CALCUTTA HIGH COURT

Raja Janaki Nath Roy

Vs

Jyotish Chandra Acharya

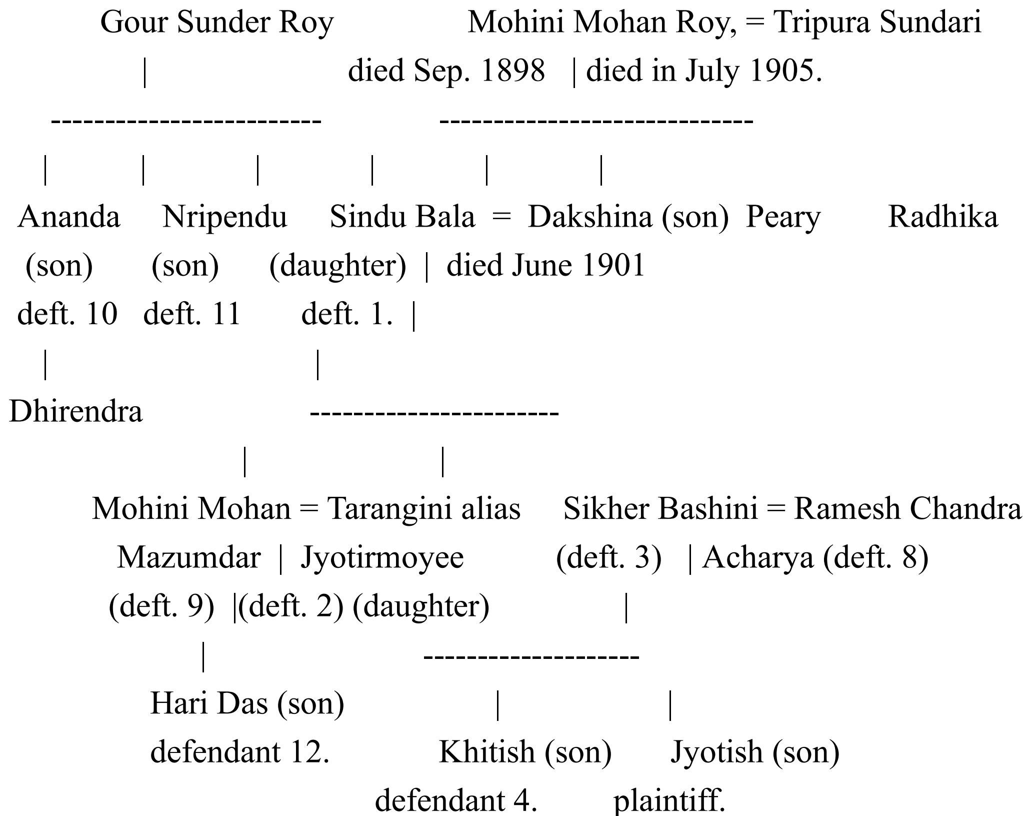
(Nasim Ali ,J.)

21.08.1940

JUDGMENT

Nasim Ali, J.

1. This appeal arises out of a declaratory suit by a Hindu reversioner. The property in dispute belonged to Baboo Mohini Mohan Roy who was vakil of this Court. The following genealogy willshow the relationship of the plaintiff to the defendants other than defendants 5, 6 and 7.



2. Defendant 2, defendant 14 and defendant 8 died after the institution of the suit.Defendant 2 is represented by her husband and son and defendant 10 by his son Dhirendra. On 13th August 1905, defendants 1 to 3 executed a deed (Ex. l) in favour of defendant 4, then a minor, surrendering and relinquishing their right to the properties which Dakshina inherited from his father. On 16th August 1918, defendant 8 as guardian of defendant 4 mortgaged the disputed properties to defendant 5 and the father of defendants 6 and 7. On 18th March 1930 the mortgagees purchased the mortgaged properties in execution of a decree obtained on the basis of the mortgage. This sale was confirmed on 29th February 1932. On 25th May 1932, plaintiff raised the present suit. His case briefly stated is this : The deed of surrender executed by defendants 1 to 3 in favour of defendant 4 is invalid under the Hindu law. The auction sale at which defendants 5 to 7 have purchased the disputed properties therefore cannot affect the right of the reversionary heirs of Dakshina. Defendant 1 made an absolute gift of Rs. 1,20,000 to defendants 10 and 11, from the estate of Dakshina. This gift is not binding on the reversionary heirs of Dakshina.

3. He accordingly prayed for a declaration:

(a) that the deed of surrender and all acts done on the strength of the said deed by defendants 1 to 4 and 8 are not binding against the reversionary heirs of Dakshina;

(b) that the reversionary heirs of Dakshina are entitled to get back from defendants 10 and 11, Rs. 1,20,000. Defendants 1 to 3 and 12 did not appear in the suit. Defendants 4 and 8 filed written statement but did not contest the suit during trial. Defendants 5 to 7 filed a joint written statement. Their case is that the suit is barred by limitation and that the surrender by defendants 1 to 3 in favour of defendant 4 is valid in law and that they have acquired absolute interest in the disputed properties on the basis of their purchase at the mortgage sale. Defendants 10 and 11 also filed a joint written statement. Their case is that Rs. 1,20,000,. was paid to them by defendant 1 not out of the corpus of Dakshina's estate but out of the income accumulated after the death of Dakshina.

4. The material issues raised in suit are these:

1. Is the suit barred by limitation?

2. Is the alleged deed of surrender and relinquishment dated 12th August 1905 by defendants 1 to 3 of their respective life interest in favour of defendant 4 a valid and bona fide deed? Did the entire estate of late Babu Dakhina Mohan Roy vest in defendant 4 by the alleged surrender? Is

the alleged relinquishment and surrender binding upon the plaintiff?

3. Did the sum of Rs. 1,20,000 claimed appertain to the corpus of the estate of late Babu Dakhina Mohan Roy or was it at the absolute disposal of defendant i?

5. The trial Judge has answered all the three issues in favour of the plaintiff and has decreed the suit. Hence this appeal by the defendants 5 to 7. The dispute in this appeal between Dhirendra (son of defendant 10) and the plaintiff has been settled out of Court. The points for determination in this appeal are: (1) Whether the suit is barred by limitation. (2) Whether the surrender by defendants 1 to 3 in favour of defendant 4 is valid and binding on all the reversionary heirs of Dakshina.

6. The first point. The deed of surrender was executed on 13th August 1905. Plaintiff was born thereafter. The present suit was instituted on 25th May 1932. Plaintiff's case is that he was born in 1318 B.S. (1911). The case of the appellants' is that he was born in 1908. P. W. 2 and P. W. 3 support the plaintiff's case. P. W. 2 was an officer under plaintiff's father from 1312 B.S. to 1335 B.S. while the other witness served under him from 1309 B.S. to 1342 B.S. P. W. 2 says that the plaintiff was born in 1318 B.S. P. W. 3 says that defendant 4 was 1 1/2 or 2 years old when he entered service and that plaintiff was born after he entered service. He also says that the difference in age between defendant 4 and the plaintiff is 10 or 11 years. It is clear from the evidence in this case that defendant 4 was born in Agrahayan 1307 B.S. The evidence of P. W. 3, therefore, materially corroborates the evidence of P. W. 2. In support of their case the appellants rely on the statement in the school register about the age of the plaintiff. There is no evidence to show on what materials the entry in the register about the age of the plaintiff was made.

7. Defendant 11 stated in his evidence that plaintiff was born in 1313 B.S. The trial Judge has believed the evidence of P. W. 2 and P. W. 3. The school register has not much evidentiary value. D. W. 11 is vitally interested in the result of this litigation. In view of these facts and circumstances I agree with the subordinate Judge that plaintiff was born in 1318 B.S. It is not disputed in this case that on this finding the plaintiff's suit is within time. I. therefore hold that the suit is not barred by limitation.

8. Second point.-The portion of the deed of surrender (ex. l) which is material for the purposes of this appeal is as follows:

First party - Khitish Chandra Acharyya Chowdhury minor represented by his certificated guardian and father Rames Chandra Acharyya. Second party-Sindu Bala Debi. Third party - Jyotir Moyee Debi. Fourth party-Sikhar Basini Debi.

Annoda Mohan Roy and Peary Mohan Roy made an application on 25th July 1901, in the original side of Hon'ble High Court for obtaining the probate of the will which was a forged one, on the allegation that it was executed by late Dakshina Mohan Roy on 31st May 1901 .... On 10th March 1903, the said will was declared to be a forged one and the said probate case was finally dismissed ....

