
(1930) 11 PAT CK 0016
In the Patna High Court

Thakur Prasad and Others

APPELLANT

Vs

Mt. Dipa Kuer and Others

RESPONDENT

Date of Decision : 21-11-1930

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1931 Patna 442

Hon'ble Judges : Ross, J; Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—These five appeals arise out of four suits to avoid alienations of her husband's property by a Hindu widow Mt. Lakpati Kuer. The plaintiff in all the four suits was Mt. Dipa Kuer, daughter and sole heir of Ishwar Prasad Rai who died on 16th April 1917. Lakpati Kuer was the widow of Surjan Singh who died in or about 1850, and she herself died on 2nd November 1912. The plaintiff's father was son of Pratap Narain, the only son who survived his mother, Mt. Bibo Kuer, sister, and nearest relation of Surjan Singh; Mt. Bibo Kuer died in 1881, and Pratap Narain on 3rd March 1912, about eight months before the death of Lakpati Kuer, the widow whose alienations are now in question. Upon the death of Lakpati Kuer, Pratap's son Ishwar Prasad Rai succeeded to the estate of Surjan Singh. In 1914 he brought a suit to avoid an alienation in respect of Mauza Jamalpur made by Mt. Lakpati Kuer, and obtained a decree. There was an appeal to the High Court, during the pendency of which Ishwar Prasad died and Mt. Dipa Kuer, the plaintiff in the present suits was substituted in his place. The present suits were brought in 1924 not more than 12 years after the death of Lakpati Kuer. The earliest of the alienations now challenged is a sale of 1899 in favour of one Sheo Shankar Lal for Rs. 2,500 by Ex. D; this forms the subject-matter of Suit No. 57, out of which arises Appeal No. 119.

2. The next alienation refers to a four annas share in Mauza Pahari Kalan along with a similar share in certain khudkasht brahmattar lands in the same mauza; this was a sale effected by Mt. Lakpati Kuer in 1901 under Ex. E in favour of the

same purchaser Sheo Shankar Lal for Rs. 6,400, and forms the subject-matter of Suit No. 53 out of which arises Appeal No. 54. The next alienation is dated 8th March 1908, and covers a similar share of the mauza and the brahmattar lands; this was a sale effected by Ex. T for the same price and forms the subject-matter of Suit No. 52, out of which arises Appeal No. 53. There was another alienation on the same day effected by means of Ex. W, a samarpannama or deed of dedication to two deities, Sree Thakurji Maharaj and Sree Sheoji. On the following day Mt. Lakpati Kuer executed an atai-nama or deed of gift, Ex. X, in favour of Mt. Rajdulari Kuer who had constituted a shebait in succession to Mt. Lakpati Kuer under the samarpan-nama, Ex. W. These two alienations, Exs. W and X, were the subject-matter of Suit No. 51, out of which arise Appeals Nos. 70 and 136. The plaintiff alleged that Mt. Lakpati Kuer only took the limited interest of a Hindu widow in the estate of Surjan Singh, that the sales were not supported by legal necessity and are not binding on her as the reversioner's heir and that the dedication and the gift to the shebait are also not binding on her.

3. The principal grounds on which the suits were defended below and the only grounds that have been raised are that the plaintiff as the daughter of the man who took the reversion was not entitled to challenge the alienations, that the sales were supported by legal necessity, that the sales and dedication and gift were within Mt. Lakpati's competence because by a family arrangement in accordance with which Pratap Narain executed a deed of relinquishment, Ex. Y, in her favour in 1895, she had become the absolute proprietress of the properties now in question, and that Ishwar Prasad, having taken the benefit of that family arrangement, was estopped from challenging the transactions. The learned Subordinate Judge overruled all these contentious and decreed the plaintiff's suits except in respect of the dedication which he upheld as coming within the power of a Hindu widow bona fide to alienate a reasonable portion of the property of her husband for his spiritual benefit. The defendants have preferred Appeals Nos. 50, 54, 119 and 136, while the plaintiff has preferred Appeal No. 70 in respect of the dedication by Lakpati Kuer.

