

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Hayward.

BAI-KANKU, WIDOW OF PARAG DESAI, AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS v. BAI JADAV, DAUGHTER OF LALLU DAYAL (ORIGINAL PLAINTIFF) RESPONDENT^c.

1919.

April 10.

Hindu Law—Reversioner—Mortgage by widow—Suit for redemption filed by the widow—Dismissal of the suit on an admission made by the widow in a previous suit—Appeal filed but withdrawn—Subsequent suit by reversioner for redemption—Widow's suit did not involve a trial of the right of reversioner—Fair trial—Res judicata—Limitation.

The plaintiffs sued to redeem a possessory mortgage dated the 22nd December 1857. It was executed by the widow of the last male holder and contained a "Gahan Lahan" clause that if the money was not paid within a year the mortgagee should become the owner. In 1865 a suit was filed by the widow to redeem the mortgage. It was dismissed by the Munsiff on the ground that the widow had admitted on 21st October 1859, in proceedings between the mortgagee and the tenants, that the mortgagee had under the "Gahan Lahan" provision become the owner of the property. Against the decision an appeal was filed but it was withdrawn. The widow died in 1902 and in 1911 a suit was filed by the reversioner for the redemption of the mortgage of 1857. The defendants pleaded limitation and contended that the suit was barred by *res judicata* in consequence of the decree against the widow in the suit of 1865.

Held, (1) that the suit was not barred by *res judicata* as the decree in the Munsiff's Court was given against the widow on a ground personal to herself, and therefore there was no fair trial of the right of the reversioner ;

(2) that the suit was not barred either by Article 141 or by Article 148 of the Limitation Act, 1908, as it was brought within twelve years of the death of the widow and within sixty years of the mortgage.

PER HAYWARD J. :—The rule laid down in *Katama Natchiar v. The Rajah of Shivagunga*⁽¹⁾ is a special rule applicable to the peculiar position of limited holders under Hindu law, and not the general and strict rule of *res judicata* prescribed by section 11 of the Civil Procedure Code, 1908. This special rule has to be applied with due regard to the peculiar precautions necessary in this

^cSecond Appeal No. 1129 of 1915.

(1) (1863) 9 Moo. I. A. 539.

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country to prevent the exercise of pressure over limited female holders to the prejudice of the rights of reversioners. The rule has therefore not to be interpreted with reference to the strict rules regarding fraud and irregularities required to invalidate decrees otherwise binding under the general law of procedure.

SECOND appeal against the decision of P. J. Taleyarkhan, District Judge of Broach, confirming the decree passed by Naginlal V. Desai, Joint Subordinate Judge at Broach.

Suit for redemption.

The property in suit originally belonged to one Nagar Valabh whose widow Bai Bonji mortgaged it on the 22nd December 1857 with one Bhukhan Bhaibawa who was represented in suit by appellants-defendants. The mortgage bond was passed for Rs. 2,301 and contained a Gahan Lahan clause to the effect that on default in the payment of the mortgage-debt within one year the mortgagee should become absolute owner of the property. The property mortgaged was 440 bighas of land and valued at Rs. 13,000.

Bai Bonji failed to pay the mortgage debt within the stipulated period.

In 1859 the mortgagee in possession brought a rent suit before the Mamlatdar against a tenant and in that suit Bai Bonji admitted in her deposition that the mortgagee had become absolute owner.

In 1865, Bai Bonji filed a suit No. 745 of 1865 for redemption of the mortgage of 1857. The said suit was dismissed by the Munsiff on the ground that Bai Bonji had admitted in her deposition in the suit of 1859 that the mortgagee had become owner of the property by operation of the Gahan Lahan clause. Bonji then preferred an appeal No. 207 of 1865 against the Munsiff's decision to the District Court but on 3rd February 1866

she made an application to the appellate Court for its dismissal with all costs on her. The Court, thereupon, endorsed the memo. of appeal as "Adjusted, section 98."

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Bai Bonji died in 1902.

In 1911, the plaintiff as the assignee of the reversionary heir of Nagar Valabh, brought a suit for redemption of the mortgage of 1857 under the provisions of the Dekkhan Agriculturists' Relief Act and for possession of the property on accounts being taken.

