) (1873) 19 Cal. W. R., 202.

(2) (1892) 20 Cal., 206.

(3) (1833) 6 All., 322.

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though technically he succeeded as reversioner in his own right just as in the other case the son succeeded in the right of his father and not through his mother. The ruling in *Sia Dasi v. Gur Sahai*<sup>(1)</sup> shows how the doctrine of estoppel works in such matter. In this view of the law I am inclined to hold that the alienation of the two lands sold by Radhabai, being assented to by the chief reversionary heir, bound the plaintiff.

There is no such equity to protect the appellants in respect of the other three lands. I would, therefore, confirm the decree in regard to them and dismiss plaintiff's claim in regard to the lands Nos. 495 and 496 with costs in proportion throughout.

*Decree varied.*

(1) (1880) 3 All., 362.

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## APPELLATE CIVIL.

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*Before Mr. Justice Fulton and Mr. Justice Batty.*

1900.

August 6.

MUNICIPALITY OF PAROLĀ (ORIGINAL DEFENDANT), APPELLANT, v.  
LAKSHMANDĀS SUPADUBHAI AND ANOTHER (ORIGINAL PLAINTIFFS),  
RESPONDENTS.\*

*Municipality—District Municipal Act (Bom. Act II of 1884), Sec. 48—  
Suit against Municipality for declaration and injunction—Notice of action.*

The plaintiffs sued the Municipality of Parola to obtain a declaration that a certain building erected by them had been built in accordance with, and not in contravention of, orders issued by the Municipality, and further, to obtain an injunction restraining the Municipality from pulling it down. The Municipality contended (*inter alia*) that the suit was not maintainable, as no notice of the suit had been given as required by section 48 of the District Municipal Act (Bom. Act II of 1884).

*Held*, that notice was not made an indispensable preliminary to such a suit by section 48 of the Act.

SECOND appeal from the decision of Ráo Bahádur Vaman M. Bodas, First Class Subordinate Judge of Dhulia with appellate powers, confirming the decree of Ráo Sáheb G. V. Patvardhan, Subordinate Judge of Amalner in the Khándesh District.

\* Second Appeal, No. 38 of 1900.