4. To take the defendants' appeals first. It has been contended that the reversioner's right to avoid alienations by a Hindu widow is personal to him and does not devolve on his heir. The contention is rested on the observation of Dawson-Miller, C.J., in *Maharaw Kesho Prasad Singh Bahadur Vs. Chandrika Prasad Singh and Others*, that

it is the reversioners and reversioners alone who can dispute the gift,

5. Similar observations are to be found in such cases as *Kishori Pal v. Bhusai Bhuiya* [1909] 3 I.C. 78, *Devnandan Prasad v. Udit Narain Singh* [1914] 23 I.C. 298, *Jabed Ali v. Prasanna Kumar* AIR 1923 Cal. 423, *Sitaram Kavaji Bhosle Vs. Khandu Mairala Shinde*, and *Jhari Koeri and Mangru Koeri and Others Vs. Bijai Singh and Another*, . But it is noticeable that these observations were made in cases not involving the right of the reversioner's heir to set the alienations aside but in cases where strangers to the reversionary interest such as mortgagees

from the widow and tenants under the estate were concerned. In the case of Maharaw Kesho Prasad Singh Bahadur Vs. Chandrika Prasad Singh and Others, the question arose in a redemption suit brought by donees from the widow against her zarpeshgidars, and Dawson-Miller, C.J., observed in these circumstances:

The question is whether a gift of the whole of her husband's property made by a Hindu widow, not challenged by the reversioners during her lifetime and acquiesced in by those who would take a vested interest after her death can be challenged by any one else. In my opinion there can be only one answer to this question. It is the reversioners and the reversioners alone who can dispute the gift. It is, in a sense, permissible, though perhaps not strictly accurate, to say that the gift is void when considering its validity as against the reversioner. He may treat it as a nullity and need not sue to have it set aside before claiming possession.... He may, on the other hand, elect to treat it as valid but no third person can claim his option or set up the plea that such a gift is void merely because it may have been but was not so treated by the reversioner...

6. At the same time, the ruling relied upon by the lower Court, Nishakar Chakravarti v. Ram Kumar Tewari [1912] 16 I.C. 634 is also distinguishable on the facts. In that case the plaintiffs as transferees from the reversioner sued for recovery of possession of property permanently leased by the widow to the predecessor-in-interest of the defendants. It has accordingly been contended that it was a case where the reversioner made his election to disaffirm the alienation by transferring the property. At the same time it is impossible to doubt the correctness of the observation in that case, having regard to the nature of the reversioner's right, at his pleasure, to treat the alienation as a nullity without the intervention of any Court, that the entire property vested in the reversionary heir upon the death of the widow. The reversioner in the present case died four or five years after the death of the widow and long before his right to recover possession of the property could be barred by limitation. What passed to the plaintiff was the property that had vested in her father as the reversioner upon the death of Lakpati Kuer, and this meant the entire property. The appellant's contention is that the alienated property continued to be the property of the alienees until the reversioner made his election. This is true only in the sense that it was not open to third parties, strangers to the reversion, to challenge their title. But the property of Surjan Singh vested all of it, in Ishwar Prasad upon the death of Lakpati Kuer though without possession in respect of the items alienated. It was consequently open, in my opinion to Ishwar Prasad's heir the plaintiff, to sue for recovery of possession she is in one sense in a stronger position than a mere transferee from the reversioner--within the period of limitation. The mere failure of Ishwar Prasad to sue in his lifetime is no indication of his election to affirm the transactions. As a matter of fact he said in Ex. 8, his deposition in the suit brought by him in 1914 to set aside the alienation of Mauza Jamalpur in 1884, that he hoped to take steps in respect of the properties covered by the ekrarnama, that is to say, the so-called deed of relinquishment

executed by his father in 1895, Ex. Y. He was plainly not bound to take action immediately upon the succession opening out and it may well be that he preferred first to attack the transaction that seemed to offer the least difficulty to him. It has been urged on behalf of the appellant that Ishwar Prasad would not have elected to attack the transactions evidenced by Exs. D and E, as the former was attested by his father and the latter was connected in part with a mortgage bond of 1395, Ex. B, which was similarly attested. But instances are not uncommon where the sons have attacked transactions directly entered into by their fathers, and the material fact is that Ishwar Prasad did not in fact elect to affirm the transactions before his death which occurred more than seven years before the expiry of the period of limitation allowed to the reversioner by law. In my opinion the learned Subordinate Judge was right in coming to the conclusion that the plaintiff was competent to sue for avoiding the alienations and obtaining recovery of possession of the properties in suit.