Radhika Mohan Roy .... produced another will which was a forged one on the allegation that it was executed (by Dakshina Mohan Roy) on 2nd May 1901 and made an application on the original side of the Hon'ble High Court on 19th June 1901 for obtaining probate of the same. In that proceeding .... Sindu Bala filed objection. . . . Considering and knowing that the prosecution of the suit would entail unnecessary expenditure, waste of time and harassment and that even in case of success in the case all the expenses incurred and compensation money would not be recoverable and with the object of doing good and benefit to the reversioners to the estate of late Dakshina Mohan Roy .... the said Radhika Mohan Roy and the second party Sindu Bala Debi both jointly executed a mortgage bond and agreement dated 7th Chaitra 1310 B.S...As consideration for the said deed Sindu Bala Debi promised to pay Radhika Mohan Roy Rs. 50,000 amicably and out of that she paid to him Rs. 5000 in cash and with regard to the balance of Rs. 45,000 she executed a kistibandi mortgage bond in favour of the said Radhika Mohan Roy. In accordance with the said agreement and the terms of the said deed the aforesaid Radhika Mohan Roy did not appear in the last mentioned probate case which was dismissed on 22nd March 1904.

The late Dakshina Mohan Roy left a heavy amount of debts at the time of his death and after his death the second party Sindhu Bala Debi has had to contract a loan of a large sum to carry on litigations for the protection and benefit of the estate left by him especially in order to carry on the first mentioned probate case brought by Annoda Mohan Roy and Peary Mohan Roy to its last stage and in connexion with the carrying out of the last mentioned probate case brought by Radhika Mohan Roy up to its present stage. There is also some money duo to the attorneys, etc., also in connexion with the aforesaid two cases and other cases relating to the estate of the late Dakshina Mohan Roy. Loans having been contracted and there having been debts for the protection and benefit of the estate and the amounts of all those loans and debts having been spent for the purposes of and for the benefit of the estate, it (the estate) is liable for the said debts and loans and they are binding against the estate.

I, second party, Sindhu Bala Devi, am a Hindu widow. To perform religious acts etc., is the principal vow of my life; specially I am a pardanashin lady and remain in the inner apartment of the house. I have not sufficient experience and power to manage the properties. Under these circumstances it is very difficult for me to manage and preserve the estate by paying the

following via., the balance of what has been left out of the debts, etc. contracted by my husband after payment of portion thereof .... and all the debts etc., contracted by me for the purposes and requirements of the estate .... and besides the above dues of the attorney's etc., also for the period they worked for the estate and other debts of the estate of which the amount could not be ascertained .... . With regard to the sahom allotted to my share in the partition suit .... by the said Peary Mohan Roy the sadar revenue thereof is so excessive and the collections thereof are so inconvenient and expensive .... it will be very difficult, rather impossible for me to preserve the estate ....

My two daughters viz., the third party Srimaty Tarangini Devi and the fourth party Srimaty Sikhor Basini Debi, who will be heirs to the estate left by my husband after my death, will also obtain the same in life interest only. Even if I relinquish my life interest in their favour and place my husband's estate in their hands there is no chance that they would properly manage the estate of my husband and repay the debts etc., and would protect the estate properly for (the benefit of) their successors who would be entitled to the same in absolute right. I have no son and as far as I know, I have no power to take a son in adoption ....

For the aforesaid reasons I have considered it to be beneficial to me in this life as well as in after life if I and my two daughters, the third and fourth parties cause the absolute right in the estate left by my husband to vest in you from the present time by jointly conferring upon you whatever right, title and interest we have and may have to the same and by making gift of the same to you and by relinquishing the same in your favour absolutely and I think that to be necessary.

We, viz., I, Tarangini Debi, the third party and I, Sikhar Basini Debi the fourth party, have at present no rights of possession and enjoyment in respect of the estate left by our father. We shall have only life interest to the said estate on the death of our mother the second party. We are purdanashin ladies and inmates of the seraglio. We have no properties of our own. We have no experience whatever about worldly affairs. We have also no desire to enjoy the properties. For all these reasons and under the aforesaid circumstances if the estate remains in the hands of my mother, there is no chance of our making any arrangement or rendering any assistance in the matter of protection of the estate and in the works of management and administration etc., thereof and even if the said estate come to our hands it will be difficult for us to manage and protect the said estate. At present you, the first party, are the only reversionary heir to the estate in absolute right alive. If we jointly and in agreement with our mother the second party confer upon you and relinquish in your favour whatever right, title and interest we have to the said estate, you being entitled to the same wholly and in absolute right shall be able to protect it. There seems to be no other good arrangement for protection of the estate except the above. If the estate is ruined, I, the third party, shall not have any chance of getting the benefit I have been

deriving on the basis of this document, and if any son be born of my womb or if I take a son in adoption then they will have no chance of obtaining the benefit which has been obtained for them. on the basis of this document. For all these reasons for the benefit of myself and my future son or adopted son and in order to prevent harm in future, after taking proper consideration under the circumstances, I have thought it proper to cause full and absolute right to accrue to you by conferring upon you my entire right, title and interest in the said estate and by relinquishing the same in your favour...

After careful consideration of all the circumstances of the estate, I have fixed Rs. 41,111 as mentioned in schedule Jha, as the consideration for conferring upon you and relinquishing in your favour whatever right, title and interest I have got to the said estate, and your father and other well-wishers on your behalf have admitted the said, consideration to be adequate. I have no right of enjoyment of the estate before the death of my mother the second party and the future affairs are uncertain in every way and I shall be entitled to the said consideration money from the very beginning and shall be competent to enjoy the interest in the said money from now without any opposition and loss even from now. If, out of the said consideration money, Rs. 11,111 be set apart for my own use and enjoyment and the balance of Rs. 30,000 be kept in the custody of my husband by making him trustee under a trust deed, the income derived therefrom also having remained in his custody will swell to a big sum and if a son be born to me in future or if I take a son in adoption the said son or adopted son on attaining majority will be entitled to receive the said money from the said trustee and will derive great benefit and profit thereby.

You the first party, are the only son born of the womb of me, Sikhar Basini Debi, fourth party.

I have regarded it as my duty to confer upon you and to relinquish in your favour whatever right, title and interest we have got and may get in future to the estate left by my father on acceptance of the monthly allowance mentioned in schedule (Ena). In accordance therewith I third party Tarangini Devi and I fourth party Sikhar Basini Debi have decided to join our mother the second party and to execute this deed of ekrar surrendering and relinquishing right in your favour.

As consideration for the above deeds and the consideration money mentioned therein, whatever right, title and interest I, the second party, Sindhu Bala Devi have or may acquire or which may accrue to me in future in...the self acquired properties and the personal properties of the late Dakshina Mohan Roy and all sorts of decrees and suits etc. relating to the estate left by the said late Dakshina Mohan Roy and the accumulated money and all sorts of dues etc. and all sorts of claims etc. and in the deed of agreement executed by the said Radhika Mohan Roy on 7th Chaitra, 1310 B.S. in the aforesaid manner, and whatever right, title and interest we, viz. I, the third party Tarangini Devi and I, the fourth party Sikhar Basini Devi have in respect of the

properties .... and in respect of the decrees and suits etc., relating to the estates left by our father and the accumulated money and all sorts of dues etc., and claims etc., and whatever right, title, and interest we have and may have and which will accrue to us and be enforceable after the death of our mother and whatever right, title and interest and possession we have and may acquire in connection with the said estate on the basis of the agreement dated 7th Chaitra 1310 B.S. executed by our paternal uncle Radhika Mohan Roy in favour of our mother the second party, we jointly and severally confer upon you by this document subject to the terms thereof hereinafter mentioned and relinquish the same in your favour.

Herein below are mentioned, item by item, all those terms and conditions under which the proparty mentioned in this deed are given away to you in relinquishment of right and interest therein on the basis of this deed:

(a) You, first party agree to pay me, second party, Sindhu Bala Debi Rs. 850 per month as Britti or monthly allowance during my life time out of the estate left by my husband on account of my religious acts and maintenance .... As security for payment of the said Britti or monthly allowance, the property No. 1, out of the properties mentioned in the schedule marked (Kha), which lies within District Nokhali and which is encumbered with the charge of Rs. 45,000 the unpaid money of the agreement dated 7th Chaitra 1310 B.S. executed by the said Radhika Mohan Roy in favour of myself, is encumbered with that charge. You shall not be competent to transfer the said property by sale etc., by ignoring the said Britti or monthly allowance, that is to say, without being subject to the charge thereof.

