**(1864) 04 CAL CK 0003**

**Calcutta High Court**

**Case No:** Regular Appeal Nos. 79, 84, 201 and 210 of 1862

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| Gaurhari Gui | | APPELLANT |
| | Vs | |
| Peari Dasi <BR> Gobindmani Dasi Vs Shamlal Bysak <BR> Kalikumar Chowdhry and Others Vs Ramdas Shaha and Others <BR> Machooram Sen Vs Gaurhari Gui | | RESPONDENT |

**Date of Decision:** April 7, 1864

**Judgement**

Sir Barnes Peacock, Kt. C.J.

1. The question which was referred for the consideration of a Full Bench in these appeals, is whether a conveyance by a Hindu widow of moveable property, which she takes by descent from her husband, is valid during the widow''s life, if the conveyance is made for causes other than those allowed by the Hindu law; and if not, whether the reversionary heirs of the husband can interfere by Suit to cause the property to be delivered up to themselves or to the widow. The case has been very fully and elaborately argued on both sides. The principal authorities on the subject are collected in the Vyavashta Darpana, a very useful book upon Hindu law by Baboo Shama Churn Sircar. Katayana says: "Let the childless widow, preserving unsullied the bed "of her lord, and abiding with her venerable protector, enjoy the property, "restraining herself until her death; after her, let the heirs take it" Colebrooke''s Dayabhaga, Chap. II, Sec. 1, para. 56. Again--"The "widow is only to enjoy her husband''s estate, she is not "competent to make a gift, mortgage, or sale of it" Colebrooke''s Dayabhaga, Chap. II, Sec. 1, para. 56.

2. In Colebrooke''s Digest, Vol. III, p. 465, it is said: "It fully appears "that the widow''s disposal of her husband''s property at pleasure, otherwise "than by the simple use of it, or by donation for the benefit of her lord, "is invalid."

3. Sir William Macnaghten, a very great authority, appears to have been of opinion that a gift or conveyance by a widow other than for allowable cause, was void not only as against the reversionary heirs of her husband, but also as against herself (see Macnaghten"s Hindu Laws Vol. I, pp. 19, 20)

4. In the case of Doe d. Bonnerjea v. Bonnerjea 2 Morley"s Digest, 152, the plaintiff was non-suited. The decision turned upon another point, and is no authority upon the question now under consideration; but it is important as containing the opinion which was delivered to East, C.J., by Macnaghten, J., drawn up by his son Sir William Macnaghten. The opinion was as follows:--"If a widow make a sale in perpetuity of her husband"s "landed property, by a deed to that effect, the purchaser, as she had "no right to make the sale, will not be benefited by it; nor will "he be entitled, in virtue of it, to the interest which the widow "has in the estate. This is founded upon the principle of the sale being "without ownership, which renders it void ab initio, and not, as I "before thought, upon the principle of a greater interest being conveyed "by the deed than the widow was competent to grant. The Pandits "whom I have to-day consulted agree in saying that, if one of four "brothers make a deed of sale of the whole patrimonial property, it "will be held good as far as his share is concerned, because the sale creates "ownership in the purchaser, and not the deed, which is only proof of "the sale, and may be taken to prove it as far as will serve that purpose; though invalid with respect to the conveyance of the property "of the other brothers, it is valid against himself, and is proof of his "intention. Not so in a deed made by a widow: she has no unlimited "proprietary right over any part of her husband"s property, but merely "a general usufructuary right over the whole indiscriminately. It is "clear, therefore, that she cannot convey the whole in perpetuity, but the "deed by which she conveys it is void ab initio as to the sale, nor can "it convey the interest which she possesses which (independently of "its not being transferable) is an interest of a totally different nature "from that of proprietary right" Ibid, 155.

5. The opinion that the purchaser would not he entitled during the widow"s life was founded upon the principle that she had no proprietary right over any part of her husband"s property, hut merely a general usufructuary right over the whole indiscriminately, and that the sale being without ownership was void ab initio by the Hindu law. The opinion of Sir William Macnaghten was founded upon the same principle, upon which he also gave his opinion in the same case, that the sale of a father"s property by a son during the father"s life-time was void ab initio, upon the ground that it was a sale without ownership, and, therefore, not binding after the father"s death upon the son who succeeded to the property as his father"s heir.

6. Sir William Macnaghten appears to have considered that the widow had no greater right in an estate which she takes by descent from her husband than a son has in the estate of his father during his father"s life-time.

