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offence under section 297 could be said to have been made out. This point, in our opinion, is not open at this stage, it having been held that all the ingredients of the offence had been established on the record. Even otherwise there is no substance in the contention because the prosecution evidence is sufficient to hold the offence proved against all the appellants.

For the reasons given above we hold that there is no substance in these appeals and they are accordingly dismissed.

Appeals dismissed.

Agent for the appellants: *Sukumar Ghose.*

Agent for the respondent: *P. K. Bose.*

Agent for the complainant: *S. C. Bannerjee.*

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April 14.

LAKSHMANA NADAR AND OTHERS

v.

R. RAMIER.

[MEHR CHAND MAHAJAN and S. R. DAS JJ.]

Hindu law—Will—Bequest to wife for her lifetime and to daughter absolutely after wife's lifetime—Estate taken by wife—Whether ordinary life estate or Hindu widow's estate—Daughter's estate—Whether vested—Death of daughter before widow, effect of—Construction of Hindu will—Guiding principles.

A Hindu Brahmin governed by the Mitakshara law made a will in which he gave the following directions: "After my lifetime, you, the aforesaid Ranganayaki Ammal, my wife, shall till your lifetime enjoy the aforesaid entire properties ... After your lifetime, Ramalakshmi Ammal, our daughter and her heirs shall enjoy them with absolute rights and powers of alienation such as gift, exchange and sale from son to grandson and so on for generations. As regards the payment of maintenance to be made to C, wife of my late son, H, my wife Ranganayaki Ammal shall pay the same as she pleases and obtain a release deed." After the death of the testator his wife entered into possession of his properties but before the death of his wife, his daughter and all her children died:

Held, (i) that on a proper construction of the will in the light of surrounding circumstances, the testator had conferred on his

wife only an ordinary life estate, and alienations made by her would not endure beyond her lifetime :

(ii) that the testator's daughter obtained under the will a vested interest in the properties after the lifetime of the widow, to which her husband succeeded on her death.

The rule of construction by analogy is a dangerous one to follow in construing wills differently worded, and executed in different surroundings.

Ram Bahadur v. *Jager Nath Prasad* (3 Pat. L.J. 199), *Pavani Subbamma* v. *Arumala Rama Naidu* ([1937] 1 M.L.J. 268), *Nathu Ram Mahajan* v. *Ganga Bai* ([1938] 2 M.L.J. 562), *Vasanta Rao Ammennamma* v. *Venkata Kodanda Rao* ([1940] 1 M.L.J. 188), *Maharaja of Kolhapur* v. *Sundaram Iyer* (I.L.R. 48 Mad. 1), *Mahomed Shumsool* v. *Shewakram* (2 I.A. 7), *Ratna Chetty* v. *Narayanaswami Chetty* (26 M.L.J. 616), *Mst. Bhagwati Devi* v. *Chowdry Bholonath Thakur* (2 I.A. 256) and *Lallu* v. *Jagmohan* (I.L.R. 22 Bom. 409) referred to.

Judgment of the Madras High Court affirmed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 95 of 1952. Appeal from the judgment and decree dated the 27th February, 1950, of the High Court of Judicature at Madras (Rao and Ayyar JJ.) in Appeal No. 635 of 1946 arising out of judgment and decree dated the 13th August, 1946, of the Court of the Subordinate Judge of Tinnevelly in Original Suit No. 50 of 1945.

