

Mt. Deoki Vs. Jwala Prasad

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Court : Allahabad

Decided On : Feb-14-1928

Reported in : AIR1928All216; 108Ind.Cas.564

Appellant : Mt. Deoki

Respondent : Jwala Prasad

Judgement :

Sulaiman, J.

1. This is a defendant's appeal arising out of a suit for a declaration that the plaintiff was the next male heir of the deceased Hoti Lal and a will set up by his widow, Mt. Deoki, in her favour alleged to have been dated 28th October 1922 was a false and spurious document. The deceased Hoti Lal had left a daughter Mt. Prembati who would succeed to the estate if her mother were to die, but the plaintiff has not impleaded her. She is in fact an unmarried minor girl of tender years and is under the protection of her mother. The claim was mainly contested by the widow Mt. Deoki, who pleaded that the deceased had, one day before his death, executed an unregistered will in her favour conferring upon her an absolute estate. The property in dispute consists of a one-sixth share in two markets and a one-third share in two residential houses. The defendant further pleaded that the plaintiff was not the next immediate reversioner and was not entitled to maintain the suit for declaration.

2. The Court below has decreed the claim by granting the plaintiff a declaration that the alleged will set up by the widow was a forged document. The defendant has accordingly appealed to this Court, and on her behalf both the right of the plaintiff to maintain the suit and the finding of the Court below as regards the spuriousness of the will are challenged.

3. As regards the relief that the plaintiff would be the next male heir, it is now well settled that a mere presumptive reversionary heir, who has a mere possibility of succession or spes successionis upon the death of a Hindu widow, is not entitled to maintain a suit for a declaration of his so-called reversionary right. A reversioner as such cannot under Section 42, Specific Relief Act, claim to be entitled to any legal character or any right to any property. Even assuming that the word 'right' may include rights present, future, vested or contingent, such a declaration would be refused as it would be premature. As the actual succession will depend upon the state of things existing when the widow dies, it is impossible to predicate at this moment who would be the reversionary heir of the deceased full proprietor. The declaration sought, therefore, is futile and must be refused. Indeed the learned advocate for the appellant has conceded that such a declaration cannot be granted.

4. The next question is whether in the presence of Mt. Prembati, the daughter, who would succeed immediately if the widow were to die, the present plaintiff, who is the male reversionary heir, is entitled to maintain the suit. In the leading case of *Rani Anand Kuar v. The Court of Wards* [1881] 6 Cal. 764, their Lordships of the Privy Council laid down the general rule that a declaratory suit

must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed if the widow were to die at that moment... and that such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering... 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 presumable reversioner would be entitled to sue. In such a case... the Court must

exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit.

5. Following this case it was held in *Madari v. Malki* [1884] 6 All. 428 that without proof of any connivance or collusion between a Hindu widow and her daughters, a collateral reversioner was not entitled to maintain such a suit. On the other hand another Bench held in *Bal Gobind v. Ram Kumar* [1884] 6 All. 481

that the existence of female heirs, whose right of succession cannot surpass a widow's estate, does not affect the suit of the nearest presumptive reversionary heir to the full ownership of the estate, and that such presumptive heir can maintain a suit for declaratory relief... irrespective of the question of collusion or concurrence by such female heirs.

6. The former Allahabad case was followed in *Ishwar Narain v. Janki* [1893] 15 All. 132. The latter case was approved of in *Hanuman Pandit v. Jola Kunwar* [1908] A.W.N. 207, and in *Raja Debi v. Umed Singh* [1912] 34 All. 207, where it was held

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, her existence offering no bar to the maintenance of the suit.

