

Prag Dat and anr. Vs. Balbhaddar Prasad and ors. and

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Court : Allahabad

Decided On : Mar-03-1919

Reported in : (1919)ILR61All492

Judge : Muhammad Rafiq and ;Lindsay, JJ.

Appellant : Prag Dat and anr.

Respondent : Balbhaddar Prasad and ors. and ;rani Kunwar and ors.

Judgement :

Muhammad Rafiq and Lindsay, JJ.

1. The parties to this appeal are descended from a common ancestor, except defendants Nos. 2 and 6. One Saheb Rai Shukul, as the pedigree given at page 9 of the paper book will show, had three sons, namely, Debi Din, Bhawani Din and Jeorakhan. We are concerned here with the descendants of Bhawani Din and Jeorakhan only. The plaintiffs in the present case are two of the grandsons of Bhawani Din, and the defendants, with the exception of defendants Nos. 2 and 6, are the descendants of Jeorakhan, who died more than 45 years prior to the institution of the suit leaving him surviving a widow, Musammat Sita Kunwar, and three daughters, Musammat Makhan Kunwar, Musammat Rani Kunwar and Musammat Tulsha Kunwar. Jeorakhan had adopted one of his nephews, namely, Sheva Das, who predeceased him. Sheva Das left two children; a son and a daughter called Balgobind and Musammat Bakhta Kunwar, respectively.

Balgobind predeceased Jeorakhan. Musammat Bakhta Kunwar is the mother of Balbhaddar Prasad, defendant No. 3, who is one of the appellants before us. Musammat Makhan Kunwar had a son, Mangli Prasad, who died leaving him surviving two sons, named Gargi Din and Brij Nandan. They are defendants Nos. 4 and 5 in the suit and appellants Nos. 2 and 3 before us. Musammat Rani Kunwar was defendant No. 1 and was a party to this appeal as a respondent, but we are told that she is dead now. Musammat Tulsha Kunwar had a son named Durga Prasad, who died leaving him surviving a daughter called Chiti, who is no party to the suit.

2. Jeorakhan owned some immovable property. He had shares in the villages Patari, Merakhpur and Madarpur. In 1852 he and two other persons purchased the equity of redemption of the village of Said Alipur. In January, 1870, he executed a deed of gift of his shares in the villages Patari and Merakhpur in favour of his three daughters and his grand-daughter, Musammat Bakhta Kunwar. He retained Madarpur and the equity of redemption in Said Alipur. After his death mutation of names was effected in favour of his widow, Musammat Sita Kunwar, in respect of the villages Madarpur and Said Alipur. Musammat Sita Kunwar died within a year or two of her husband's death. After her death a dispute arose between her daughters and her grand-daughter, Musammat Bakhta Kunwar, on the one side and the descendants of Bhawani Din on the other. The latter claimed the share of Jeorakhan in Madarpur and his right of redemption in Said Alipur under an oral will from Musammat Sita Kunwar. On the other hand, her daughters and her granddaughter claimed the property on the same ground, that is, an oral will from Musammat Sita Kunwar in their favour. Mutation of names was allowed to the daughters and the granddaughter of Musammat Sita Kunwar, but we cannot say now on the material on the record on what ground the order for mutation was made. No copy of that order has been produced.

3. After the mutation order in favour of the ladies, the name each of them was entered in respect of a one-fourth share and each of them enjoyed the property separately. Musammat Makhan Kunwar died about 1875, and after her death the name of her son, Mangali Prasad, was entered in the revenue papers in respect of her one-fourth share. On the death of Mangli Prasad in 1900, the names of his two