The defendants contended *inter alia* that the suit was barred by limitation and also barred by *res judicata* in consequence of the decision in suit No. 745 of 1865.

The Subordinate Judge overruled the contentions of the defendants and allowed the plaintiff's claim.

On appeal, the District Judge held that Bai Bonji did represent the estate in the suit of 1865 and that the withdrawal of the appeal by her was not due to fraud, collusion or compromise, but he found that the suit was not barred by *res judicata* as the suit by Bai Bonji was dismissed on a ground personal to herself: see *Braja Lal Sen v. Jiban Krishna Roy*⁽¹⁾. He also held that the suit was not barred by limitation.

The defendants appealed to the High Court.

G. S. Rao, for the appellants:—I submit (1) that the suit is barred by *res judicata* by reason of the decision in the suit of 1865; and (2) that the claim is barred by limitation.

First, the lower appellate Court has found that Bai Bonji did represent the estate in the suit of 1865 and that the withdrawal of the appeal by her was not the result of fraud. It allowed the plaintiff's claim on the

(1) (1898) 26 Cal. 285 at p. 297.

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ground that the suit by Bai Bonji was on a cause of action personal to herself and any decree passed against her did not bind the reversioners. In support of this finding the lower appellate Court relied upon an admission of Bai Bonji in the suit of 1859 by the mortgagee to the effect that the mortgagee had become owner by virtue of Gahan Lahan clause in the mortgage deed. I submit that even apart from an admission by Bai Bonji, the mortgagee had become owner under the law then prevailing. In 1858 such mortgages by conditional sale were legal. The introduction of the equitable doctrine in *Ramji v. Chinto*⁽¹⁾ was to ignore the terms of the contract. The English doctrine that time was not the essence of the contract was not known to the ancient law of India: see *Pattabhiramier v. Vencatarow Naicken*⁽²⁾. We find that up to the decision in *Ramji v. Chinto*⁽¹⁾, the Sudder Diwani Adalat had given effect to such contracts: see *Thumba-sawmy Mudelly v. Mahomed Hossain Rowthen*⁽³⁾.

Therefore, no admission was under the law needed from Bai Bonji, as the contract executed itself and the mortgagor became a completed owner under its terms; and when Bai Bonji sued for redemption in the suit of 1865, she was suing not only on her own behalf but on behalf of all the persons interested in the estate, and therefore the reversioners were bound by the decree.

The case of *Braja Lal Sen v. Jiban Krishna Roy*⁽⁴⁾ relied on by the lower appellate Court does not apply. There the widow was in possession of her husband's estate. She did not pay rent and for arrears the landlord obtained a decree and put up the property to sale. A question arose as to whether the widow's interest or the entire interest was sold and it was held that as the

(1) (1864) 1 Bom. H. C. 199.

(3) (1875) L. R. 2 I. A. 241 at p. 247.

(2) (1870) 13 Moo. I. A. 560 at p. 567. (4) (1898) 26 Cal. 285 at p. 298.

widow was only enjoying rent the widow's interest passed. Here it could not be said that the widow was suing in respect of personal interest because by redemption she sought to recover the property not only for herself but also for reversioners: see *Jigol Kishore v. Maharajah Jotindro Mohun Tagore*⁽¹⁾.

I further submit that the principle laid down in *Katama Natchiar v. The Rajah of Shivagunga*⁽²⁾ governs the present case. The decree in the suit of 1865 was fairly and properly obtained. A decree based on a compromise fairly obtained binds the reversioners: see *Rama v. Daji*⁽³⁾. In *Chaudhri Risal Singh v. Balwant Singh*⁽⁴⁾ it was contended that as the estoppel was personal it did not bind the estate, but it was found that the estoppel did not make the widow less representative of the estate. Applying that principle here, I submit that the admission by Bai Bonji estopped her personally but it did not make her less representative of the estate in a redemption suit.