K. S. Krishnaswamy Iyengar (*S. Ramachandra Iyer*, with him) for the appellants.

K. Rajah Iyer (*R. Ganapathy Iyer*, with him) for the respondent.

1953. April 14. The Judgment of the Court was delivered by

MAHAJAN J.—One Lakshminarayana Iyer, a Hindu Brahmin, who owned considerable properties in the Tirunelveli district, died on 13th December, 1924, leaving him surviving a widow Ranganayaki, and a married daughter Ramalakshmi. Ramalakshmi had married the plaintiff and had a number of children from him. They were all alive in December, 1924, when Lakshminarayana died. Before his death he

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executed a will on 16th November, 1924, the construction of which is in controversy in this appeal. By this will he gave the following directions :—

"After my lifetime, you, the aforesaid Ranganayaki Ammal, my wife, *shall till your lifetime*, enjoy the aforesaid entire properties, the outstandings due to me, the debts payable by me, and the chit amounts payable by me. After your lifetime Ramalakshmi Ammal, our daughter and wife of Rama Ayyar Avergal of Melagaram village, and her heirs shall enjoy them with absolute rights and powers of alienation such as gift, exchange, and sale from son to grandson and so on for generations. As regards the payment of maintenance to be made to Chinnammal alias Lakshmi Ammal, wife of my late son Hariharamayyan, my wife Ranganayaki Ammal shall pay the same as she pleases, and obtain a release deed".

Ranganayaki entered into possession of the properties on the death of her husband. On 21st February, 1928, she settled the maintenance claim of Lakshmi Ammal and obtained a deed of release from her by paying her a sum of Rs. 3,350 in cash and by executing in her favour an agreement stipulating to pay her a sum of Rs. 240 per annum.

Ramalakshmi died on 25th April, 1938 during the lifetime of the widow. None of her children survived her. On the 24th July, 1945, the widow describing herself as an absolute owner of the properties of her husband sold one of the items of the property to the 2nd defendant for Rs. 500. On the 18th September, 1945, the suit out of which this appeal arises was instituted by the plaintiff, the husband and the sole heir of Ramalakshmi, for a declaration that the said sale would not be binding on him beyond the lifetime of the widow. A prayer was made that the widow be restrained from alienating the other properties in her possession. On the 19th September, 1945, an *ad interim* injunction was issued by the High Court restraining the widow from alienating the properties in her possession and forming part of her husband's estate. In

spite of this injunction, on the 27th September, 1945, she executed two deeds of settlement in favour of the other defendants comprising a number of properties. The plaintiff was allowed to amend his plaint and include therein a prayer for a declaration in respect of the invalidity of these alienations as well. It was averred in the plaint that Ramalakshmi obtained a vested interest in the suit properties under the will of her father and plaintiff was thus entitled to maintain the suit.

The defendants pleaded that the plaintiff had no title to maintain the suit, that the widow was entitled under the will to an absolute estate or at least to an estate analogous to and not less than a widow's estate, that the estate given to Ramalakshmi under the will was but a contingent one and she having predeceased the widow, no interest in the suit properties devolved on the plaintiff. The main issue in the suit was whether the widow took under the will an absolute estate or an estate like the Hindu widow's estate and whether the daughter's interest therein was in the nature of a contingent remainder, or whether she got in the properties a vested interest.

The subordinate judge held that the widow took under the will a limited life interest, and not an absolute estate or even a widow's estate under Hindu law, and that the daughter got thereunder a vested interest in the properties to which the plaintiff succeeded on her death. In view of this finding he granted the plaintiff a declaratory decree to the effect that the first defendant had only an estate for life in the suit properties and that the alienations made by her would not enure beyond her lifetime. The question as to the validity of the alienations was left undetermined. The unsuccessful defendants preferred an appeal against this decree to the High Court of Judicature at Madras. During the pendency of the appeal the widow died on 14th February, 1948. The High Court by its judgment under appeal affirmed the decision of the trial judge and maintained his view on the construction of the will. Leave to appeal to the Supreme Court was

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granted and the appeal was admitted on the 27th November, 1951.

