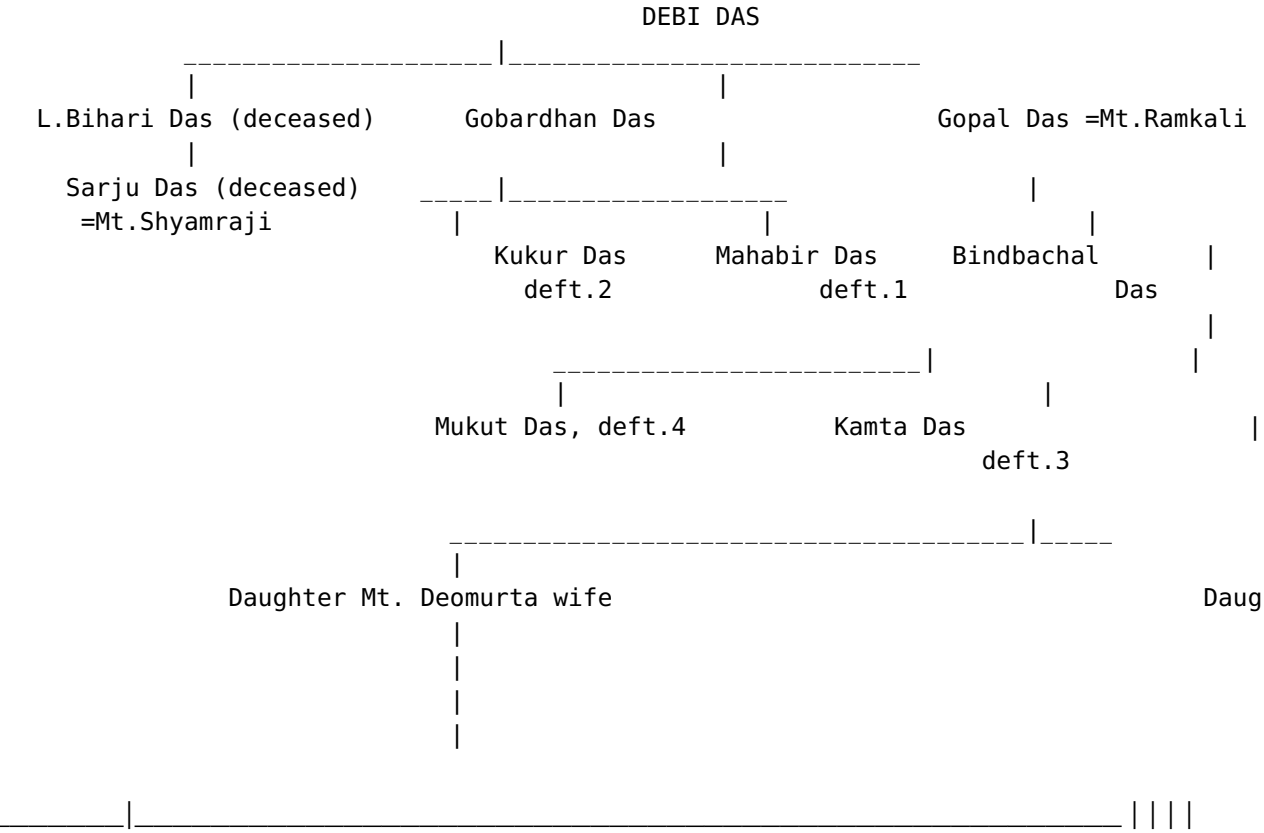
# Chanderjit Das And Ors. vs Debi Das And Ors. on 22 November, 1950

## Equivalent citations: AIR1951ALL522, AIR 1951 ALLAHABAD 522

JUDGMENT

Agarwala, J.

1. These three appeals arise out of a suit for possession over five annas four pies odd share in Mahal No. 2 Tappa Nai Karni of village Heoti, and three annas six pies two suls odd share in Tappa Khas of village Dewarwa in the district of Gorakhpur. The following pedigree will be of help in understanding the facts of the case.




