

Uma Shanker Vs. Ram Charan

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Court : Allahabad

Decided On : Sep-01-1939

Reported in : AIR1939All689

Appellant : Uma Shanker

Respondent : Ram Charan

Judgement :

ORDER

Ganga Nath, j.

1. This is a plaintiff's appeal and arises out of a suit brought against the defendant for possession of a house described in the plaint, as the nearest reversioner of Har Narain, the last male owner of the property in dispute. The defendant contended, inter alia, that the plaintiff was not the nearest reversioner of Har Narain and that he had relinquished his reversionary rights under an agreement dated 2nd November 1888. The trial Court found that the plaintiff was the nearest reversioner of Har Narain and the agreement relied on by the defendant was void under Section 6(a), T.P. Act. It decreed the suit. On appeal the learned Civil Judge disposed of the case merely on the ground of the deed of relinquishment dated 2nd November 1888. The learned Civil Judge was of the opinion that the plaintiff was estopped from asserting his claim as reversionary heir. He relied on *Nakched Choudhury v. Sukhdev Choudhuri* : AIR1930 All430 and *Raghubir Dutt v. Narain Dutt* : AIR1930 All498 , *Annada Mohan Roy v. Gour Mohan Mallick* (1921) 8 A.I.R.

Cal. 501 and Wazan Singh v. Ratan Singh (1921) 8 A.I.R. Cal. 105. He refused to follow Dayaram Premji v. Bechar Das (1922) 9 A.I.R. Bom. 437. Mohammad Hashmat Ali v. Kaniz Fatima (1915) 2 A.I.R. All. 486, is a Division Bench case and is in point. There it was decided:

There is nothing illegal in a person, for good consideration, contracting not to claim in the event of his becoming entitled to inherit on the decease of a living person.

2. Its correctness was doubted by Piggott, J, in Chabli v. Parmal (1919) 6 A.I.R. All. 371 who observed:

The learned District Judge has found that the agreement of 3rd June 1897, 'if legal is binding on the plaintiff.' He quotes the authority of the Bombay High Court, Sums-uddin Goolam Hussain v. Abdul Husain Kalim-uddin (1907) 31 Bom. 165, in support of his finding that the agreement in question amounts in effect to the transfer of the chance of succession to an estate, and cannot be enforced against the plaintiff so as to prevent him from claiming property which has devolved upon him under the ordinary Hindu law of inheritance. I have myself referred to a case in which the same view was taken, If the matter were res integra in this Court, I should have preferred to follow that decision, adopting the reasoning of Sir Edward Chamier.

3. There is no doubt that a reversioner cannot transfer his right to succeed as reversioner. Section 6(a), T.P. Act, is clear on this point. There are some cases in which it has been held that if a reversioner is a party to a compromise and has obtained under it some substantial benefit which he has enjoyed, he is estopped from asserting his right when the succession opens. In Kanhai Lal v. Brij Lal (1918) 5 A.I.R. P.C. 70, their Lordships of the Privy Council observed at p. 495:

There is no question here of a conveyance of, or of an agreement to convey, any future right or expectancy, or of an agreement to relinquish any future right or expectancy. The question here is whether Lala Kanhai Lal did not by his acts in 1892 debar himself from now claiming as reversioner.

4. At page 496 they observed:

Lala Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Mt. Ramdei, against her own interests and those of her daughter, Mt. Kirpa, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordships' opinion he is bound by it, and cannot now claim as a reversioner.