Secondly, time began to run when the contract executed itself, *i.e.*, in 1858. Since then the mortgagee claimed as owner and in that capacity had filed a rent suit and also a suit for possession. Under the Limitation Act XIV of 1859 adverse possession against the widow, if it barred the widow's right, also barred the reversioner's right: see section 1, clause 12; *Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty*⁽⁵⁾ and *Aumirtolall Bose v. Rajoneekant Mitter*⁽⁶⁾.

Coyajee with *H. V. Divatia*, for the respondent:—
We submit that the suit is not barred by *res judicata*.

(1) (1884) L. R. 11 I. A. 66.

(4) (1918) L. R. 45 I. A. 168, at p.

(2) (1863) 9 Moo. I. A. 539.

178.

(3) (1918) 20 Bom. L. R. 947 at p. (5) (1868) 9 W. R. 505.

949.

(6) (1875) L. R. 2 I. A. 113 at p. 121.

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The question is whether the decree in the suit of 1865 was fairly and properly obtained against the widow Bai Bonji. The lower Court takes the transaction beginning with the mortgage by Bai Bonji to the withdrawal of the appeal by her as one transaction and comes to the conclusion that it cannot be said that Bai Bonji protected the estate by having a fair trial. The basis of the Munsiff's judgment in the suit of 1865 was that the mortgage had come to an end by operation of Gahan Lahan clause and by the admission of Bai Bonji in the suit of 1859. In view of this decision it was incumbent upon Bai Bonji to have prosecuted the appeal but instead of doing so she withdrew it on payment of costs. Moreover the law laid down in *Ramji v. Chinto*⁽¹⁾ was the same when the suit of 1859 was brought and as it did prevail the mortgagee could not become owner by reason of the Gahan Lahan clause: any admission by Bai Bonji was useless; it would not have the effect of binding the interest of the reversioners: *Bapuji Apaji v. Senavaraji Marvadi*⁽²⁾, and *Abdul Rahim v. Madhavrav Apaji*⁽³⁾.

We, therefore, submit that the decree was not fairly and properly obtained and it proceeded only on a claim personal to the widow and was thus not binding on the reversioners: see *Brammoye Dasse v. Kristo Mohun Mookerjee*⁽⁴⁾; *Braja Lal Sen v. Jiban Krishna Roy*⁽⁵⁾; *Jeram v. Veerbai*⁽⁶⁾; *Subbi v. Ramkrishna-bhatta*⁽⁷⁾; *Katama Natchiar v. The Rajah of Shivagunga*⁽⁸⁾; *Chaudhri Risal Singh v. Balwant Singh*⁽⁹⁾.

(1) (1864) 1 Bom. H. C. 199.

(5) (1898) 26 Cal. 285 at p. 298.

(2) (1877) 2 Bom. 231 at p. 237.

(6) (1903) 5 Bom. L. R. 885.

(3) (1889) 14 Bom. 78 at p. 81.

(7) (1917) 42 Bom. 69.

(4) (1876) 2 Cal. 222 at p. 223.

(8) (1863) 9 Moo. I. A. 539.

(9) (1918) L. R. 45 I. A. 168.

Secondly, the suit is also barred by limitation. The Limitation Act XIV of 1859 did not contain any provision for acquisition of title by prescription. It did not repeal Regulation V of 1827 which contained the law of prescription and under that Regulation, section 1, thirty years were required for the right of possession to ripen by ownership, i.e., the mortgagee in this case would have become owner in 1888, but by the Indian Limitation Act of 1871, Article 141, a reversioner was given a new starting point of limitation and his cause of action under that Act arose on the death of the widow. The suit is also saved by Article 141 or 148 of the Indian Limitation Act, 1908. Bai Bonji died in 1902 and the suit is brought in 1911. It is, therefore, in time.

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SCOTT, C. J.:—This is a suit by a reversioner to redeem a mortgage created by a Hindu widow Bai Bonji.

The original mortgage was in 1854. It was for the debts of the husband of Bonji. It was renewed in 1857 for the existing debts and certain further debts contracted by this widow. The latter mortgage is that in question in this suit. It contained among other provisions a Gahan Lahan clause that if the money was not paid within a year the mortgagee should become the owner.

