

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Rajah  
Debendro Narain Roy v. Coomar Chundernath  
Roy, from the High Court of Judicature at  
Fort William in Bengal; delivered 4th April  
1873.*

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Present :

SIR JAMES W. COLVILLE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

IT is not necessary for their Lordships to express at any length the grounds on which they think that this Appeal must be dismissed. The Plaintiff comes into Court to follow into the hands of the Defendant, who by intermediate transfers has acquired the title of the purchaser at an auction sale, which took place so long ago as the 10th June 1843, the property which was then sold. The grounds upon which he does this are, that the late Rajah Shib Prosad Roy, who died some time before the sale, was the undoubted owner of the property; that Rajah Shib Prosad Roy left an unnoomuttee puttro, by which he authorised his widow to adopt a son; and that in the year 1856, more than 12 years after the sale, she exercised that power in favour of him, the Plaintiff. However, nothing turns upon the point of time. His contention is that the sale must be taken to have been a sale of merely the widow's interest, and that upon her death, in the year 1865, his interest for the first time accrued, and that he was therefore entitled to commence this suit for the purpose of recovering the property in July 1868. The nature of the unnoomuttee puttro was peculiar, in that it did not leave the widow's estate to be defeated immediately by the adoption, as in

the ordinary case, but gave to her in the event of an adoption a life interest in the property. Hence the interest of the Appellant did not commence until the widow's death. If this suit were successful, it certainly would be a flagrant instance of the extreme inconvenience which arises so often from the limited nature of a Hindoo widow's estate, and from the confusion which is introduced into the devolution of estates by authorities to adopt, which for a considerable time are not acted upon. But of course, if the facts supported the contention of the Appellant, it would be their Lordships' duty to apply the law without regard to such inconveniences or to the hardship upon the purchaser at the execution sale, and those who claim under him. It appears, however, to their Lordships that in this case there are no reasons whatever why they should apply that harsh law. If the only execution under which the property was sold, and the only liability which the proceeds of the sale were applied to satisfy, had been that incurred after the death of the Rajah Shib Prosad Roy, in the proceedings taken ineffectually to contest the foreclosure of the mortgage, and the recovery of the mortgaged property, it might still be a question whether that were not a liability which bound the inheritance, inasmuch as it was incurred by the Court of Wards as representing the whole estate, and with the bonâ fide object of protecting the whole estate. It does not seem, however, to their Lordships, to be necessary to rest their decision upon that ground, since the view taken in the able judgment of the High Court affords a more satisfactory ground upon which to place it, that ground being that the property had, in fact, been also attached in satisfaction of decrees for other debts for which the estate of the Rajah was beyond all question liable; and that although the sale was had under the attachment issued in the suit of the mortgagees, the property was in fact sold in satisfaction of all the decrees that had been

recovered affecting the property, the proceeds of the sale being paid in the usual way into the Collectorate, and there applied among the decree holders, some of whom most unquestionably had subsisting and valid claims against the estate of the Rajah.

Under these circumstances, their Lordships fully concur with the High Court in thinking that the Appellant has no substantial ground upon which he can impeach the long title acquired by the Respondent under the execution sale. It is, therefore, wholly unnecessary for their Lordships to consider whether the evidence supports the conclusion of the High Court upon the question whether Anund Moyee Dabea had abandoned the world before her death, or whether the Court of First Instance was correct in holding that that case had not been established.

Their Lordships must humbly advise Her Majesty to affirm the decree under appeal, and to dismiss this Appeal. The costs, of course, ought to follow the result.