2. One Gopal Das died in the year 1892 leaving a widow Ram Kali and two daughters Deomurta and Sheoraji, three nephews, Bindhyachal Das, father of Kamta Das and Mukut Das, defendants 3 and 4, Mahabir Das, defendant 1 and Kukur Das, defendant 2 and Mt. Shamraji, widow of Sarju Das, nephew o£ Gopal Das. The property in suit over which possession is sought along with other

property already an the possession of the plaintiffs, stood in the name of Gopal Das. On his death there was a dispute in mutation proceedings. There were four sets of claimants. Ram Kali wanted her name to he mutated on the property in her right as a widow on the allegation that the deceased was separate from his nephews. Bindhyachal Das, Mahabir Das and Kukur Das claimed the property as their own by right of survivorship on the allegation that Gopal Das was joint with them. Deomurta and Sheoraji claimed the property as daughters and Shyamraji claimed a share in it along with the nephews. There was a compromise dated 18-4-1893 amongst all the claimants. By this compromise 1/3rd of the zamindari property was given to Deomurta, another 1/3rd to Sheoraji and the remaining 1/3rd to the three nephews together, and 12 bighas of sir land of village Heoti was given to the widow for her maintenance with the provision that after her death that was also to devolve on the daughters and the nephews in the same proportion in which the other properties had been given. Shyamraji did not take any property. The parties entered into possession of the various portions of the properties in accordance with the terms of the compromise.

3. Deomurta died first about the year 1911 leaving the five plaintiffs and one Janak Raj Das deceased as her sons. Thereafter Ram Kali died about the year 1917. Then on 14-10-1937, Sheoraji, the second daughter, also died leaving one son Ram Rachha Das, defendant 9, and the five plaintiffs, the sons of Deomurta, Janak Raj Das having died in the meanwhile. Before Sheoraji died several transfers of the property had been made by Deomurta and Sheoraji. On 24-12-1893 Deomurta sold to two persons, Sarju and Salik, one anna five pies share in village Heoti for paying off the debts of Gopal Das. On 28-11-1914, Janak Raj Das, deceased, and Brij Raj Das, plaintiff 5, sons of Deomurta sold four pies and one suls share in village Heoti to Bindhyachal Das, Mahabir Das, defendant 1, and Kukur Das defendant 2, nephews of Gopal Das. On 24-4-1919 Sheoraji and her son Ram Rachha Das sold one anna nine pies and one suls share in villages Heoti and Dewarwa to Bindhyachal Das and Mahabir Das, nephews of Gopal Das.

4. The suit which has given rise to this appeal was filed in 1938 by plaintiffs 1 to 4, sons of Deomurta, on the allegations that Gopal Das was separate from his nephews and was the sole owner of the property that stood in his name, that the compromise was not binding upon the plaintiffs, that they were entitled to succeed along with Ram Rachha Das pro forma defendant 9 son of Sheoraji and Brij Raj Das, defendant 10 son of Deomurta, and that the various sale-deeds mentioned above were not binding on them. Later on Brij Raj Das defendant 10 was transferred to the array of plaintiffs.

5. The defence of the nephews and sons of one of the nephews was that Gopal Das died in a state of jointness with them, that on account of the disputes raised by Ram Kali, Sheoraji and Deomurta, there was a genuine family settlement dated 13-4-1893, which was binding on the plaintiffs, that under the agreement the daughters became separate owners of the properties and were succeeded by their sons to their respective shares and that the transfers made by the daughters and their sons could not be challenged and were made for legal necessity and for the benefit of the minor sons.

6. The defence of defendants 5 to 8, heirs of Salik and Sarju, was the same as that of the nephews. They further inter alia pleaded that the transfer made to them was binding upon the plaintiffs. They denied that the plaintiffs were the daughters' sons of Gopal Das.

7. The defence of Ram Rachha Das, defendant 9 was that the plaintiffs were not the sons of Deomurta and that they were sons of a co-wife of Deomurta, and that he was entitled to the 1/3rd share of Sheoraji.