In 1865 a suit was filed by the widow Bonji to redeem the mortgage. It was dismissed by the Munsiff on the ground that the plaintiff had admitted in 1859 in a deposition given in a suit filed by the mortgagee against a tenant, that the mortgagee had become owner of the property by the operation of the Gahan Lahan clause. For this reason the Munsiff

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did not apply to the case the decision in *Ramji v. Chinto*⁽¹⁾ decided in the previous year by the Bombay High Court to the effect that notwithstanding a Gahan Lahan clause the doctrine "once a mortgage always a mortgage" prevails in this Presidency.

Against the Munsiff's decision an appeal was filed, but it was not heard, as before the hearing it was recorded as "adjusted". Bonji died in the year 1902. The reversioner sued within twelve years of her death for redemption. The defendant mortgagee contends that the right of redemption is gone, and relies on the decree in the suit of 1865 in support of the plea of *res judicata*.

That a decree against a widow in relation to her husband's property may bind reversioners is well established provided certain conditions exist. The leading case is *Katama Natchiar v. The Rajah of Shivagunga*⁽²⁾. The doctrine applicable to the present suit is to be found at p. 603 of that volume in the following passage: "It seems, however, to be necessary, in order to determine the mode in which this appeal ought to be disposed of, to consider the question whether the decree of 1847, if it had become final in *Anga Mootoo Natchiar's* life-time, would have bound those claiming the Zemindary in succession to her. And their Lordships are of opinion that, unless it could be shown that there had not been a fair trial of the right in that suit—or, in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit in the Zillah Court by any person claiming in succession to *Anga Mootoo Natchiar*. For assuming her to be entitled to the Zemindary at all, the whole estate would for the time be vested in her,

⁽¹⁾ (1864) 1 Bom. H. C. 199. ⁽²⁾ (1863) 9 Moo. I. A. 539.

absolutely for some purposes, though, in some respects, for a qualified interest; and until her death it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the Courts of this country as to tenants in tail representing the inheritance, would seem to apply to the case of a Hindoo widow; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow". It would appear from these remarks that the onus is on a reversioner challenging the conclusive nature of the decree against the widow on whose death he claims to prove that there has not been a fair trial of the right in suit. The question arises owing to the appeal filed by the widow whether the termination of the suit in the manner in which it was disposed of can operate to bind the plaintiff. It is argued that the widow appealed relying upon the decision of the Bombay High Court in the case of *Ramji v. Chinto*⁽¹⁾ and the inconclusive nature of her previous admission, and that then, without apparent cause, she abandoned the appeal. It is contended, as was found by the learned Judge in the trial Court, that Bonji cannot reasonably be said to have fairly and honestly contested the right and taken the steps necessary to protect the estate of which she was in charge for the time being as a Hindu widow. The learned Judge of the lower appellate Court has however considered the effect of the withdrawal of the appeal, and his finding is expressed in the following paragraph:—"There was no allegation in the pleadings that the withdrawal of the appeal was due to fraud, collusion, or compromise, and there is no legal proof either. It would be profitless to speculate as to the cause of the withdrawal. It was

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suggested that the first Court having in its judgment stated that Bonji had perjured herself, she must have got frightened lest the Court of appeal should sanction her prosecution, if it came to hear the appeal. But this is mere conjecture and conjecture, however well founded, cannot be accepted as legal proof. It was also suggested that as the property was worth considerably more than the amount raised on it, and as the Munsiff's decision was manifestly wrong, Bonji was unlikely to have withdrawn the appeal unless it was made worth her while to do so. But this, again, is mere suspicion which, though it may be well founded, cannot be acted upon. I therefore find that it is not shown that the withdrawal of the appeal was due to fraud, collusion, or compromise." He therefore held that the withdrawal of the appeal had the effect of making the decree of the first Court final, and as that decree was fairly and properly obtained in a suit contested up to decree it fulfilled the conditions of the rule laid down in the *Shivagunga ease*⁽¹⁾ as amplified in the later cases. The later cases material to this point are *Hurrinath Chatterji v. Mohunt Mothoor Mohun Goswami*⁽²⁾ in which the daughter who represented the estate in a litigation had, been negligent in applying for leave to appeal in *forma pauperis* against a decree which had been passed against her, and it was held that the dismissal of her application, with the result that she was unable to appeal at all for want of funds, was binding upon the reversioners. The case can only be put on the ground that the negligence of the person representing the estate may be relied upon by the opposite party for the purpose of barring the right of a reversioner subsequently to agitate the point which it was in the power of the negligent party to have had tried out in appeal. Other and later cases

(1) (1863) 9 Moo. I. A. 539.