7. As regards the legal necessity for the alienations, the learned Subordinate Judge has dealt in detail with the various items that were put forward in the sale-deeds and come to the conclusion that none of them was such as to bind the estate and that the transferees did not make honest inquiries about the necessities recited and did not bona fide believe in their existence. The only criticism made on this part of the judgment of the learned Subordinate Judge is that as Ex. D, the sale deed of 1899, was attested by Pratap Narain, the then presumptive reversioner, the onus should have been laid on the plaintiff to establish that there was in fact no legal necessity. This aspect of the matter was not overlooked by the learned Subordinate Judge for he has observed:

Then again the attestation made by a reversionary heir only raises a presumption of legal necessity, but when the very evidence adduced by the defendants shows want of necessity or no necessity the presumption is of no avail.

8. As a matter of fact that the attestation would not by itself either create estoppel or imply consent: see *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya* AIR 1916 P.C. 110, and even if it be taken that Pratap did in fact consent to the alienation such consent would be of a very little value in the circumstances of this case. A reversioner's consent does not by itself operate to validate an alienation by a Hindu widow but is only presumptive evidence that the alienation was proper. But the value of a consent and its effective results must, as Sir Lawrence Jenkins, C.J., observed in *Vinayak v. Govind* [1901] 25 Bom. 129, be measured by reference to all the circumstances of the case. The reversioner's consent derives its value from the fact that he has an interest in preventing improper alienations but in the present case Pratap had disqualified himself by Ex. Y, the deed of relinquishment he executed in favour of the widow, from taking any interest in the widow's dealings with the property of which he had purported to make her the "absolute proprietress." It has also been urged that the deed of relinquishment is itself evidence of legal necessity. I shall deal with the deed in detail a little later on. Suffice it for the present to say that the

deed in question can hardly be taken to justify any of the particular transactions now impugned. Pratap's consent, if any could not have been given with the bona fide intention of supporting any of the transactions as really necessary in the interests of the estate left by Surjan Singh to his widow.

9. The next contention that requires to be dealt with is the effect of Ex. Y as evidencing a family arrangement or compromise. This so-called deed of relinquishment was executed by Pratap Narain on 24th March 1895 in favour of Lakhpatri Kuer simultaneously with Ex. Z, the similar deed executed by her in his favour. Pratap says in this deed that under a judgment of 16th April 1874, Lakhpatri Kuer was to remain in possession of Surjan Singh's estate for her life and that on her death he was to be the reversionary heir entitled to the estate.

At present the said Mussamat is encumbered with debts on account of the pendency of several rent suits, and no Mahajan is willing to advance loans on account of my being the reversionary heir. Therefore the said Mussamat made over to me the whole and entire 16 annas of Mauza Mirzapur Pipra lands. In short I took the entire 16 annas of Mauza Mirzapur Pipra aforesaid of my own free will and accord and renounced and relinquished all claim to and made a general renunciation in respect of all other moveable and immovable properties left by the said Surjan Singh save and except the share of Mauza Jamalpur Barhia and made the said Mussamat the absolute proprietress thereof. I and my heirs and representatives neither have nor shall in future--in the lifetime of the said Mussamat or on her death--have any kind of claim and dispute in respect of any moveable and immovable properties and household articles held in possession by her. The said Mussamat shall have perfect right and power in respect of all the remaining properties left by Surjan Singh. She may mortgage the said properties, let them out in zarpeshgi or may make a gift thereof or may transfer them of her own will. I therefore execute this deed of relinquishment of claim in favour of the said Mussamat.

10. Exhibit Z is as I have indicated, similar in its import:

On account of his (Babu Pratap Narain Rai) being the reversionary heir,
says Lakhpatri Kuer in this deed:

I cannot enter into any transaction without his consent and I am encumbered with debts on account of the pendency of several suits. Therefore as the said Babu Pratap Narain Rai has executed a deed of relinquishment of claim in respect of the entire remaining moveable and immovable properties left by my husband to me, I of my own free will, without compulsion and coercion on the part of anyone else and in order to avoid future disputes, made over the whole and entire 16 annas of Mauza Mirzapur Pipra....

