

Gokul Vs. Mohri Bibi

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Court : Allahabad

Decided On : Jan-18-1918

Reported in : AIR1918All72; (1918)ILR40All325; 44Ind.Cas.1005

Judge : Muhammad Rafiq and ;Piggott, JJ.

Appellant : Gokul

Respondent : Mohri Bibi

Judgement :

Muhammad Rafiq and Piggott, JJ.

1. The facts which have given rise to this appeal are as follows:

2. There were three brothers, Kauleshar, Chandu and Jageshar, who owned a fixed-rate holding of seven bighas and five biswas. According to the plaint the three brothers separated and the holding was privately divided amongst them. On the 9th of January, 1900, the name of Jageshar was entered in respect of two bighas and five biswas, and the rest, five bighas, stood in the name two of brothers, Kauleshar and Chandu. Kauleshar died leaving him surviving his son, Gokul. Chandu died leaving him surviving a widow only and no issue. One Basant Lai obtained a simple money decree against Jageshar, one of the brothers mentioned above, and against Govind, a third party. In execution of his decree Basant Lal attached the whole of the holding, namely, the fixed-rate holding of

seven bighas and five biswas. At the time of the attachment the two widows of Kauleshar and Chandu were alive, as also the son of Kauleshar called Gokul, who was a minor at the time. On the 27th of March, 1901, Gokul filed an objection through his mother as guardian, objecting to the attachment, presumably on the ground that his father and uncle, Chandu, were separate from Jageshar and their property was not liable to sale and attachment in the decree of Basant. On the 5th of June, 1901, the date fixed for hearing the objections, an application was presented to the court on behalf of the guardian of the minor praying for an adjournment, on the ground, that the information of the date of hearing had reached the guardian too late to take steps for production of evidence. The learned Subordinate Judge rejected the application for adjournment and proceeded to dispose of the objections. The order, made on the objections, is as follows:---'This is an objection under Section 278 of the Civil Procedure Code. The correctness of it is disputed by the defendants. The objector has produced no evidence to make out the truth of his claim and it is dismissed with costs.' After the rejection of the objection the entire holding of seven bighas and five biswas was put up to auction and purchased by Basant Lal, the decree-holder. On the 21st of June, 1902, the amin, who was deputed to deliver possession to the purchaser, reported that the widows of Kauleshar and Chandu had obstructed him in his duties. The purchaser having taken no steps, his application for delivery of possession was rejected on the 5th of July, 1902. On the 19th of July, 1903, he again applied for delivery of possession and succeeded in getting it on the 23rd of February, 1904. On the 20th of June, 1914, Gokul, the plaintiff appellant, instituted the suit out of which this appeal has arisen, for possession of five bighas of the fixed-rate holding on the allegation that said the land was not liable to attachment and sale in execution of the decree of Basant Lal against Jageshar. Gokul further stated in his plaint that his father Kauleshar and his two uncles, Jageshar and Chandu, had separated long prior to the decree of Basant and had divided the holding equally amongst themselves. After the separation each brother was in possession of his own share. Basant Lal, the decree-holder, could only sell the share of Jageshar. At the time of the execution of the decree of Basant Lal he, the plaintiff, was minor and was entitled to object as regards the share of the holding that belonged to his father only. Chandu's widow, Musammat Katwari, was alive at

the time of the attachment and the sale of the holding. She died some years after. On her death the share of Chandu came to the plaintiff as the reversionary heir. He attained majority in June, 1912, hence the suit was brought for recovery of the possession of that portion of the holding which longed to his father and his uncle, Chandu. The claim was resisted on various pleas. It was urged on behalf of the defendant that the three brothers were joint and had never separated and that the decree against Jageshar had been passed in the capacity of the karta of the family. It was therefore binding on all the three brothers and their legal representatives. The plea of limitation was urged in respect of the entire claim on the basis of the plaintiff's objections, dated the 27th of May, 1901. The learned Munsif in whose court the suit was filed held that the three brothers were joint and therefore the decree of Basant Lal was binding on the plaintiff. He further found that the objections, dated the 27th of May, 1901, made by the plaintiff through his mother related to the whole of five bighas, the alleged share of Chandu and Kauleshar, and the objections having been dismissed and the suit having been brought more than one year after the dismissal, the present claim was barred under article 11 of schedule I to the Limitation Act. The plaintiff preferred an appeal to the District Judge who disagreed with the first court as to the status of the family of the three brothers but agreed with it as to the plea of limitation. The learned District Judge held that the three brothers were separate but that the claim was obviously barred under Article 11 of Schedule I to the Limitation Act.