7. It was 'pointed out in this last-mentioned judgment that the Madras, Calcutta and Oudh Courts had taken the same view of the Privy Council case. The same principle was accepted in *Lakhpati v. Ram Bodh Singh* [1915] 37 All. 350. The Patna High Court also has taken the same view in *Ram Yad v. Ram Bhira* [1920] 4 Pat. L.J. 734. There is thus a clear preponderance of authority in favour of the view that a reversioner to the full proprietary estate is entitled to maintain a suit without showing collusion between the nearer female heir and the widow, and that the principle laid down by their Lordships of the Privy Council has no application where the next heir is a female and as such entitled only to a life estate. But, with great respect, we would point out that all the learned Judges have ignored the significance of the definition of the words 'presumptive reversionary heir' as given

by their Lordships themselves, and have introduced the words 'to the full proprietary, interest' which are not to be found in that definition. In Rani Anand Kunwar's case [1881] 6 Cal. 764 their Lordships, at p. 772, stated:

must be brought by the presumptive reversionary heir, that is to say by the person who would succeed if the widow were to die at that moment.

8. When there is a nearer female heir intervening it cannot be said by any stretch of the language that the next male heir is the person who would succeed if the widow were to die at that moment. In face of this clear language we are unable to agree that the words 'reversionary heir' used by their Lordships meant only 'reversionary heir to the full proprietary interest' and did not include the female heir who would succeed immediately if the widow were to die at that moment. Although there have been expressions of the contrary view by so many eminent Judges, we feel it our duty to give effect to the clear language used by their Lordships and hold that the general rule laid down in Rani Anand Kunwar's case [1881] 6 Cal. 764 is not inapplicable to the case where a nearer female heir intervenes, provided that she would be the heir to the estate if the widow were to die at that moment. The rule that the next immediate reversioner should have the right of suit in the first instance has been re-affirmed by their Lordships of the Privy Council in the case of Venkatanarayana v. Subba Ammal A.I.R. 1915 P.C. 124. There it was held that a suit by the presumptive reversioner is a representative suit on behalf of the general body of reversioners, and on the death of the presumptive reversioner the next presumable reversioner is entitled to continue the action. The right to relief on the part of reversioners exists severally in order of succession and arises out of the one and the same transaction impugned as invalid and not binding against them as a body.

9. Can a suit brought by a daughter be thrown out on the ground that she is not the presumptive reversioner as contemplated by their Lordships?

10. At the same time we fully appreciate the difficulties which might arise if the Courts were to insist on strict proof of collusion, concurrence or carelessness on the part of the next female heir for in many cases such strict proof may not be forthcoming, and lapse of time may make available evidence disappear. But in our

opinion the solution of the difficulty does not lie in saying that the general rule laid down by their Lordships of the Privy Council is inapplicable where a female heir intervenes, but in recognizing that the instances mentioned by their Lordships, when the next presumable reversioner can sue, were not intended to be absolutely exhaustive. Their Lordships remarked, at p. 772:

In such cases, upon a plaintiff stating the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit.

11. It follows that although we are unable to hold that the existence of a nearer female heir can always be ignored by the next male heir, we are prepared to concede that even without any express proof of refusal, concurrence or collusion on her part there may be special circumstances in which a Court may exercise its discretion and grant the declaratory relief to a remoter heir.

12. Another serious difficulty in the way of the plaintiff is caused by the unfortunate omission to implead Mt. Prembati. The learned advocate for the plaintiff replies and says that once the right of the remoter reversioner to sue is established, there is no rule which requires that the nearer heir should be impleaded. He has brought to our notice that at least in some cases of the Allahabad High Court the nearest female heir had not been impleaded and nevertheless the declaration was granted. In Bal Govind's case the existence of the daughter Mt. Phulera was discovered only at the trial and made certain after the finding of the first Court that she was still alive. Similarly in Lakhpat's case Sarju Dei, alleged to be the legitimate daughter of Jita was not a party and the case proceeded on the assumption that her presence, even if proved to be legitimate, would not prevent the plaintiff from suing.

13. In Hani Anand Kunwar's case [1881] 6 Cal. 764 on top of p. 773, their Lordships remarked:

The Court... would probably require the nearer reversioner to be made a party to the suit.

14. Again in Venkata Narayana v. Subba Ammal A.I.R. 1915 P.C. 124 their Lordships said:

There is nothing to preclude a remote reversioner from joining or asking to be joined in the action brought by the presumptive reversioner or even obtaining the conduct of the suit on proof of laches on the part of the plaintiff or collusion between him and the widow or other female whose acts are impugned.