8. The Court below found that the plaintiffs were the sons of Deomurta, that Gopal Das was joint with his nephews, that the family settlement was binding on the plaintiffs, that Sheoraji and Deomurta got widow's estate under the compromise with the result that after the death of Sheoraji all the sons of the two daughters inherited the estate equally, that the sale-deed executed by Deomurta on 24-12-1893 was for payment of debts of Gopal Das and was binding on the plaintiffs, that the sale-deed of 28-11-1914 by Janak Raj Das and Brij Raj Das was binding on Brij Raj Das plaintiff only and not binding on the other plaintiffs, in other words, was not binding with regard to 4/6th of the property, and that the sale-deed of 1919 executed by Sheoraji and Ram Rachha Das was binding with regard to the share of Ram Rachha Das alone and not binding with regard to the share of the plaintiffs. In the result the suit was decreed in favour of plaintiffs 1 to 4 for recovery of possession over 4/6th share in the old 4 pies 1 suls share of village Heoti, and was decreed in favour of plaintiffs 1 to 5 for possession over 5/6th share in one anna nine pies one suls of both the villages. The rest of the claim was dismissed.

9. Appeal No. 147 of 1940 is by the plaintiffs and on their behalf the following points have been urged before us : (1) That the finding that Gopal Das and his brothers were joint is erroneous. (2) That the family settlement is not binding upon them. (3) That the transfer made by Deomurta on 24-12-1893, even though for legal necessity, was not binding upon the plaintiffs because it was not made by both the daughters, Deomurta and Sheoraji.

10. The points urged in App. No. 209 of 1943-by Kukur Das, nephew of Gopal Das, and the sons of the other two nephews (Mahabir Das having died during the pendency of the suit) are : (1) That the daughters obtained absolute interest under the family settlement with the result that each daughter or her sons could transfer their shares of the property and that, therefore, the sale-deeds of 1914 and 1919 were valid to the full extent; that in the alternative, life estate and not a widow's estate in the property was created in favour of the daughters with the result that the remainder vested in the nephews because Gopal Das was joint with them. (2) That there was, at any rate, no survivorship among the daughters and that, therefore, each daughter was succeeded by her own sons and the transfers made by them would be valid. (3) That there was legal necessity for the sale-deed dated 24-4-1919 executed by Sheoraji and Ram Rachha Das and hence it was binding upon the plaintiffs.

11. In App. No. 421 of 1943 by Ram Rachha Das, one plea taken, besides those which have been taken in App. No. 209 of 1943, was that the plaintiffs were not the sons of Deomurta.

12. We may state at once that after going through the record we are satisfied that the plaintiffs and Brij Raj Das are the sons of Deomurta and that the finding of the Court below on this point is perfectly correct. This plea was not seriously pressed in arguments before us.

13. We are further satisfied that Gopal Das was separate from his brothers at the time of his death. On the point of separation, two documents, in our opinion, conclusively establish the case for the

plaintiffs. One of these documents is Ex. 1, settlement khewat of the year 1294F of village Dewarwa. In this document it is stated that Gopal Das, Gobardhan Das, father of Bindhyachal Das, Mahabir Das and Kukur Das, and Sarju Das son of Lal Behari Das, another brother of Gopal Das, are owners of khewat No. 1 in equal shares and in the remark column there is an entry to the effect that "all the three co-sharers are separate in mess. Sarju Das makes the collection of rents and renders the account of profits to other co-sharers."

The document was verified by all the three persons after it was read out to them word by word. With regard to this document the lower Court has stated that the words 'separate in mess' do not necessarily mean that they were separate in estate. This is quite true. But when it is stated that Sarju Das makes the collection of rents and renders the account of profits to the other co-sharers, it is clear that the parties were separate in estate also.

14. The other document is the khewat of village Heoti of the year 1294F. In this document, Gopal Das, Gobardhan Das and Sarju Das are shown as separate owners of 5 annas and four pies share. Their names and shares are mentioned separately. In the remarks column the following entries are made:

> "All the three co-sharers are separate. Collections are made together on behalf of all the three co-sharers and after allowing credit for the rent of the Sir and khudkasht land, they understand their accounts of the amount of profit according to their shares entered in the khewat."

This document was also verified and signed by all the three persons. In face of these entries no doubt remains that Gopal Das was separate from his brothers.

15. Mr. Gopal Behari on behalf of the sons of the nephews has urged that these entries in the revenue papers are no evidence of separation. He has relied upon the case of Nageshar Bux Singh v. Ganesha, 42 ALL. 368 : (A. I. R. (7) 1920 P. C. 46) and Mt. Bhagwani Kunwar v. Mohan Singh, A. I. R. (12) 1925 P. C. 132 : (88 I. C. 385).

