

Ramdeo Vs. Sheo Naik and ors.

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Court : Allahabad

Decided On : Feb-23-1926

Reported in : AIR1926All465; 94Ind.Cas.190

Appellant : Ramdeo

Respondent : Sheo Naik and ors.

Judgement :

Sulaiman, J.

1. This is plaintiff's appeal arising out of a suit for recovery of possession of fractional shares in certain holdings and groves, The plaintiff is the daughter's son of one Bhairo, deceased and the defendants are nephews of Bhairo. One of the points in dispute was whether Bhairo was joint with his nephews or separate. Both the Courts below have found the point in favour of the plaintiff and held that Bhairo was separate from his nephews. The holdings, however, remained joint and thus Bhairo and his nephews were co-owners of specific shares in the various holdings. The plaintiff claimed to have acquired interest in the occupancy holdings and groves by virtue of a deed of gift executed by Bhairo in his favour and also because he was the daughter's son and was sharing in cultivation with Bhairo during the latter's lifetime. None of the Courts below held that the plaintiff is entitled to succeed on the strength of this alleged gift. So far as the tenancies which are the subject matter of appeal are concerned, a gift would not transfer any

title to the plaintiff.

2. The Court of first instance found that there was abundant evidence that both Mt. Dhiraji and her son, the present plaintiff, lived with Bhairo and were joint in cultivation with him. On the basis of this finding he decreed the claim. On appeal the lower appellate Court has come to the conclusion that the plaintiff did not share in cultivation with Bhairo. If this finding were binding on me absolutely I would have to dismiss the appeal. The finding ordinarily would be a finding of fact and would be binding upon me, But after some consideration I have come to the conclusion that this finding is vitiated by the circumstance that the learned Judge has not appreciated the true meaning of the expression 'sharing with him in cultivation' and his finding does not mean anything more than that the plaintiff was not actually ploughing the fields when Bhairo was alive. My reasons are as follows:

(1) The learned Judge thought that the plaintiff must have been twelve years of age when Bhairo died. He then remarked 'a boy of this age could hardly share in cultivation.' Although it is unlikely that a boy of the age of twelve years would actually plough the fields, yet there is nothing stranger in his helping his maternal grandfather in his cultivation. Sharing in cultivation does not necessarily mean actual ploughing. A person who helps another in his agricultural pursuits would be sharing in cultivation although he does not actually plough the fields. It has been held in the case of Hari Singh v. Joti Singh 2 Unp Deo 237 that sharing is not confined to ploughing sowing, attending the crops or reaping them. In the case Ram Kishore v. Gauri Shankar 2 Unp Deo 502 even a boy of ten years who was helping the last tenant was held to be sharing in cultivation.

(2) The learned Judge nowhere says that he disbelieves the plaintiff's evidence. On the other hand he thought that 'the statements of plaintiff's own witnesses show that he really did not share in cultivation,' but if the statements of plaintiff's witnesses Jasodanand and Mahadeo, referred to by the learned Judge, are to be accepted, the plaintiff's case is fully established.

(3) The learned Judge says that Jasodanand stated that he saw the plaintiff cultivating from 12 to 15 years, and then because Bhairo died 12 years before the witness's statement, the learned Judge thought that it was clear that the plaintiff

could not be joint in cultivation with him. This is hair splitting. The witness had given a period 12 to 15 years which was a mere estimate and there was no justification for pinning him down to the lower limit of 12 years. Even if he were pinned down to the lower limit, a difference of a few months may prove that the plaintiff was joint in cultivation before Bhairo died. The witness, Jasodanand in his examination-in-chief has distinctly stated that the plaintiff was joint in cultivation in the lifetime of Bhairo (Ramdeo Bhairo ke sath kheti karta tha.)

(4) The learned Judge thought that the witness Mahadeo was more clear because he stated that the plaintiff began cultivation after the death of Bhairo. Here the learned Judge has misread the statement of Mahadeo. Mahadeo in his examination-in-chief has stated that Ramdeo used to share in the cultivation with Bhairo: (Bhairo ke sath kheti bari karta tha.) In cross-examination he stated that he began to plough the fields after the death of Bhairo (jotne shuru kia. R). The learned Judge apparently has thought that sharing in cultivation is the same thing as ploughing.

3. For the reasons given above I am of opinion that the finding recorded by the lower appellate Court is unsatisfactory and is vitiated, and that a clear finding on the evidence already on the record is called for. I accordingly send down the following issue to the lower appellate Court.

(1) Did the plaintiff Ramdeo share in the cultivation of all or any of the holdings in dispute with Bhairo during the latter's lifetime.

4. The usual ten days are allowed for filing objections.