(2) (1893) L. R. 20 I. A. 183.

are *Ghelabhai v. Bai Javer*⁽¹⁾ very similar to the present case, and *Chaudhri Risal Singh v. Balwant Singh*⁽²⁾, the passage chiefly in point being at page 179.

Being bound in second appeal to accept the finding of fact of the learned Judge of the lower appellate Court, which has been above set forth, I am of opinion that on that basis the learned Judge was right in holding that the withdrawal of the appeal had the effect of making the decree of the first Court final. The learned Judge, however, did not decide the case against the plaintiff, for he held that the decree in the Munsiff's Court was given against the widow on a ground personal to herself inasmuch as the Munsiff would not have so decided but for her admission, and that her admission in the litigation could be no more binding upon the reversioner than an alienation by her of her equity of redemption otherwise than for necessity. The question is whether the learned Judge is right in this conclusion.

In my opinion he is right. The suit was decided by the Munsiff on the ground that notwithstanding the decree in *Ramji v. Chinto*⁽³⁾ which had established for Gahan Lahan mortgages the principle of "once a mortgage always a mortgage" the widow Bonji was concluded by an admission in a previous deposition to the effect that the mortgagee had become the full owner by operation of the Gahan Lahan clause. Such a decision cannot be rested on the doctrine of estoppel for the mere admission of the widow in a deposition raised no estoppel although the Munsiff seems to have treated Bonji as estopped from pleading that the equity of redemption remained in her. It was not an estoppel binding on Bonji's representatives assuming

(1) (1912) 37 Bom. 172.

(2) (1918) L. R. 45 I. A. 168.

(3) (1864) 1 Bom. H. C. 199.

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that the reversioners of her husband can in the circumstances be treated as her representatives. The suit was dismissed in consequence of an unguarded statement by Bonji which could affect no one but herself. The plaintiff's case can therefore be put at least as high as that of the reversioner in *Braja Lal Sen v. Jiban Krishna Roy*⁽¹⁾, where a suit by a widow to set aside a sale had been dismissed mainly on the ground that the sale had been confirmed with the consent of the widow given upon receipt of Rs. 2,040 by her and the learned Judges, Maclean C. J. and Banerjee J., said that having regard to the ground of dismissal it would not be right to hold it a bar to the reversioners' claim. The only remaining question, therefore, is whether the suit is barred by limitation. Here again I think the learned Judge is right for if the equity of redemption was only suspended during Bonji's life-time the reversioner being within 60 years would, even according to the Limitation Act of 1859, clause 15, be within time.

The decree of the lower Court must be affirmed and the appeal dismissed with costs.

HAYWARD, J.:—The plaintiffs sued defendants to redeem a possessory mortgage dated 22nd December 1857. It was executed by the widow of the last male holder and contained a "Gahan Lahan" clause providing that the mortgagee should in default of due payment of the loan become owner of the property. It was admitted by the widow on 21st October 1859 in proceedings between the mortgagee and the tenants that the mortgagee had under the "Gahan Lahan" provision become owner of the property. She nevertheless sought some years later to repay the loan Rs. 2,300 and redeem the property valued at Rs. 13,000

⁽¹⁾ (1898) 26 Cal. 285 at p. 297.