16. It is true that an entry in the revenue papers that certain persons are owners "in equal shares" is hardly any evidence of separation of those persons. But here we are dealing with entries of a different kind, entries in which the co-owners of an estate specifically make a statement that they are separate and render account of profits to the different owners according to their shares. No better evidence of the severance in status of the co-owners could be had. In none of the cases cited before us, this kind of evidence was considered. The rulings, therefore, relied upon by Mr. Gopal Behari are of no assistance to him.

17. As regards the family settlement of 1893, Mr. Kanhaiya Lal Misra's attack is three-fold--(a) that there was no bona fide dispute at the time of the settlement between the parties, and the agreement was a design to partition the estate between the widows, the next reversioners, and the remoter reversioners, (b) that the agreement was bad as it contravened the provisions of Section 6(a), T. P. Act and (c) that the daughters obtained an absolute interest in the estate and could not represent the

reversioners.

18. The settlement was in these terms:

> "We, Mt. Ram Kali, wife of Gopal Das deceased, Bindhyachal Das, Mahabir Das for self and as guardian of his own brother Kukur Das minor, sons of Gobardhan Das, Mt. Sheoraji and Mt. Deomurta do declare as follows:
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> "Gopal Das, husband of me Mt. Ram Kali Patwaran, was a co-sharer of a 5 anna 4 pie share in mauza Heoti aforesaid and a 5 anna 4 pie share in mauza Dewarwa Tappa and Pargana aforesaid and was the Arazidar (owner) of 9 bighas, 19 biswas and 13 biswansis of land. Six months ago Gopal Das aforesaid died a natural death, leaving behind him two daughters. I Mt. Ram Kali Patwaran, as his heir, filed an application in the Tahsil of Maharajganj for mutation of names to be effected in my favour, in respect of the entire shares and the land in the aforesaid villages held by my husband. In the aforesaid case Bindhyachal Das and Mahabir Das for self and as guardian of his own brother Kukur Das minor are objectors as own nephews. Mt. Shyam Raji wife of Sarju Das deceased widow of cousin who is issueless is a claimant by right of inheritance from the joint family, and Mt. Shiva Raji wife of Mangal Das and Mt. Deomurta wile of Shiva Saran Das daughters of Gopal Das are claimants by right of their being daughters. We all the executants want that the matter should herein be decided by way of foresightedness and in order to remove dispute and future litigation. We the executants have while in sound state of body and mind in enjoyment of our shares and without any force or coercion of anybody do herein covenant and give in writing as follows: I, Mt. Shyam Raji, wife of Sarju Das deceased has got no right in respect of any share in the estate of Gopal Das aforesaid, nor shall I bring any claim in future and in the aforesaid villages we Bindhyachal Das and Mahabir Das for self and as guardian of my own brother Kukur Das minor are co-sharers to the extent of 1/3rd share and I, Shiva Raji Patwaran wife of Shiva Mangal Das to the extent of 1/3rd share and I Mt. Deo Murta Patwaran wife of Shiva Saran Das to the extent of 1/3rd share, we shall get (our shares) accordingly along with all the rights and interests appertaining to the zamindari property. We have according to our respective shares, already taken the Sir and Khudkasht land situate in the aforesaid villages along with the cattle. There is no longer any dispute with respect to this point. I, Mt. Bam Kali Patwaran, have for my livelihood, taken 12 bighas of Sir land one tiled house bounded as set forth below situate in Mauza Heoti, tappa and pargana aforesaid and 4 bullocks and declare myself to have no concern with the remaining right and share. Till my death I shall remain in possession and occupation of the Sir land by cultivating the same and of the aforesaid house by taking up my residence therein. After my death Bindhachal and Mahabir Das for self and as guardian of his own brother Kukur Das shall be the heirs and owners of my Sir land, house mentioned above and all my assets to the extent of 1/3rd share, Mt. Shiva Raji wife of Mangal Das to the extent of 1/3rd share and Mt. Deo Murta wife of Shiva Saran Das to the extent of 1/3rd share. The obsequies of mine shall be performed by

