

Ramzan Vs. Ram Daiya

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Court : Allahabad

Decided On : Jul-31-1917

Reported in : AIR1918All408; (1918)ILR40All96

Judge : Muhammad Rafiq and ;Piggott, JJ.

Appellant : Ramzan

Respondent : Ram Daiya

Judgement :

Muhammad Rafiq and Piggott, JJ.

1. This second appeal by the plaintiff in a suit for ejectment. arises under the following circumstances:

There was a joint Hindu family consisting of a father, Shankar, and his son, Ram Charan. Shankar mortgaged a certain house which formed part of the ancestral family property, and in which it would seem that he and his son were residing, although it is not clear that this point has been specifically considered by the courts below, by a simple mortgage in favour of one Musammat Dhan Devi. Ram Charan died, after this mortgage had been contracted, leaving him surviving a widow, Ram Daiya, who is the defendant respondent in this case. Shankar subsequently sold a share of the house in question to the plaintiff, Ramzan. The latter induced the mortgagee to accept redemption of this share on payment off of

the mortgage debt. After this Musammat Dhan Devi, the mortgagee, brought a suit for sale against Shankar, who had now become by survivorship the sole owner of the entire house. She obtained a decree for the sale of the remaining 1/4 share of the house in satisfaction of 14 of the original mortgage debt. This decree the plaintiff, Ramzan, who had already become the owner of the remaining 8/4 share of the house, purchased from Musammat Dhan Devi. He took out execution, brought this 1/4 share to sale and purchased it himself. On attempting to take possession of what he had purchased he was resisted by the defendant Musammat Ram Daiya. Hence this present suit, in which the plaintiff claims actual possession of the share of the house purchased by him at the auction, along with an injunction restraining the defendant from interfering with his possession. The suit has been resisted simply on the ground of defendant's right of residence in the ancestral family house as a Hindu widow. The first court overruled this contention and decreed the claim. The learned District Judge held that the question of the defendant's right of residence depended on the question whether or not the original alienation, that is to say, the mortgage by Shankar of the entire house, had been made for legal necessity. He remitted an issue on this point, and on receiving a finding that legal necessity was not proved, he has dismissed the plaintiff's suit altogether. The plaintiff comes to this Court in second appeal. The decision of the lower appellate court is certainly unfair to the plaintiff to some extent, as the latter was at least entitled to formal possession subject to the alleged right of residence of the defendant for her life-time. On the decree of the lower appellate court as it stands, it is difficult to see how the plaintiff can ever enforce his proprietary rights hereafter. We are asked, however, by the plaintiff to consider the question whether his suit ought not to have been decreed as brought. In our opinion it ought to have been decreed. We have been referred to a great deal of case-law on the subject of a Hindu widow's right of residence and maintenance. It is unnecessary to go into the principles laid down by these decisions. The point in the present case is that, at the time of the original alienation from which the present plaintiff eventually derives his title, that is to say, the mortgage by Shankar of the entire house, the present defendant was not a Hindu widow. She was the wife of Ram Charan and was living with him and with her father-in-law. The decision of this Court in the case of *Ajudhia Prasad v. Jasoda* Weekly Notes, 1887 p. 279. shows the

distinction to be drawn between an alienation effected to the prejudice of existing rights of maintenance and residence in favour of widowed ladies depending upon a joint family, and an alienation effected by the male members of a family in connection with which a right of residence or maintenance is set up by a lady who was bound at the time by the action of her husband and who claims to have become entitled to residence or maintenance, since the date of the alienation, by reason of her husband's death. Some of the arguments addressed to us on behalf of the respondent in this case have really called in question the correctness of this decision. We can only say that we are not prepared to re-consider it. It seems reasonable to say that, when a right of residence or maintenance comes into existence in favour of the widow of a man who was lately a member of a joint undivided Hindu family, she takes that right in the property as it stands at the time of her husband's death. She cannot set up her right of maintenance or residence as against alienations effected during the life-time of her husband. Now what the learned District Judge has called upon the plaintiff to prove in the present case is that the mortgage effected by Shankar was binding upon his son Ram Charan. This is precisely the plea which a Bench of this Court refused to allow a widowed daughter-in-law, in the position of the present defendant, to set up in the case *Sohni v. Mohan Kuer* (1911) 9 A. L. J., 23. If the defendant cannot plead that the alienation made by Shankar did not bind Ram Charan, that is to say, did not affect the rights of Ram Charan in the house in question, then it is impossible to see why she should not be just as much bound by the alienation as she would have been if Ram Charan had concurred in making it. The issue remitted by the learned Judge raised a question which might have been litigated upon an objection taken by Ram Charan himself, but which this Court refused to allow to be taken by a person in the position of Ram Charan's widow. We must hold, therefore, that the principle of the decision in *Ajudhia Prasad v. Jasoda* Weekly Notes, 1887, p. 279 governs the present case, and, as we are not prepared to dissent from it or re-consider it we must allow this appeal. We do so accordingly. We set aside the decree of the lower appellate court and restore that of the court of first instance, with costs throughout.