

(1908) 07 BOM CK 0025

Bombay High Court

Case No: Second Appeal No. 499 of 1907

Ganapa Sanna Suba

APPELLANT

Vs

Subi Sanna Suba

RESPONDENT

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**Date of Decision:** July 24, 1908**Citation:** (1908) 10 BOMLR 927**Hon'ble Judges:** Chaubal, J; Batchelor, J**Bench:** Division Bench

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### Judgement

Batchelor, J.

In this appeal the question is whether the plaintiff is bound by the permanent lease granted by the widow in January 1889. This question the learned District Judge has answered in the affirmative on the ground that the lease was necessary in order to prevent the land from being wasted and to bring large parts of it under cultivation. Several cases are cited by the learned Judge in support of his opinion, and the question we have to answer is whether that opinion is really in accordance with law.

2. Now there can be no doubt of the general principle that a permanent alienation of Immovable property by a Hindu widow can only be justified on the ground of necessity. What necessity has hitherto been supposed to include, may be seen on reference to Golap Chandra Sarkar's work at p. 312, where the instances given of necessity are religious purposes, payment of the husband's debts, performance of his funeral rites, maintenance of the widow, certain marriages, costs of certain litigations and preservation of the estate.

3. It is, we think, settled that the widow can alienate in order to preserve the estate, but we do not think that she is entitled to alienate merely in order to improve it. In support of this view we may refer to Hurry Mohun Rai v. Gonesh Chunder Doss (1884) 1 L. It. 10 Cal. 823 where Mr. Justice Mitter says : "Suppose a Hindu widow engages a builder to make sundry improvements in the family dwelling." house while there is no necessity for such improvement, and dies after the work is finished. It seems to me that it would be unjust to hold that the next heir is liable to pay for

the work done out of the estate, though it is to a certain extent benefited thereby. It follows therefore that in order to bind the next heir it is not sufficient to show that the contract has conferred a benefit upon the estate; but it must be further established that the contract is of such a nature that a prudent owner in managing his estate would find such a contract necessary for the due preservation of the estate." Thus the necessity required involves some notion of pressure from without and not merely a desire to better or to develop the estate, for this last implies vast powers of management which in practice would not easily be distinguishable from an authorisation to embark upon speculative ventures. The only case which Mr. Nilkanth has been able to show to us as decided in his favour is *Dayamani Debi v. Sri Nibash Kundui* (1906) L.R. R. 33 Cal. 842 where it was held that a Hindu widow, as regards the management of the estate, has not less power than the manager of an infant's estate, and the reversioners are not entitled to set aside a permanent lease granted by her, which is found to be for the benefit of the estate and by which they are found to have been benefited. But we notice that the learned Chief Justice in the course of his judgment observes that "each case must depend upon its own circumstances " and we take it therefore that this particular decision was intended to be based upon the special circumstances then before the Court. This inference derives support from what was said by the Judicial Committee in *Sham Sundar Lal v. Achhan Kunwar* (1898) L.R. 25 IndAp p. 183 where Lord Davey says " the authorities quoted by Mr. Cowell have no application to the case. They were cases of. a family business being carried on by the manager of an undivided family estate. In that case the manager of a family business has a certain power of pledging assets for the requirements of the business. But the position of a Hindu widow or daughter is not by any means the same as that of the head of an undivided family, and even in the latter case the validity of a mortgage by the manager of a family business without the concurrence of the other members of the family, or when some of those members are minors, depends on proof that the mortgage was necessarily entered into in order to pay the debts of the business. This is clear from the cases cited, including that of *Dcbulat Ram v. Mehr Chund*. To use the language of Pontifex J. in a judgment quoted in that case, the touchstone of the authority is necessity." And now reverting to Maclean C.J.'s remark that each case must depend upon its own circumstances, we have here a circumstance which, if it be necessary, can be safely used to distinguish this case from that of *Dayamani Debi*, for here we are satisfied upon a general view of the whole transaction entered into by the widow, that she was not acting fairly towards the expectant heir, to apply the test which was adopted in *Chimnaji Govind Godbole v. Dinkar Dhondev Godbole* (1886) L.R. R. 11 Bom. 320.

4. Upon these grounds, therefore, we must reverse the decree under appeal. Mr. Nilkanth has contended that an issue should be sent down to determine the cost of the improvements which were made by the defendants 3 and 4 and for which the plaintiff should be held liable, but we do not think that it is necessary to send down

an issue upon this point, for in the interlocutory judgment of the learned Subordinate Judge we have precise findings that the cost of the improvements effected was Rs. 250 and that the plaintiff should be held liable to refund this amount to defendants 3 and 4.

5. The decree will therefore award possession to the plaintiff on condition that he refund this sum of Rs. 250 to the defendants 3 and 4. This condition will only attach to those lands which are included in the Mulgeni lease. In regard to the lands not so included the plaintiff will be entitled to unconditional possession and mesne profits from the year 1902-03 till delivery of possession or until the expiration of three years from the date of this decree whichever event first occurs.

6. Costs on the respondents throughout.