> these people. They should perform the obsequies according to the enjoinments of the Hindu Religion. All the three claimants should bear the entire expenses according to their respective shares and should also pay up the debt found due to the creditors of Gopal Das deceased husband of me Mt. Ram Kali Patwaran after deductions and remissions have been made. I, Mt. Ram Kali Patwaran, have got no concern therewith. As regards the amount of debt which is found due to the creditors of Gopal Das, we Bindhachal Das and Mahabir Das in my own right and as guardian of my own brother Kukur Das minor shall pay to the extent of 1/3rd, I, Mt. Shiva Raji, wife of Mangal Das to the extent of 1/3rd, and I, Mt. Deo Murta, wife of Sheo Saran Das to the extent of 1/3rd share and they shall have no objection thereto. The party who is liable to pay the amount due by him shall pay it in cash or by executing a separate document in favour of the creditors within one year of the execution of this agreement. It any party does not, for any reason, pay the amount due to the creditors, within 1 year, the party who pays the amount due by the other party shall be entitled to get it from him i. e. the party who is in default."

Now the law in respect of family settlements may be stated as follows. The requirements of a valid family settlement differ accordingly as it is sought to bind the actual parties to the settlement or strangers to it. The parties to a family settlement are bound by it if there is some consideration apart from natural love and affection. This consideration need not consist in the existence of a family dispute or of a doubtful claim based on the allegation of an antecedent title. It is enough if the arrangement is for the benefit of the family or for the maintenance of peace and harmony and the avoidance of future discord or for the preservation of the property. In such a case the Courts will not scan too minutely the quantum of the consideration. See Mt. Dasodia v. Gaya Prasad, A. I. R. (30) 1943 ALL. 101: (I. L. R. (1943) ALL. 411 F.B.) ; Helan Dasi v. Durga Das Mundal, 4 C. L. J. 323 and Satya Kumar v. Satya Kripal, 10 C. L. J. 503 : 3 I. C. 247.

19. In this respect the Indian law follows the English law, as laid down in the well known case of Williams v. Williams, (1867) 2 Ch. A. 294: (36 L. J. Ch. 419) and as summarised in Halsbury's Law of England, Hailsham Edn., Vol. 15, p. 4.

20. But when it is sought to bind the reversioners by a family arrangement entered into by a widow or other reversioner holding a limited interest in the estate, the matter stands on a different footing. As stated in the case of Dasodia v. Gaya Prasad, (A. I. R. (30) 1943 ALL. 101 : I. L. R. (1943) ALL. 411 F. B.) referred to above, by Dar J.

> "In order to make a family arrangement made by a Hindu female who holds a Hindu widow's interest in the property binding on the reversioners who are not parties to the arrangement, it will not be sufficient to find that the female received some consideration other than love and affection to uphold the transaction. Questions will arise with regard to the female's power to represent the estate and to bind the reversioners and in such a case the questions whether there was a bona fide dispute and whether there were doubtful claims and above all whether it was a claim on the basis of an antecedent title might be vital matters."

21. An arrangement, which is not a settlement of a bona fide dispute in respect of the estate, or, in other words, of a dispute with regard to an antecedent title to the estate, or which is not for the benefit of the estate as a whole including the reversioners, cannot bind the reversioners. See Khunni Lal v. Gobind Krishna Narain, 33 ALL. 356: (38 I. A. 87) and Ram Sumaran Pd. v. Mt. Shyam Kumari, A.I.R. (9) 1922 P. C. 356 : (1 Pat. 741 P. C.).

22. The plaintiffs being no parties to the settlement, the first set of cases referred to above, namely, the Full Bench decision in Dasodia v. Gaya Prasad, (A.I.R. (30) 1943 ALL. 101 : I. L. R. (1943) ALL. 411 F.B.) and others do not apply to the present case, and the lower Court was wrong in relying upon them. In the present case, it must be shown that there was a bona fide dispute with regard to an antecedent title to the estate, or that the settlement was for the benefit of the estate as a whole including the reversioners. While considering this question one should not be guided by the fact that on the facts now proved after full investigation, one party to the claim had no title to the property at all. We have to take into consideration the circumstances as they existed when the family settlement was entered into.

