

Mul Chand Vs. Thakur Das

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SooperKanoon Citation : sooperkanoon.com/464409

Court : Allahabad

Decided On : Apr-24-1931

Reported in : AIR1932All61

Appellant : Mul Chand

Respondent : Thakur Das

Judgement :

Sen, J.

1. This is an appeal by the plaintiff and it arises out of a suit for partition and separate possession of a moiety share of a house in the city of Aligarh. Plaintiff claims to be the adopted son of one Basheshar Lal. He claims to have been adopted by his widow Mt. Rupanian. The action is directed against Thakur Das who is the brother of Basheshar Lal. The parties are Jains. The family of Basheshar Lal and Thakur Das was admittedly joint.

2. The adoption is alleged to have taken place in 1906, The defendant denied the adoption and impugned it upon the ground that the adoptive mother had obtained no authority from her husband or from his male agnates to adopt and also contended that the suit was barred by 12 years' limitation. These pleas were repelled by the trial Court which gave the plaintiff a decree. The lower, appellate Court has accepted the finding of the trial Court in support of the factual of adoption. It has however reversed the decision of the trial Court upon two grounds

: the first is that admitting that the plaintiff was adopted by a widow of a joint family, the adoption having taken place without the authority of the husband or the assent of the male members of the family, the said adoption was not valid in the absence of a custom to the contrary; such a custom according to the Court below has not either been alleged or proved. We have grave doubts about the correctness of this finding. But we do not think it necessary to make any pronouncement upon this point because we are of opinion that the finding of the Court below on the point to be just noticed completely disposes of the appeal.

3. The lower appellate Court came to a positive finding that the plaintiff's claim was time barred. This is the main ground upon which the decree of the lower appellate Court rests. The plaintiff was adopted in 1906 in Kasganj. His adoption was secret. It was not known to and was not assented by the members of Basheshar Lal's family. The defendant has remained in possession of this property on his own account since the date of the adoption for a period of more than 12 years. The present suit was not instituted till 2nd April 1927. Where an adoption has secretly taken place without the knowledge or assent of the defendant who, since the alleged adoption has remained in absolute and exclusive possession of the property, the plaintiff, as the adopted son of a deceased brother, cannot be taken to be in constructive possession of the property in suit through the defendant. The principle enunciated by the Privy Council in the case of *C.E.V.S. Corea v. M.I. Appuhamy* [1912] A.C. 230 does not apply to a case like the present. In such a case the possession of the defendant cannot be taken to be that of a cosharer who has been holding the property on account of himself and the adopted son. We are clearly of opinion that the learned Judge of the Court below intended to find and has found as a fact, that the defendant has remained in possession over the entire property for a period of more than 12 years adversely to the plaintiff from the date of the adoption. This finding is clearly one of fact and concludes the appeal. We accordingly dismiss this appeal but, without costs as the respondent is not represented.