

(1880) 12 CAL CK 0017

Calcutta High Court

Case No: None

Ramkishore
Chuckerbutty and
Another

APPELLANT

Vs

Kallykanto
Chuckerbutty

RESPONDENT

Date of Decision: Dec. 3, 1880

Citation: (1881) ILR (Cal) 479

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

(who, after stating the facts, continued):-In special appeal it is contended that the Judge has put a wrong construction upon the decree, which by its terms purports to be against Bissessuree Debia personally, and that they, special appellants, are not, within the meaning of Section 234 of the Civil Procedure Code, "legal representatives of the deceased." In support of this contention they cite as an authority the case of Mohima Chunder Boy Chowdhry v. Ram Kishore Acharjee Chowdhry (15 B. L. R. 142). They also refer to a recent, but unreported, case, decided in special appeal by a Division Bench of this Court. The judgment of Sir Richard Couch in the first quoted case supplies two reasons, which militate against the argument of the special appellants. Sir Richard Couch says:-" In the present case the debt was not due from the husband, and if the estate of the husband is to be charged either for the arrears of rent becoming due after his death, or for the bond which was given by the widow, it can only be upon the ground that the debts were necessarily contracted by the widow, or under such circumstances as to make the whole estate liable, and not merely the interest in it of the person who contracted them." And again: "Here the suits were against the widow only, she cannot be said to have been defending them as representing the reversioner, or as protecting his interest."

2. Now it is manifest in this case, from the summary of the plaint which is embodied in the decree now sought to be executed, that the widow did not seek by her suit to recover any interest personal to herself, but that she contracted this judgment-debt in the effort to recover a portion of her husband's estate. It was only in her character as representative of that estate that she did, or indeed could have, instituted that suit, and any land which she might recover in it would necessarily form portion of her husband's ancestral estate which she enjoyed during her lifetime, and to which, at her death, the special appellants, as next heirs, have succeeded. But if we had any doubt regarding the nature of that decree, it would be removed by the conduct of the reversionary heirs, the special appellants before us. They were made parties to the suit, but made no opposition to the claim of the widow. On the contrary, the Judge points out that one of them, admitted that he advised the widow in the conduct of the suit. There, it seems to us, are, to use the words of Sir Richard Couch, "circumstances which make the whole estate liable," and which render this case clearly distinguishable from the one which was then before him.

3. As to the unreported case referred to, the facts of it are not before us, and it seems to us from the judgment which has been read to us, that the learned Judges never intended to decide that, under no circumstances, could the estate in which a widow has only "a life-interest be rendered liable in satisfaction of a decree obtained against her, unless such liability was expressly declared in the decree.

4. It would no doubt be more satisfactory if our Courts were always to be careful in recording whether a decree against a Hindu widow is a personal decree or one against her as representing her husband's estate and chargeable thereon-and such a practice would materially diminish litigation; but in our experience this has not been hitherto the practice of our Courts.

5. Having regard, therefore to these considerations, we are of opinion that the decree was against the widow Bissessuree as representing her husband's estate; and that, therefore, the special appellants, as succeeding to that estate by right of inheritance, are liable to satisfy that decree as the legal representatives within the meaning of Section 234.

6. We, therefore, dismiss the appeal with costs.