

Atar Singh Vs. Thakar Singh

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Court : Mumbai

Decided On : Jul-17-1908

Reported in : (1908)10BOMLR790

Judge : Robertson, ;Atkinson, ;Collins, ;Andrew Scoble and ;Arthur Wilson, JJ.

Appellant : Atar Singh

Respondent : Thakar Singh

Disposition : Appeal allowed

Judgement :

Collins, J.

1. This is an appeal from a decree of the Chief Court of the Punjab varying a decree of the District Judge of Amritsar. The suit was brought by Thakar Singh and his brother, Kehr Singh, minors, by their mother acting as next friend, to set aside a deed of sale made on the 7th May 1894 by their father Dyal Singh to the appellants and certain other persons as purchasers, on the ground that the lands, the subject-matter of the sale, were, in the view of the Hindu law, ancestral, and that the sale was not necessary, and was for a fictitious consideration and in fraud of the rights of the plaintiffs' father, Dyal Singh, as next heir and reversioner on the death of the widow of Dhanna Singh, the deceased owner. Kehr Singh died while the suit was pending. The only question in dispute on this appeal is whether the

lands were ancestral. The District Judge has held that they were not, the Chief Court has reversed his decision and held that they were.

2. It is not disputed that the onus on this issue is on the plaintiffs, and it is because in the opinion of the District Judge they failed to discharge this onus that the suit was dismissed.

3. It is through their father, as heir of the above-named Dhanna Singh, that the plaintiffs claimed, and unless the lands came to Dhanna Singh by descent from a lineal male ancestor in the male line, through whom the plaintiffs also in like manner claimed, they are not deemed ancestral in Hindu law. Therefore if the plaintiffs cannot show that they were not self-acquired lands in the hands of Dhanna Singh, the suit fails, Now, as the District Judge points out, there is really no evidence that the lands in question came to Dhanna Singh by descent at all. There is evidence that he acquired some lands in the district by purchase from the owners, and there is a probability that he acquired others by the abandonment of other persons who may have been collateral, and, in that way, may have become possessed of lands which, by the custom of the Punjab, would be regarded as ancestral. But there is no evidence whatever defining the boundaries of these portions of land respectively. Indeed, the learned Judges of the Chief Court themselves say.' It is impossible to differentiate between the portions which came from relatives and co-sharers and the portions which may have, in some instances, been purchased. 'But it is by reason of this impossibility that the plaintiffs failed to prove their case. The learned District Judge also points out that, since the death of Dhanna Singh, large portions of the land held by him have been sold by his widow, and it is quite possible that all the ancestral land, if he had any, was embraced in these sales, and that the sale of the lands in question embraced exclusively self-acquired lands. Their lordships agree that, when the onus lies, as it does in this case, on the plaintiffs in seeking to set aside on such grounds a solemn deed executed by their father, conjectures cannot be accepted as a substitute for proof. With the greatest respect to the Judges of the Chief Court their lordships venture to think that they have hardly given, sufficient weight to this consideration. Their lordships agree with the conclusion and reasoning of the learned District Judge, and will humbly advise His Majesty that the appeal be

allowed and the decree of the Chief Court set aside with costs. The respondent must pay the costs of this appeal, except so far as they may have been increased by the delay which has taken place in the prosecution of the appeal.

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