

Man Kunwar Vs. Dilip Singh,

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SooperKanoon Citation : sooperkanoon.com/448061

Court : Allahabad

Decided On : Jan-05-1921

Reported in : (1921)ILR43All389

Judge : Pramada Charan Banerji and ;Gokul Prasad, JJ.

Appellant : Man Kunwar

Respondent : Dilip Singh,; Lajja and ors.

Judgement :

Pramada Charan Banerji and Gokul Prasad, JJ.

1. In his appeal arises out of a suit for possession and mesne profits brought under the following circumstances. The property in dispute belonged to one Jiraj Singh, a Jat by case, who died in December, 1909, leaving him surviving a widow, Musammat Indo, and a daughter, Man Kunwar, who is the plaintiff in this case. His widow, Musammat Indo, soon after died in the beginning of 1910. In March, 1910, an application was put in on behalf of Musammat Man Kunwar for mutation of names in place of that of her deceased father. On the same date an application was put in on behalf of the defendant Dalip Singh and his brother Jhandu to have their names mutated in place of that of their deceased father, Sis Ram, who had died on or about the same time as Jiraj. Later on an objection was preferred on behalf of Dalip Singh to the entry of the name of Musammat Man Kunwar in respect of the property left by Jiraj, on the allegation that be, Dalip Singh, was the

adopted son of the deceased. This dispute was referred to arbitration and the arbitrators, on the 16th of November, 1910, made an award upholding the adoption and recommending that mutation of names should be effected in favour of Dalip Singh. This was accordingly done. At that time both Man Kunwar and Dalip Singh were minors. After Musammat Man Kunwar had attained majority she, on the 5th of February, 1917, instituted the present suit for possession of the property left by her father and also for mesne profits, on the ground that Dalip Singh was not, as a matter of fact, the adopted son of Jiraj Singh deceased and that the award was a collusive proceeding and was not binding on her. The defence put forward by Dalip Singh was to the effect that he had been adopted by Jiraj in his life-time and that the arbitration proceedings were binding on the plaintiff and operated as *res judicata*. The lower court held on the first question, namely, the adoption, that it was not proved. As to the second point it came to the conclusion that the only question which was before the Revenue Court for decision was which of the two persons was entitled to the entry of his name in place of that of the deceased, Jiraj Singh, and, following the ruling in the case of *Girdhari Chaube v. Ram Baran Misir* (1916) 14 A.L.J. 85, it came to the conclusion that any decision by the Revenue Court on the question of the entry of names in the revenue papers could not bar any of the parties from having the question of his title to the property decided by the Civil Court. It, therefore, decreed the claim for possession and mesne profits. Dalip Singh has preferred the present appeal and he contests the correctness of the above two findings of the court; below. As regards the first question, namely that of adoption, he has produced a mass of oral evidence and has also relied on certain documentary evidence. [The judgment then discussed the evidence.] We, therefore, agree with the view taken by the court below of the evidence, oral and documentary, in this case and we hold that the defendant has failed to prove that he was the adopted son of Jiraj.

2. Now we come to the second point, namely how far the award of the arbitrators in the Revenue Court estopped the plaintiff from litigating the question of her title in the Civil Court. Reliance is placed on Section 207, Clause (2), of the Land Revenue Act, which provides that no person shall institute any suit in the Civil Court for the purpose of setting it aside or against the arbitrators on account of their award. The proceedings in the Revenue Court related, as we have already

stated, to the entries of names in place of the deceased Jiraj. According to the express provisions of Section 40 of the Land Revenue Act the question of title regarding the property in dispute could be contested by a suit in a Civil Court, notwithstanding the fact that the Revenue Court had ordered the entry of the name of a particular person in regard to that property. The result of an award under Section 207 in a case like this would be that if the court accepted it, it would pass an order in accordance with it, so that the effect of the award could not be in any case higher than that of the order passed in accordance therewith confirming the award. We are, therefore, of opinion that Section 207 of the Land Revenue Act could not prevent a suit like the present, which was for possession of the property, being instituted in the Civil Court. We agree with the view taken by Mr. Justice Walsh in the case of *Girdhari Chaube v. Ram Baran Misir* (1916) 14 A.L.J. 85 and hold that a suit like the present one is not outside the jurisdiction of the Civil Court.

3. As to the amount of mesne profits, although a plea has been taken in the grounds of appeal, we have not been shown any ground for differing from the conclusion arrived at by the court below. We accordingly dismiss the appeal with costs.