

Melap Chand Vs. Meharban Singh

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Court : Allahabad

Decided On : Jan-15-1913

Reported in : 18Ind.Cas.226

Judge : Rafique, J.

Appellant : Melap Chand

Respondent : Meharban Singh

Judgement :

Rafique, J.

1. It appears that Sumer Singh, defendant-respondent No. 2, executed a deed of sale on March 3rd, 1897 in favour of Gulab Chand, father of the defendant-appellant, Seth Milap Chand, in respect of six pies share in Mauza Gurha entered in the khewat as No. 11. After the sale, an application for mutation of names was made by Gulab Chand and his name was entered in the revenue papers accordingly. On the death of Gulab Chand, the name of the defendant appellant, Milap Chand, was entered in the revenue papers in place of his father. On January 1st, 1910, Seth Milap Chand, the defendant-appellant in the present appeal, brought a suit for the recovery of his share of the profits. The suit was brought against Meharban Singh, the younger brother of Sumer Singh, as Meharban was at the time the Lambardar of the village. The latter resisted the suit denying the right of Milap Chand to claim any profits on the ground of the transfer in favour of

Gulab Chand being invalid. The claim of Milap Chand was decreed. On April 12th 1910, Meharban Singh instituted a suit in the Court of the Munsif of Jhansi to have it declared that Seth Milap Chand was not the owner of the share of six pies entered in his name in khewat as No. 11. It was alleged in the plaint that the sale in favour of Gulab Chand was made by Sumer Singh at a time that the latter was in the service of Gulab Chand, that the sale was without any consideration, that no possession was given at or after the sale, that the share sold by Sumer Singh was a joint family property of the two brothers, Sumer Singh and Meharban Singh, and, hence, could not be sold by Sumer Singh alone, and that the cause of action accrued on January 27, 1910, the date on which Milap Chand sued for the recovery of profits. The suit was brought against Milap Chand and Sumer Singh, but Milap Chand alone resisted the suit. He said that the share in suit was not the joint family property but was the exclusive property of Sumer Singh. It was further urged that full consideration had passed on the sale-deed and that possession had been delivered at the time of the sale. The plea of limitation was also advanced. The Court of first instance decreed the claim. ON appeal, the learned District Judge affirmed the decision of the first Court. In second appeal before this Court, the points raised in the lower Court are again urged. The questions relating to the character of the property in suit, the passing of consideration and the delivery of possession are questions of fact and cannot be discussed at this stage. The only point which is open to argument is that relating to limitation. For the appellant, it is contended that the claim of Meharban Singh was barred by limitation inasmuch as the cause of action, if any, accrued to him at the time that the mutation of names was effected in favour of Gulab Chand the vendee, soon after the sale, that is, sometime in 1897. In support of his contention, the learned Vakil for the appellant has cited the case of Akbar Khan v. Turaban 31 A. 9; 5 A.L.J. 637; (1908) A.W.N. 252; 4 M.L.T. 414; 1 Ind. Cas. 557. I do not think that the case relied upon by the appellant helps him. The facts of that case were that in 1895 the name of Turaban was entered in the revenue papers in respect of certain property and the title of the plaintiffs, namely, Akbar Khan and another, was denied. In 1903, Akbar Khan and another applied for the rectification of the khewat and the application was opposed by Turaban and rejected. Akbar Khan and another then brought a suit for a declaration that they were entitled to the property mentioned in the plaint and

alleged that the cause of action had accrued to them in 1895 when their title to the property in suit was denied by Turaban whose name was entered in the revenue papers. It was held that the limitation applicable to the case was that prescribed by Article 120 of the second Schedule to the Limitation Act, namely, six years and that time began to run from 1895. An argument was urged on behalf of the plaintiffs appellants that a fresh cause of action had accrued to them in 1905, when Turaban, the defendant-respondent, had objected to the correction of the khewat. The argument, however, was rejected with the remark that the refusal to have the entry corrected was a continuation of the original cause of action, namely, the entry of the defendant's name in the revenue papers in 1895. Now the facts of the present appeal are quite different to those of *Akbar Khan v. Turaban* 31 A. 9; 5 A.L.J. 637; (1908) A.W.N. 252; 4 M.L.T. 414; 1 Ind. Cas. 557. In the appeal before me, there is no evidence that at the time that Gulab Chand's name or at the time the name of his son was mutated, Meharban Singh was a party to the proceedings or that a question of title was raised at the time. Meharban Singh has not alleged in his plaint that the cause of action accrued to him on the mutation of names in favour of Gulab Chand or that of his son. The plaintiff-respondent has distinctly stated in his plaint that the cause of action accrued to him on the date of the institution of the suit for profits by Milap Chand. And even if it be conceded that mutation of names in favour of Gulab Chand or in that of Milap Chand was an invasion of the title of Meharban Singh, the institution of the suit by Milap Chand would be a fresh invasion of Meharban Singh's right and would give him a right of action from that date. I am supported in this view by the following cases: *Ilahi Bux v. Harnam Singh* A.W.N. (1898) 215. *Robert Skinner v. Shanker Lal* 31 A. 10 note; 1 Ind. Cas. 556 and the remarks at the end of the judgment in *Akbar Khan v. Turaban* 31 A. 9; 5 A.L.J. 637; (1908) A.W.N. 252; 4 M.L.T. 414; 1 Ind. Cas. 557. I find that the claim is not barred by the law of limitation. The appeal fails and is dismissed with costs, including in this Court, fees on the higher scale.