(b) My step-brother Srijukta Babu Ananda Chandra Roy and my full brother Srijukta Nripendra Chandra Roy have laboured hard and made great sacrifice. Especially if Srijukta Babu Ananda Chandra Roy had not rendered pecuniary help continually it would have been impossible for me to support my objection in the said will case. But for their efforts and care, the estate could not have been preserved so long. Although out of affection for me they did not demand proper remuneration from me yet if I do not make payment to them by way of compensation according to the circumstances of estate and according to my own consideration I shall be morally guilty. Therefore, I have decided to give them the sum of Rs. 1,20,000 by way of gift as compensation for the above. By this deed the right I had and have to enjoy and appropriate according to my pleasure the income of the estate left by my husband which is now in the hands of the administrator pendente lite, and the arrears of rent etc., have been entirely given away to you and with regard to that in consultation with your father Sriman Ramesh Chandra and your other well-wishers and with the approval and consent of them and the third and fourth parties it has been settled that as consideration for my making wholesale gift of the income and arrears of rent etc, which I am entitled to enjoy according to my pleasure by this deed and for my relinquishing the

same in your favour you shall give me Rupees 1,20,000 (one lac twenty thousand rupees) with right to exercise full ownership therein and to use and appropriate the same according to my pleasure and on that condition. Out of the said sum you paid Rs. 10,000 in cash on 19th Asharh and out of the balance of Rs. 1,10,000, you shall pay to me Rs. 20,000 within two months of the coming of this estate in your own possession from the administrator pendente lite. In default interest will run on the said sum of Rs. 20,000 at the rate of 1 per cent. per annum from that date.

(c) I, third party, Tarangini Debi having made a gift in your favour of the right and interest I have and shall have in future in the estate left by my father and having relinquished the same in your favour, as consideration for the same you have promised to pay me Rs. 41,111. Out of that you paid to me Rs. 5111 in cash on 10th Asharh 1312 B.S. and as regards the balance of Rs. 36,000 you shall pay the same according to the kistbandi mentioned in schedule (Jha) and having stipulated to pay interest on the defaulted kist at the rate of as. 8 per Rs. 100 per month in case you make default in payment of any kist, you execute an instalment mortgage bond in my favour ... by keeping in mortgage the properties of the schedules marked Ka, Kha, Ga and the properties of the items 1 and 2 of the schedule marked Gha as security for payment of the aforesaid sum. . . I shall get the said sums in absolute right with right to make all kinds of transfer thereof such as gift, sale, etc., and with right to possess and enjoy the same down to my sons, grandsons and other heirs and representatives in succession. . . After my death neither you nor any other person shall be entitled to claim the said money as heirs of Dakshina Mohan Roy under any circumstances ... I, third party, Tarangini Debi have no son. You are at present the sole reversionary heir to the estate left by my father in absolute right. Consequently, my mother the second party and myself the third party and my full sister the fourth party all having jointly made a gift of all our right title and interest in the said estate to you and having relinquished the same in your favour, you become owner thereof in indefeasible and absolute right.

(d) You, first party shall pay monthly allowance at the rate of Rs. 50 per month to me, third party, Tarangini Debi, during my life-time (after the death of her mother). In default of paying the monthly allowance month after month interest will run on the monthly allowance in arrear at the rate of Re. 1 per cent. per month. The liability of this monthly allowance shall become operative after the death of my mother.

(e) In consideration of my making a gift of and relinquishing in your favour whatever right and interest I, fourth party, Sikhar Basini, have at present and shall have in future in the estate left by my father you shall pay to me Rs. 100 per month as Britti or monthly allowance with right to enjoy the same down to my son, grandsons and other heirs in succession, but during the life-time of my mother, the second party, Sindhu Bala Debi, I shall get monthly allowance at the rate of Rs. 50 per month. After the death of my mother you shall pay monthly allowance at the full rate

of Rs. 100 in the aforesaid manner. ... In case of failure to pay the said two kinds of monthly allowance at the end of one month interest will run on the said monthly allowance in arrear at the rate of Re. 1 per cent. per month from the next month.

9. The contentions of the appellant with regard to Ex. 1 are two-fold : (1) that the transaction embodied in this deed amounts to surrender by a Hindu widow in favour of the second reversioner with the consent of the first reversioner. Such surrender is valid under Hindu law. The consent of the immediate female reversioner even if purchased for consideration specially when the estate is in danger and cannot be saved except by vesting it in a male reversioner does not vitiate the surrender. (2) Assuming that the transaction embodied in Ex. 1 can be justified only on the basis of double surrender i.e., first surrender by the widow in favour of the daughter and then surrender by the daughter in favour of the daughter's son, the transaction embodied in Ex. 1 binds the actual reversioners.

10. The first contention can be divided into two parts, viz : (a) the effect of the consent of the first reversioner on the transaction, (b) the effect of the payment of consideration for obtaining the consent of the first reversioner on the transaction. In support of the first part of the contention reliance was placed by the appellants on the following passage in the judgment of this Court in Protab Chunder Roy v. Srimati Joy Monee Dabee ('64) 1 WR 98:

We think that it admits of no reasonable doubt that under Hindu law a Hindu lady in possession can relinquish, and by relinquishing anticipate for the reversioners their period of succession; and if she does this in favour of second reversioners in the present instance with the consent of the first, then or afterwards expressed, the relinquishment is valid, and this, notwithstanding that it may be expressed in a form which, under some circumstances, might be open to question.

11. In that case, however, the consenting first reversioner was a male and not a female or limited owner as in the case before us. We were asked by the appellant to extend this rule to the facts of the present case as the rule stated in that case is in general terms. The first part of the rule is a rule of the Hindu law. By operation of this part the succession of the immediate reversioner is accelerated on the surrender by the widow. This acceleration does not depend upon the consent of the immediate reversioner. The second part of the rule states the effect of the consent of the immediate male reversioner on his accelerated interest accrued from the operation of the law of surrender by a Hindu limited owner. Where the immediate reversioner is a male, the accelerated interest vests in him absolutely and he can deal with it in any way he likes. He may make a gift of his interest. He can transfer it for consideration. If there is no consideration for the consent the consent may imply a gift. If there is consideration for such consent it may be a sale. Where however the immediate reversioner is a female and the accelerated interest is the interest of a

limited owner she can only deal with her limited interest. She cannot, by her dealing, affect the interest of the actual reversioners unless by her consent she effaces her own limited interest and thereby accelerates the absolute interest of the second male reversioner.

12. The second part of the rule in Protab Chunder Roy v. Srimati Joy Monee Dabee ('64) 1 WR 98 therefore cannot be extended to the consent of defendants 2 and 3 unless their consent amounted to an effacement of their life interest or surrender according to Hindu law as except an alienation for legal necessity. I am not aware of any other principle of Hindu law under which a limited owner can accelerate the absolute interest of the second male reversioner and thereby destroy the interest of actual reversioners. In support of the second part of the first contention reliance was placed by the appellants on the following observations of Sadasiva Ayyar J., in Chinnaswami Pillai v. Appaswami Pillai ('19) 6 AIR 1919 Mad 865 at page 29 :' The act of a daughter who being next heir, surrenders the whole estate, vests the absolute inheritance in the next male heir even if she received consideration for her surrender of the full enjoyment of the property during her life-time.

13. These observations however must be read along with the facts of that case. In that case the consideration for the surrender by the daughter was maintenance of the daughter and such consideration does not invalidate surrender by a Hindu limited owner under the Hindu law. The contention of the appellants however is that the relinquishment by defendants 2 and 3 even if it was for consideration other than maintenance cannot invalidate the relinquishment and prevent the destruction of the rights of the actual reversioners as the spirit of the Hindu law is, inasmuch as it is a meritorious act on the part of a Hindu widow to preserve the estate of her husband for the spiritual benefit of her husband and that if the estate is in such danger that it cannot be saved except by vesting it in a male reversioner the consent of the intermediate female reversioners can be purchased for consideration other than their reasonable maintenance. No authority was cited before us in support of this contention excepting the observations of Sadashiva Ayyar J., quoted above. Assuming that it is the duty of a Hindu widow to save the estate of her husband the imposition of the burden by Ex. 1 on the estate left by Dakshina already over-burdened with liabilities was not a step leading to the preservation of the estate.