sons, Gargi Din and Brij Nandan, were entered in respect of the same property in the revenue papers. Musammat Bakhta Kunwar died about 1885, and the name of her son, Balbhaddar Prasad, was entered in her place in the revenue papers. Musammat Tulsha Kunwar died some time in 1907, and the name of her son, Durga Prasad, was substituted for her name in the revenue records. Durga Prasad died on the 24th of October, 1915, but instead of his daughter's name being entered in his place, the name of his cousin Narain Prasad was recorded in the Government papers on the allegation that he was the adopted son of Musammat Tulsha Kunwar. He is defendant No. 2. In 1911 Gargi Din, Brij Nandan, Musammat Rani Kunwar, Durga Prasad, Narain Prasad and Balbhaddar sued to redeem the mortgage of Said Alipur. It should be observed here that the mortgage was created in 1847 and that it was a usufructuary mortgage for Rs. 1,700. The above mentioned persons stated in their plaint that their ancestor Jeorakhan had with two others purchased the equity of redemption of the mortgagor and that they, as heirs of Jeorakhan, were entitled to redeem the mortgage. It was further stated that in case it was found that they, i.e., Gargi Din, Brij Nandan, Durga Prasad and Balbhaddar, were not the legal representatives of Jeorakhan and could not sue as such for redemption, Musammat Rani Kunwar who represented the full rights of her father could maintain the action. Moreover, Gargi Din, Brij Nandan, Narain Prasad and Balbhaddar had purchased the rights of one of the sons of Roshan Khan, a co-purchaser with Jeorakhan, of the equity of redemption, and could therefore join in the suit. The claim was contested, but a decree was passed in favour of all the plaintiffs on the 27th of June, 1911. The redemption money was paid and mutation was effected in favour of the then plaintiffs on the 30th of March, 1912.

4. On the 6th of May, 1914, Gargi Din executed a deed of simple mortgage in favour of Lala Bala Prasad, defendant No. 6, in respect of an eight annas share in mahal Mangli Prasad in mauza Madarpur. On the 8th of December, 1915, Prag and Puttan, two of the grandsons of Bhawani Din and grand-nephews of Jeorakhan, instituted the suit, out of which this appeal has arisen, asking for three declarations viz., that:

(a) It may be declared that Narain Prasad is not the adopted son of Musammat Tulsha Kunwar. The entry of the name of Narain Prasad, defendant No. 2, in the revenue papers, on the basis of the statement of Musammat Rani Kunwar, dated the 11th of April, 1915, and those of Narain Prasad, dated the 29th of March, 1915, and the 14th of May, 1915, respectively, in place of that of Durga Prasad, in respect of the zamindari shares, detailed below, i.e., an 8 pie share in mauza Said Alipur, mahal Badri Prasad; a 2 anna share, with reference to village and 16 anna share with reference to mahal, in mauza Madarpur Tassadduq Ali, mahal Tulsha Kunwar, and a 2 1/4 pie share in mauza Bagahi, mahal Badri Singh, and all the proceedings and the order directing the mutation of names to be effected in favour of Narain Prasad after the death of Musammat Rani Kunwar, may be declared to be null and void and ineffectual as against the right of the plaintiffs as the reversioners of Jeorakhan Shukul;

(b) It may be declared that the mortgage deed, dated and registered on the 16th of May, 1914, executed by Gargi Din, defendant No. 4, in favour of Bala Prasad, would become null and void and ineffectual, after the death of Musammat Rani Kunwar as against the right of the plaintiffs as the reversioners of Jeorakhan Shukul;

(c) It may be declared that after the death of Musammat Rani Kunwar the (mutation) proceedings and the order for mutation of names in favour of defendants (Nos. 1 to 5) and also in favour of Durga Prasad deceased, passed by the Revenue Court on the 30th of March, 1912, on the basis of a decree for redemption, dated the 27th of June, 1911, and the deed for delivery of possession, dated the 8th of December, 1911, filed in suit No. 484 of 1910 of the court of the Subordinate Judge of Cawnpore (Chhita, Rani Kunwar and others, versus Kundan Lal and others) will become null and void and ineffectual as against the rights of the plaintiffs as the reversioners of Jeorakhan Shukul.