but her suit was on the strength of her previous admission dismissed on 31st October 1865. It was however conceded in the judgment that otherwise the "Gahan Lahan" provision would not have had the effect of making the mortgagee the owner of the property in view of the decision in *Ramji v. Chinto*⁽¹⁾. The widow appealed on the grounds that she was not bound by her admission in other proceedings and that the decision was directly opposed to the ruling in *Ramji v. Chinto*⁽¹⁾. The appeal was filed on 30th November 1865 but was withdrawn on payment of costs on 23rd January 1866. It was endorsed "adjusted" on 3rd February 1866. No further proceedings were taken and the widow died in 1902. The representatives of the reversioners brought the present proceedings for redemption against the representatives of the mortgagee in 1911. There was no question as to the propriety of the mortgage nor on the other side was it disputed that the debt had long been liquidated out of the profits of the property. The substantial questions were whether the reversioners were bound by the decree against the widow and whether they were barred by limitation.

The Subordinate Judge came to the conclusion that the reversioners were not bound as there had not been a fair trial of the right of the reversioners within the ruling in the *Shivagunga case*⁽²⁾ in that the widow had compromised the appeal. He thought the widow could not "under the circumstances be reasonably said to have fairly and honestly contested the right and taken the steps necessary to protect the estate of which she was in charge for the time being as a Hindu widow". The District Judge came to the same conclusion but by a more direct route. He considered

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⁽¹⁾ (1864) 1 Bom. H. C. 199.

⁽²⁾ (1863) 9 Moo. I. A. 539 at p. 607.

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that "the ground on which Bonji's (the widow's) suit was dismissed was her admission that the breach of the 'Gahan Lahan' clause had made the mortgagee owner" and that it was thus "dismissed on a ground personal to herself" and did not bar the reversioners. He considered that it was "not shown that the withdrawal of the appeal was due to fraud, collusion or compromise" and that "the case must be dealt with as if no appeal had been preferred." He thought, that the ruling in *Shivagung's case*⁽¹⁾ did not support the proposition that "where the decree appears to be manifestly wrong, it is the widow's duty to appeal from it, and if she fails to do so, or having appealed fails to press the appeal to a decision, she shall be considered to have failed in her duty to protect the estate and the decree in that case will not bind the reversioners." It would seem therefore that he held that there had not been a fair trial of the right of the reversioners quite apart from what happened to the appeal. Both the Subordinate Judge and the District Judge held the reversioners were not barred by limitation.

We have, therefore, these established facts. The loan of Rs. 2,300 on mortgage of property worth Rs. 13,000 was permitted by the widow, on an admission extracted from her in other proceedings, in direct opposition to the equitable rule "once a mortgage always a mortgage" recognised in *Ramji v. Chinto*⁽²⁾, to result in the enlargement of the mortgagee's interest into full ownership without dispute in appeal. It seems to me impossible for us to say on these established facts that there was no justification for the view that there had been no fair trial of the right of the reversioners within the ruling in the *Shivagunga case*⁽³⁾—the view held notwithstanding some difference of opinion as to

⁽¹⁾ (1863) 9 Moo. I. A. 539. *

⁽²⁾ (1864) 1 Bom. H. C. 199.

⁽³⁾ (1863) 9 Moo. I. A. 539 at p. 607.

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what happened to the appeal by both the lower Courts. It seems to me that this case and indeed every other of this nature must be decided on its own particular merits. The admission of the widow here was apparently without consideration and without legal necessity. It was inconclusive and it would seem to have been insufficient even to bind her own limited interest in the equity of redemption. It was obviously ineffectual to transfer the important interest therein of the reversioners. The behaviour of the widow and the widow's interest were the subjects mentioned in the judgment. There was no reference whatever to the important interest of the reversioners. There was in effect a trial only of the right of the widow. There was not a fair trial, indeed there was no trial, of the right of the reversioners. It seems to me that would be sufficient to exclude the trial from the rule in *Shivagunga's case*⁽¹⁾ without going further and establishing fraud in the withdrawal of the appeal. It has somewhat similarly been held that suits against the widow for arrears of rent or maintenance chargeable to the estate were personally against the widow and did not involve the rights of the reversioners. There was no necessity therefore in those suits to establish fraud. They were *Nugenderchunder Ghose v. Sreemutty Kaminee Dossee*⁽²⁾, and *Baijun Doobey v. Brij Bhoolal Lal Awusti*⁽³⁾. It has also somewhat similarly been held that suits in which arbitration awards or compromises have been accepted by the widow would, quite apart from fraud, not bind the reversioners. These have been detailed at pages 92 to 94 of *Khunni Lal v. Gobind Krishna Narain*⁽⁴⁾. These rulings were there held inapplicable (at p. 103) but were not disapproved.