5. On the other hand, it has been contended that there is no distinction between a transfer of a future right or expectancy by a reversioner and his relinquishment of his rights for consideration, as the result in both is the same. In *Annada Mohan Roy v. Gour Mohan Mullick* (1923) 10 A.I.R. P.C. 189, at p. 936, their Lordships approved of the observations of Tyabji, J., in the following words:

The Transfer of Property Act does not permit a person having expectations of succeeding to an estate as an heir, to transfer the expectant benefits; when such a transfer is purported to be made an attempt is in effect made by the two persons to change with each other their legal positions, and attempt by the one to clothe the other with what the Legislature refuses to recognize as rights, but styles as a mere chance incapable of being transferred. It would be defeating the provisions of the Act, to hold that though such hopes or expectations cannot be transferred in present or future, a person may bind himself to bring about the same results by giving to the agreement the form of a promise to transfer not the expectations but the fruits of the expectations by saying that what he has purported to do may be described in different language from that which the Legislature has chosen to apply to it for the purpose of condemning it. When the Legislature refuses the transaction as an attempt to transfer a chance it indicates the true aspect in which it requires the transaction to be viewed.

Their Lordships think that they are only following out numerous other passages which have been referred to in earlier judgments of this Board when they accept that reasoning and that conclusion. It is impossible for them to admit the common sense of maintaining an enactment which would prevent the purpose of the contract, while permitting the contract to stand as a contract or to see how by appealing to Section 63, Contract Act, or to the nature of the bargain as a mere

bargain de future, they could uphold it as a contract when it is a contract to which, not only must specific performance be refused under the Transfer of Property Act, but as to which damages can never be recovered, because the contract is not a performable contract until the realization of the expectations occurs.

6. The principle of estoppel on which *Kanhai Lal v. Brij Lal* (1918) 5 A.I.R. P.C. 710 referred to above was decided was not considered in the latter case, *Annada Mohan Roy v. Gour Mohan Mullick* (1923) 10 A.I.R. P.C. 189. The contract may be void being forbidden by some provision of law, yet a party may be precluded by some act of his, which may operate as estoppel from asserting his claim. The case therefore is one which is not free from difficulty and, in which in any case permission for Letters Patent appeal will have to be granted. It will therefore be better if this case is decided by a larger Bench. It is therefore ordered that the case be laid before the Hon'ble the Chief Justice for such orders as he may think proper.

Thom, C.J.

7. This is a plaintiff's appeal arising out of a suit in which the plaintiff prayed 'that on ejectment of the defendant, the plaintiff may be put in possession of the house bounded as below, situate in mohalla Bikabganj, Farrukhabad.' One Har Narain was the last male owner of the house, possession of which is sought by the plaintiff. Har Narain died in 1885. His wife, Chitar Kunwar, on his death entered into possession of the house in her right as a Hindu widow. Mt. Chitar Kunwar died in the year 1921. She was succeeded in possession by her daughter, Mt. Shyama who continued in possession until her death in November 1934. The plaintiff claims the house in suit as nearest reversioner. The defendant is the son of a sister of Mt. Shyama's husband. It is alleged that he took possession of the house in suit on Mt. Shyama's death. The defendant pleaded inter alia that the plaintiff was not the nearest reversioner entitled as such to succeed to Har Narain's estate, and that further on the 15th October 1888 the plaintiff had executed a deed by which he relinquished any right he had to succeed as reversioner to Har Narain's estate. The learned Munsif in the trial Court held that the plaintiff as nearest reversioner was entitled to succeed to Har Narain's estate. So far as the deed of

15th October 1888 is concerned, he held that it was void in view of the terms of Section 6(a), T.P. Act, and did not therefore operate as a bar to the plaintiff's claim in the present suit. In the result he decreed the suit. The learned Civil Judge in the lower Appellate Court held that in as much as the plaintiff had surrendered by the deed of 15th October 1888 his prospective reversionary rights in Har Narain's estate for valuable consideration, he was barred from maintaining a claim to any part of the estate on the death of Mt. Shyama. The learned Judge accordingly dismissed the suit.