5. For the defence several pleas were advanced in bar of the claim. It was urged on behalf of the defence that:

1. Plaintiffs have no cause of action for the present suit.

2. The claim is barred by limitation.

3. After the death of Musammat Sita Kunwar the property in suit was divided between her daughters and grand daughter with the consent of the next reversions and that decision is binding and effectual.

4. The property in suit devolved on the daughters and the grand-daughter under an oral will of Jeorakhan and they took it as full owners.

5. Plaintiffs should pay proportionate amount of redemption money and costs of the redemption suit.

6. The learned Subordinate Judge disallowed the objections for the defence and decreed the claim. Three of the defendants, namely, Balbhaddar Prasad, son of Bakhta Kunwar, and Gargi Din and Brij Nandan, sons of Mangli Prasad and grandsons of Makhan Kunwar, have preferred this appeal. They challenge the decree against them on the grounds mentioned above. Before proceeding to consider the arguments on behalf of the appellants, we must note first that the objections of the latter are directed against reliefs Nos. 2 and 3. It is conceded that the appellants are not concerned in, and do not challenge, relief No. 1 which relates to Narain Prasad's alleged adoption and his getting possession of part of the property in suit on the death of Durga Prasad. The decree in favour of the plaintiffs with regard to relief No. 1 will therefore stand, even if the appellants make out a case with regard to the other reliefs.

7. We take up the plea of the want of cause of action first. The arguments for the appellants' are different in respect of each of the two pleas Nos. 2 and 3. It is contended that the plaintiffs have no right to complain of the redemption suit, inasmuch as it was for the benefit of the estate and it did not in any way invade or injure their rights as reversioners.

8. It appears that Musammat Rani Kunwar, the sole surviving daughter of Jeorakhan, had joined with her as plaintiffs in the suit Durga Prasad, Balbhaddar, Gargi Din and Brij Nandan on the allegation that they also were the legal representatives of her deceased father. It was also stated in the plaint that in case

the court was of opinion that the said four persons were not the legal representatives of Jeorakhan, Musammat Rani Kunwar herself could maintain the action. Another allegation in the plaint was that Balbhaddar and Gargi Din with some others had purchased the rights of one of the sons of Roshan Khan, a co-purchaser of the equity of redemption with Jeorakhan. The plaintiffs in the present case have based their cause of action on the allegation made in the plaint of the redemption suit with regard to Balbhaddar and others being the legal representatives of Jeorakhan. The appellants' contention that the said plaint also contained the allegation that Musammat Rani Kunwar alone could maintain the suit and that Balbhaddar and Gargi Din had purchased the rights of Roshan Khan's son is of no force, as the judgment and the decree in the redemption suit have not been filed and we cannot say in what capacity the decree was passed in favour of Balbhaddar and others. It is not denied that after the decree in the redemption suit and the redemption of the property possession was obtained and mutation of names effected in favour of Balbhaddar Durga Prasad, Gargi Din and Brij Nandan. If the decree for redemption was passed in favour of Musammat Rani Kunwar alone as the legal representative of Jeorakhan, and in favour of Balbhaddar and Gargi Din as purchasers from Roshan Khan's son, why then were the names of Durga Prasad and Brij Nandan entered in the Revenue papers, and how did they get possession subsequently of the redeemed property? We think that the proceedings in the redemption decree show that, at least as far as Durga Prasad and Brij Nandan are concerned, the decree was interpreted to mean that they had obtained it as legal representatives of Jeorakhan on the allegations made in the plaint and obtained possession as such. The conduct of Musammat Rani Kunwar in joining strangers as co-plaintiffs with her on the ground that they were her father's legal representatives and giving them possession over part of the redeemed property distinctly amounted to an invasion of the interests of her father's reversioners. The plaintiffs in the present suit have, therefore, in our opinion a cause of action in respect of relief No. 3.