23. The situation in the mutation proceedings after Gopal Das's death was that the nephews of Gopal Das had put up a claim that Gopal Das was joint with them. There was no registered partition deed. The estate had not been divided by metes and bounds. There was no proof that the estate was acquired by Gopal Das separately. No doubt, there was a statement in the settlement papers of Gopal Das and his brothers that they were separate. It might or might not have been known to the widows and the daughters. Even if it was known to them, they might have thought that the Court might not consider this evidence to be conclusive, that there might be some other evidence with the nephews showing that the brother continued to live jointly with the other members of the family, or that the statement had been made with some ulterior purpose and was not true in fact. Besides, there was cost of litigation to be incurred and uncertainty of the result of litigation was to be taken into consideration. There is no evidence of collusion between the nephews, the widow and the daughters.

24. It cannot be said that the settlement was a device to divide the estate between the widows, the next reversioner, and the remoter reversioner. No doubt, the estate was divided into three portions, two portions going to two daughters and one portion going to the nephews, the widow retaining only a life estate in a small portion of the property for her maintenance. But this does not mean that this was done as a mere device to divide the estate mala fide with the ulterior object of dividing the estate and not with a genuine desire of settling the dispute which had cropped up in the mutation proceedings.

25. In the circumstances, it must be held that there was a bona fide dispute in respect of an antecedent title to the estate and the widow and the daughters were competent to settle it by the compromise.

26. The agreement did not contravene Section 6(a), T. P. Act, because it did not purport to transfer "the chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature."

A compromise would contravene Section 6(a) only when the object thereof is to deal with a spes successionis. When an agreement decides an antecedent title to the estate, in the hands of the widow, the compromise is valid even though indirectly it affects the rights of a reversioner, as was held in a Full Bench decision of this Court : see Uma Shankar v. Ram Charan, A.I.R. (26) 1939 ALL. 689 : (I.L.R. (1939) ALL. 950 F.B.), where it was observed :

> "The transfer or relinquishment of prospective right as part of a family settlement or of a compromise by rival claimants to property stands in an entirely different position from the bare transfer of spes successionis."

27. But if the daughters got an absolute title under the settlement, it cannot be said that the settlement is binding on the plaintiffs, the actual reversioners, because in that case the daughters could not be said to have acted in a representative capacity and the compromise could not be said to be a genuine settlement of a doubtful claim. We have, therefore, to see what title the daughters obtained under the settlement.

28. It will be observed that the daughters had put forward their claim not as absolute owners to the estate in their own right but as daughters of Gopal Das deceased. Therefore, they were claiming no more than a widow's estate as reversioners. It is quite clear that the arrangement was that 1/3rd of the estate should be declared to belong to the nephews and 2/3rd to Gopal Das and his heirs and the widow was to surrender 2/3rd of the estate in favour of the next reversioners, the daughters, while retaining for herself some land for her life-time for her maintenance. There is no reason to think that in such an arrangement the daughters were considered to have obtained an absolute title to the exclusion of their sons. The nature of the estate given to the daughters must be construed in the light of the claim put forward by them; and since their claim was with regard to a widow's estate, it must be presumed that they were given a widow's estate and no more. This is also consonant with the known ideas of Hindus as to the nature of the estate that daughters take in their father's estate. The mere fact that the word 'owner' was used with regard to them does not conclusively establish that an absolute estate was intended to be given to them, because the word 'owner' is not inconsistent with a widow's estate. It is true that, in the absence of anything to the contrary, the word 'owner' is generally construed as referring to an absolute estate; but in the present case a contrary intention is quite apparent and, as such, the word 'owner' must be construed in the sense of a widow's estate. The compromise was, therefore, not entered into by the daughters in any capacity other than that of representatives of the estate. It is, therefore, binding on the actual reversioners.

29. It was urged by Mr. Gopal Behari on behalf of the sons of the nephews that if the daughters did not obtain an absolute estate, they had, at any rate, obtained a life estate as distinguished from a widow's estate in which case, after their death, the property would revert to the nephews. There is nothing in the agreement to show that the daughters were given a life estate as apart from a widow's estate. Moreover, this argument would have been of help to the nephews, if Gopal Das were held to have been joint. As he is held to be separate, the daughters' sons were nearer heirs to the nephews, and would take the estate in any event.

