

Bindraban Vs. Ram Narain and ors.

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Court : Allahabad

Decided On : Jul-25-1924

Reported in : AIR1925All330; 85Ind.Cas.449

Appellant : Bindraban

Respondent : Ram Narain and ors.

Judgement :

1. There were two brothers, Jawahir and Mazbut. It has been found that they were joint. Jawahir died shortly before Mazbut, and left w widow, Bari Bahu surviving him. The two brothers together owned an 8 pies share. On the death of Jawahir, with the consent of Mazbut, the name of Bari Bahu was recorded with respect to a 4 pies share. On the death of Mazbut the name of Bari Bahu was recorded in respect of the 4 pies share which stood in his name. Bari Bahu continued to be in possession of the entire 8 pies share till her death which happened in 1917. Before her death, however she; on the 6th November 1906, made a transfer by way of sale of a 4 pies share in favour of the defendant-appellant. On 13th September 1918, that is to say within 12 years of the execution of the sale deed the respondents brought the suit out of which this appeal has arisen claiming, as the reversioners of Bari Bahu, for the recovery of the 4 pies share sold to the defendant-appellant. One of the pleas of the appellant was that Bari Bahu was in adverse possession of the property, and therefore, the plaintiffs' suit was barred by time. This plea found favour with the Court of first instance. On appeal the learned District Judge came to the conclusion that Bari Bahu's possession was not

adverse but was permissive. On this finding the suit was decreed. A second appeal was filed to this Court, and the learned Judge of this Court remitted an issue specifically directed to the character of possession of Bari Bahu. The finding recorded by the learned District Judge on 16th May 1922 was that the possession of Bari Bahu was permissive and not adverse. On this finding the learned Judge who heard the second appeal dismissed the appeal brought by the defendant.

2. In this appeal it is contended that possession of Bari Bahu was really adverse and not permissive. The learned District Judge has made the following remark in his judgment:

It is not shown that her (Bari Bahu's) possession ever became adverse or was even alleged to be adverse before the sale-deed of November 6, 1906.

3. Assuming that Bari Bahu did not obtain possession until the death of Mazbut, it does not necessarily follow that she claimed title adversely to her husband's estate. Ordinarily a Hindu widow would claim to be in possession in right of her husband. As the learned District Judge has remarked, there was absolutely nothing before him to show that she ever claimed a title in herself and a title adverse to her husband's estate, and therefore to the estate which would go on her death, to the reversioners to her husband's property.

4. Two cases of the Privy Council have been cited to us to show that in the circumstances of these cases their Lordships held that the possession of the widows, in those cases was adverse. But each case must be treated on its own facts. In the latest Privy Council case of *Lajwanti v. Safa Chand* A.I.R. 1924 P.C. 121, their Lordships found, in the circumstances of the case that the two widows who were not entitled to the property (they being stepmothers to the last male owner of the property) were in possession as Hindu widows and they prescribed for the benefit of their husband's estate. This case, therefore, is entirely concluded by the finding of the learned District Judge, that there was no assertion of an adverse title by the widow in herself, namely, title adverse to her husband's estate and to the estate that would go to the reversioners. The first such assertion that did take place was on 6th November, 1906, and this suit is amply within time from that date. The appeal fails and is hereby dismissed with costs.

