

(1923) 01 CAL CK 0013
In the Calcutta High Court

Jari Lal Pal

APPELLANT

Vs

Lal Behari Hazra

RESPONDENT

Date of Decision : 03-01-1923

Acts Referred:

Citation : AIR 1923 Cal 499 : 75 Ind. Cas. 625

Hon'ble Judges : Panton, J; Ghose, J

Bench : Division Bench

Judgement

1. The only question involved in this appeal is, whether a lease executed by a Hindu widow, under circumstances to be mentioned here in after, passed any title binding against a reversionary heir. The facts of the case have been fully set out in the two judgments of the Courts below and it is unnecessary to repeat them at length. It will be sufficient if the facts are stated shortly so far as the question involved in this appeal is concerned. It appears that a lady of the name of Raj Kumari Deby, who was the widow of one Kenaram Hazra, executed a deed of release in favour of one Ram Das Mukerjee, who was a reversionary heir of her husband. In the deed of release the lady stated that after her husband's death she had been in enjoyment of all moveable and Immoveable properties left by her husband. She then went on to state that she was executing the deed of release in favour of the said Ram Das in respect of all Immoveable properties left by her husband. She stated that the Immoveable properties were all mentioned in the schedule to the deed and that if, through mistake or omission or for any other reason, any Immoveable property was left out of the schedule there would be no hindrance to the title or possession of the reversionary heir in respect of the Immoveable properties left out of the schedule if such had happened. With reference to the moveable properties, she declared that she would retain the same in her possession and that, after her demise, the said Ram Das would be the owner of the same. It is argued by Mr. Bankim Chandra Mukerjee, who has conducted this appeal with much ability, that the words of the deed of release taken as a whole conveyed the entirety of the estate left by the grantor's husband and that, if that was so, the deed of release fulfilled the conditions laid

down by their Lordships of the Judicial Committee in the case reported in *Suteshwar Misser v. Maheshrani Misrain* 57 Ind. Cas. 325 : 25 C.W.N. 194 : 39 M.L.J. 161 : 28 M.L.T. 154 : 2 U.P.L.R. (P.C.) 128 : 12 L.W. 461 : 18 A.L.J. 1069 : 47 I.A. 233 : 48 C. 100 (P.C.), and that, therefore, it should be held that the deed of release passed a title which was binding as against the reversionary heir. There is another point which has been argued, namely, that the reservation of the right of residence in the homestead did not in any way contravene the conditions laid down by the Privy Council in the case referred to above and also in other cases decided by their Lordships of the Judicial Committee dealing with the question of surrender by widows of their estate. So far as the last point is concerned, namely, whether the reservation of a right of residence in a family dwelling house or in a homestead can or cannot be stigmatized as a device to divide the property which belonged to the last male owner, between the lady, and the reversionary heir, need not be gone into in this case and the reason is this. Looking at the words of the deed it self, we are satisfied that the entirety of the estate, composed of moveable as well as Immovable properties, did not pass by the deed of, release. No doubt, so far as the Immovable property was concerned, there was a complete surrender by the lady in favour of Ram Das. But as regards the moveable properties the words that occur in the concluding portion of the deed conclusively show that the title thereto, namely, the title of the lady in her husband's estate to the moveables, remained unaffected by the document in question and that after her demise the title as well as the possession thereof would pass to Ram Das. In our opinion, the terms of the deed of release were not sufficient to pass the entirety of the estate left by the last male owner to Ram Das and, that being so, inasmuch as there was not a total surrender by the widow of her estate which was inherited from the last male owner in favour of Ram Das it can hardly be contended that the deed passed any title binding as against the reversionary heir.

2. Our attention has been drawn to numerous cases decided in the Courts in India and also to the recent Privy Council decision on the question of surrender by widows of their estate. The last case namely, the case reported in *Sureshwar Misser v. Maheshrani Misrain* 57 Ind. Cas. 325 : 25 C.W.N. 194: 39 M.L.J. 161 : 28 M.L.T. 154 : 2 U.P.L.R. (P.C.) 128 : 12 L.W. 461 : 18 A.L.J. 1069 : 47 I.A. 233 : 48 C. 100 (P.C.), laid down two working rules, namely, (1) that there must be a total surrender by the widows of her widow's estate inherited from the last male owner, and (2) that the arrangement between the widow and the reversionary heir should not be such as can be described as a device to partition the estate, between the widow and the reversionary heir. So far as the first point, is concerned, Mr. Mukerjee's client obviously fails on the terras of the deed. In this view, there is no escape from the conclusion that no title whatsoever, in the circumstances of this case, passed to the grantee sufficient to bind the reversionary heir.

3. The Appeal, therefore, fails and must be dismissed with costs.