11. Attention has been drawn on behalf of the appellants to the statement of Dipan Singh witness 4, for the plaintiff in cross-examination that at that time Pratap Narain was claiming that he was entitled to the entire property left by

Surjan Singh and Lakpati Kuer was entitled merely to maintenance. It is however clear from the two deeds of relinquishment themselves that there was no dispute going on at the time between Lakhpatri Kuer and Pratap Narain. Even on Dipan's statement it is clear that there was no bona fide dispute and no bona fide claim even, for Pratap Narain was only Surjan Singh's sister's son while Lakpati Kuer was Surjan's widow. The expressed motive for the settlement is to be found in the statements that no Mahajan was willing to advance loans to Lakpati on account of Pratap Narain being the reversioner and that on account of the pendency of several suits it was necessary for Lakhpatri Kuer to raise loans. But it does not appear that there was much litigation going on at that time with Lakpati Kuer and the very next year Lakpati Kuer purchased some brahmattar lands and also executed a will in favour of her brother's son Jadunandan Singh. There was thus no real intention to save the reversion. Lakhpatri got herself converted into an absolute proprietress only to take the property away from her deceased husband's agnates. A bona fide settlement of disputes will bind the actual reversioner even though he may not be a party to it, as has been held in a series of cases out of which it is sufficient to cite *Khunni Lal v. Gobind Krishna* [1911] 33 All. 356. So will a compromise for the benefit of the estate if bona fide. Even where the then presumptive reversioner is a party to the compromise, it is however an element to be taken into consideration in deciding how far it was bona fide, that it was a

family settlement which was prudent and reasonable under the circumstances"-- AIR 1925 272 (Privy Council) .

12. The binding character of a compromise is further based on the assumption that there was an antecedent title of some kind in the parties and that the agreement acknowledges and defines what that title is. None of these considerations support the arrangements of 1895 between Pratap Narain and Lakhpatri Kuer. Because Pratap Narain relinquishes his reversionary claim to the rest of the estate (save Mauza Jamalpur) Lakhpatri Kuer gives him Pipra by her deed of relinquishment. But until the property held by Lakhpatri for her life vested on her death in Pratap Narain as a reversioner, should he survive her, he had nothing to assign or to relinquish or to bargain with: see *Amrit Narain Singh v. Gaya Singh* AIR 1917 P.C. 95 . During the life of a Hindu widow the reversion remains contingent, and there is no one who possesses a vested interest in the remainder which can be disposed of by any means known to the law-- *Gangabai Joshi Vs. Hari Ganesh Joshi*, ; the widow and the reversioner are not competent to deal with the estate;

so as to convert the widow's estate, the property still remaining in her from a qualified into an absolute one" *Hem Chandra Sannyal v. Swarnamoyee Devi* [1895] 22 Cal. 354.

13. The family arrangement cannot therefore be supported or held to bind the reversioner or his heir, *Anup v. Mahabir* [1917] 3 Pat. L.J. 83 and *Obala Kondama v. Kandasami* AIR 1924 P.C. 56, and Lakhpatri Kuer's alienees could and should

have ascertained for themselves the invalid character of her claim as absolute proprietress. I am clearly of opinion that the defendants-appellants have no case against the plaintiff on the footing that Ex. Y evidences a binding family arrangement or compromise.

14. I now come to the question whether the plaintiff is estopped from challenging the alienations made by Lakhpatri Kuer in consequence of the family arrangement, by reason of the fact that her father Ishwar Prasad took some benefit under that arrangement. It is not pretended that there is any estoppel within the meaning of Section 115, Evidence Act. Ishwar Prasad was at that time a boy of 12 and could not have made any representations. It is however pointed out that when, on the death of his father he came into possession of a share in Mauza Pipra by virtue of survivorship, he treated that share as his own property and settled it upon his stepmother Mantoran Kuar for her maintenance; and it is urged that he thus affirmed his father's or Lakhpatri Kuer's ekrarnama or deed of relinquishment of 1895 by taking the benefit of the title to that mauza conveyed to his father on the occasion of the settlement. We are however concerned in the present case not with the title of Pipra but with the title of the defendants to the properties transferred by Lakhpatri Kuer to them. Lakhpatri Kuer made these transfers on the footing that she was the absolute proprietress of these properties and, as I have already shown, it was impossible in law for Pratap Narain to convert Lakhpatri Kuer from a Hindu widow with restricted dowers of alienation into what is commonly but not very accurately called an "absolute proprietress." Ishwar Prasad's claim to the estate of Surjan Singh is not derived through his father who died before the succession opened; one reversioner, it is settled law, does not claim through another. Had Pratap succeeded to the estate on the death of the widow, the position might have been different; the estoppel might have descended to his son: *Mahadeo Prasad Singh v. Mata Prasad* AIR 1922 All. 297 and AIR 1927 227 (Privy Council) . The case of *Vinayale v. Govind* [1901] 25 Bom. 129 is easily distinguishable.