14. I am therefore unable to give effect to the first contention. The second contention raises two points : (1) Whether the surrender by the widow is valid under Hindu law. (2) Whether the surrender by the daughters is valid under Hindu law. The basis of the doctrine of surrender by a Hindu widow is the effacement of the widow's interest and not the ex facie transfer by which such effacement is brought about. The result merely is that the next heir of her husband steps into the succession in the widow's place. There is no difference between surrender to a daughter and surrender to the nearest male reversioner : Sitanna v. Viranna . The voluntary self-effacement is

sometimes referred to as a surrender, sometimes as a relinquishment or abandonment of her rights. It may be effected by any process having that effect provided that there is a bona fide and total renunciation of the widow's right to hold the property: Bhagwant Koer v. Mt. Dhanuk Dhari ('19) 6 AIR 1919 PC 75 at pages 270-271. The surrender cannot be considered bona fide if the arrangement is for dividing the estate with the reversioner: RadhaRani v. Srimati Brindarani . Seasonable provision for the maintenance of the widow, regard being had to the position in life of her husband and the size of her estate is not an arrangement for dividing the estate with the reversioner: Sitanna v. Viranna ; RadhaRani v. Srimati Brindarani . While dealing with the question of the payment of Rs. 1,20,000 to the widow by defendant 4 in order to enable her to make a gift of this amount to defendants 10 and 11, the trial Judge has observed:

The onus was upon the widow and upon the assignees, defendants 10 and 11, to show that the said amount had accumulated on the date of surrender. No evidence had been adduced to prove that Rs. 1,20,000 was available out of the income of the estate of Dakshina Babu on the date of surrender. The only evidence in this point is the deposition of Nripen Babu who is an interested witness. From the circumstances of the case, it appears to me that Ananda Roy and Nripendra Roy have taken advantage of the helpless condition of their sister Sindhu Bala and they have taken a good share in the division of Daksbina Babu's properties and that the recitals in the deed of surrender that the gift of Rs. 1,20,000 was made out of the income of Dakshina Babu's estate is not a bona fide recital. I hold therefore that the said gift of Rs. 1,20,000 was invalid against plaintiff who seeks a declaration to the same effect.

15. The contention of the appellants is that the trial Judge was wrong in holding that the onus was upon the widow and defendants 10 and 11 to show that Rs. 1,20,000 was available out of the income of the estate on the date of the surrender inasmuch as in the present suit plaintiff wants a declaration that the surrender by the widow was invalid and in such a suit the onus is upon the plaintiff to substantiate the grounds of invalidity of the surrender. In support of this contention reliance was placed upon certain observations of this Court in Brojo Kishoree Dassee v. Sreenath Bose ('68) 9 WR 463 at p. 467. The observations relied upon were made in a suit for a declaration that a certain adoption was invalid. Plaintiff is admittedly a reversioner of Dakshina. The properties covered by the deed of surrender belonged to Dakshina. The deed of surrender does not state that the amount of accumulations was Rs. 1,20,000 or thereabout. If the actual reversioner brings a suit after the death of the limited owner or owners for possession of the estate of the last full owner and his claim is opposed by persons claiming under alienation by the intermediate limited owners for legal necessity the onus is upon the alienees to prove legal necessity. I do not see any reason why the claim based on surrender by limited owners would stand on a different footing.

16. In a suit by presumptive reversioners for a declaration that alienations by the intermediate limited owners is not binding on the actual reversioners the onus of proving legal necessity, in my opinion, is also upon the alienees. The suit for a declaration by a presumptive reversioner that surrender by the limited owners is invalid and does not destroy rights of actual reversioners should be governed by the same rule of onus inasmuch as under the Hindu law the intermediate limited owners have only life interest and the estate vests absolutely only in male reversioners. There are certain exceptional circumstances under which the right of the actual reversioners can be destroyed by the intermediate limited owners. The person pleading these exceptional circumstances must prove them.

17. The subordinate Judge, in my opinion, was right in holding that the onus was upon the widow and the defendants 10 and 11 to prove that Rs. 1,20,000 or thereabout was the accumulated income from the death of Dakshina up to the date of surrender particularly in view of the fact that this amount was not stated in Ex. 1 to be the accumulated income on the date of the surrender. Peary Mohan instituted a suit in the year 1901 before the death of Dakshina for partition of the estate of Mohini Mohan. Dakshina was appointed receiver of the estate in May 1901. After his death in June 1901, no receiver was appointed till 6th March 1902. Thereafter the entire estate was again in the possession of a receiver appointed in the partition suit. This receiver was discharged on 15th November 1905.

18. On 19th June 1901, Radhika started the case for obtaining the probate of the will alleged to have been executed by Dak-shina on 2nd May 1901. An administrator pendente lite of Dakshina's properties was appointed in the same year. Although the probate case was dismissed on 22nd March 1904, the administrator was not discharged till 8th January 1906. The administrator in the probate case did not get possession of Dakshina's ancestral properties but he used to receive from the receiver in the partition suit monies paid by the latter from the income of Dakshina's share and the income, if any, from the self-acquired properties of Dakshina.

19. Plaintiff examined defendant 1 as a witness on his behalf. In the course of her cross-examination by defendants 10 and 11 she said:

Q.__Did the said sum of one hundred and twenty-thousand rupees accumulate in the receiver, out of the income of your husband's estate during the pendency of the case in the High Court?

A__I have heard that some money did accumulate.

Q.__I put it to you that the sum of Rs. 1,20,000 which Ramesh told that he would pay to you was in stock in the hands of the receiver out of the income of your husband's estate.

A.-I have heard that some money was in stock.

20. From the evidence of plaintiff's witness Kashi Nath Mitter, the income from the properties inherited by Daksbina from his father from the time of the death of Dakshina to the date of surrender by his widow would be about Rs. 1,20,000.

21. Dakshina had certain self-acquired properties. There is no evidence to show how much the administrator pendente lite received from those properties during this period.

22. The evidence of defendant 11 is that the arrears of rent in the hands of the administrator were more than Rs. 1,20,000. In his cross-examination he admitted that he did not look into the accounts. He is an interested witness. The trial Judge has disbelieved his evidence and I see no reason to believe him.

23. The receiver paid about Rs. 70,000 to the administrator pendente lite and took about Rs. 5000 for his salary.

24. Out of the amount received by the administrator he paid about Rs. 31,200 for the maintenance of defendant 1 and Rs. 11,000 towards the payment of Dakhina's debt. Out of this amount he took his commission (Rs. 3500) also and met the costs of the litigation.

25. The debts left by Dakshina amounted to about Rs. 1,82,000, The annual interest on this amount was about Rs. 10,000. If there had been any substantial surplus accumulations either in the hands of the administrator pendente lite or of the receiver further payments towards the satisfaction of the liabilities on Dakshina's estate would have been met. I therefore agree with the trial Judge that the widow took a very substantial amount from the corpus of the estate, and that the arrangement about the payment of Rs. 1,20,000 was a device to divide the estate with the reversioners. From the deed of surrender it appears that defendant 2 took a monthly allowance of Rs. 50 after the death of the widow and a sum of Rs. 41,111 as consideration for the gift and relinquishment in favour of defendant 4 of the right and interest which she had or could have in future in the estate left by Dakshina. It further appears that defendant 3 took a hereditary monthly allowance of Rs. 50 for maintenance during the life time of her mother and of Rs. 100 thereafter.

26. The Subordinate Judge has found that this arrangement also was a device to divide the estate with the reversioner. It is not the appellants' case that this arrangement amounted to an alienation by the daughters of their life interest for legal necessity. The contention of the appellants is that this arrangement was a reasonable provision for the maintenance of the daughters during their lives and consequently the transaction amounted to a surrender of their life interests under the Hindu law. The argument in support of this contention is this: The monthly income of the estate

was Rs. 30,000. The monthly allowance of Rs. 50 for defendant 2 was too small for her maintenance. She was entitled to take more. If Rs. 41,111 be taken as the capitalised value of the balance of her reasonable maintenance, the arrangement for the payment of this amount out of the estate should be considered as a reasonable arrangement for her maintenance during her life. Defendant 3 was also entitled to take a reasonable maintenance for her life. A monthly allowance for her life of Rs. 50 during the life time of defendant 1 and of Rs. 100 thereafter for her life would be too small. If she had chosen to take an allowance only for her life, she could have taken a larger amount. If instead of taking a larger amount only for her life defendant 3 took smaller hereditary allowance the arrangement should be considered as a reasonable arrangement for her maintenance during her life.

27. I am unable to accept this contention and my reasons are these: (1) The question as to what amount would be a reasonable provision for the maintenance of defendants 2 and 3 is a question of fact. (2) This question of fact was not raised in the trial Court and was not even raised in the memorandum of appeal to this Court. (3) The estate was heavily involved and had to pay a large amount as interest to creditors. Rs. 850 had to be paid to defendant 1 monthly for her maintenance. The estate was involved in litigation. The allotments in Dakshina's share were not yet final as an appeal against the allotments made by the trial Judge was pending in this Court. The sadar revenue payable for the allotments made by the trial Court was excessive and the collections were inconvenient and expensive. (4) From the materials on the record of the present case it is not possible for me to say that the , payment of Rs. 41,111 in cash and of Rs. 50 monthly as allowance after the death of the widow to defendant 2 or a hereditary monthy allowance of Rs. 50 to defendant 3 during the lifetime of the widow and Rs. 100 thereafter, was a reasonable arrangement for the maintenance of the two daughters for their lives.

