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**Data DIn Vs. Mt. Nohra**

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**SooperKanoon Citation** : sooperkanoon.com/449608

**Court** : Allahabad

**Decided On :** Jan-07-1930

**Reported in** : AIR1930All419; 121Ind.Cas.825

**Appellant** : Data Din

**Respondent** : Mt. Nohra

**Judgement** :

**Sen, J.**

1. This is an appeal by the plaintiffs in a suit for declaration of title to certain zamindari property and for possession in the alternative. The relationship of the parties will appear from the following genealogical table;

Baijnath_____|_____| |Ram Autar Suraj Bali|| | |Data Din Sat Narain |plaintiff 2 plaintiff 1 Ram Sanmukh=Mt. Nohra(defendant)

2. Data Din and Sat Narain claimed to be the members of a joint Hindu family with Ram Sanmukh, husband of Mt. Nohra defendant. They alleged that Ram Sanmukh died in the year 1918 as a member of the joint Hindu family and that they became owners of the property which was recorded in his name by right of survivorship and that the name of Mt. Nohra was recorded in the revenue papers only by way of solatii cause.

3. The suit was resisted on the ground that Ram Sanmukh died as a member of a divided family, that upon his death his property devolved upon his widow by right of inheritance, and that the suit was obnoxious to the provisions of Section 233-K, Land Revenue Act.

4. The first Court held that Ram Sanmukh died as a member of a joint Hindu family with the plaintiffs, and that Section 233-K, Land Revenue Act, did not bar the suit. It accordingly gave the plaintiffs a decree.

5. The lower appellate Court has not gone into the question as to whether Ram Sanmukh died as a member of the joint Hindu family with the plaintiffs, but has reversed the decision of the trial Court upon the ground that Section 233K operated as a bar to the suit.

6. The property in dispute is situate in mauza Anchraul in the District of Basti. Certain co-sharers of this mauza applied for partition of their shares in the revenue-paying mahal on 7th December 1921. Proclamation in due course was issued under Section 110, Land Revenue Act, against the other co-sharer who did not join in the partition including the parties to the present action. The present plaintiffs applied that a separate patti be formed of their share together with the share of Mt. Nohra. Mt. Nohra, however, did not join in this application. At a later stage, long after the expiry of the period which was fixed under the proclamation, Mt. Nohra applied that her share might be formed into a separate patti. The Assistant Collector gave effect to this petition and directed a separate patti to bo formed. The order of the Assistant Collector was reversed on appeal. The result was that while a separate patti of the share of the plaintiffs was formed, the share standing in the name of Mt. Nohra was incorporated into the Baqi Manda mahal.

7. It is difficult to understand how on these facts, the plaintiffs' claim could be barred by Section 233-K, Land Revenue Act. The declaration which the plaintiff's seek is that they are the owners of the property which stands recorded in the name of Mt. Nohra. The object of this suit is not to claim any relief affecting the partition of union of mahals. If the plaintiffs' claim is allowed, the only result will be that the name of Mt. Nohra will be removed from the revenue records and the name of the plaintiffs substituted in her place, leaving the integrity of the partition

proceedings absolutely unaffected. This case is in many respects parallel to Lal Behari v. Parkali Koer [1920] 42 All. 309. The rule of law laid down therein is directly opposed to the view of the lower appellate Court.

8. We hold that Section 233-K, Land Revenue Act is no bar to the suit.

9. The result is that we allow the appeal, set aside the decree of the lower appellate Court and remand the case to that Court for disposal of the appeal on the marits. Costs here and hitherto should abide the result.

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