30. Another argument of Mr. Gopal Behari may be noticed at this place. According to him, the daughters clearly gave up their right of survivorship as amongst themselves and completely divided the estate so that upon their death their respective sons inherited the property in absolute right and the succession to the whole estate did not open out upon the death of the last daughter. No doubt, it is possible for daughters or other limited owners, who take, as joint owners a widow's estate in property and who succeed to each other by right of survivorship, to agree to divide the estate and to give up the right of survivorship as amongst themselves. But this cannot be done so as to affect the right of the reversioners.

31. In Balu Bai v. Tanu Bai, A. I. R. (1) 1914 Nag. 21 : (10 N. L. E. 51), Hon. Stanyon A. C. J., was of opinion that "several sisters who have jointly inherited the estate of their father, can by express agreement among themselves, effect such a partition of their interests, as to destroy their rights of survivorship inter se, while leaving the reversion still unaffected."

In Hazari Lal v. Ch. Halku Lal, A.I.R. (35) 1948 Nag. 236 : (I. L. R. (1948) Nag. 662), it was held that "two or more co-widows of a Hindu governed by the Banaras School of the Mitakshara, who have inherited the property of their husband, are entitled, by agreement among themselves, to make an absolute partition of their joint estate so as to extinguish the right of survivorship inter se."

It was, however, pointed out that "the fact that co-widows at the time of partition between them have entered into an agreement to relinquish their rights of survivorship cannot affect the rights of the ultimate reversioners, because two or more widows cannot, by any agreement between them, affect the rights of the ultimate reversioners."

Therefore, even if there was an agreement between the daughters to destroy the right of survivorship inter se amongst them, it cannot affect the rights of the plaintiffs.

32. The next question that falls to be determined is whether the transfer dated 24-12-1893, by one of the daughters, namely, Deomurta, even though for legal necessity, can bind the actual reversioners having regard to the fact that the transfer was not made by both the daughters. It is conceded that the transfer was made for payment of debts of Gopal Das and was, therefore, for legal necessity.

33. It is well settled that two widows or two daughters succeeding to the husband's or father's estate succeed as joint tenants with a right of survivorship. They are entitled to obtain a partition of separate portions of the property so that each may enjoy her equal share of the income accruing therefrom. Each can deal as she pleases with her own life interest, but she cannot alienate any part of the corpus of the estate by gift or will so as to prejudice the rights of the survivor or a future reversioner. If they act together they can burden the reversion with any debts contracted owing to legal necessity, but one of them acting without the authority of the other, cannot prejudice the right of survivorship by burdening or alienating any part of the estate. The mere fact of partition between the two, while it gives each a right to the fruits of the separate estate assigned to her, does not imply a right to prejudice the claim of the survivor to enjoy the full fruits of the property during her lifetime. See Bhugwan Deen Deobey v. Myna Baee, 11 M. I. A. 487 : (9 W. R. 23 P. C.); Gajapati Radhamani v. Pushpati Alakarajeswari, 16 Mad. 1 : (19 I. A. 184 P.C.) and Gauri Nath v. Mt. Gaya

Kuar, 26 A. L. J. 1174 : (A. I. R. (15) 1928 P. C. 251).

34. The matter was considered by a Bench of this Court in Jai Narain Singh v. Munna Lal, 26 A. L. J. 268 : 50 ALL. 489 : (A. I. R. (15) 1928 ALL. 92). In that case two widows had separated their shares for conveniently enjoying the estate left by their husband. It was found that one of the widows had made an alienation for legal necessity. The other widow did not object to the alienation during her life time. After her death the reversioners questioned the alienation. A Bench of this Court held that the alienation was binding for two reasons. First, that in the circumstances of the case the other widow must be deemed to have consented to the alienation, and second, that even if there was no consent, an alienation made by one of them for legal necessity though not binding on the other widow was binding upon the reversioner. In this view of the law, the Bench differed from the view expressed in a Madras case, Appalasuri v. Kannamma, A.I.R. (13) 1926 Mad. 6 : (90 I. C. 881).