28. For the reasons given above, I hold that the transactions embodied in Ex. 1 did not amount to a valid surrender of the life interests of defendants 1 to 3 under Hindu law and that the arrangement contained therein was merely a device to divide the estate with defendant 4. The result, therefore, is that this appeal fails and is dismissed with costs to the plaintiff-respondent. Hearing-fee is assessed at ten gold mohurs.

B.K. Mukherjea, J.

29. I agree with my learned brother, that this appeal should be dismissed. The facts giving rise to the appeal may be shortly stated as follows:

30. One Dakshina Mohan Roy, a Hindu resident of Bhowanipur in the suburbs of Calcutta, who was possessed of considerable properties both moveable and immovable, died on 6th June 1901,

leaving behind him his widow, Sindhu Bala, who is defendant 1 in the suit, and two daughters, namely, Tarangini and Sikhar Basini, who are defendants 2 and 3, respectively. Sindhu Bala succeeded to the properties left by her husband in the limited interest of a Hindu widow. Soon after Dakshina's death there were two probate proceedings commenced by the brothers of Dakshina in the original side of this Court for obtaining probate of two wills alleged to have been left by the deceased. Radhika, the youngest brother of Dakshina, was the propounder of one of these wills and his application for probate was filed on 19th June 1901. The other will was propounded by the other two brothers, named Annada and Pyari, and the probate proceedings in respect of the same was started on 15th July 1901. The widow, Sindhu Bala, appeared as an objector in both these proceedings. The second probate case which was commenced by Annada and Pyari came up for hearing first and Sale J., who heard the case rejected the application for probate and pronounced the will to be a forgery. This decision is dated 21st February 1902. There was an appeal taken against this judgment which was also dismissed on 10th March 1903. The earlier probate case in which Radhika figured as a propounder ended in a compromise and was eventually dismissed for non-prosecution, the widow agreeing to pay a sum of Rs. 50,000 to Radhika as consideration for inducing him to withdraw from the litigation and renouncing all claims under the will set up by him.

31. It may be mentioned here that a stepbrother and a brother of Sindhu Bala who were made defendants 10 and 11 in the suit materially assisted her in contesting this protracted litigation with her husband's brothers and Babu Annada Chandra Roy, defendant 10, who was a leading lawyer of Dacca, and who died after the institution of the suit advanced the entire money that was necessary for the purpose of carrying on the litigation. On 13th August 1905, Sindhu Bala along with her two daughters, Tarangini and Sikhar Basini, who were the immediate female reversioners executed a deed, which has been called a satyarpan and nadabi ekrar patra and by which she purported to renounce her widow's interest in all the properties left by her husband in favour of defendant 4, Kshitish Chandra Acharyya who was her only daughter's son then, existing he being a son of Sikhar Basini, the youngest daughter of Dakshina. Kshitish was a minor at that time and he was represented in this transaction by his father Ramesh, who was defendant 8 in the suit and who has died since then. Under this document Kshitish was to get the entire estate of Dakshina in absolute right as a full male heir on cessation of the limited interests of the widow and her two daughters subject to certain terms and conditions which may be summarised as follows: (1) He was to pay a sum of Rs. 850 a month to Sindhu Bala, the widow, as her britti or maintenance allowance and this payment -was made a charge upon certain properties which were described in schedule Kha to the document. (2) Defendant 4 was to pay out of the estate the amount due on a decree made by the High Court on the basis of a promissory note both against Dakshina and defendant 8, the father of defendant 4, but for which loan,

defendant 8 was really liable. (3) Defendant 4 was to pay off the entire amount including interest due on a bond for Rs. 48,845-11-3 dated 7th Baisakh 1310 B. S: executed by defendant 1 in favour of her step-brother defendant 10 for the money that was advanced by the latter to enable the widow to contest the probate proceedings. (4) Defendant 4 was to hand over for the absolute use of the widow a sum of Rs. 1,20,000 and this was to be given by the widow to her two brothers, defendants 10 and 11 as a token of love and gratitude for the services they rendered in connexion with the litigations with her husband's brothers. (5) Defendant 2, Tarangini, who was the elder daughter of Dakshina was entitled to Rupees 41,111 out of the estate as consideration for joining with her mother in the deed of surrender. She was also to have Rs. 50 a month from after her mother's death, and so long as she would herself live. (6) Defendant 4 was to pay to defendant 3 his own mother a monthly allowance of Rs. 50 so long as Sindhu Bala would remain alive, and an allowance of Rs. 100 a month after Sindhu Bala's death which was made hereditary and which would devolve after Sikhar Basini's death on her heirs and successors. (7) Defendant 4 was also to pay a sum of Rs. 45,000 odd which was still due to Radhika on account of the compromise entered into between him and thewidow.

32. The plaintiff, who is a son of Shikhar Basini and a younger brother of defendant 4 and who was born subsequent to the execution of the deed of surrender, brought the suit out of which this appeal arises for a declaration that the document was ineffectual as an act of surrender in creating an absolute estate in defendant 4 to the detriment of the reversionary rights of the plaintiff. The ground alleged, in the plaint was that it was not a bona fide act of renunciation by the widow in favour of the nearest reversioner and the whole scheme was one to divide the properties of Dakshina between defendant 4 on the one hand and certain nominees and relations of the widow on the other.

33. It appears that on 16th August 1918 defendant 8 as guardian of defendant 4 executed a mortgage in respect of a large number of properties comprised in the deed of surrender in favour of defendant 5 and the predecessors of defendants 6 and 7 to secure an advance of Rs. 1,60,000. The mortgagee got a mortgage decree on the basis of this as well as another mortgage bond which was executed by defendant 8 in respect of his own personal properties. In execution of this decree the mortgaged properties were sold in two instalments and purchased by the mortgagee decree-holders. The sale was held partly in 1930 and partly in February 1932 and the present suit was commenced by the plaintiff on 25th May 1932.

34. Besides the parties already mentioned there were two other persons joined as defendants in the suit. One was the husband of Tarangini who was made defendant 9 and the other her son who was made defendant 12. The relief prayed for by the plaintiff was a declaration that the rights of the future reversionary heirs of the late Dakshina Mohan Roy other than defendant 4 to the

properties left by Dakshina were not affected by the deed of surrender executed by defendants 1, 2 and 3 in favour of defendant 4 on 13th August 1905 and all subsequent acts done by the defendants on the basis of the said deed were not binding on such reversionary heirs. There was a further prayer for a declaration that the reversionary heirs of Dakshina were entitled to get back from defendants 10 and 11 the sum of Rs. 1,20,000 which they obtained from the estate.

35. The suit was contested by defendants 5 to 7 who filed one joint written statement and by defendants 10 and 11 who filed another. The rest of the defendants did not take part in the proceedings though written statements were filed by defendants 4 and 8. The contentions raised by defendants 5 to 7 in substance were that the plaintiff had no locus standi to maintain the suit which was not a bona fide one and was barred by limitation. It was averred that the surrender made by the widow was a valid and bona fide surrender which had the effect of vesting the estate absolutely in defendant 4 and it was binding on all the reversionary heirs of Dakshina. These defendants, it was said, had obtained a valid mortgage of the lands described in Schedule Ka and acquired a good title to the same by purchase at the mortgage sale. The defence of defendants 10 and 11 was that they rendered very great and valuable services both financial and otherwise in connexion with the litigations between the widow and her husband's brothers and that the sum of Rs. 1,20,000 which was given to them by the widow was no part of Dakshina's estate, but represented the accumulations of the income of the estate and the outstanding arrears of rent at the date of the surrender and over these moneys the widow had absolute power of disposal. They further contended that the bond for Rs. 48,845 was lawfully executed by defendant 8 as guardian of defendant 4 with the permission of the District Judge and that this debt was a charge upon Dak-shina's estate.

36. The trial Court decided all the issues in favour of the plaintiff and decreed the suit. It was declared that the deed of surrender executed by Sindhubala and her two daughters was not binding on the plaintiff after the death of these three ladies. If was further declared that the gift of Rs. 1,20,000 in favour of defendants 10 and 11 as well as the mortgage in favour of defendants 5 to 7 and the sale on the basis of thereof were not binding on the plaintiff. It is against this decree that defendants 5 to 7 have preferred this appeal. No appeal was filed by defendant 11 or the substituted heir of defendant 10 but they were made respondents. It is reported to us that the heir of defendant 10 settled his dispute with the plaintiff and is not interested any further in this litigation. Mr. Gupta who appears for the appellants has raised a two-fold contention in support of the appeal. He has contended in the first place that the deed of surrender executed by the widow was a perfectly valid and lawful act which had the effect of vesting the entire estate of Dakshina upon defendant 4 and that the subordinate Judge was wrong in holding that it was a mere device to divide the estate between the reversioner and certain nominees of the widow. The second point

taken is that the plaintiff's suit for a declaratory relief is barred by limitation.