The substantial question to decide in the appeal is whether the estate granted by the testator to his widow was a full woman's estate under Hindu law or merely a limited life estate in the English sense of that expression. It was not contested before us that a Hindu can by will create a life estate, or successive life estates, or any other estate for a limited term, provided the donee or the persons taking under it are capable of taking under a deed or will. The decision of the appeal thus turns upon the question whether the testator's intention was to give to his widow an ordinary life estate or an estate analogous to that of a Hindu widow. At one time it was a moot point whether a Hindu widow's estate could be created by will, it being an estate created by law, but it is now settled that a Hindu can confer by means of a will on his widow the same estate which she would get by inheritance. The widow in such a case takes as a demisee and not as an heir. The court's primary duty in such cases is to ascertain from the language employed by the testator "what were his intentions", keeping in view the surrounding circumstances, his ordinary notions as a Hindu in respect to devolution of his property, his family relationships etc.; in other words, to ascertain his wishes by putting itself, so to say, in his armchair.

Considering the will in the light of these principles, it seems to us that Lakshminarayana Iyer intended by his will to direct that his entire properties should be enjoyed by his widow during her lifetime but her interest in these properties should come to an end on her death, that all these properties in their entirety should thereafter be enjoyed as absolute owners by his daughter and her heirs with powers of alienation, gift, exchange and sale from generation to generation. He wished to make his daughter a fresh stock of descent so that her issue, male or female, may have the benefit of his property. They were the real persons whom he earmarked with certainty as the ultimate recipients of

his bounty. In express terms he conferred on his daughter powers of alienation by way of gift, exchange, sale, but in sharp contrast to this, on his widow he conferred no such powers. The direction to her was that she should enjoy the entire properties including the outstandings etc. and these shall thereafter pass to her daughters. Though no restraint in express terms was put on her powers of alienation in case of necessity, even that limited power was not given to her in express terms. If the testator had before his mind's eye his daughter and her heirs as the ultimate beneficiaries of his bounty, that intention could only be achieved by giving to the widow a limited estate, because by conferring a full Hindu widow's estate on her the daughter will, only have a mere *spes successionis* under the Hindu law which may or may not mature and under the will her interest would only be a contingent one in what was left undisposed of by the widow. It is significant that the testator did not say in the will that the daughter will enjoy only the properties left undisposed of by the widow. The extent of the grant, so far as the properties mentioned in the schedule are concerned, to the daughter and the widow is the same. Just as the widow was directed to enjoy the entire properties mentioned in the schedule during her lifetime in like manner the daughter and her heirs were also directed to enjoy the same properties with absolute rights from generation to generation. They could not enjoy the same properties in the manner directed if the widow had a full Hindu widow's estate and had the power for any purpose to dispose of them and did so. If that was the intention, the testator would clearly have said that the daughter would only take the properties remaining after the death of the widow.

The widow cannot be held to have been given a full Hindu widow's estate under the will unless it can be said that under its terms she was given the power of alienation for necessary purposes, whether in express terms or by necessary implication. As above pointed out, admittedly power of alienation in express terms was not conferred on her. It was argued

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that such a power was implicit within the acts she was authorized to do, that is to say, when she was directed to pay the debts and settle the maintenance of Ramalakshmi it was implicit within these directions that for these purposes, if necessity arose, she could alienate the properties. This suggestion in the surrounding circumstances attending the execution of this will cannot be sustained. The properties disposed of by the will and mentioned in the schedule were considerable in extent and it seems that they fetched sufficient income to enable the widow to fulfil the obligations under the will. Indeed we find that within four years of the death of the testator the widow was able to pay a lump sum of Rs. 3,350 in cash to the daughter-in-law without alienating any part of the immovable properties and presumably by this time she had discharged all the debts. It is not shown that she alienated a single item of immovable property till the year 1945, a period of over 21 years after the death of her husband, excepting one, which she alienated in the year 1937 to raise a sum of Rs. 1,000 in order to buy some land. By this transaction she substituted one property by another. For the purpose of her maintenance, for payment of debts etc., and for settling the claim of the daughter-in-law she does not appear to have felt any necessity to make any alienation of any part of the estate mentioned in the schedule and the testator in all likelihood knew that she could fulfil these obligations without having recourse to alienations and hence he did not give her any power to do so. In this situation the inference that the testator must have of necessity intended to confer on the widow power of alienation for those limited purposes cannot be raised. In our opinion, even if that suggestion is accepted that for the limited purposes mentioned in the will the widow could alienate, this power would fall far short of the powers that a Hindu widow enjoys under Hindu law. Under that law she has the power to alienate the estate for the benefit of the soul of the husband, for pilgrimage and for the benefit of the estate and for

