

Harnath Vs. Mt. Phool Koer

Harnath Vs. Mt. Phool Koer

SooperKanoon Citation : sooperkanoon.com/453044

Court : Allahabad

Decided On : Nov-12-1929

Reported in : AIR1930All125; 122Ind.Cas.893

Appellant : Harnath

Respondent : Mt. Phool Koer

Judgement :

1. The facts of this case briefly are these; The pedigree on p. 9 will show the relationship between certain persons whose names it would be necessary to mention. Khemai, it appears, was the last survivor of three brothers, Bhagirath, Girdhari and himself. Parbati was in possession of a 1/3rd share of the family property as the widow of her husband, Bhagirath. Khemai brought a suit, being suit No. 30 of 1908, against Mt. Parbati to recover 2/3rds share from Parbati. The suit was decreed with respect to 1/3rd only, it being held that Khemai was in possession of 1/3. The result was that Parbati was held to be entitled to 1/3 share and Khemai was held to be entitled to 2/3. Khemai obtained delivery of possession over the property decreed to him on 2nd August 1910. Khemai has died and it has been proved that the plaintiff-appellant, Harnath, is his sister's son and, therefore, heir, in the absence of any nearer relation. The suit of Harnath was for recovery of Khemai's entire property and it succeeded in the Court of first instance in respect of 2/3 share. In appeal by the transferees of Parbati the suit was dismissed on the ground that the possession of Mt. Parbati was adverse as against Khemai from the date of delivery of possession to the latter, namely 3rd August 1910.

2. In this Court it has been argued that the possession of Mt. Parbati, who was the lambardar, was Khemai's possession because she held as the agent of all the cosharers in the property, and that, at the earliest moment when Parbati's possession could become adverse, was 1st August 1911, on which date Khemai would be entitled to ask for 'profits.'

3. We think that this contention is right. The case is to be distinguished from other cases where the judgment-debtor is under no obligation to hold the property on behalf of the decree-holder. (The fact that Parbati was the lambardar of the zamindari property made her an agent for the decree-holder, Khemai, and, therefore, Khemai was in constructive possession of the property through 'Parbati, till at least 1st August 1911, when 'profits' could be demanded. In this view, the suit with respect to the 1/3 share, which was decreed to Khemai, would be within time.

4. The principle enunciated above will not apply to house property or to the 1/3 share over which Khemai himself was in possession and which was, therefore, not in suit in the earlier case.

5. The result is that the appeal succeeds in part. We decree the claim for possession of 1/3 share over the properties Nos. 1, 2, 3 and 5, as shown in the schedule attached to the plaint at p. 8 of the paper book. The rest of the claim is dismissed. The plaintiff-appellant will have 1/3 of his costs in all the Courts and the contesting defendants will have their costs in proportion to their success (2/3) in all the Courts.