9. The main attack is, however, directed against relief No. 2 which relates to the mortgage created by Gargi Din in favour of Bala Prasad, defendant No 6, on the 16th of May, 1914. It is argued that a reversioner is entitled to complain of the act of a Hindu female who has a limited estate, if her act is beyond the authority given

to her by the Hindu law and injuriously affects his rights. He can ask for a declaration that it will be null and void as against him after her death and, if the act is in the nature of waste, she can be restrained by injunction from committing it in future, But if the reversioner chooses to pass by a transfer made by her which he considers unjustifiable and which injuriously affects him he cannot question the alienation made by her transferee. No cause of action accrues to him on the second transfer though the female tenant be alive at the time. She is no party to the second transfer and a reversioner can complain only of the dealings with the property of a female with a limited interest if her dealings are unjustifiable and injurious to his interests. The only case, it is said, in which a reversioner has a right of action against the transferee of a female with a limited estate is when the transferee commits waste. In the present case the giving of mortgage by Gargi Din cannot be said to be an act of waste. In support of this contention the following authorities are relied upon:

10. Hindu Woman's Estate (Siroya) pp. 288--291, Trevelyan's Hindu Law p. 500, Kamavadhani Venkata Subbaiya v. Joysa Narasingappa (1866) 3 Mad., H.C. Rap., p. 116.

11. The passages in the first mentioned work at pp. 288 and 291 are as follows: 'Where a Hindu widow is no party to the alienation impeached by reversioners they are not entitled to a declaration that the alienation is void and does not bind them.' (p. 288.)

12. 'A reversioner is entitled to restrain unlawful acts of a stranger holding under the widow.' (p. 291, Clause q.)

13. The first passage given at p. 288 is a reproduction word for word from the M.W. Notes for 1912, (Journal) p. 183.

14. The report does not give the name of the case, the judgment of the court, the facts of the case and the allegations on which the reversioner sought relief or what reliefs were sought. It does not appear whether the note in the report refers to an opinion expressed on an issue distinctly raised in the case or was a mere obiter dictum. The second passage relied upon by the appellants refers to the right of

reversioner to restrain the unlawful acts of a stranger, that is, to one of the remedies of a reversioner. It does not necessarily imply that an alienation by a stranger holding under a Hindu widow gives no cause of action to the reversioner. Another learned writer on Hindu law (a Hindu himself) has expressed a contrary opinion. After discussing the rights of a reversioner, he says: 'It will thus be seen that the next immediate reversioner can sue for a declaration that an alienation by a widow or other limited owner or that an alienation by an assignee from her or that an act which is injurious to the estate of the reversioner is voidable at his instance except during the widow's life-time,' See Ramkrishna, Hindu Law, Vol. II, p. 297.

15. Trevelyan's Hindu Law is cited to show that the learned author nowhere says that a reversioner has a right of suit in respect of a transfer made by the assignee or the transferee from a Hindu widow; all that the learned author lays down is that the reversioner can sue in respect of an act of waste committed by the transferee. Reliance is placed on the passage at p. 501 under the heading of 'suit to restrain waste'. The case of Kamavadhani Venkata Subbaiya v. Joysa Narasingappa (1866) 3 Mad., H.C. Rep., 116 is an authority for the proposition that a reversioner can sue to restrain a transferee from a Hindu female from injuring the property. The point under discussion here was not raised in that case, nor is it mentioned by Trevelyan.

16. We cannot find in any of the cases or dicta cited before us definite authority for the proposition that an alienation by the transferee from a Hindu female in possession with a limited estate or by a stranger in possession holding under her does not furnish the nearest reversioner with a cause of action for a declaratory suit; and in view of the language of Section 42 of the Specific Relief Act we are not prepared to hold that such a suit is not maintainable.

17. It cannot be denied that the nearest reversioners have a 'right' to the property of the last male owner. The expression 'right' includes all rights present, future, vested or contingent and, as illustration (e) to Section 42 itself shows, the right of a reversioner under Hindu law. It may be that this latter right is nothing more than a *spes successionis* and incapable of transfer but it is still recognized as a right the

denial of which may furnish a cause of action for a suit under Section 42 of the Specific Relief Act.