15. The transaction challenged in that case was the very transaction to which the reversioner's father had assented, and Sir Lawrence Jenkins, C.J., held that it was not open to the reversioner to get rid of it really on the ground that the father's consent was given in such circumstances as to establish that the sale was binding on the estate. Ranade, J., seems to have proceeded on a ground akin to that of estoppel, but the reversioner in that case was in the impossible position of maintaining that the widow could not sell her deceased husband's property for the very marriage to which the reversioner owed his being. In *Hardei v. Bhagwan Singh* AIR 1919 P.C. 27 their Lordships of the Judicial Committee dealt with a case of a family arrangement at a time when the rights of the widow and her three daughters were in doubt. The widow had divided all the properties among those three daughters and the sons of two of them, and their Lordships held that the plaintiff--one of the daughters who was a party to the arrangement--was bound by her own agreement and was not entitled to repudiate it, especially as the arrangement had been accepted by the parties for

a long period of time. Their Lordships however made this significant observation:

Whether this arrangement is binding on the grandsons cannot be determined in this suit, and on that question their Lordships express no opinion.

16. To hold that Ishwar Prasad was bound by the arrangements to which his father was a party, though Ishwar Prasad as the reversioner does not claim through his father, and to hold this merely because Ishwar Prasad did afterwards take some benefit under that arrangement would amount to supporting the transfer of his expectancy by Pratap Narain. It WAS on such a ground that in *Annada Mohan Rai v. Gour Mohan Mullick* AIR 1923 P.C. 189 their Lordships declined to uphold a contract to transfer an expectancy. In my opinion there was no estoppel of any kind against Ishwar Prasad in respect of the transfers now in question. It has also been suggested on behalf of the appellants that the fact that he took the benefit of the arrangements of 1895 should be treated as an election by him to affirm the transactions. But which transactions? What Lakhpati Kuer transferred in 1895 was Mauza Pipra to Ishwar Prasad's father, and it was clearly unnecessary for Ishwar Prasad to affirm or disaffirm that transfer. It was also impossible for Ishwar Prasad to affirm the surrender of whatever it was that his father surrendered in order to constitute Lakhpati Kuer into an absolute proprietress. The transaction of 1899 and subsequent years relate to properties which Lakhpati Kuer dealt with as the absolute proprietress, and it would have been impossible even for Ishwar Prasad himself who ultimately succeeded as the reversioner expressly to confer on her the status of absolute proprietress as his father purported to do in 1895.

17. I find it difficult in the circumstances to apply the doctrine of election to Ishwar Prasad in favour of the defendants-appellants. Reference has also been made to the fact that Ishwar Prasad attested two of the alienations of Mauza Pipra made by his father after 1895, and to the fact that one of these was entered into partly for paying up a debt contracted for the purpose of performing the marriage of Ishwar Prasad himself. But these facts do not make the appellants' position much stronger than is done by Ex. O, the deed by which Ishwar Prasad himself within a couple of months of his father's death assigned what remained of the mauza, viz. a one-sixth share, to his stepmother. The doctrine of election by a reversioner to hold good a Hindu widow's alienations has been applied in some cases where it was not easy to apply the principle of estoppel.

18. As examples I may refer to *Fateh Singh Vs. Thakur Rukmini Ramanji Maharaj*, and *Akkawa v. Sayad Khan* AIR 1927 Bom. 260, two Full Bench decisions which have been cited at the Bar. But in both these cases it was the consenting reversioner himself that was held to have elected to affirm the transaction. The alienations challenged by the plaintiff-respondent cannot in my opinion be supported on any of the four grounds--total surrender by the widow and accelerations of the reversioner's estate, legal necessity, estoppel and election--referred to by their Lordships of the Judicial Committee in *Rangasami*

Gounden v. Nachiappa Gounden AIR 1918 P.C. 196 in connexion with the question, of validity of a Hindu widow's alienations with the consent of the presumptive reversioner. The only other ground urged on behalf of the appellants in support of the alienations is the doctrine of family settlement, with which I have dealt already.

