

Bholai and anr. Vs. Kali and anr.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1886)ILR8All70

Judge : W. Comer Petheram, C.J. and; Oldfield, J.

Appellant : Bholai and anr.

Respondent : Kali and anr.

Judgement :

W. Comer Petheram, C.J.

1. I am of opinion that this suit is not maintainable. The facts, as alleged by the plaintiffs-appellants themselves, are, that the female defendant is the widow of a Hindu who was a member of an undivided Hindu family, and that they (the plaintiffs) represent the other members of that family. They allege that, after the death of their brother, they allowed the widow's name to be recorded in his place, in respect of his rights and interests in the property in dispute, out of compliment to her, and that subsequently, although she was not entitled to any interest in the property itself, but only to receive maintenance from them, she was allowed to receive the profits in lieu of the maintenance. They further state that, under this arrangement, she obtained and still continues in possession, and that she executed a deed mortgaging the property to the other defendant. They bring this suit to obtain a declaration that the mortgage was an illegal transaction. It is a suit

which must be brought under Section 42 of the Specific Relief Act, or it cannot be brought at all.

2. Upon this state of facts, the widow's possession--which the plaintiffs themselves allege to be an actual possession--must have one of two characters. Either it is a possession by the plaintiffs' consent, entitling her merely to receive the profits for her maintenance, or it is a possession for her life, given to her in exchange for the annuity which, under the arrangement I have referred to, she has released to the plaintiffs. In either case, I am of opinion that the suit is not maintainable. If her possession is merely permissive, and extends no further than the collection of the profits, then the plaintiffs may eject her from the property, if they are at any time-dissatisfied with her mode of dealing with it. Then, before they can claim the relief provided by Section 42 of the Specific Relief Act, they must claim the other relief to which they are entitled--that is to say, the relief of ejectment, that being the substantial and real relief appropriate to such a cause of action. On the other hand, if the widow had an estate in possession, given to her in exchange for the annuity which she had released to the plaintiffs, then she possessed an interest which, so far as I can see, she had a right to dispose of. The mortgage-deed in question contains no description of the amount of the estate-mortgaged by her. It is expressed with extreme vagueness, and, upon its face, mortgages her share of the property only. It could therefore have no operation beyond her share; and, in my opinion, no Court would be justified in interfering, and in making such a declaration as the plaintiffs ask for, merely because the deed is so vague that they apprehend that some imaginary claim may possibly be made by somebody at some time or other. Under these circumstances, I am of opinion that the suit and the appeal must be dismissed. Each of the respondents will be allowed his own costs separately.

Oldfield, J.

2. I agree in the opinion that this is not a case in which the declaration sought for should be granted. I may add that we have heard the appeal on its merits, and I see no reason to interfere with the decision of the Court of First Instance. The appeal is dismissed with two sets of costs.

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