

Mt. Rasulan Vs. Babu

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Court : Allahabad

Decided On : Jan-03-1930

Reported in : AIR1930All350

Appellant : Mt. Rasulan

Respondent : Babu

Judgement :

Bennet, J.

1. This is a Letters Patent appeal brought by the plaintiff whose suit was decreed in full by both the lower Courts, but on appeal by a defendant, the learned Judge of this Court dismissed the suit of the plaintiff in regard to half an occupancy holding. The pedigree in this case is as follows:

Imam_____ | _____ | |Mt. Rasulan (Pltff.) Abdul Rahman
=daughterMt. Mirian (widow)_____ | | |Abdul Aziz Mt.
Nasira Mt. Khalila

2. Imam was the owner of an occupancy holding and he died before Act 2 of 1901. He was succeeded by his daughter Mt. Rasulan the present plaintiff and his son Abdul Rahman. Although according to Mahomedan Law Abdul Rahman would have been entitled to a two-thirds share, the entry of the occupancy holding was made for Mt. Rasulan and Abdul Rahman in equal shares. Abdul Rahman died

about nine or ten years before the suit and he was succeeded by his son Abdul Aziz who died without issue in 1916. On the death of Abdul Aziz, the name of his mother Mt. Mirian, the widow of Abdul Rahman was entered and on her death in 1918, the name of one Babu, a defendant, who was the brother of Mt. Mirian was entered as in occupation of half her holding. Now, on 2nd January 1904, the plaintiff Mt. Rasulan had mortgaged her half share of the occupancy holding to her brother Abdul Rahman for Rs. 99. One part of the plaintiff's case was a suit for redemption of this half of the holding which was mortgaged and the plaintiff has received from all Courts a decree for redemption of this half for Rs. 99 and that matter is not now before us. The question before us is whether the plaintiff is entitled to succeed by survivorship to the remaining half of the occupancy holding. It was argued that this claim was a new case for the plaintiff, but we find it clearly stated in para. 9 of the plaint that after the death of Abdul Rahman the plaintiff was a tenant along with Abdul Aziz his son and after the death of Abdul Aziz, she became the tenant of the entire holding.

3. For the respondent it was contended that under Section 22, Act 2 of 1901, which was in force at the time of the death of Mt. Mirian in 1918, and at the time of the death of Abdul Aziz in 1916, the plaintiff is not a person entitled to succeed to the interest of either of those persons. This is undoubtedly so. The question which we have to consider is whether the plaintiff is entitled to succeed as a joint tenant or whether Section 22 prevents one of two joint tenants succeeding on the extinction of the line of the other joint tenant. It was argued in the first place that the specification of shares prevented the plaintiff from having any right of succession in the share of one-half entered for her brother Abdul Rahman. But there was no division of the holding or partition and the mere specification of shares does not amount to any division or partition. This matter of joint tenants has been once before this Court in Second Appeal No. 764 of 1905. In that case, an occupancy tenant died leaving a widow and two daughters who were recorded as joint tenants. The widow and the daughters applied to be entered for her share. It was held that the daughters succeeded by survivorship to the whole of the joint holding and the zamindars could not claim any right of reversion of a portion of a joint holding to themselves. Although the judgment of this Court is given somewhat briefly, still it refers with approval to the reasons given by the District Judge, where

the proposition is discussed at length. With those reasons we are in agreement. We may also refer to the provisions of law now made in the new Act, Act 3 of 1926, Section 26 where it is laid down:

And except in the case of widows or of a co-tenant who dies leaving no heir entitled to succeed under Section 24, no interest in any exproprietary, occupancy, statutory, or non-occupancy tenancy shall pass by survivorship.

4. That is to say, under this provision, the interest of a co-tenant who dies leaving no heir will pass by survivorship to his co-tenant.

5. It was argued by the learned counsel for the defendant that the right of occupancy was extinguished within the meaning of Section 18, Act 2 of 1901, because the tenant had died leaving no heir. But we consider that if that section had meant to refer to one of two joint tenants, the section would have stated so definitely. We may also refer to the wording of Section 22 which refers to an occupancy tenant, and to his interest in the holding. Therefore, in our opinion, Section 22 lays down the succession for a deceased occupancy tenant but it does not lay down that there should be no right of survivorship of one occupancy tenant to a deceased occupancy co-tenant. It was argued by the learned counsel for the defendant that there was no provision in Act 2 of 1901, under which a joint tenant could take by survivorship from a deceased joint tenant whose line had become extinguished. That is so, but neither is there any provision for the reversion to the landholder of a share in such circumstances. The fact is that Act 2 of 1901 does not make any special provision for such a case. Accordingly we must go to more general provisions of law for guidance. An occupancy tenancy originates in a non-occupancy tenancy which is held for 12 years, and a non-occupancy tenancy originates in a contract between the landholder and the tenant that the landholder will let the holding from year to year and that the tenant will pay the yearly rent. When the period of 12 years is complete the tenant receives the statutory protection against ejectment on the mere ground that he holds from year to year, but the contract to let and to pay rent remains in force. Where there are joint tenants the devolution of joint rights is governed by Section 45, Contract Act which states:

Where a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them, during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

6. This section gives the general principle which governs the devolution of the rights of joint tenants. The scope of Section 22, Act 2 of 1901 is limited to defining who is the representative of the deceased joint occupancy tenant. When there is no person who is a representative of the deceased joint occupancy tenant within the meaning of Section 22, Act 2 of 1901, then there is no such representative to claim along with the remaining joint occupancy tenant or tenants that the landholder should fulfill his part of the contract. Consequently under Section 45, Contract Act, the remaining joint occupancy tenant or tenants have the right to claim fulfillment alone from the landholder. We may refer for comparison to the principles of the English Law of Tenancy as stated in Foa, Landlord and tenant, 5th Edn.p. 65:

If a lease be granted to two or more persons they hold as joint tenants, and upon the death of one of them the other or others will become entitled by survivorship to the whole at law.

7. Further at p. 36 in Foa it is stated:

Joint tenants have but a single free-hold, and they may, therefore, always join in making a demise of it, they then forming together but one lessor. Such a joint demise operates both as a demise by each joint tenant of his own share and by all of the whole, and is consequently not determined by the death of any of them, the lessee thereupon simply becoming tenant to the survivors or survivor, who will become entitled to the whole rent. But though there is but one freehold, and each joint tenant is seised of the whole ('per tout' as well as " per my '), yet for leasing purposes each of them has an exclusive right only to his own share, consequently, if one of them purport singly to demise the whole, nothing more than his own share will pass.

8. These passages illustrate the nature of joint tenancy. The rule of survivorship among joint tenants is, however, modified in India by Sections 42 and 45, Contract Act, which put the representative of the deceased joint tenant in his place, so long as there is such a representative. On failure of such a representative the rule of survivorship among joint tenants applies.

9. Applying these principles to the present case we hold that the plaintiff Mt. Rasulan did take the half share of the joint occupancy holding belonging to Abdul Aziz on his death, as he left no successor capable of taking under Section 22, Act 2 of 1901. Mr. Rasulan being the sole surviving joint occupancy tenant took this share by survivorship. Accordingly we set aside the decree of the learned single Judge of this Court and we restore the decrees of the lower appellate Court and the Court of first instance with costs throughout.

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