3. The plaintiff in his second appeal to this Court advances two contentions. He says that his claim is not barred under article 11 of schedule I of the Limitation Act, inasmuch as his objection was dismissed without any investigation, and, secondly, in any case his claim with regard to two bighas, ten biswas of the holding which he inherited from his uncle, Chandu, after the death of the latter's widow, cannot be said to be barred by limitation as the lady died after the dismissal of the objections, and she had taken no objection to the attachment and sale of the holding. The second contention may be dismissed in a few words. There is a distinct finding of the learned Munsif that the objections of the plaintiff related to five bighas of the holding, that is, the share of his, i.e., plaintiff's, father and uncle. The plaintiff took no objection to this finding in his appeal to the District Judge. There is nothing on the record to make us come to a different conclusion and hold that the objection

related only to the share of Kauleshar. In the plaint itself the plaintiff does not mention the fact of having made an objection in 1901 and there does not seem to be any replication or any statement by him in reply to the written statement that his claim was barred because it was brought a year after the order of the 5th of June, 1901. In support of the first contention a number of cases have been cited by the learned Counsel for the plaintiff appellant. The following cases have been relied upon by the plaintiff, namely, Kallar Singh v. Toril Mahton (1896) 1 C. W. N., 24. Kunj Behari Lal v. Kandh Prasad Narain Singh (1907) 6 C. L. J., 362. Sarat Chandra Basu v. Tarini Prasad Pal Ghowdhry (1907) I. L. R. 34 Cal., 491. Sarala Subba Rau v. Kamsala Timmayya (1906) I. L. R. 31 Mad., 5. and Sujan Ram v. Rattan (1904) punj Rec., p. 318. According to these cases, an objection made under Section 278 of the old Code of Civil Procedure, corresponding to Order XXI, Rule 53, of the present Code, if dismissed without investigation, would take the case of the objector out of the operation of one year's rule of limitation. But the question is what does the word 'investigation' mean? There are cases which go to show that the circumstances under which the objections of the plaintiff were disposed of were not such as to warrant the conclusion that they were decided without investigation, vide-Rahim Bux v. Abdul Kader (1905) I.L.R., 32 Cal., 537. Shagun Chand v. Shibbi (1911) 8 A. L. J., 626. and Chandi Prasad v. Nand Kishore (1903) 20 Indian Cases, 369. We would also refer to Lachmi Narain v. Martindeil (1897) I. L. R., 19 All., 253. for the principle according to which the limitation of one year should be enforced. Most of the case law has been discussed by Mr. Justice Mukerji in the case of Kunj Behari Lal v. Kandh Prasad Narain Singh (2). After the consideration of the case-law the learned Judge concludes thus:---'It is manifest, therefore, from the language of the Code itself, that the only order upon which the character of finality is impressed is an order made upon inquiry.' He also remarks:

It does not follow, however, that merely because the claimant does not advance evidence or is absent, there are no materials before the court to enable it to inquire into the matter.' In the present case the learned Subordinate Judge dismissed the objections of the plaintiff, not in default, nor without any investigation. It is true that the plaintiff produced no evidence in support of his objections, but it does not follow that there was no material on the record to enable the Judge to dispose of

the objections. We think that the cases relied upon by the plaintiff appellant are distinguishable from the case before us.

4. The appeal therefore fails and is dismissed with costs.

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