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Court : Allahabad

Decided On : Nov-01-1922

Reported in : (1923)ILR45All169

Judge : Rafiq and ;Piggott, JJ.

Appellant : Randhir Singh

Respondent : Udit Narain Singh

Judgement :

Rafiq and Piggott, JJ.

1. The plaintiff in this case, Diwan Randhir Singh, is a landed proprietor, residing in the Jhansi district. Amongst his property we find certain, land in a village called Kerokhar, held by him, in what is described in this record, as an ubari tenure. We should have preferred to find on the record a little more evidence regarding the precise nature of this tenure and the conditions to which it is subject. It would seem, however, that the tenure is something of the nature of a special grant from Government and that it is subject to resumption by Government under possible conditions, though what those conditions may be, is not made particularly clear. As long ago as the 9th of March, 1901, Diwan Randhir Singh borrowed a Sum of Rs. 5,500 from a caste-fellow of his own, Diwan Balbhadar Singh residing in the Hamirpur district. One of the few points on which the plaintiff has not, in the course of this litigation, contradicted previous admissions of his own, is the fact that he

really did borrow Ks. 5,500 in connection with the execution of this document. Even in the trial court he admitted in plain terms that he did owe Diwan Balbhadar Singh this sum of money. Evidently the original intention of the parties was that this money should be secured by usufructuary mortgage on the property of Diwan Randhir Singh in the village of Kerokhar. Whether possession was actually given to the mortgagee is not quite clear; but it seems to be an admitted fact that, after the execution of this document, the parties began to doubt whether an alienation of this land in this particular form would be permitted by Government, and the question arose between the borrower and the lender about substituting some other form of security. At any rate, on the 22nd of February, 1902, we find Diwan Randhir Singh executing a simple mortgage of the same property in favour of one Kunwar Chimman Singh, for a consideration stated at Rs. 7,000, out of which Rs. 5,500 was to go to pay the debt due to Diwan Balbhadar Singh. In the present suit the plaintiff described Kunwar Chimman Singh as the own nephew of Diwan Balbhadar Singh. When cross-examined on the point, he failed to make out this precise relationship; but we may take it that there was some relationship between the two men. The plaintiff has alleged that no further consideration passed in respect of this document for Rs. 7,000 and that its execution was part of an arrangement between himself, Balbhadar Singh, and Kunwar Chimman Singh for the transfer of the debt due to Balbhadar Singh and its conversion into a simple mortgage for Rs. 7,000 in favour of Kunwar Chimman Singh, because the creditor was not satisfied with the security offered by the usufructuary mortgage originally executed.

2. The next important date in the case is the 25th of September, 1902. On this date Randhir Singh admittedly executed a document the interpretation and effect of which are questions in dispute between the parties. On the face of it this document consists of an express declaration that the executant had shortly before taken in adoption, with all due formalities, Kunwar Udit Narain Singh, minor son of Balbhadar Singh, and, further, that, as part of the same arrangement, the executant conveyed to the said Kunwar Udit Narain Singh his own proprietary rights in this village of Kerokhar. From the date of the execution of the deed, Kunwar Udit Narain Singh was to be the owner of this ubari tenure.

3. So long as he remained a minor, however, the property was to remain under the management and superintendence of Randhir Singh. There were other provisions dealing with the possibility of the subsequent birth of natural offspring to the executant, but with this we are not directly concerned. Mutation proceedings followed before the revenue courts and, in the course of those proceedings, it is beyond question that Randhir Singh stated in the most express and definite language that his possession over this property in village Kerokhar was now that of a guardian and superintendent (we might say, a trustee) on behalf of Kunwar Udit Narain Singh. After this date the proceedings taken by the Local Government under the Bundelkhand Encumbered Estates Act of 1901 came into operation. Diwan Bandhir Singh was one of the indebted proprietors, whose estate was brought under the operation of that Act and we have it that a number of claims were filed against him. Amongst other creditors Kunwar Chimman Singh put in a claim on foot of his simple mortgage for Rs. 7,000. In the court of the Special Judge appointed to determine claims under the Encumbered Estates Act a compromise was eventually filed, bearing date the 5th of July, 1905. The wording of this document is certainly peculiar. It makes no secret of the fact that Diwan Randhir Singh had entertained the intention of denying and repudiating the adoption of Kunwar Udit Narain Singh attested by the registered deed of the 25th of September, 1902. However, the compromise sets forth that, after discussion between the parties concerned, Diwan Balbhadar Singh had taken it upon himself to satisfy whatever claim Kunwar Chimman Singh had under the mortgage of 1902 and that, in return for this consideration, Diwan Randhir Singh had abandoned whatever intention he might have entertained of repudiating the adoption. He now binds himself, in express terms, to consider Kunwar Udit Narain Singh as his son and he re-affirms the fact of the adoption. There are certain other conditions the most notable of which is that, in the event of this adoption ever being repudiated by Diwan Randhir Singh or any other member of his family, they shall be bound to pay to Diwan itklbhadar Singh a sum of Rs. 11,250, which is estimated as the amount of the debt due to Kunwar Chimman Singh upon his simple mortgage in respect of which Diwan Randhir Singh was obtaining a release under the terms of the compromise.