(1) (1863) 9. Moo. I. A. 539 at p. 607.

(2) (1867) 11 Moo. I. A. 241 at p. 261.

(3) (1875) L. R. 2 I. A. 275.

(4) (1911) L. R. 38 I. A. 87.

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by their Lordships of the Privy Council. It would seem, therefore, that if there should be no real trial of the rights of the reversioners, it would be unnecessary to establish fraud to exclude the trial from the rule in the *Shivagunga case*⁽¹⁾. If there should be a real trial of the rights of the reversioners, the effect would of course be nullified by proof of fraud. But there must be a real trial of the rights of the reversioners and there must also be freedom from fraud in order to provoke the rule in the *Shivagunga case*⁽¹⁾. Such was not the case here. There was no practical trial of the rights of the reversioners and there was no necessity to establish fraud. This case was therefore distinguishable from those of *Jugol Kishore v. Maharajah Jotindro Mohun Tagore*⁽²⁾; *Hurrinath Chatterji v. Mohunt Mothoor Mohun Goswami*⁽³⁾; and *Chaudhri Risal Singh v. Balwant Singh*⁽⁴⁾. It has moreover to be remembered that, as pointed out in the last mentioned decision, the rule is a special rule applicable to the peculiar position of limited holders under Hindu law, and not the general and strict rule of *res judicata* prescribed by section 11 of the Civil Procedure Code of 1908. This special rule has to be applied with due regard to the peculiar precautions necessary in this country to prevent the exercise of pressure over limited female holders to the prejudice of the rights of reversioners. The rule has therefore not to be interpreted with reference to the strict rules regarding fraud and irregularities required to invalidate decrees otherwise binding under the general Law of Procedure.

It seems to me that the question of limitation has also been decided rightly by the lower Courts. The suit by the widow affected only her own right to

(1) (1863) 9 Moo. I. A. 539 at p. 607.

(2) (1893) L. R. 20 I. A. 183 at pp. 186, 187 and 192.

(3) (1884) L. R. 11 I. A. 66 at p. 73.

(4) (1918) L. R. 45 I. A. 168 at p. 179.

redeem, and did not, in view of what has been said, affect the right of the reversioners. They had sixty years to redeem under section 15 of Act XIV of 1859, and their right would not have become barred in any case either under that Act or Act IX of 1871 by reason of section 2 of Act XV of 1877. But as a matter of fact they brought their suit within twelve years of the death of the widow and within sixty years of the mortgage, and their right to redeem would not, therefore, be barred either by Article 141 or by Article 148 of the Schedule to the Limitation Act, 1908.

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Decree confirmed.

J. G. R.

CRIMINAL REVISION.

*Before Mr. Justice Heaton and Mr. Justice Shah.**In re CHANDULAL RANCHHOD.**

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April 11.

Criminal Procedure Code (Act V of 1898), sections 488, 489—Magistrate—Order for maintenance to wife—Subsequent decree for restitution of conjugal rights—Decree puts an end to order for maintenance—Subsequent application by wife for increase in rate of maintenance not competent.

In 1910, a wife obtained an order for maintenance under the provisions of section 488 of the Criminal Procedure Code, 1898. In 1912, the husband obtained a decree against his wife for restitution of conjugal rights. The decree was never executed: and the husband continued to pay, without objection the allowance directed by the Magistrate's order of 1910. In 1918, the wife applied for and obtained from the Magistrate an order under section 489 of the Code for an increase in the amount of maintenance. The husband having applied to the High Court:—

Held, that the decree of 1912 having as a matter of law determined or put an end to the Magistrate's order under section 488, an application under section 489 of the Code was not competent to the wife.

* Criminal Revisional Application No. 14 of 1919.