19. In my opinion all the grounds urged on behalf of the defendants-appellants fail.

20. I now come to the plaintiff's appeal. This refers to the dedication of eight annas of Mauza Pahari and of the brahmattar lands to the deities. It has been urged on behalf of the appellant that this dedication is not binding on the reversioner because Lakhpatri Kuer made it without any reference to the spiritual good of her deceased husband and resorted to it merely as a cloak for settling the property upon the widow of her brother's son as a shebait. It is settled law that for religious or charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband, the Hindu widow has a larger power of disposition than that which she possesses for purely worldly purposes. In Sardar Singh v. Kunj Behari Lal AIR 1922 P.C. 261 their Lordships referred to the distinction between alienations for religious acts of an obligatory character and those for acts which are simply pious, and if performed, are meritorious so far as they conduce to the spiritual benefit of the deceased owner and they uphold the dedication of about 1-75 of the whole estate for the observance of bhog to a deity and for the maintenance of the priest. As was observed by Mookerjee, J., in Khub Lal Singh v. Ajodhya Misser [1915] 43 Cal. 574, there are some reported cases in which a distinction has been drawn between acts of which the religious merit is solely acquired by the female heir and acts of which the religious merit accrues to the deceased or is shared by the female heir with him.

21. The learned Judge was apparently in favour of the criticism made by Pandit Pran Nath Saraswati in his Tagore Law Lectures of the Hindu Law of Endowments that the distinction is groundless. In the particular case before him there was, however no room for any such distinction but Rafique and Stewart, JJ., observed in Musammatt Sham Devi Vs. Babu Birbhadra Prasad, minor, through Musammatt Munni Debi and Others, that whatever be the application of that distinction to persons governed by the Dayabhaga Law, it would not appear to be a doctrine applicable to persons governed by the Mitakshara Law, and that an act done by the widow supposed to conduce to the benefit of herself will not confer spiritual benefit on her husband. This was followed in Munshi Lal v. Shiv Dei AIR 1924 Lah. 137, where it was held that a gift by a Hindu widow of a moderate portion of her deceased husband's estate can only be valid if it is expressly made for the spiritual welfare of the deceased husband and that an act supposed to conduce to the spiritual benefit of the widow is not necessarily an act supposed to conduce to the spiritual benefit of the deceased husband. Khub Lal's case [1915] 43 Cal. 574 however would seem to have been governed by the law of the Mitakshara; the parties were from the District of Gaya and do not bear Bengali

names. The primary reason for holding that the soul of the deceased husband participates in the religious merit of acts performed by the widow is a text of Brihaspati's:

In Scripture and in the Code of law as well as in popular practice a wife is declared by the wise to be half the body of her husband equally sharing the fruit of pure and impure acts.

22. The Dayabhaga is not the only place where this text is found; among other places it occurs as the first quotation given by Apararka under Yajnavalkya, II, 136, in a commentary which is mentioned in Buhler and West as being of great value for the correct interpretation of the Mitakshara. The distinction between acts conducive to the spiritual benefit of the widow alone and acts conducive to her deceased husband's welfare as well as her own is found in an early case--Kartick Chunder Chukerbutty v. Gour Mohun Roy 1 W.R. 48, which was decided by Shumbhoo Nath Pandit and Campbell, JJ., but it seems to have been assumed in that case rather than rested on the Hindu text-books. Of later cases it will be sufficient to refer to Tatayya Vappuluri v. Gaurinalla Ramakrishnamma [1910] 34 Mad. 288 which was decided by Benson and Krishnaswami Ayyar, JJ., and was referred to with approval, though on another point, by their Lordships of the Judicial Committee in the case of Sardar Singh v. Kunj Behari Lal AIR 1922 P.C. 261. The learned Judges observed.

We have already said that the gift or expenditure should have reference to the spiritual needs of the father or husband whose property is taken. Where it was only for the widow's spiritual benefit, as in *Puran Dei v. Jai Narayan* [1882] 4 All. 482, the gift was undoubtedly without justification.