other authorized purposes. It cannot be said that a Hindu widow can only alienate her husband's estate for payment of debts, to meet maintenance charges and for her own maintenance. She represents the estate in all respects and enjoys very wide power except that she cannot alienate except for necessity and her necessities have to be judged on a variety of considerations. We therefore hold that the estate conferred on Ranganayaki Ammal was more like the limited estate in the English sense of the term than like a full Hindu widow's estate in spite of the directions above-mentioned. She had complete control over the income of the property during her lifetime but she had no power to deal with the corpus of the estate and it had to be kept intact for the enjoyment of the daughter. Though the daughter was not entitled to immediate possession of the property it was indicated with certainty that she should get the entire estate at the proper time and she thus got an interest in it on the testator's death. She was given a present right of future enjoyment in the property. According to Jarman (Jarman on Wills), the law leans in favour of vesting of estates and the property disposed of belongs to the object of the gift when the will takes effect and we think the daughter got under this will a vested interest in the testator's properties on his death.

It was strenuously argued by Mr. K. S. Krishnaswami Iyengar that Lakshminarayana Iyer was a Brahmin gentleman presumably versed in the sastras, living in a village in the southernmost part of the Madras State, that his idea of a restricted estate was more likely to be one analogous to a Hindu woman's estate than a life estate as understood in English law wherein the estate is measured by use and not by duration, and that if this will was construed in the light of the notions of Lakshminarayana Iyer it should be held that the widow got under it a Hindu widow's estate and the daughter got under it a contingent remainder in the nature of *spes* and on her death there was nothing which could devolve on the plaintiff and he thus had no *locus standi* to question the alienations made by the widow,

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The learned counsel in support of his contention drew our attention to a number of decisions of different High Courts and contended that the words of this will should be construed in the manner as more or less similar words were construed by the courts in the wills dealt with in those decisions. This rule of construction by analogy is a dangerous one to follow in construing wills differently worded and executed in different surroundings. [Vide *Sasiman* v. *Shib Narain* (1)]. However, out of respect for learned counsel on both sides who adopted the same method of approach we proceed to examine some of the important cases referred to by them.

Mr. Krishnaswami Iyengar sought to derive the greatest support for his contention from the decision in *Ram Bahadur* v. *Jager Nath Prasad* (2). The will there recited that if a daughter or son was born to the testator during his lifetime, such son or daughter would be the owner of all his properties but if there was no son or daughter, his niece S. would get a bequest of a lakh of rupees, and the rest of the movable and immovable properties would remain in possession of his wife until her death, and after her these would remain in possession of his niece. The remainder was disposed of in the following words: —

"If on the death of my wife and my niece there be living a son and a daughter born of the womb of my said brother's daughter, then two-thirds of the movable property will belong to the son and one-third to the daughter. But as regards the immovable property none shall have the lest right of alienation. They will of course be entitled to enjoy the balance left after payment of rent".

This will was construed as conveying an absolute estate to the son and the daughter of the niece. It was remarked that in spite of an express restriction against alienation, the estate taken by S. (the niece) was an estate such as a woman ordinarily acquires by inheritance under the Hindu law which she holds in a completely representative character but is unable to

(1) 49 I. A. 25. (2) 3 Pat. L. J. 199.

alienate except in case of legal necessity and that such a construction was in accordance with the ordinary notions that a Hindu has in regard to devolution of his property. The provisions contained in this will bear no analogy to those we have to construe. The restraint against alienation was repugnant to both a life estate and a widow's estate and was not, therefore, taken into account. But there were other indications in that will showing that a widow's estate had been given. The fact that the gift over was a contingent bequest was by itself taken as a sure indication that the preceding bequest was that of a widow's estate. There is no such indication in the will before us.

