Privy Council Appeal No. 11 of 1919.
Bengal Appeal No. 5 of 1916.

Chowdhury Sureshwar Misser and another - - - *Appellants*

v.

Musammat Maheshrani Misrain and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DATED THE 24TH JUNE, 1920.

Present at the Hearing :

LORD BUCKMASTER.
LORD DUNEDIN.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD DUNEDIN.]

One Nanu Prashad Misser died in April, 1906, and it is to his property that this suit relates. He was survived by a widow, respondent No. 1, by four daughters, respondents No. 2, and by a son who was six years old. The son died within a few months after his father's death. The daughters then applied for letters of administration with the will annexed of the deceased father, under which will they took the immovable property on failure of the son under burden of certain provisions to the widow. The application was opposed by Madhab Misser, a first cousin of Nanu, who, at that time, was the nearest agnate, and upon the assumption that the will was inoperative, was the nearest reversioner according to Hindu law. Letters were, however, granted in respect that the will had been properly executed. Madhab Misser then raised a civil suit to have a declaration that the will was inoperative and that the property having been joint was succeeded to by the son ; that upon his death the mother became entitled to a woman's interest, and that on her death when it happened the estate would devolve on the reversioner then entitled. This suit was opposed by the daughters and by the mother. The suit

came on for trial before the Subordinate Judge of Darbhanga and evidence was led; but before judgment was given a compromise was effected in terms of which the suit was decreed. The compromise was to the following effect. The rights under the will were given up. The movable property, with the exception of certain animals and a small amount of grain, was given absolutely to the widow. The widow surrendered all right of succession to the immovable property. The plaintiff, who by this surrender became, as nearest reversioner, entitled to the immovable property, made over half of that property to the daughters. The plaintiff and the daughters each gave a small portion of the land to the widow for maintenance. The necessary deeds to carry out this arrangement were executed and from the date of said compromise, February, 1909, possession has been in terms of that arrangement.

In September, 1911, Madhab Misser having then died, the plaintiffs, who are the nephews of Madhab and the nearest reversioners now in existence, raised the present suit, craving a declaration that the compromise was invalid and ineffectual, and that the parties had no right to Nanu's estate; that they, the plaintiffs, as reversioners would be entitled on the determination of the life interest of the widow, the first respondent, to the estate if at that time they still remained the nearest reversioners. The learned District Judge, and the High Court on appeal, dismissed the suit and appeal has now been taken to this Board.

In the suit, as originally framed, the plaintiffs, now the appellants, alleged that the compromise was a fraudulent scheme between the respondents and the deceased Madhab Misser to divide the estate between them. This was found against them by the learned District Judge, and in the Appeal Court the contention was deliberately abandoned. The question, therefore, came to be simply this—were the compromise and the arrangements thereby sanctioned within the powers of the parties?

The power of a widow (and a mother succeeding to her son is in the same position) to deal with the estate with the consent of the nearest reversioner at the time was very fully examined by this Board in the recent case of *Rangasami Gounden* v. *Nachiappa Gounden*, L.R. 46, I.A. 72, and what was there stated need not be here repeated. It is perhaps necessary to say that as the learned Judges in the High Court delivered judgments in this case before that case was decided they laid stress on certain passages in the judgments in the case of *Nobokishore* v. *Hari Nath Sarma Roy*, I.L.R., 10 Cal. 1102, which can hardly be taken as quite accurate in respect of what was decided by this Board.

The appellants, however, contend that they are entitled to succeed on the law as laid down in the *Gounden* case. Now there are two conditions as there laid down which must be fulfilled to make a surrender by the widow, with consent of the next heir (necessity being out of the question), valid. The first is that the surrender must be total, not partial. The second is that the surrender, in the words of the *Gounden* case, " must be a *bona fide*

surrender, not a device to divide the estate with the reversioners." The appellants argue that both the conditions are here contravened. Now as far as the first is concerned, it must be pointed out that the succession in this family is regulated by the Mithila School of Law. Under that law it is admitted that a female succeeding to the male takes an absolute interest in the movable property; so what under the compromise was left to or retained by her was what she was absolutely entitled to. The compromise merely recognised her right to it. As regards the immovable property, in which she had only a widow's interest, the surrender here was total not partial.

Then as regards the second, it has been already pointed out that the *bona fides* of the transaction is not now challenged. Is it then a device to divide the property between the lady and the reversioner? Now their Lordships do not doubt that to make an arrangement such a device, it is not necessary that the lady surrendering should take part of the property directly. An arrangement, by which the reversioner as a consideration for the surrender promised to convey a portion of the property to a nominee or nominees of the lady surrendering, might well fall under the description of a device to divide the estate. It is here that the fact of the arrangement being a compromise becomes of importance. Once the *bona fides* is admitted, we have the situation of a contest under which, if decision were one way, the estate was carried to the daughters away from the family, and a litigation in the course of which the estate would probably be much diminished. This situation made it a perfectly good consideration for the lady in order to avoid these results to consent to give up her own rights by surrender. On the other hand it was a good consideration for the reversioner to get rid of the will and in a question with the daughters, who would take all by the will, to agree to give them a half of the property.

The conveyance of small portions of land to the widowed mother was unobjectionable, as it was only for maintenance. Their Lordships are, therefore, of opinion that the arrangements of the compromise cannot be stigmatised as a device to divide the estate between the surrendering lady and the nearest reversioner, and cannot now be taken exception to.

Their Lordships will, therefore, humbly advise His Majesty to dismiss the appeal.

In the Privy Council.

CHOWDHURY SURESHWAR MISSER AND ANOTHER

v.

MUSAMMAT MAHESHRANI MISRAIN AND OTHERS.

DELIVERED BY LORD DUNEDIN.

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