18. Of course it does not follow that because a plaintiff in a suit under Section 42 can show a cause of action the court must necessarily give him relief by declaration. The granting of the relief is a matter of discretion. The lower court in the exercise of its discretion under the circumstances of the present case has thought it fit to grant the relief with regard to the mortgage created by Gargi Din. Having regard to the pleadings in the case (the appellants having set up a title in the daughters and the grand-daughter of Jeorakhan, wholly inconsistent with and adverse to the rights of the plaintiffs as reversioners) we consider we should not be justified in interfering with the decree of the lower court passed in the deliberate exercise of the discretion with which it is vested by law. We do not think that the discretion was exercised by the lower court wrongly or arbitrarily. Our view is not without authority. See *Jaipal Kunwar v. Indar Bahadur Singh* (1904) I.L.R., 26 All, 238 and *Ram Autar Dube v. Badal Pandey* (1912) 17 Indian Cases, 586. We therefore reject the contention for the appellants.

19. The second objection for the appellants is that the claim is barred by limitation. It is argued that a right to sue accrued to the plaintiffs on the following occasions on all of which they were alive.

1. The admission of Musammat Bakhhta Kunwar to a share in the property in suit i.e., in 1873.
2. The mutation of names in favour of Mangli Prasad on the death of his mother Makhan Kunwar in 1875.
3. The mutation of names in favour of Balbhaddar on the death of his mother in 1885.
4. The mutation of names in favour of Gargi Din and Brij Nandan on the death of Mangli Prasad in 1900.

20. It is contended that Article 125 of the Limitation Act which prescribes 12 years as the period within which a reversioner can bring a suit to have an alienation

made by a limited owner declared invalid against him applies to the case. The plaintiffs, it is said, in order to evade the statutes of limitation have based their claim on the dates of the adoption, the redemption suit and the mortgage to Gargi Din ignoring the acts of the daughters of Jeorakhan which really affected the interests of the plaintiffs adversely, The object of the suit is to challenge the acts of the daughters of Jeorakhan by disputing the subsequent acts of those holding under them. In support of the contention the following cases are cited; Jaggi v. Prithipal Weekly Notes, 1894, p. 134 and Kunwar Bahadur v. Bindraban (1914) I.L.R., 87 All., 195.

21. We are unable to accede to the contention for the appellants. The cases relied upon are not in point. The plaintiffs have not based their cause of action on acts done on the occasions mentioned above nor do they admit that any alienations or transfers were made by the daughters of Jeorakhan. Moreover, Jeorakhan's daughters could deal with their father's property in their life-time and give the whole or part of it to persons not entitled to it for their life-time only. In the present case if they gave some property to some members of the family whom they wanted to support and provide for, they could do so for the period of their lives. In our opinion the plaintiffs were not bound under law to seek a declaration in respect of the admission of Bakhta Kunwar or her son, or Makhan Kunwar's son or grandsons, to the enjoyment of some portion of the property as long as one of Jeorakhan's daughters was alive. Nor are the plaintiffs barred under the statutes of limitation from seeking the declarations which they seek now because they omitted to challenge the above mentioned acts of Jeorakhan's daughters. Article 125 provides for the case of a reversioner who seeks to challenge the alienation made by a Hindu female or other limited owner. In the present case none of the acts complained of is an alienation by a female with a limited estate. The article of the Limitation Act applicable to the present case is Article 120 and the suit has been brought within six years of the acts of the defendants that are objected to. We therefore hold that the claim of the plaintiffs is not barred by limitation.

22. [The portion of the judgment dealing with the question of consent and the existence of the oral will is omitted.]

23. The last point that remains to be considered is that which is mentioned in the 5th ground of appeal. The appellants contend, and we think rightly, that before the plaintiffs get possession of their shares of mauza Said. Alipur they should pay proportionate costs of the redemption suit and of the redemption money. The amounts of both will have to be determined at the time when the plaintiffs come to ask for possession. Subject to this observation we uphold the decree of the lower court. The appeal fails and we dismiss it. We allow costs to the plaintiffs respondents.

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