

(1880) 07 CAL CK 0012

Calcutta High Court

Case No: None

Jemah Misser and
Others

APPELLANT

Vs

Chottoo Misser

RESPONDENT

Date of Decision: July 19, 1880

Citation: (1881) ILR (Cal) 198

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

(who, after shortly stating the facts, continued):-In this Court, it has been argued by the appellant, that, according to the rule laid down by the Privy Council in the Shivagunga case (Kathama Natchiar v. Dorasinga Tever L. R. 2 I. A. 169, the plaintiffs were not entitled to the decree which the lower Court has given them; that their interest being only contingent, the Court could make no declaration of title in their favour; and that the decree which they have obtained is not one which can give them any consequential relief in this or any other suit.

2. It appears to me, however, that this is one of that class of cases which are referred to in the Shivagunga case (L.E. 2 I. A. 169) as being exceptions to the general rule, which is there laid down. In page 191 of the judgment, their Lordships allude to suits brought against Hindu widows by presumptive reversioners to restrain waste and the like, as being "suits of a very special class, which have been entertained by the Courts ex necessitate rei." They expressly say, that, in such cases, the reversioner cannot get a declaration of his own title as against third persons; but he is permitted to sue as the presumptive heir, because, unless he were allowed touring such a suit, there would be no means of preventing the widow from doing perhaps irremediable mischief to the estate. And suits like the present, it seems to me, come clearly within the principle of that exception.

3. It was held by the Privy Council in the case of *Thakoorain Sahiba v. Mohan Loll* (11 Moore's I. A. 386; Section c, 7 W. E., P. C, 25), that suits of this kind would lie " upon the ground of the necessity that the contingent reversioner may be under, of protecting his contingent interest."

4. Unless such a suit could be brought, it might be impossible, if the widow lived to a great age, to bring evidence after her death to prove that there was no legal necessity for alienations which she may have made when a young woman ; and it is for this reason,--namely, the probability of failure of evidence through lapse of time,--that the right to bring these suits has been constantly upheld by this Court; see *Gobindmani Dasi v. Shamlal Bysak* B. L. E. Sup.48: S.C. W. E. Sp. 165 *Lalla Ghuttur Narain v. Wooma Koon-waree* (8 W. E. 273), *Behary Ball Mohurwar v. Modho Ball Shir Oyawal* (13 B. L. E. 222; S.C. 21 W. E. 430), *Kami-kha Prasad Roy v. S. M. Jagadamba Dasi* (5 B. L. E., 508). I think, therefore, that the lower Appellate Court was quite right, and that this appeal should be dismissed with costs.