

Mt. Uma Devi Vs. Gur Narain

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Court : Allahabad

Decided On : May-11-1927

Reported in : AIR1927All694; 103Ind.Cas.349

Appellant : Mt. Uma Devi

Respondent : Gur Narain

Judgement :

Dalal, J.

1. A suit for profits was instituted in the revenue Court by Mt. Janki Kunwar on the 25th April 1921 against the defendant Chaube Gur Narain. Mt. Janki Kunwar is dead and is now represented by her daughter Mt. Uma Devi. Her suit was dismissed by the revenue Court on the ground that she had no title to the property, but on appeal to the District Judge it was held that the entry of her name in the khewat entitled her to sue. He therefore remitted the suit to the trial Court for decision on the question of the amount of profits due to Mt. Janki Kunwar. The amount was determined to be Rs. 342-12-6, and a decree passed whereupon Gur Narain appealed to the District Court. It so happened that before the hearing of the appeal on 11th September 1924 Gur Narain had obtained a declaration from the civil Court that he was owner and in possession of the property in suit, against which Mt. Janki Kunwar's name had been entered. The exact terms of the declaration were that by virtue of her being a widow of a joint Hindu family no

proprietary right in the property described in the plaint accrued to Mt. Janki Kunwar and that her name stood recorded in the proprietor's column of the khewat only fictitiously. The District Judge thereupon held that he was bound by the civil Court's declaration and decreed the appeal and dismissed the suit of Mt. Janki Kunwar as then carried on by Mt. Uma Devi.

2. Mt. Uma Devi has filed this second appeal. Mr. Gupta on her behalf has argued the appeal with considerable ability and put forward two grounds:

(1) That the arrangement was a family arrangement under which Mt. Janki Kunwar was to recover profits in lieu of maintenance and that this Court may enforce such an arrangement even if Mt. Janki Kunwar was technically not entitled to sue for profits.

(2) That the District Judge having once decided that Mt. Janki Kunwar was entitled to sue and recover profits cannot in the same litigation overrule his own finding and decide to the contrary.

3. I am afraid words about a family arrangement have been loosely used by the learned Subordinate Judge in his judgment dated the 31st January 1924. I have referred to the paper-book in F.A. No. 96 of 1924, at p. 40. Dr. Agarwala has shown me a judgment of this Court according to which the family arrangement, if one made, was made by the previous life-holder, Mt. Naraini Kunwar, and a Bench of this Court has decided that the defendant was not bound by that arrangement. When such was the view of the civil Court Mt. Janki Kunwar was not entitled to recover profits by way of maintenance, and there is no possibility of my granting a money decree by way of maintenance.

4. The second point taken by the learned Counsel would, standing by itself, be sound but Dr. Agarwala, the learned Counsel for the respondent, has been able to put before me a position which is fatal to the appeal. I think it is correct to say that the District Judge cannot go back on his own decision, but the matter has now opened up completely here. The District Judge had remanded the suit under Order 41, Rule 23, Civil P.C., and there was no appeal from that order of remand. Under the circumstances, when an appeal comes to this Court, not only the question of

profits is reopened here, but also the question whether the plaintiff was entitled to sue or not. Once that question is opened, the principles of the ruling in the case of Surjan Singh v. Chatura Kunwar A.I.R. 1922 All. 356 will attach to the matter in dispute, and this Court will be bound to take notice of the decree of the civil Court and to act accordingly. Possibly the District Judge ought to have dismissed the appeal before him, but that will not help the appellant. If there had been an appeal here by Gur Narain on a decree passed by the District Judge, the question of the title of Mt. Janki Kunwar, who instituted the suit would have been reopened and decided in accordance with the civil Court decree.

5. I dismiss this appeal, but make no order as to costs here.

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