37. As regards the first point it is not disputed on behalf of the respondents that the deed of surrender comprises the entire estate of Dakshina. It is further conceded that the validity of the deed as an act of surrender is not in any way affected by the provision for payment of a sum of Rs. 850 as a maintenance allowance to the widow or the provisions relating to payment of debts due to defendants 10 and 11 on the one hand and Radhika Mohan Roy, the youngest brother of Dakshina on the other. It is admitted that these debts are lawful charges on the estate of Dakshina. The validity of the deed of surrender is attacked substantially on two grounds. The first ground is that as defendant 4 was not the next heir of her husband, and the immediate reversioners were her two daughters, the estate could not vest absolutely in defendant 4, unless the daughters themselves had withdrawn their life estates by a valid act of surrender. The second ground taken is that it was not a bona fide act of self-effacement by the widow, but was a mere device to divide the property between defendant 4 on the one hand and the nominees of the widow on the other. These are really the two matters which require investigation in connexion with the first point taken in this appeal. The doctrine of surrender or relinquishment by the widow of her interest in the husband's estate which has the effect of accelerating the inheritance in favour of the next heir of her husband is now a well-settled doctrine of Hindu law which has been established by a long series of judicial pronouncements. So far as the Bengal law is concerned, its origin is attributed to Jimutbahan's commentary on the well-known text of Katyayana which runs as follows:

Let the childless widow preserving unsullied the bed of her lord and abiding with her venerable protector enjoy the property with moderation until her death, and after her let the heirs take it - Vide Dayabhag Chap. 11, Section 1, para. 59.

38. As was pointed by Sir Asutosh Mookerjee J. in Debi Prosad v. Golap Bhagat ('13) 40 Cal 721 at p. 771, Jimutbahan while commenting upon this passage observed that the persons who would be next heirs on failure of prior claimants succeed to the residue of the estate remaining after her use of it upon the demise of the widow in whom the succession had vested, in the same manner as they would have succeeded if the widow's right had never taken effect. The theory of relinquishment as the learned Judge observed was foreshadowed in this passage by Dayabhaga and in fact the words used by Jimutbahan, namely, 'if her right ceases or never takes effect' are comprehensive enough to include not merely the case of the death of the widow but all cases where her right ceases. In other words, the reversioners take the estate not merely when the widow dies but also when her title is extinguished, for instance, by renunciation, remarriage or the like.

39. Though the doctrine has undergone development in recent years, yet its basis remains unaltered, namely, that it is the self-effacement by the widow or the withdrawal of her life estate which opens the estate of the deceased husband to his next heirs on that date. "It must be remembered" so observed their Lordships of the Judicial Committee in Sitanna v. Viranna , that the basis of the doctrine is the effacement of the widow's interest, and not the ex facie transfer by which such effacement is brought about. The result is merely that the next heir of the husband steps into the succession in the widow's place.

40. This being the principle underlying the doctrine of surrender, no surrender and consequent acceleration of estate can possibly be made in favour of anybody except the next heir of the husband. By surrendering the estate the widow brings about the same result as would happen in the case of her natural death and the next heir steps into the inheritance as a matter of law without any act of consent or acceptance on his part. The Privy Council has held further in the case mentioned above that the fact that the immediate reversioners are female heirs who take only a limited interest in the property does not make any difference, and a surrender in favour of such limited heirs is equally effective though certainly the interest which they take in the property is not thereby enlarged. In the present case the immediate reversioners were the two daughters of the widow who joined with the latter in making a surrender in favour of the daughter's son who might be described to be a reversioner of the second degree. The question is whether such a surrender is valid in Hindu law. Mr. Gupta argues that it is valid provided the immediate reversioners give their consent as they have done in the present case.

41. The point is not free from doubt, and it was expressly left open by the Judicial Committee in Narayanswami Ayyar v. Rama Ayyar . In support of his contention Mr. Gupta has relied upon certain decisions, to wit, Protab Chunder Roy v. Srimati Joy Monee Dabee ('64) 1 WR 98, Chinnaswami Pillai v. Appaswami Pillai ('19) 6 AIR 1919 Mad 865, Mt. Chito v. Jhunnilal and Anto v. Yeshwante ('32) 19 AIR 1932 Bom 430, and his contention is that the different High Courts in India have practically concurred in holding that such surrender is permissible in Hindu law. The cases referred to by him really come under two heads. The first head comprises eases where there is an alienation by the widow in favour of a remoter reversioner or a stranger with the consent of the immediate reversioner who is a male heir or is otherwise capable of taking an absolute interest in the property. The second head relates to eases where the immediate reversioner is a female heir who takes only a limited interest in the property and with her consent the widow surrenders the estate to a reversioner who is remoter in degree. The case in Protab Chunder Roy v. Srimati Joy Monee Dabee ('64) 1 WR 98 is the earliest of the first type of cases. Here the widow with the consent of her husband's brother Parbati who was the immediate reversioner, made a gift of the entire estate in favour of the four sons of the latter. It was held that

the deed of gift vested a complete estate in the donees. The learned Judges expressed themselves very generally when they observed as follows:

We think that it admits of no reasonable doubt, that under Hindu law, a Hindu lady in possession can relinquish, and by relinquishing anticipate for the reversioners, their period of succession and if she does this in favour of second reversionera in the present instance with the consent of the first then or afterwards expressed, the relinquishment is valid, and this notwithstanding that it may be expressed in a form which under some circumstances might be open to question.

42. It may be pointed out that it was not really a case of surrender by the widow in favour of a reversioner of the second degree; it was a gift or alienation to persons who were really in the position of strangers at that time with the consent of the immediate heir. It was held by this Court in a number of cases which were reviewed and confirmed in NoboKishore Sarma v. HariNath Sarma ('84) 10 Cal l102 (FB) that a widow is entitled to sell or transfer the entire estate without any necessity but with the consent of the next male heir so as to bar the rights of the actual reversioners at the time of her death. This was explained by the Judicial Committee in Rangasami Gounden v. Nachiappa Gounden ('18) 5 AIR 1918 PC 196 as an extension of the principle of surrender. "The surrender, once exercised" so observed their Lordships in favour of the nearest reversioner or reversioners, the estate became his or theirs, and it was an obvious extension of the doctrine to hold that inasmuch as he or they were in title to convey to a third party, it came to the same thing if the conveyance was made by the widow with his or their consent. This was decided to be possible by NoboKishore Sarma v. HariNath Sarma ('84) 10 Cal l102 (FB) already cited. The judgment went upon the principle of surrender, and it might do so for the surrender there was of the whole estate; but it is worthy of notice that the order of reference showed that the alienation was ostensibly on the ground of necessity, so that it might have been supported on the grounds to be mentioned under the second head above set forth.

43. It will be seen that the Privy Council did not disapprove of the principle that a transfer by the widow with the consent of the reversioner could be treated as equivalent to a renunciation by the widow which vested the estate in the immediate reversioner followed by an alienation by the latter in favour of the alienee. In NoboKishore Sarma v. HariNath Sarma ('84) 10 Cal l102 (FB) it must be remembered, the widow really sold the property to a stranger and presumably received the consideration herself. Sir Richard Garth C. J., entertained considerable doubt as to the propriety of the view which would make a sale by the widow to or with the consent of the reversioners stand on the same footing as a real relinquishment by her. But, in view of a series of prior decisions of the Court, he was con-strained to accept that view as correct. In view of the recent pronouncements of the Judicial Committee that the surrender must be a voluntary and bona fide act of self-effacement by the widow and what is to be given up is the whole estate of

the husband or the whole less what is necessary for her maintenance, it is extremely doubtful whether a sale by the widow which has the effect of converting her husband's estate into money can be regarded as a surrender at all. It would certainly be an indirect way of getting absolute control over the money into which the husband's estate was converted and could not but be regarded as a dodge either to enlarge her own interest or to divide the estate between herself and the reversioner with whose consent the transfer is effected. This aspect of the question was not considered by the Privy Council probably because the transfer in NoboKishore Sarma v. HariNath Sarma ('84) 10 Cal 1102 (FB) was upheld on the ground of legal necessity as well. The principle laid down in Protab Chunder Roy v. Srimati Joy Monee Dabee ('64) 1 WR 98, was applied by the Bombay High Court in Anto v. Yeshwante ('32) 19 AIR 1932 Bom 430 There the widow made a surrender of her husband's estate in favour of the husband of a deceased daughter with the consent of an existing daughter who was the next heir at the time and who according to the Bombay law was entitled to take an absolute interest in the estate. Baker J. expressly invoked the authority in NoboKishore Sarma v. HariNath Sarma ('84) 10 Cal 1102 (FB) as explained by the Judicial Committee in Rangasami Gounden v. Nachiappa Gounden ('18) 5 AIR 1918 PC 196.