4. We now come to the year 1907, in the course of which Diwan Balbhadar Singh died. He had another son named Raj Ballabh Singh, and, on his death, the question arose regarding the succession to his proprietary rights. This was brought before the revenue courts upon an application for mutation. The order of the Assistant Collector, dated the 10th of September, 1907, is on our file. It is to the effect that Kunwar Udit Narain Singh having been adopted into another family, had no right of succession in respect of the estate of his natural father. The order passed, therefore, is that Raj Ballabh Singh alone be recorded as having succeeded to the proprietary rights of Diwan Balbhadar Singh. About the end of the year 1916, or the beginning of the year 1917, Kunwar Udit Narain Singh attained majority. On the 5th of January, 1917, he presented a petition to the revenue courts calling attention to the fact that he had now attained majority and asking that in the records for the village of Kerokhar this fact should be recognized by the removal of the name of Diwan Bandhir Singh, which, up to that time, stood recorded as superintendent or manager (Sarbarahkar) in charge of the property on behalf of the minor proprietor, Kunwar Udit Narain Singh. This application was granted.

5. On the 16th of May, 1918, Diwan Randhir Singh filed the suit with which we are now concerned. He bases this suit essentially upon the allegation that he had never adopted Kunwar Udit Narain Singh and had never even purported to perform any ceremony of adoption in respect of this boy. He recites certain facts, intended to account for the execution of the deed of the 25th of September, 1902, and his own subsequent proceedings. It is sufficient to say that he represented to the court that he was under pressure from Diwan Balbhadar Singh, on account of the debt which he owed to that gentleman, and that the aforesaid creditor, while putting pressure upon him to satisfy the debt, offered to refrain from pressing his claim if the debtor, i.e., Diwan Randhir Singh, would execute a document declaring (falsely) that he had adopted Kunwar Udit Narain Singh and purporting to convey to this minor boy his proprietary rights in the village of Kerokhar. To do the plaintiff all possible justice, we may make it clear that the plaintiff insists upon the fact that the statements in the deed of the 25th of September, 1902, regarding the adoption were known to be false at the time by all parties concerned and that it was a perfectly well understood thing that the transfer of the ubari tenure in village

Kerokhar in favour of Kunwar Udit Narain Singh was to remain a mere paper transaction. As a matter of fact, according to the plaint, Diwan Randhir Singh had remained right up to the year 1917 in the position of beneficial owner in respect of this property. He had applied the rents and profits of the same to his own use, neither spending anything on account of the nominal owner, Kunwar Udit Narain Singh, nor feeling himself under any obligation to render, or even to keep, any account of his receipts or of his expenditure. Further, it is represented in the plaint that, in spite of the proceedings of the year 1905 and the compromise then executed, no real cloud had ever been cast on the plaintiff's title to this property until Kunwar Udit Narain Singh made his application of the 5th of January, 1917. This is the date given in the plaint for the origin of the cause of action, and there are four reliefs sought. The first is a declaration that the deed of the 25th of September, 1902, is void and ineffectual as against the plaintiff. The second is that it may be declared that the defendant Kunwar Udit Narain Singh is not the adopted son of the plaintiff, Diwan Randhir Singh. The third is that it may be declared that the aforesaid defendant has no rights in the village of Kerokhar, but that the plaintiff is the owner of the property therein already referred to. The last is in the form of an alternative relief and asks for a declaration that, in any event, if Kunwar Udit Narain Singh be the adopted son of Diwan Randhir Singh, these two are, as members of a joint undivided Hindu family, owners in equal shares of the ubari property in the village of Kerokhar.