Reliance was next placed on the decision in *Pavani Subbamma* v. *Ammala Rama Naidu* (1). Under the will there dealt with, the widow S, was to enjoy the properties and after her lifetime the properties were to be taken in the ratio of three to five by the son's daughter and the daughter's son respectively. A suit was instituted by the son's daughter for the recovery of possession of her share in one item of property forming part of the estate which had been sold by S. The question for decision in that case was whether S. was at all entitled to sell anything more than her life interest even for purposes of meeting a necessity binding upon the estate. Varadachari J. held that since in the will the gift over to the grand-children was of the *entire properties*, and not a mere gift by way of defeasance, it had to be held that it indicated that the prior gift in favour of the widow was only of a limited interest. This decision therefore goes against the contention of the learned counsel but he placed reliance on the observations made in the judgment when the learned Judge proceeded to say " In deference to the view taken in *Maharaja of Kolhapur* v. *Sundaram Iyer* (2), it may be possible to create an interest analogous to a woman's estate in Hindu law notwithstanding the addition of a gift over and that the estate taken by S. need not necessarily be only a life estate in the English law

(1) (1937) 1 M.L.J. 268. (2) (1925) I.L.R. 48 Mad. 1.

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sense of the term." We do not understand how such passing observations can be helpful in deciding the present case. Assuming that it is possible to create a Hindu woman's estate notwithstanding the addition of a gift over, the question nevertheless whether that had been done in a given case must depend on the terms of the particular instrument under consideration.

The following remarks in the Privy Council decision in *Nathu Ram Mahajan* v. *Gangabai*(1) were next cited:—

As the will gave her the right to 'enjoy' the income of the estate during her lifetime, it was evidently contemplated that she should, as provided by the Hindu law in the case of a widow, be in possession of the estate."

Such casual observation made in respect of a will couched in entirely different terms cannot afford much assistance in the decision of the case.

In *Vasantharao Ammannamma* v. *Venkata Kodanda Rao Pantulu*(2), the next case cited, a Hindu testator who was a retired subordinate judge provided by his will as follows:—

"Out of the aforestated ancestral lands, the one-ninth share to which I am entitled shall be enjoyed after my death by my wife till her death, and after her death it shall pass to S. son of my second elder brother deceased. My self-acquired properties shall on my death be enjoyed by my wife till her death and after her death they shall pass to my daughter. Thereafter they shall pass to my grandson through my daughter".

The will was construed as giving the self-acquired properties ultimately to the grandsons, and the estate of the daughter was likened to an estate which she would take under the law of inheritance, that is a limited estate analogous to a widow's estate. At page 193 of the report it was observed as follows:—

"The question therefore arises, did he intend to confer only a life estate or a daughter's estate? It seems

(1) (1938) 2 M.L.J. 562. (2) (1940) 1 M.L.J. 188.

to us that he meant to give a daughter's estate rather than a life estate. *He omits the words 'during her life' with reference to the disposition in favour of the daughter.* The words 'pass to my daughter' would rather indicate that in the ordinary course of devolution the estate should pass to her, that is, the daughter and then to the grandsons. The words used in favour of the grandsons seem to indicate that the estate conferred on the daughter was not a life estate because there is no direct gift in favour of the grandsons, but on the other hand, what he says is that through his daughter the estate shall pass to his grandsons. Either he must have intended that the daughter should convey the property either by will or *inter vivos* to the grandsons or she having taken the estate, through her it should pass to the grandsons in the ordinary course of devolution. If it was the daughter's estate that was intended to be conferred, there can be no question that the estate taken by the grandsons is not a vested interest". This line of reasoning which appealed to the learned judges is not of much help to us here as the language in this will is quite different. If the same line of reasoning is adopted here, the decision of the case would go against the client of Mr. K. S. K. Iyengar because in the will in this case the widow's estate is delimited by the words "till your lifetime."