8. A number of issues were raised and decided in the trial Court which, in view of the decision of the learned Civil Judge that the deed of 15th October 1888 was binding on the plaintiff, were not considered by the lower Appellate Court. To these issues in the present appeal therefore we do not deem it expedient to make reference. On the assumption that the plaintiff is the nearest reversioner in respect of Har Narain's estate the only question for consideration in this appeal is as to the effect of the deed executed by the plaintiff on 15th October 1888. The operative portion of that deed is as follows:

Har Narain, son of Mool Chand, caste Brahman, my maternal grandfather is dead. His property, specified below, is in possession of Mt. Chitar, the maternal grandmother of me, the executant, and I am the future heir and my maternal grandmother has life interest in the property aforesaid. As my maternal grandmother has paid me the compensation of my rights, I relinquish my right and execute a deed of agreement in her favour who shall now be the permanent owner of the property aforesaid. I neither have nor shall have any right whatsoever therein. I have, therefore, executed this agreement by way of a deed of relinquishment so that it may serve as evidence and be of use when required.

9. The learned Munsif, as already observed, held that this deed was invalid and of no effect in view of the terms of Section 6(a), T.P. Act. The learned Civil Judge in the lower Appellate Court has held that as it was a surrender for valuable consideration of the reversionary rights of the plaintiff it was binding upon him and that therefore he could not now claim the property in suit. Section 6(a), T.P. Act, is in the following terms:

(a) The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature cannot be transferred.

10. In appeal it was contended for the appellant that the aforementioned deed of 15th October 1888 was nothing more than the transfer of a reversionary interest and that it was accordingly void. For the respondent on the other hand it was maintained that the deed was not merely the transfer of a reversionary interest but was the relinquishment of a future right to claim and that therefore it was not affected by Section (6)(a), T.P. Act. In support of this contention reliance was especially placed upon certain observations of Richards C. J. in *Mohammad Hashmat Ali v. Kaniz Fatima* (1915) 2 A.I.R. All. 486. In the course of his judgment in that case which came before the High Court in Second Appeal Richards C.J. observed:

It is contended on behalf of the appellant that under the provisions of Section 6, T.P. Act, it is impossible for any person to transfer the chance of becoming entitled to a share in the property of a living person. This no doubt is quite correct but It seems to us that there is nothing illegal in a person for good consideration contracting not to claim in the event of his becoming entitled on the decease of a living person.

11. In that case the plaintiffs claimed certain property through one Khurshed Jahan who had compromised certain disputes by abandoning not only all rights which were then vested in her but also the possibility of her succeeding to shares as one of the heirs of her mother. The observation of Richards, C.J., quoted must be taken in reference to the particular facts of the case which was before the Court. It is clear from the judgment that the renunciation by Khurshed Jahan formed part of a family settlement, a settlement which concluded disputes which arose between contending claimants to certain property. The observation therefore 'that there is nothing illegal in a person, for good consideration contracting not to claim in the event of his becoming entitled on the decease of a living person' was clearly obiter. As a general proposition, its soundness is doubted by Piggot, J. in *Chabli v. Parmal* (1919) 6 A.I.R. All. 371. Learned Counsel for the defendant-respondent

relied further upon a number of decisions of this Court, viz : Kanti Chandra v. Al-i-Nabi (1911) 33 All. 414, Sukhdei Bibi v. Kedar Nath (1911) 33 All. 467, Barati Lal v. Salik Ram (1915) 2 A.I.R. All. 441, Moti Shah v. Gandharp Singh : AIR1926 All715 , Nakched Choudhury v. Sukhdev choudhuri : AIR1930 All430 , Raghubir Dutt v. Narain Dutt : AIR1930 All498 , Mahadeo Prasad Singh v. Mathura Chaudhari (1931) 18 A.I.R. All. 581. It is unnecessary to review these decisions in detail. Suffice it to say that they are decisions in oases in which in each instance it was found that the transfer of a spes successions was part of a family settlement or part of a compromise in a dispute which had arisen as to the ownership of property. The transfer or relinquishment of a prospective right as part of a family settlement or of a compromise by rival claimants to property stands in an entirely different position from the bare transfer of a spes successions. As was observed by Srinivasa Iyengar, J. in Kamaraju v. Venkatalakshmipathi (1925) 12 A.I.R. Mad. 1043.