23. On the text of Brihaspati it is difficult to see how it is possible for a Hindu widow to aim at any spiritual good for herself in which the soul of her deceased husband would not participate." It is however perhaps too late in the day to go back to the Hindu texts, and in the present case it, is not absolutely necessary to do so. In the deed of endowment, Ex. W, Mt. Lakpati Kuer refers to a temple that she had already built and says:

It is quite necessary for me, for my welfare and salvation in the next world, to make a permanent arrangement for the service, worship, rag-bhog and occasional festivities of the Gods installed in the said temple....

24. This temple came under judicial notice in *Bishan Dayal Singh v. Jaisarai Kuar* [1918] 48 I.C. 746, where it was held that Lakpati Kuer's alienation of Mauza Jamalpur for the construction of the temple and installation of the idols was not binding on the estate. Lakpati Kuer in the deed of endowment also refers to Pratap Narain's deed of relinquishment and to a will executed by her on 28th May 1896, in favour of her brother's son, Jadunandan Singh, and of the deities. She executed a deed of endowment because, as she says:

On account of the death of (my) said nephew the said will has become now void

and inoperative.

25. It is provided that she is to be in charge of the dedicated properties and of the arrangement for service, worship, etc., of the deities and that on her death this is to devolve on Mt. Rajdulari Kuer, widow of Jadunandan Singh, as a trustee with power to appoint her successor or successors. This last makes it more than possible for Rajdulari to keep even the management of the property and service of the deities from Surjan Singh's agnates. The dedication is thus open to a number of objections. In the first place, Lakpati's alienation of Jamalpur for the installation of the deities having been set aside as beyond her power as a Hindu widow, it would seem somewhat inconsistent to hold that it was within her power to dedicate the property now in question for the service of the same temple, especially as she clearly acted without any authority from her husband and further purported to make the alienation for her own "welfare and salvation in the next world." Secondly, a Hindu widow's alienation for such purposes must be "within proper and reasonable limits:" *Puranchand v. Manohar Lal* [1918] 42 Bom. 136. The limits can only be determined with reference to all the circumstances. At the time Lakpati Kuer made the dedication she had already alienated all the properties that came to her from her deceased husband save and except the raiyat khana lands and the homestead of which she made a gift to Mt. Rajdulari the very next day after expressly referring to the fact that she had previously executed a will in 1896 in favour of Jadunandan Singh, which had failed on account of his death and to Rajdulari's want of means. The learned Subordinate Judge has found that dedication covered a little less than 1/5th of the total estate and that this proportion cannot be regarded as unfair and unreasonable. In doing so however he has taken into account Mauza Jamalpur with a net income of Rs. 1,100 and Mauza Pipra with an income of Rs. 700 (out of a total income of Rs. 2,995), which, as matters stood at the time, were already lost to the estate, if indeed anything could properly be said to have been left for the reversion after Lakpati converted herself, into an absolute proprietress. Half of Mauza Pahari, with an income of Rs. 535, was also gone from the estate as matters stood at the time. Mt. Lakpati Kuer had at the time of this dedication properties bringing an income of Rs. 660 only and out of this she dedicated properties with an income of Rs. 535.

26. This seems a very high proportion to apply for religious purposes not of an obligatory character; and the smaller proportion of 1/5th or so found by the learned Subordinate Judge is also not easily justifiable in the circumstances of the case. Mt. Lakpati Kuer had already converted herself into an absolute proprietress, and the dedication was so shortly after followed by the gift of the rest of the estate to Mt. Rajdulari that it may be fairly inferred that her object was to leave for the reversion nothing out of the properties of which she had purported to make herself the absolute proprietress. It was explained on behalf of the appellant that it was not the appellant's object to destroy the dedication and that she would be content to get the shebaitship of the temple. The offer was not acceptable to Rajdulari who preferred to contest the appeal on the

footing that the dedication was valid and binding on the reversion. It seems to me that in the present state of the law the dedication must be taken to be beyond Lakpati Kuer's competence as a Hindu widow, if not, on the ground that she had in contemplation her own spiritual welfare only, than on the ground that it was not an alienation "within proper and reasonable limits," whatever may be thought regarding her evident object of leaving nothing for the reversion. I would therefore allow Mt. Dipa Kuer's appeal, Appeal No. 70, with costs, modify the decree of the Subordinate Judge and decree the claim in full with costs.

27. I would dismiss the four appeals by the defendants with costs.

Ross, J.

28. I agree.