Reliance was next placed on *Maharaja of Kolhapur* v. *Sundaram Iyer* (1). That was a case of a government grant on the special terms set out therein and the question arose as to the nature of the grant. There it was said that "the widows of Sivaji Raja got the gift of a life estate very much resembling the ordinary estate of a Hindu widow and with all the incidents of a widow's estate except the liability to be divested, but nevertheless a life estate rather than an estate of inheritance." These remarks do not throw much light on the point before us.

The last decision referred to was the decision of the Privy Council in *Mahomed Shumsool* v. *Shewukram* (2). There a Hindu inhabitant of Bihar by a document of

(1) (1925) I.L.R. 48 Mad. 1. (2) (1874-75) 2 I.A. 7.

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a testamentary character declared his daughter who had two daughters, as his heir, and after her, her two daughters together with their children were declared heirs and malik. One daughter of the daughter predeceased the testator without issue and the other daughter died after the death of the testator leaving an only son, the respondent in that case. In a suit by the respondent against his grandmother the daughter of the testator for a declaratory order preserving unmolested his future right and title to the said lands, it was held that the daughter took an estate subject to her daughters succeeding her. In this judgment the following observations were emphasized as relevant to this enquiry :—

"It has been contended that these latter expressions qualify the generality of the former expressions, and that the will, taken as a whole, must be construed as intimating the intention of the testator that Mst. Rani Dhun Kaur should not take an absolute estate, but that she should be succeeded in her estate by her two daughters. In other words, that she should take an estate very much like the ordinary estate of a Hindu widow. In construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate."

These observations are unexceptionable but it may also be pointed out that it is open to a Hindu to confer a limited life estate on his widow or even a larger estate than a widow takes as an heir and that in every case he may not confer upon her by will a Hindu widow's estate which she would otherwise get by inheritance. Generally speaking, there will be no point in making a will if what is to be given to a widow is what she would get on intestacy and cases do arise

where a Hindu wishes to give to his widow a more restricted estate than she would get on intestacy or a much larger estate than that. The question in every case cannot be determined merely on the theory that every Hindu thinks only about a Hindu widow's estate and no more. What is given must be gathered from the language of the will in the light of the surrounding circumstances.

The learned counsel for the respondent followed the line adopted by Mr. Krishnaswami Iyengar. He also on the analogy of other wills and the decisions given on their terms wanted a decision on the construction of this will in his favour. In the first instance, he placed reliance on a decision of the Madras High Court in *Ratna Chetty* v. *Narayanaswami Chetty*(1). There the testator made a will in favour of his wife providing, *inter alia*, "all my properties shall after my death be in possession of my wife herself and she herself should be heir to everything and Mutha Arunachala Chetty (nephew) and my wife should live together amicably as of one family. If the two could not agree and live together amicably, my wife would pay Rs. 4,000 and separate him and then my wife would enjoy all the remaining properties with absolute rights. If both of them would live together amicably, Muthu Arunachala Chetty himself would enjoy the properties which remain after the death of the widow." It was held upon the construction of the will that the nephew, who lived amicably with the widow till his death, had a vested interest at testator's death which could not be defeated by a testamentary disposition by the widow in favour of a stranger. This decision only decides that case and is not very relevant in this enquiry.

Reference was also made to the decision of their Lordships of the Privy Council in *Mst. Bhagwati Devi* v. *Chowdry Bholonath Thakur*(2). This was a case of a gift *inter vivos*. The gift to Mst. Chunderbutti, his wife, was in these terms :—

(1) (1914) 26 M.L.J. 616. (2) (1874-75) 2 I.A 256.

