

Raja Dei Vs. Umed Singh

Raja Dei Vs. Umed Singh

SooperKanoon Citation : sooperkanoon.com/447400

Court : Allahabad

Decided On : Jan-08-1912

Reported in : (1912)ILR34All207

Judge : Karamat Husain and ;Chamier, JJ.

Appellant : Raja Dei

Respondent : Umed Singh

Judgement :

Chamier, J.

1. Nagina Singh died many years ago, leaving a widow, Musammat Waziri, a daughter, Musammat Raja Dei, and a daughter's son, Kan. Singh. In June, 1909, Musammat 'Waziri, who was in possession of the estate of her- husband, made a gift of it to Kan Singh. The plaintiffs at once brought this suit for a declaration that the gift was not binding upon them. The plaintiffs other than the present respondent, Umed Singh, are more distantly related to Nagina Singh than Umed Singh is. The courts below have agreed in making a declaration as prayed in favour of Umed Singh. Kan Singh died while the suit was pending in the court of first instance. The appeal to the lower appellate court was filed by Musammat Raja Dei, and it is she who has filed this second appeal. In this Court it is contended that at the date of the institution of this suit, Umed Singh was not the nearest reversionary heir of Nagina Singh, and therefore the suit was not maintainable.

Indeed, it is contended that even Kan Singh, supposing he had not been the donee of the property, could not have maintained a suit for a declaration inasmuch as the next reversioner was his mother, Raja Dei.

2. There is, of course, no doubt that the nearest reversioner, who is the presumptive heir, though he may have only a contingent interest, may sue for a declaration that a transfer by a female heir in possession of the property of the last full owner does not bind the estate. Upon the question whether a remote reversioner may maintain such a suit when the immediate reversioner is or rather will be the holder of a life-estate only, as where the immediate reversioner is a Hindu female, there is some conflict of authority in this Court. In *Madari v. Malki* (1884) I.L.R. 6 All. 428. *Straight and Broodhust, JJ.*, held that such a suit could not be maintained unless the immediate reversioner was shown to be in collusion with the heir in possession, but in *Balgobind v. Ram Kumar* (1884) I.L.R. 6 All. 481 *Oldfield and Mahmood, JJ.* held that such a suit could be -maintained.

3. In *Ishwar Narain v. Janki* (1893) I.L.R. 15 All. 182. *Tyrrell and Blair, JJ.* refused to follow the decision in the latter case and adopted the view taken in the former case. In the case of *Hanuman Pandit v. Jota Kunwar* Weekly Notes 1908 p. 207 my learned colleague, after referring to several decisions of this and other courts, said that he preferred the decision in *Balgobind v. Ram Kumar* and the same view was taken in *Dirgbijai Singh v. Jagannath Singh* F.A. No. 210 of 1910 which is the latest case in this Court. The balance of authority in the Calcutta High Court is clearly in favour of the view taken in *Balgobind v. Ram Kumar* and the Madras High Court have held in several cases that such a suit can be maintained by a remote reversioner when the immediate reversioner is a female entitled to a life-estate only. I have myself in several cases in Oudh followed the view taken by *Oldfield and Mahmood, JJ.*, in *Balgobind v. Ram Kumar* by the Madras' High Court and by many Judges in the Calcutta High Court, and I am content to adopt the arguments contained in the judgment of *Mahmood, J.*, and in the judgment of *Brett and Mookerjee, JJ.*, in the latest case in the Calcutta High Court, *Abinash Chandra Mazumdar v. Harinath Shaha* (1904) I.L.R. 32 Calc. 62. I am of opinion that a remote reversioner presumptively .entitled to the full ownership of the property can maintain such a suit as this, where the immediate reversioner is a female who will

take, if anything, a limited or 'life-estate only. The existence of Raja Dei, then, in my opinion, offers no bar to the maintenance of the present suit. Nor in my opinion is the maintenance of the suit barred by the fact that Kan Singh was at the date of the institution of the suit the next reversioner presumptively entitled to the full ownership of the property. In *Rani Anund Koer v. Court of Wards* (1884) I.L.R. 6 All. 428 their Lordships of the Privy Council said:

If the nearest reversionary heir refuses without sufficient cause to institute proceedings or if he has precluded himself by his own act or conduct from suing or has colluded with the widow or concurred in the act alleged to be wrongful, the next presumptive reversioners would be entitled to sue.

4. These remarks clearly cover the present case where the nearest reversionary heir was a female who supports the alienation in question, and the nearest reversionary heir presumptively entitled to the full ownership of the property was the person in whose favour the transfer complained of was made. In my opinion the courts below were right in holding that the respondent; Umed Singh, was competent to maintain this suit. It has not been suggested that they did not exercise a wise discretion in making a declaration in his favour. I would observe in conclusion that no question of acceleration of estates arises here, for Kan Singh, the donee, was not the next reversioner. I would dismiss the (appeal with costs.

Karamat Husain, J.

5. I agree with my learned colleague in the order proposed by him.

6. Order of the Court is that the appeal be dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com