

(1911) 06 BOM CK 0015
In the Bombay High Court
Case No : Second Appeal No. 891 of 1909

Ramkrishna Kuppuswami

APPELLANT

Vs

Tripurabai

RESPONDENT

Date of Decision : 26-06-1911

Acts Referred:

Citation : (1911) 13 BOMLR 940 : 12 Ind. Cas. 529

Hon'ble Judges : Rao, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—The question which we have to consider in this case is whether an alienation of her husband's property by a Hindu widow for the purpose of assisting her husband's reversioner in certain pecuniary difficulties in which he had become involved owing to the assistance which he had given to the widow's cousin Somasundar, is binding upon the son adopted to her husband by the widow after the date of the alienation.

2. The authorities discussed by this Court in *Vinayak v. Govind* ILR (1900) 25 Bom. 129, show that the assent of the nearest reversioner to an alienation by a Hindu widow raises a presumption that the alienation was proper. Now if the facts which have been found by the learned District Judge in the present case are taken into consideration, we do not think it can be contended by any one that the alienation was in fact a proper alienation so as to be binding upon the son adopted subsequent to the alienation, unless it can be said that the consent of the nearest reversioner is always sufficient in every case to validate the alienation.

3. It is, however, clear from the series of authorities to which we have referred that this is a proposition of law which cannot be sustained.

4. In certain cases the consent of the nearest reversioner has had a double aspect not merely as raising a presumption as to the propriety of the alienation but also as raising an estoppel against persons claiming under that reversioner.

For example, in the most recent case decided by the Privy Council, Bajrangi Singh v. Manokarnika Bakhsh Singh ILR (1907) All. 2, the plaintiff actually claimed under the reversioners who had previously consented in writing to the alienation by the widow. Again in the case in Vinayak v. Govind ILR (1900) 25 Bom. 129, the plaintiff who challenged the alienation was the son of and claimed under the reversioner who had assented to the alienation.

5. In the present case we have not any similar circumstances which can be taken into account as raising any question of estoppel, for, Somasundar, for whose benefit the liabilities had been incurred which had ultimately led to the alienation, was not a member of the family of the widow's husband, but was a cousin of the widow, and although he was the father of the plaintiff, the plaintiff does not claim under him but under his adoptive father.

6. For these reasons we think that the learned District Judge was in error in thinking that the mortgage of the house was validated by Balsundar's consent and that that consent was on all fours with the consent given by Venkatesh in the case of Vinayak v. Govind ILR (1900) 25 Bom. 129.

7. We, therefore, reverse the decree of the lower appellate Court and pass a decree for the plaintiff declaring that the mortgage Exhibit 92 in favour of the 2nd respondent is not valid and that the sale in favour of the 3rd respondent in execution of the decree against respondent No. 1 is not binding on the minor plaintiff.

8. We further decree that the respondents Nos. 2 and 3 do pay the appellant's costs throughout.