44. These decisions are no direct: authorities on the present point. They only show that when a transfer is made in favour of a stranger or a remoter reversioner with the consent of the immediate heir it is possible to construe the transaction as a surrender in favour of the consenting reversioner followed by a transfer by him in favour of the alienee. The other two decisions relied on by Mr. Gupta come under the second head. The first of these viz., Chinnaswami Pillai v. Appaswami Pillai ('19) 6 AIR 1919 Mad 865, is a decision of the Madras High Court. Here, the widow and the only daughter of a deceased Hindu surrendered their interests in the estate of the deceased in favour of the daughter's son, and a deed was executed by them both in which there was a stipulation that the reversioner should maintain them during their lifetime. On the death of all of them, the actual reversioners who happened to be different persons sued to recover the estate from the father of the deceased daughter's son who got the properties by right of inheritance. It was held that the surrender was valid in law and operated to vest the estate in the daughter's son. What was invoked in this case was in substance a fiction of a double surrender. It was held by Sadasiva Ayyar J, that a surrender by a widow with the consent of the next female heir to the secondary mala heir can be treated as a joint surrender by both, and that such a joint surrender might be treated as a surrender by the widow to the next female heir which vests the property in her for a moment and an immediate surrender of the property thus vested in the female heir by the latter to the next male heir, the result being to vest an absolute title in the secondary male heir. In this case the daughter actually joined with her mother in executing the deed of surrender but the same principle was held applicable to a case where the immediate female heir instead of joining in the deed of surrender simply expressed her consent to it by

signing it as an attesting witness: vide Mt. Chito v. Jhunnilal .

45. In my opinion the principle formulated by the Madras High Court is the only conceivable principle, upon which a widow can be held competent to surrender the estate in favour of the secondary male reversioner with the consent of the immediate female heirs. In a way it can be said to be a logical extension of the doctrine of surrender. If the immediate reversioner who consents to the alienation by the widow is a male heir we can conceive of an antecedent surrender by the widow in his favour which entitles him to deal with the property in any way he likes by way of a sale or gift. If, however, the immediate reversioner is a female heir, the presumed surrender in her favour by the widow does not enlarge her interest and the next male heir can get an absolute estate only on the footing of another surrender by the immediate female reversioner unless there is legal necessity to support the transaction.

46. I am inclined to hold that a widow can, with the consent of her daughter who is the next heir of her husband, relinquish the estate in favour of the daughter's son. But the consent given by her must show an intention to efface her own interest completely and circumstances must be such as would entitle the Court to construe the transaction as amounting, in substance, to a relinquishment by the widow in favour of her daughter and a second surrender by the latter in favour of the next male heir. I think therefore that if the daughter who joins with the mother in the act of surrender reserves for herself as a consideration for the same a substantial part of the property which she is also presumed to surrender, or stipulates for any benefit to her save and except what is necessary for her maintenance, the transaction might amount to a transfer of her own life interest for consideration, but that could not give the reversioner in whose favour the surrender is made an absolute interest in the estate to the prejudice of the actual reversioner at the time of her death.

47. I cannot accept the contention of Mr. Gupta that we cannot and need not look beyond the fact that the daughter has given consent to the surrender and it is immaterial as to whether her consent was procured by paying her a large sum of money. Mere consent might operate as a personal estoppel against the consenting daughter or any other person claiming through her, but it cannot bind the actual reversioner. There is a passage indeed in Chinnaswami Pillai v. Appaswami Pillai ('19) 6 AIR 1919 Mad 865, where Sadasiva Ayyar J., observes that the act of a daughter who being next heir surrenders the whole estate vests the absolute inheritance in the next male heir, even if she received consideration for her surrender of the full enjoyment of the property during her lifetime. But, as the facts of the case show, the only consideration there was a provision for maintenance of the daughter and nothing else. In the case before us the two daughters of Dakshina joined with the widow in executing the deed of surrender and they purported to confer upon defendant 4 and relinquish in his favour whatever right, title and interest they had in the

estate. It was also recited that the daughters had no desire to enjoy the property. So far as Tarangini was concerned the consideration that she received for relinquishing her rights was Rs. 41,111 as described in schedule Jha to the document. Out of this Rs. 11,111 was set apart for her own use and enjoyment and the balance of Rs. 80,000 was to be kept in the custody of her husband and suitably invested for the benefit of any eon that might be born to her in future. "If the estate is ruined" so runs the deed, I, the third party, shall not have any chance of getting the benefit I have been deriving on the basis of this document, and if any son be born of my womb or if I take a son in adoption, then they will have no chance of obtaining the benefit which has been obtained for them on the basis of this document. For all these reasons, for the benefit of myself and my future son or adopted son and in order to prevent harm in future after taking proper consideration under the circumstances, I have thought it proper to cause full and absolute right to accrue to you by conferring upon you my entire right, title and interest,... I have fixed Rs. 41,111 as the consideration for conferring upon you and relinquishing in your favour whatever right, title and interest I have got to the said estate, and your father and other well-wishers on your behalf have admitted the said consideration to be adequate.

48. Paragraph 10 of the deed provides further that a monthly allowance of Rs. 50, would be paid ,to Tarangini for her life after the death of Sindhubala. No exception can possibly be taken to the stipulation in the deed relating to the payment of a monthly allowance of Rs. 50. But the question is whether the acceptance of a consideration of Rs. 41,111 is consistent with the deed being construed as an act of surrender on her part. Mr. Gupta argues that having regard to the extent of the properties left by Dakshina a sum of Rs. 41,111 would be quite a reason-able and modest amount which could be paid to her in lieu of maintenance. It is said that the maintenance need not be provided in the shape of a periodical pecuniary allowance and there is nothing in law which prevents the surrendering female heir from taking a portion of the immovable property or a lump sum at once for purposes of maintenance provided it is not unreasonable. This as a proposition in law need not be disputed. In Sureshwar Misser v. Mt. Maheshrani Misrain ('21) 8 AIR 1921 PC 107, the widow was given a small portion of immovable property which she was to enjoy for her life. In Sitanna v. Viranna ('34) 21 AIR 1934 PC 105 she reserved six acres out of her husband's estate for her own maintenance and surrendered the rest. In Angamuthu Chetti v. Varatharajulu Chetti ('20) 7 AIR 1920 Mad 627, there were two widows, and the reversioner in whose favour the surrender was made gave a personal undertaking to maintain one of them and paid a sum of Rs. 500 to the other. In all these cases the provisions were held to be quite consistent with a bona fide surrender.

49. In the present case a difficulty arises by reason of the fact that this question was not raised in this shape before the subordinate Judge and we have no materials before us to decide as to

whether Rs. 41,111 would be a reasonable sum to be paid to one of the daughters by way of a maintenance allowance. The estate is indeed large, but there are very heavy liabilities upon it, and the document itself shows that Tarangini herself was doubtful as to whether there would be anything left of her father's estate after the death of her mother. It was a prudent course she adopted to accept a lump sum and avoid all uncertainties regarding the future. But quite apart from this, the very recitals in the deed would, in my opinion, go to show that this sum of Rs. 41,111 was not taken by Tarangini as a provision for her maintenance. It was expressly stated in the document that a sum of Rs. 11,111 was to be taken by her for her own personal use and the balance was to remain with her husband who was to invest it for the benefit of her future children. To me it seems that the receipt of this sum of money by Tarangini was not compatible with the idea of effacing herself completely and letting the estate go down to the next heir. It was really a sale of her interest for a consideration which she deemed to be adequate under the circumstances of this case.

50. So far as the other daughter, Sikharbasini, is concerned no objection has been taken to the stipulation to pay her a monthly sum by way of maintenance. What is objected to is the provision which makes the allowance hereditary. In my opinion, this objection is quite justified. A surrendering female heir can always reserve for herself a right to be maintained out of the estate which she surrenders, but the maintenance can be enjoyed by her only during her lifetime. It would be against the spirit of the doctrine of surrender if the widow would stipulate for a maintenance allowance not only to be paid to her during her lifetime, but which would be payable for ever to her heirs and successors. My conclusion is that although the two daughters undoubtedly gave their consent to the vesting of the entire estate in defendant 4, yet that consent was not an indication of a voluntary self-effacement on their part and the transaction cannot be upheld on the footing of a surrender. ,

51. I am not impressed with the argument of Mr. Gupta that it was justifiable in the circumstances of the present case to secure the consent of the daughters even by paying them money consideration, inasmuch as it was an act of religious merit on the part of the widow to protect her husband's estate and there was no other way of protecting the same except by vesting it in a male heir. Protection of the husband's estate is, think, no relevant matter for consideration in determining the validity of a surrender by the widow. Whatever be the motives that actuate her, it is always open to the widow to efface herself and put an end to her legal existence. The estate then automatically vest in the next heir; and unless the next heir chooses to pass it on to some other person, in some manner recognized by law the widow cannot arrogate to herself the right of making a sort of testamentary disposition, and direct that the property should go not to the immediate heir but to some other person who might be more competent to manage the same.