6. In reply to this claim, apart from a denial of the facts put forward by the plaintiff and an assertion that the adoption of the defendant had fully and effectively been carried out prior to the execution of the deed of the 25th of September, 1902, a number of legal objections were raised. It was contended that the suit as brought was clearly barred under any possible article of the schedule to the Indian Limitation Act which could be suggested as applicable to the same. There was also a contention that, as regards the declaration of title sought in respect of the ubari tenure in village Kerokhar, the plaintiff was not entitled to claim a mere declaration, inasmuch as he had been effectively dispossessed in consequence of the defendant's application of the 5th of January, 1917, and the orders of the revenue courts passed thereon.

7. The trial court elected to take evidence on all the issues before determining any of the questions of law. We may say at once that with regard to the alleged adoption, there was a considerable body of evidence produced on both sides. The witnesses for the plaintiff were in direct conflict with those for the defendant and there was undoubtedly some hard swearing on one side or the other. The trial court came to the conclusion that Diwan Randhir Singh was speaking the truth when he said that he had never adopted Kunwar Udit Narain Singh and had never even gone through any ceremony purporting to have the effect of an adoption. For reasons to be stated presently, we do not propose to record a definite finding on this point. We feel bound to pay, however, that the learned Subordinate Judge seems to us to have given very indifferent reasons for not attaching greater weight than he has done to the repeated declaration of Diwan Randhir Singh; nor has he attempted to consider the question of the probability or improbability of the conduct attributed to Diwan Balbhadar Singh in the plaintiff's version of the facts. It being admitted that a substantial sum of money, amounting at least to Rs. 5,500 was due from the plaintiff to Diwan Balbhadar Singh, the court was bound to ask itself what consideration Diwan Balbhadar Singh received for refraining from pressing his claim (under cover of the mortgage executed in favour of Kunwar Chimman Singh in the year 1902) and for abandoning it altogether in the year 1905. No doubt the actual adoption of Diwan Balbhadar Singh's younger son by Diwan Randhir Singh and the actual transfer to the boy of the property in village Kerokhar would form an effective consideration for the abandonment of a claim on the mortgage; but what the plaintiff says is that no such consideration ever passed and that Diwan Balbhadar Singh knew perfectly well throughout that there had been in fact no adoption and that the recital in the deed of the 25th of September, 1902, of the transfer in favour of the minor boy was a move paper transaction which would never be carried into practical effect.

8. We are, however, principally concerned with the legal objections raised by the defendant; the first and most important question is that of limitation. It also requires to be considered in the same connection whether, in any event, the conduct of the plaintiff towards Diwan Balbhadar Singh and towards Kunwar Udit Narain Singh has not been such as to create an estoppel in law, preventing the court from entertaining any plea on the plaintiff's part based upon the assertion that no

adoption in fact took place. No doubt it is perfectly true that under the Hindu law an adoption can only be effected by the due performance of certain religious ceremonies; but we have the authority of their Lordships of the Privy Council in a well-known case from these Provinces for the proposition that the plaintiff in an action can be estopped by his own previous conduct from asserting that such valid and binding adoption had not in fact taken place.

9. Now, with regard to the question of limitation, the claim for a declaration of the invalidity of the deed of the 25th of September, 1902, falls, *prima facie*, under Article 91 of the first schedule to the Indian Limitation Act (No. IX of 1908). The essential fact which, according to the plaint, entitled the plaintiff to have the instrument cancelled or set aside is beyond question the fact that no adoption had ever taken place prior to the execution of this document. This fact was perfectly well-known to the plaintiff, if there is any truth whatever in his story, on the very date on which he put his signature to this document and caused it to be registered. *Prima facie*, therefore, the law allowed him a period of three years within which to change his mind and contest the validity of the document, if he desired to do so. A still more important article to be considered is Article 118 of the same schedule. This article governs any suit to obtain a declaration, not merely that an alleged adoption is invalid, but also that it never in fact took place. The period of limitation is six years from the date on which the alleged adoption became known to the plaintiff. We need hardly lay stress upon the fact that the courts are bound strictly to enforce the provisions of the Indian Limitation Act; but if ever there was a case for the strict enforcement of that statute, the one now before us seems to fulfil every possible condition. Here we have a plaintiff who has asserted over and over again the factum of a certain adoption, who has consented to be bound by it, who has on his own showing received valuable consideration in return for making such assertions and who has by reason of the setting up of the alleged adoption, caused the defendant to be deprived (under the orders of the revenue court as they stand at present) of all share in the landed property of his own natural father. Almost sixteen years after the date on which the alleged adoption was proclaimed by the plaintiff himself in the deed of the 25th of September, 1902, he comes into court with a suit which can succeed, if at all, only upon the basis of a finding that the alleged adoption never in fact took place. In our opinion the suit as a whole, in