If in substance the transaction is found to be only a dealing with the spes successionis, then, it cannot be recognized and cannot form the basis of any binding obligation. But if, on the other hand, the substance of the transaction is found to be a bona fide settlement between the parties, then, in spite of the fact that the same transaction might be represented in one of its aspects as a dealing with a spes successionis, it is none the less a real compromise of disputed rights.

12. In our judgment the law on the question raised in this appeal has been clearly defined in two decisions, of the Privy Council, viz. Annada Mohan Roy v. Gour Mohan Mullick (1923) 10 A.I.R. P.C. 189 and Amrit Narayan Singh v. Gaya Singh (1917) 4 A.I.R. P.C. 95. In the former case it was held that

a contract by a Hindu to sell immovable property to which he is the then nearest reversionary heir, expectant upon the death of a widow in possession, and to transfer it upon possession accruing to him, is void. The Transfer of Property Act, 1882, Section 6(a), which forbids the transfer of expectancies would be futile if a contract of the above character was enforceable.

13. In the course of their judgment the Board approve of the statement of the law on the point in issue by Tyabji, J., in Jagannada Raju Garu v. Lakshmi Narasimma

(1916) 3 A.I.R. Mad. 579 at p. 559 viz:

The Transfer of Property Act does not permit a person having expectations of succeeding to an estate as an heir, to transfer the expectant benefit; when such a transfer is purported to be made an attempt is in effect made by the two persons to change with each other their legal positions, and SKI attempt by the one to clothe the other with what the Legislature refuses to recognize as rights, but styles as a mere chance incapable of being transferred. It would be defeating the provisions of the Act to hold that though such hopes or expectations cannot be transferred in present or future, a person may bind himself to bring about the same results by giving to the agreement the form of a promise to transfer not the expectations but the fruits of the expectations, by saying that what he has purported to do may be described in different language from that which the Legislature has chosen to apply to it for the purpose of condemning it. When the Legislature refuses the transaction as an attempt to transfer a chance, it indicates the true aspect in which it requires the transaction to be viewed.

14. Commenting upon this exposition of the law the Board observed:

Their Lordships think that they are only following out numerous other passages which have been referred to in earlier judgments of this Board when they accept that reasoning and that conclusion. It is impossible for them to admit the common sense of maintaining an enactment which would prevent the purpose of the contract, while permitting the contract to stand as a contract, or to see how by appealing to Section 65, Contract Act, or to the nature of the bargain as a mere bargain de future, they could uphold it as a contract when it is a contract to which, not only must specific performance be refused under the Transfer of Property Act, but as to which damages can never be recovered, because the contract is not a performable contract until the realization of the expectation occurs.

15. In the latter case, *Amrit Narayan Singh v. Gaya Singh* (1917) 4 A.I.R. P.C. 95, it was held that a Hindu reversioner has no right or interest in present in the property which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign, or to relinquish or even to transmit to his heirs. His right becomes concrete only on her demise; until then it is

a mere 'spes successionis.' Now on 15th October 1888, when the plaintiff executed his deed of relinquishment he had nothing to assign, or to relinquish or even to transmit to his heirs. His right was one in regard to which it was impossible to say it would ever become concrete; it could only become concrete upon the death of Mt. Shyama and if he survived her. The bare transfer of such interest as he had therefore was void. This however does not necessarily conclude the matter. If the transfer was part and parcel of a family settlement or a compromise in a dispute between rival claimants to property it would not necessarily be invalid. The learned Munsif in the trial Court as already observed has found that the deed was not part of a family settlement. Upon this question as upon the other issues in the case, the learned Civil Judge has recorded no finding. In the absence of findings upon these other issues the case cannot be finally decided now. In our judgment however the learned Civil Judge has misdirected himself in law and his order must be recalled.

16. In the result the appeal is allowed and the order of the learned Civil Judge is set aside. The record will be returned to the lower Appellate Court with the direction that the appeal be admitted to the pending file and disposed of according to law. The appellant is entitled to his costs in this appeal.