Further, it is difficult to believe that the estate could not be protected except by relinquishing it in favour of defendant 4. The widow was certainly a purdanashin lady having no experience in zemindary affairs, and it is expressly recited in the deed, that Dakshina had incurred considerable debts during his lifetime and the properties which were allotted in his share on partition, were inconveniently situated and bore very heavy revenues. But an infant of five years, as defendant 4 was at that time, would hardly be a proper person to be entrusted with the duties of management. It was really the father of defendant 4 upon whom the widow relied, but the services of Ramesh were available to her even if she kept the estate in herself or renounced it in favour of the daughters. A full owner certainly could secure loans more easily than a limited owner, but the full owner, in this case being a minor, had also similar disabilities to encounter.

52. Assuming now for the sake of argument, that. the widow was competent to surrender the estate in favour of her daughter's son, with the consent of the two daughters who were the immediate heirs, and it was immaterial that the latter received consideration for giving their consent, it is necessary to enquire whether the act of the widow herself constituted a valid surrender according to Hindu law, that is to say, was a bona fide act of self-effacement on her part, and not a mere device to divide the estate of her husband between the reversioner and her own nominees.

53. The answer to this question depends on the propriety or otherwise of the provision in the deed of surrender under which the reversioner bound himself to hand over to the widow a sum of Rs. 1,20,000 and which the latter wanted to make a gift of, to her own brothers, defendants 10 and 11. As has been said at the beginning, Babus Ananda Chandra Roy and Nripendra Chandra Roy, the two brothers of Sindhubala, assisted her a good deal, in connexion with the litigation she had with her husband's brothers. In fact, but for the financial help which she received from Ananda Babu, it would have been impossible for her to contest the litigation. Ananda Babu had advanced a sum of Rs. 48,845 for litigation expenses and it is not disputed that he was entitled to recover this sum from the estate left by Dakshina Mohan.

54. In the deed of surrender, defendant 4 not only undertook to pay this amount for which a bond was already executed by the widow, but he took the further liability of paying a sum of Rs. 1,20,000 to the lady, which the latter wanted to hand over to her two brothers out of affection and gratitude for the services they had rendered. For this money the estate of Dakshina was not liable, and if this was to come out of the estate surrendered by the widow, she would admittedly have a large slice out of her husband's estate in absolute right for the benefit of her own relations. Mr. Gupta has frankly conceded that if this money was to be paid out of the corpus of the estate left by Dakshina the surrender would not be valid in law. He contends however that the money represented the accumulations out of the income of the estate which were in the hands of the

administrator pendente lite and the outstanding arrears of rent realizable from the tenants, and these the widow could dispose of absolutely at her discretion. It is necessary to examine the evidence on this point carefully; for, it cannot be disputed as a matter of law, that the widow had full powers over the income of her husband's estate, and a gift of the accumulated income, unless she had already chosen to treat it as a part of the corpus, could not affect the validity of surrender. By the deed of surrender) the accumulated income, and outstanding arrears of rent, were given to defendant 4 along with the corpus of the estate. Paragraph 5 of the deed recited as follows:

By this deed, the right I had and have to enjoy and appropriate according to my pleasure the income of the estate left by my husband which is now in the hands of the administrator pendente lite, and the arrears of rent etc., have been entirely given away to you and with regard to that in consultation with your father Sriman Ramesh Chandra and your other well-wishers and with the approval and consent of them and the third and fourth parties it has been settled that as consideration of my making wholesale gift of the income and arrears of rent to which I am entitled to enjoy according to my pleasure, by the deed and for my relinquishing the same in your favour you shall give me Rs. 1,20,000 with right to exercise full ownership therein, and to use and appropriate the same according to my pleasure and on that condition.

55. In substance the lady sold the accumulated income in the hands of the administrator and the arrears of rent to the reversioner for a consideration of Rupees 1,20,000. If the evidence makes it probable, that an amount near about Rs. 1,20,000 was really due to the lady as arrears of rent, or accumulated income in the hands of the administrator pendente lite at the time of the surrender the bargain would be quite a fair one, and as this was no part of the husband's estate which she was surrendering, the retention of this benefit would not be inconsistent with the withdrawal of her life estate. Mr. Gupta argues that the burden is upon the plaintiff to show that the recital in the deed is not true and that the accumulated income did not amount to Rs. 1,20,000 at the date of surrender. I do not think that this contention is sound. The document does not mention what amount there was in the hands of the administrator, and it does not specify the extent of the arrears of rent that had accrued due at that time. The plaintiff moreover was no party to the deed and is not bound by its recitals. A Hindu widow has only restricted powers of alienation with regard to the properties she inherited from her husband and it is only under exceptional circumstances, that she can confer an absolute title on others. Any person therefore who asserts that he has acquired an absolute title to such property,. on the basis of an act of surrender or alienation by the widow must make out the circumstances which would make such act valid and binding on the actual reversioner. (After considering evidence his Lordship concluded.) I think that the finding of the Court below on this point is correct. There was little or no money in the hands of the administrator and the outstandings if any were also insignificant. It was under the

guidance of Babu Ananda Chandra Roy who was himself an experienced lawyer, that the deed of surrender was drawn up. He and his brother were the persons largely benefited by the deed, and I think that this untrue recital was made in the document only to make out a plausible justification in law for the widow's giving such a large sum of money to her own brothers. In my opinion as this money was really a part of the estate left by Dakshina, the surrender by the widow was not a valid surrender in law.

56. The only other question that remains for consideration is the question of limitation. Both sides have accepted the position that the present suit is governed by Article 120 and not Article 125, Limitation Act. The position seems to be correct, as the plaintiff in this suit is not the immediate reversioner who could succeed, if the widow were to die at the time when the suit was brought. Here the immediate reversioners were parties to the alienation by the widow, and consequently precluded themselves from bringing a suit for having it declared to be improper. The remote reversioner therefore was competent to maintain a suit for a declaratory relief under Section 42, Specific Relief Act: Abinash Chandra v. Hari Nath ('05) 32 Cal 62. As the Act makes no express provision for such cases, the suit must necessarily be referred to Article 120, under which it should be instituted within six years from the date when he right to sue accrued. The right to sue would accrue ordinarily as soon as the alienation is made, but as in this case the plaintiff was not born when the widow executed the deed, his right to sue could not come into existence before the date of his birth: Das Ram v. Tirtha Nath . The plaintiff would get exemption for the entire period that he was a minor, and would have to institute the suit within three years after the attainment of majority as provided by Section (8), Limitation Act.

57. The plaintiff's case is that he was born in 1911 and attained majority in 1929 and the suit being filed within three years from that date is not barred by limitation. No horoscope or birth certificate has been produced, but the plaintiff has examined two witnesses in support of his case. The first is Biswanatk Dhar, who at the time of the plaintiff's birth was in the service of his father. He swears that the plaintiff was born in 1318 B. S and at that time Khitish the elder brother was about 11 or 12 years old. It is not disputed that Khitish was born in 1900. The other witness, Peary Mohan Das is also an old employee of Ramesh, the father of the plaintiff and he also says that the plaintiff was born when he was in the service of his father. He says however that he makes the statement on guess. As against this the contesting defendants have produced extracts from the admission register of a public school at Dacca, where the plaintiff is said to have prosecuted his studies and also a transfer certificate signed by the headmaster of the same institution. If these certificates are to be believed, the year of birth of the plaintiff would be 1908 and not 1911. The school registers are undoubtedly admissible in evidence, but the Sub-Judge I think rightly refused to attach much value to the same. It is not clear on whose statement the age

was recorded, and the register mentions the name of one Nagendra Lall Chowdhury as guardian of the plaintiff though there is no evidence to show who the gentleman was, and whether the plaintiff ever lived under his guardianship. Mr. Gupta refers in this connexion to the evidence of Sindhubala who says that the difference between the age of Khitish and that of the plaintiff would be three or four years but that is manifestly incorrect, as the plaintiff was admittedly not born when the deed of surrender was executed. Though the evidence adduced by the plaintiff as regards his age is not very satisfactory, I am unable to say that the trial Judge who had the opportunity of seeing the two witnesses was not justified in believing them. In my opinion the decision of the Court below on this point must be affirmed. In the view that I have taken, it is not necessary to consider whether a fresh right to sue accrued to the plaintiff on the sale of the properties in execution of the mortgage decree obtained by defendants 5 to 7. The result is that the appeal fails and must be dismissed with costs.