35. Jai Narain Singe's case, (26 A.L.J. 268: 50 ALL. 489 : A.I.R. (15) 1928 ALL. 92) was considered by the Privy Council in Gauri Nath Kakaji v. Gaya Kuar, 26 A. L. J. 1174 : (A.I.R. (15) 1928 P. C. 251). In Gauri Nath Kakaji's case, (26 A. L. J. 1174 : A. I. R. (15) 1928 P. C. 251), the alienation by one widow for legal necessity was, however, questioned by the other widow and it was not the case of the reversioner questioning the alienation. Their Lordships observed with regard to Jai Narain Singh's case, (26 A. L. J. 268: 50 ALL. 489: A.I.R. (15) 1928 ALL. 92), that in that case, "there was undoubtedly an expression of opinion by the learned Judges of the High Court of Allahabad that where two Hindu widows have separated for purposes of conveniently enjoying the estate left by the husband if one of them alienates a portion of the estate in her possession under the pressure of legal necessity, the reversioner is bound by such alienation. This opinion was not necessary for the decision of the case for the Court had already held that the widow who had not executed the mortgage deeds challenged, was nevertheless a consenting party to this alienation. It may be noted that the case arose not between the survivor of the widows and the mortgagee but between the mortgagee and the reversioner after the death of both widows. The opinion of the High Court was therefore obiter and it is not consistent with the judgment of the Privy Council in Gajapati Radhamani v. Pushpati Alakarajeswari, 19 I. A. 184 : (16 Mad. 1 P. C.)."

36. It may be observed that the Privy Council distinguished Jai Narain Singh's case, (26 A. L. J. 268 : 50 ALL. 489 : A. I. R. (15) 1928 ALL. 92), by saying that the dispute in that case was not between the surviving widow and the transferee but between the transferee and the reversioners after the death of both widows, and that the observations were obiter. The question in the present case also arises between the transferee and the reversioners after the death of both daughters. The observations of the Privy Council do not, therefore, strictly speaking, apply to the facts of the present case.

37. The case of Krishna Pratap Singh v. Smt. Kunwar Prembada Kunwar, A. I. R. (29) 1942 ALL. 365 : (I. L. R. (1942) ADL. 708), was also a case in which one widow had challenged the transfer made by the other widow.

38. It is, however, not necessary for us to decide the point whether an alienation by one daughter without the consent of the other daughter, for legal necessity is binding on the reversioner, because,

in our opinion, there was consent of the other daughter to the alienation in question.

39. Under the family settlement of 1893 both the daughters divided the estate inter se between them and authorised each other to pay the debts of Gopal Das to the extent of their shares. This authorisation is tantamount to an antecedent consent to a transfer made by one of them for the aforesaid purpose. It is not necessary that there should be express consent for the particular transaction which is impeached. There may also be a general consent for transfers to be made in future for a particular purpose. In our opinion, Deomurta must be considered to have had the authority of Sheoraji for making the alienation in dispute.

40. This brings us to the last point in the case, namely, whether the sale-deed executed by Sheoraji and Ram Rachha Das on 24-4-1919 was for legal necessity. It is urged that there is a presumption of the existence of legal necessity by virtue of the fact that along with the daughter Sheoraji the next reversioners were consenting parties to the alienation. The only reversioner who was a consenting party was Ram Rachha Das. There were other major reversioners also, namely, Brij Raj Das and Janak Raj Das whose consent was not taken to the alienation. In the circumstances, the consent of one of the reversioners does not raise the presumption of the existence of legal necessity.

41. It was next urged that the sale was effected in order to purchase another property nearer home which could be more easily managed than the property which was sold and that, therefore, the transaction was for the benefit of the family.

42. It appears that Ram Rachha Das had purchased some property near his residential house in Mauza Rudrapur and required money for payment of the sale consideration. The sale-deed in question was executed for the purpose of raising money to pay off the vendor. It was nowhere stated in the sale-deed that the property which was sold under the sale-deed was inconveniently situated or could not be properly managed and that it was being sold for that reason. The property that was purchased by Ram Rachha Das was for his own personal benefit and was not intended to be made part of the estate. In the circumstances, it cannot be said that the sale was for the benefit of the estate.

43. This disposes of all the points raised in the three appeals before us.

44. The result, therefore, is that there is no FORCE in any of the appeals and we dismiss them with costs.