15. This undoubtedly recognizes more than one reversioner being a party to the suit. Similarly one of us in the case of Kesho Prasad Singh v. Sheo Pargash Ojha A.I.R. 1922 All. 301 referred to the propriety of impleading other reversioners to a representative suit. As the relief to be granted is a discretionary relief it cannot be urged that the non joinder of the nearest reversioner is by virtue of Order 1. Rule 9, of no consequence even when she may be prejudiced adversely by the result of the suit. All the same, a suit cannot fail merely on the technical ground that she has not been impleaded, although the relief to be granted is really to her benefit.

16. We accordingly propose to consider the case on its merits and postpone the consideration of the question whether we should or should not exercise our discretion in granting the declaration till we have examined whether the finding of the Court below as regards the disputed will is or is not correct.

17. The will is said to have been executed by the deceased Hoti Lal on the 28th October 1922 just one day before his death. The 28th happened to be the last Saturday of the month when the registration office would be closed. The defendant accordingly explains the nonregistration of the document by this circumstance. It was written by the scribe Babu Lal and was attested by a number of attesting witnesses. Two of the witnesses and the scribe had been examined by the defendant in support of the will and we also have the statement of a servant and that of the widow herself. One of the attesting witnesses Lila Dhar has not been examined, and it is not suggested that he was not alive or available at the time when the case was tried. On the other hand the plaintiff went into the witness box and led evidence to show that the deceased for several days previous to his death was in a state of unconsciousness and was not possessed of sound disposing mind. The learned Subordinate Judge who heard this evidence himself was not

satisfied that the execution of the document had been proved. He has not accepted the defendant's evidence, and has found that the will in dispute has not been proved to be genuine. As regards the question of the unconscious state of mind of the deceased, he has also at the conclusion of his judgment remarked that he was not in a conscious state of mind. He has, however, not given details of the discrepancies in the statements of the various witnesses produced by the defendant.

18. If it had been necessary to go into the question of the state of mind of the deceased, we might have found it difficult to uphold the finding that he was not in a conscious state of mind at the time. The statement of the plaintiff's witnesses on this point appears to be grossly exaggerated.

19. The burden, however, lay on the defendant to prove by convincing evidence that the document in dispute had been actually executed by the deceased. No doubt there was considerable litigation between the deceased Hoti Lal and the plaintiff Jwala Prasad, who would be the next male reversioner of the deceased and therefore it cannot be said that the execution of the will under which an absolute estate was conferred on the widow was in any way unnatural; nor have we been impressed by the remark of the Court below that there was no special provision made for the daughter who was in existence, or that permission was given to the widow to adopt a son without saying that the property would devolve on the adopted son. It is not possible to fix upon anything inherent in the document itself which would show that it is suspicious. The learned advocate for the respondent has brought to our notice the fact that half of the residential house is said to have been bequeathed, whereas the widow admits that the deceased owned only a one-third share in it. The learned advocate for the appellant, however, does not admit that Jwala Prasad owned only a one-third; share, inasmuch as at that time his uncle Lala Kalyan Das who represented the third branch had died childless. (The judgment then discussed the evidence as to genuineness of the will and proceeded.) Having regard to all these circumstances we are of opinion that the finding of the Court below that the will has not been proved to be genuine cannot be disturbed in appeal.

20. If the will is declared to be a forged document the result will be that the absolute estate does not devolve on the widow but she only gets a Hindu widow's estate. Mt. Prembati, her daughter, if she survives her would then be the next heir to the estate. On the other hand if the will were a genuine document the widow would become the absolute proprietor of the property and might dispose of it to anyone she likes even to the exclusion of her daughter. Having regard to these circumstances we are of opinion that it is to the interest of the minor Mt. Prembati, who has unfortunately not been impleaded in this case but is entirely under the guardianship and control of the widow that it should be declared that the will is not a genuine document and does not destroy the reversionary interest to the estate of the deceased Hoti Lal. We would therefore dismiss the appeal with costs including in this Court fees on the higher scale.