the form in which it has been brought, is statute-barred for this reason alone, under the provisions of the article above referred to. The court below has come to the conclusion that a different article, namely 120 of the same schedule, applies to the suit, by reason of the 3rd and 4th reliefs in the claim, and that a cause of action for the suit bringing it within limitation under this article arose on the 5th of January, 1917. As regards this proposition of law, a good deal might be said on both sides, if we thought the provisions of Article 120 of the first schedule to the Indian Limitation Act could be invoked at all in respect of this, suit. According to 'the most authoritative decision of this Court' at present reported, namely, the case of Akbar Khan v. Turaban (1908) I.L.R. 31 All. 9 the suit for a declaration would be barred under this article, in any case, because a cause of action for a declaration that Kunwar Udit Narain Singh was not in fact the owner of the property, which the plaintiff himself had caused to be recorded in his name in the village of Kerokhar, had accrued to the plaintiff many years before the 5th of January, 1917, It must be conceded, however, that the propositions of law involved in the decision above referred to are somewhat controverted and are not altogether reconcilable with certain other decisions of this Court, of which we may refer to the case of Sheopher Singh v. Deonarain Singh (1912) 10 A.L.J. 413 as an example. Our view, however on this part of the case, may be stated thus. In the first place, we are of opinion that the whole suit is so entirely dependent upon an adjudication of the question whether the alleged adoption did or did not in fact take place, and a suit for a declaration to that effect is so clearly time-barred, that the suit cannot be brought within limitation by invoking the provisions of an article like 120 of the schedule which, by its very terms, can only come into operation when there is no other article of the schedule that can be invoked as laying down a period of limitation for a particular suit. In the second place, we are clearly of opinion that the reliefs (c) and (d), in which the plaintiff seeks relief by way of alternative declarations relating to the proprietary rights in the village of Kerokhar, are not maintainable by reason of the provisions of Section 42 of the Specific Relief Act. We cannot explain the finding of the court below that the plaintiff's possession as owner of the said proprietary rights has never been disturbed and was actually continuing up to the very date of the suit. There is, first of all, the question whether the plaintiff did or did not lose possession over his proprietary rights when he

made an express declaration that he would, in future manage the property in question as a trustee for the then minor defendant. In the second place, we are still more clearly of opinion that the effect of the revenue court's orders upon Kunwar Udit Narain Singh's application of the 5th of January, 1917, must inevitably have been the dispossession of the plaintiff. The learned Subordinate Judge, it seems to us, does not realize what the practical effect of a revenue court's decision in mutation is. From the date on which the name of Diwan Randhir Singh was expunged from the entry regarding the proprietary rights in this village as it previously stood, the only person who could maintain suits or proceedings in the revenue courts necessary to the collection of rents and the management of the property was Kunwar Udit Narain Singh. We cannot believe that the practical effect of these proceedings was not to leave the defendant, Kunwar Udit Narain Singh, in effective possession of the property. The whole suit, therefore, is, in our opinion, misconceived. It is not: necessary for us to discuss the theoretical question of what, would have been the plaintiff's position, if he had consented to recognize existing facts and to bring this suit merely as one for the recovery of possession on the basis of a still subsisting title. Undoubtedly it would then have been for the defendant to plead that the plaintiff's title had been first of all modified by the alleged adoption and finally extinguished, either by the execution of the deed of the 25th of September, 1902, or by subsequent proceedings. No doubt the defendant could and would also have pleaded that he had a superior title to the plaintiff, unless the latter were permitted to put forward allegations of fact which he was in law estopped from setting up or proving. It would have been difficult to say, however, that a suit for recovery of possession on the basis of title, alleging dispossession early in the year 1917, would have been, on the face of it, barred by limitation. The present suit, in our opinion, is so barred, principally by reason of the provisions of the Indian Limitation Act to which we have referred, also by reason of the conclusion we have come to regarding the possession of the property on the date of the institution of the suit, and, to some extent, also by the principle of estoppel. For these reasons we allow the appeal, set aside the decision of the court below, and dismiss the plaintiff's suit with costs throughout.