7. This, however, is not the case. In Goluckmonee Dabee v. Degumbur Dey 2 Boulnois" Rep., 193 (Sup. Court, November 15th, 1852), the Court said:--"No part "of the entire

interest, when the widow takes by inheritance, is in suspense "or abeyance in any way; nor is there a reversion on a life-estate, but "the whole interest is in the widow. When she takes as heir under the "Hindu law, she is ranked in all treatises as heir. Sir Francis Macnaghten treats her estate rightly as anomalous, and other writers treat it "as coming to her as heir; therefore, when they term it also a life-estate, "they use that expression in a sense different from that of a pure and "mere life-estate" Macpherson on Mortgages, 3rd Ed., 25. The Court goes on to say: "It has been invariably considered, for many years, that the widow fully represents the "estate, and it is also the settled law that adverse possession which bars "her, bars the heir also after her, which would not be the case if she "were a mere tenant-for-life as known to the English law"-Ib., 27; see also the case of Cossinauth Bysack v. Hurrosoondery Dossee Clark"s Rules and Orders, 91; and Montrion"s H.L. Cases, 495 in the Privy Council, 24th June 1826, from which it would seem that the widow takes more than a life-estate. See also Judomoney Dabee v. Saroda Prosono Mookerjee 1 Boulnois" Rep., 129; and Macpherson on Mortgages, 3rd edition, page 28. In 6 M.I.A. 433 (Privy Council) , it was held that the title of a widow to her husband"s property, though a restricted one, was not in the nature of a trust. There are some decisions in the Sudder Court in which it has been held that the conveyance does not operate as against the widow during her life-time. In Hemchund Mozoomdar v. Mussamut Taramunnee 1 S.D.A. Rep., 359, it was declared by the decree that a deed executed by the widow should not, after her death, operate to preclude the right of the surviving heirs, leaving it to operate during her life-time. In Kishno Govind Sein v. Gunganarain Sircar Macnaghten"s Cons., Hin. Law, 18, the Supreme Court declared a decided opinion that a widow had no right, other than for allowable causes, to make any grant of her interest in the estate which could inure beyond her own life. In the case of Ramanunda Mukhopadya v. Ram Krishna Dutt Ib., 19-20, it was admitted by all the Judges of the Supreme Court, that the grant which was made by a widow of property inherited from her husband, and which it clearly appeared was not made for the benefit of her husband"s soul, was good for her life. In Cossinauth Bysack v. Hurrosoondery Dossee Clark"s Rules and Orders, 91; Montriou"s H.L. Cases, 495, in the Privy Council, to which we have already referred, Lord Gifford, after reviewing the opinions of the different Pandits, observes: "The "result, as it appears to me, of these different opinions is this: "that they all agree, as I have already stated; that the widow Hurrosoondery Dossee is entitled to absolute possession; that she has, for "certain purposes, a clear authority to dispose of her husband"s property; "she may do it for religions purposes, including dowry to a daughter, "and making gifts and donations to the husband"s family. But they differ "in this. The Court Pandits say that if she alienates the property for "other purposes, without the consent of the husband"s relations, it "would be invalid; the others say that though she would incur moral "blame, if applied for purposes not allowed, yet the act would be valid as "against the relations of the husband. In that respect the four Pandits "differ from the Pandits of the Court, founding their opinion on the "doctrines contained in the Ratnakara and Chintamani where not over-ruled by the Dayabhaga and Dayatatwa" Vyavastha Darpana, 133, 1st Ed.; Ed., 1867, 97. It appears also from the same judgment that two other Pandits were examined, and were asked whether they agreed with or

differed from the opinions of the Court Pandits. Their answer was: "We agree with them that such "gifts are not valid as against the next heir of her husband; but "we say that they are valid as against the widow, who could not "reclaim them, whereas the heir is entitled to do so" Vyavastha Darpana, 133, 1st Ed.; Ed., 1867, 97. In Collychund Dutt v. Mooree Fulton"s Rep., 73, Ryan, C.J., says, "that a grant made "by a widow for her own life is good, has been decided in this Court."

8. Upon the whole, after considering all the cases upon the subject, we are of opinion that a conveyance by a Hindu widow, for other than allowable causes, of property which has descended to her from her husband, is not an act of waste which destroys the widow"s estate and vests the property in the reversionary heirs, and that the conveyance is binding during the widow"s life. The reversionary heirs are not, after her death, bound by the conveyance; but they are not entitled, during her life-time, to recover the property either for their own use or for the use of the widow, or to compel the restoration of it to her. If the widow in any case be imposed upon and induced to execute a conveyance by fraud, the conveyance will, in such a case, as in all other cases of fraud, be void.

9. It has been urged that the reversionary heirs may be prejudiced if they cannot sue for the property during the widow"s life, for after her death it may be difficult to procure the necessary evidence to show that the conveyance was executed for causes not allowable; and that, in the case of moveable property, such as money or valuable securities, irreparable injury may be done to the reversionary heirs by the grantees making away with the property during the widow"s life; or in the case of immovable property, by committing waste. But our decision will not preclude the reversionary heirs, even during the life-time of the widow, from commencing a suit to declare that the conveyance was executed for causes not allowable, and is, therefore, not binding beyond the widow"s life. Nor will it deprive the reversionary heirs, during the life of the widow, of their remedy against the grantee to prevent waste or destruction of the property, whether moveable or immoveable, in the event of their making out a sufficient case to justify the interference of the Court. Our opinion will be reported to the Division Court by which the question was referred to us, for their information and guidance.