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"the remaining 'milkiut' and 'minhai' estates, together with the amount of ready money, articles, slaves, and all household furniture I have placed in the possession of Mst. Chunderbutti Thakurain, my wife, to be enjoyed during her lifetime, in order that she may hold possession of all the properties and milkiut possessed by me, the declarant, during her lifetime, and by the payment of government revenue, appropriate the profits derived therefrom, but that she should not by any means transfer the milkiut estates and the slaves; that after the death of my aforesaid wife the milkiut and household furniture shall devolve on Girdhari Thakur, my karta (adopted son)."

The subordinate judge held that Chunderbutti got an estate for life with the power to appropriate profits and Girdhari got a vested remainder on her death. The High Court took a different view and held that Chunderbutti took the estate in her character as a Hindu widow. The Privy Council on this will held as follows:—

"Their Lordships do not feel justified, upon mere conjecture of what might probably have been intended, in so interpreting it as materially to change the nature of the estate taken by Chunderbutti. If she took the estate only of a Hindu widow, one consequence, no doubt, would be that she would be unable to alienate the profits, or that at all events, whatever she purchased out of them would be an increment to her husband's estate, and the plaintiffs would be entitled to recover possession of all such property, real and personal. But, on the other hand, she would have certain rights as a Hindu widow; for example, she would have the right under certain circumstances, if the estate were insufficient to defray the funeral expenses or her maintenance, to alienate it altogether. She certainly would have the power of selling her own estate; and it would further follow that Girdhari would not be possessed in any sense of a vested remainder, but merely of a contingent one. It would also follow that she would completely represent the estate, and under certain circumstances the statute

of limitations might run against the heirs to the estate, whoever they might be.

Their Lordships see no sufficient reason for importing into this document words which would carry with them all these consequences, and they agree with the subordinate judge in construing it according to its plain meaning."

These observations have to a certain extent relevance to the present case but on the facts this case is also distinguishable. This will was couched in different language than the will in the present case. There was a clear prohibition, forbidding the widow to make any transfers of the milkiut estates and the slaves.

Reference was also made to a decision of the Bombay High Court in *Lallu* v. *Jagmohan*(1). The will there ran as follows:—

"When I die, my wife named Suraj is owner of that property. And my wife has powers to do in the same way as I have absolute powers to do when I am present, and in case of my wife's death, my daughter Mahalaxmi is owner of the said property after that."

It was held that Suraj took only a life estate under the will, with remainder over to Mahalaxmi after her death and the bequest to Mahalaxmi was not contingent on her surviving Suraj, but that she took a vested remainder which upon her death passed to her heirs.

After considering the rival contentions of the parties, we are of the opinion that no sufficient grounds have been made out for disturbing the unanimous opinion of the two courts below on the construction of this will. Both the learned counsel eventually conceded that the language used in the will was consistent with the testator's intention of conferring a life estate in the English sense as well as with the intention of conferring a Hindu widow's estate. It was, however, urged by Mr. Rajah Iyer that as no express or implied power of alienation for purposes of all legal necessities was conferred on the widow, that circumstance

(1) (1898) I.L.R. 22 Bom. 409.

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negatived the view that the testator intended to confer upon his widow a Hindu widow's estate as she would get in case of intestacy. He also emphasized that the words of the gift over to the daughter as supporting his construction which was further reinforced by the words of the will limiting the widow's estate " till your lifetime " and of the omission from therein of words such as malik etc., while describing the widow's estate. Mr. Krishnaswami Iyengar, on the other hand, contended that the absence of any words in the will restricting her powers of alienation and putting a restraint on them, suggested a contrary intention and that the daughter's estate was described as coming into being after the estate of the widow and was not conferred on her simultaneously with the widow, and this connoted according to the notions of Hindus a full Hindu widow's estate. In our judgment, there is force in the contention of Mr. Rajah Iyer for reasons already stated and in the result, therefore, we dismiss this appeal with costs.

Appeal dismissed.

Agent for the appellant : *M. S. K. Aiyangar.*

Agent for the respondent : *Ganpat Rai.*