

**Ulfat Rai Vs. Sm. Kamla Devi and ors.**

**Ulfat Rai Vs. Sm. Kamla Devi and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/467310](http://sooperkanoon.com/467310)

**Court :** Allahabad

**Decided On :** Dec-20-1948

**Reported in :** AIR1949All458

**Appellant :** Ulfat Rai

**Respondent :** Sm. Kamla Devi and ors.

**Judgement :**

**Mushtaq Ahmad, J.**

1. This is a plaintiff's appeal arising out of a suit for possession over certain zamindari and house properties. The plaintiff claimed as the adopted son of one Jawahir Mal, whose pedigree is set out below:

A-----| | | |Lakhpat Bansu Sangam Lal  
Jawahir Mal Shugun ChandRai Lal | | || Ranjit Ullat Rai Mithan Lal=Mt. Sunehri|  
(adopted son) (adopted son) || Defdt. 4. || Mt. Kamla Defdt. 1.-----|  
|Shankar Umrao| |Kashmiri Lal Defdt. 3. Italian Lal Defdt, 2.|-----|  
|Sukhbir. Ulfat Rai Plaintiff.

2. The property in dispute admittedly belonged to Shugun Chand in the above pedigree, who died in 1918. His son Mithan Lal had pre-deceased him, Mithan Lal left a widow Mt. Sunehri and a daughter Mt. Kamla. On the death of Shugun Chand his property was entered in the khewat in the name of his daughter-in-law,

Mt. Sunehri, who died on 28th January 1941, and on her death it came to be recorded in the name of her daughter, Mt. Kamla, defendant 1.

3. The present suit was filed in 1943 after the name of Mt. Sunehri had remained recorded in the revenue papers for about 24 years, on the expiry of which the name of her daughter Mt, Kamla was entered,

4. The suit was brought on the allegation that Bansu Lal and Lakhpat Rai having pre-deceased Shugun Chand his property was inherited by his remaining brothers Jawahir Mal, the adoptive father of the plaintiff, and Sangam Lal who adopted defendant 4, that Mithan Lal had predeceased Shugun Chand and that the name of Mt. Sunehri, widow of Mithan Lal, had been recorded in the khewat only by way of consolation and in lieu of maintenance, the property being actually inherited by Shugun Chand's brothers, Jawahir Mal and Sangam Lal.

5. The defence taken by defendant 1 was that the plaintiff had not been adopted by Jawahir Mal, that Mithan Lal had died after his father Shugun Chand and that Mt. Sunehri having been in adverse possession of the property for more than 12 years, it had become her stridhan and was inherited by her daughter Mt. Kamla, defendant I.

6. The trial Court found that the plaintiff and Ranjit defendant & had been adopted by Jawahir Mal and Sangam Lal respectively, that Mithan Lal had died in the lifetime of his father Shugun Chand and that Mt. Sunehri had been in possession of the property only in lieu of maintenance and thus had not acquired title by adverse possession. On these findings the suit was decreed.

7. On appeal by defendant I, the lower appellate Court, while affirming the findings of the trial Court on the first two questions, disagreed with its finding on the other question' regarding the nature of Mt. Sunehri's possession, and held that the lady had perfected her title by adverse possession over the property which, therefore, had become her stridhan and had duly devolved on her daughter, defendant 1.

8. The only question that has been argued before me was whether Mt. Sunehri had really acquired title in the property by adverse possession, so that the suit was

barred by limitation, The two other questions being of fact the respondents' counsel very rightly did not address me on them.

9. A great deal of case-law has clustered round the question as to whether a Hindu widow in circumstances like the present could be held to have acquired absolute title in the property, having held it on her husband's death for over 12 years or she remained only a limited owner of it and the property would revert to the heirs of the husband.

10. I may at the outset dispose of a preliminary assertion in the plaint that Mt. Sunehri had been put in possession of the property only for her consolation with the consent of the heirs of Shngun Chand. No evidence of any such arrangement was adduced by the plaintiff, nor is there any discussion of the matter in either of the judgments of the Courts below. In Mt. Prithipal Kumar and Anr. v. Mt. Suraj Kunwar and Anr it was held that

There is no presumption that mutation in the name of a Hindu widow is by way of consolation. Consequently who ever raises the plea of mutation being for consolation must prove it.

This case went up to the Privy Council and the judgment was affirmed by their Lordships in Mt. Inder Kuer v. Mt. Prithipal Kuer in which the following observation was made:

This is the real evidentiary value of the mutation proceedings in this case and the learned Counsel who has gone through the evidence with great care has not been able to give any satisfactory explanation of them except that the properties were given by way of consolation to the widows, which is true neither in law nor in fact.

11. Another Bench of the Avadh Court in P. Adya Shankar Tewari v. Mt. Chandrawat A.I.R. (21) 1934 Avadh 268 held that,

where mutation in favour of a widow is not proved to have been effected with the consent of the other members of the family with a view to console her, and she remains in continuous possession for more than 12 years asserting her adverse possession, then she would complete her title by adverse possession for a period

of 12 years.

12. It may be remembered that Mithan Lal having predeceased his father, Shugun Chand, the latter had become the sole owner of the property and it could not be deemed to have come to Mt. Sunehri as the estate of her husband Mithan Lal. If Mithan Lal had died after Shugun Chand, the position, no doubt, would have been quite different, as in that case the lady would have entered into occupation of the property as her husband's estate with all the limitation of a limited owner, In the present case she had no right in law on the death of her husband to take seisen of the property which should have gone to the brothers of Shugun Chand. Cases in which a Hindu widow enters into possession of the property of her husband to the exclusion of his legal heir, for instance a son and, while asserting a hostile title, retains her possession for a period of 12 years, have to be distinguished from those of the present class. In such cases, no doubt, the widow, by virtue of her possession for the statutory period, would prescribe an unchallengeable title as a limited owner without acquiring any immunity for the property from its eventual reversion to her husband's heirs. In the present case it could in no sense be suggested that Mt. Sunehri acquired possession of the property as the widow of her husband, Mithan Lal, for the simple reason that Mithan Lal himself had never left it as his heritable estate. The real owner of the property, when Mt. Sunehri took possession of it, was her father-in-law, Shugun Chand, through whom she could not claim it.

13. The question of the capacity in which a Hindu widow is in possession of a property which had never been held by her husband prior to her taking possession of it has been considered by the Privy Council in the case of Lachhan Kunwar and Ors. v. Manorath Ram 22 Cal. 445 and the case of Sham Koer v. Dah Koer 29 Cal. 664. In the former case, a Hindu died leaving a son and a widow. The widow took possession of his property to the exclusion of the son and remained in such possession for over 12 years. She was held to have acquired an absolute title by adverse possession. Their Lordships remark-ed that

the son having the title she could not take possession excluding him, unless she intended to take an adverse possession, the possession to which she was not in

any way entitled.

and

Unless it was clearly shown that when the widow took possession she professed to do it as claiming only the limited estate of a widow, it would be impossible to hold that the rights of the other claimants were not extinguished.

14. In the latter case, again, on the death of a member of an undivided Hindu family governed by the Mitakshara law his widow and his son's widow obtained possession of a portion of the property to the exclusion of the reversionary heirs of the deceased. It was pointed out by their Lordships that legally

neither his widow nor his son's widow would be entitled to anything more than maintenance out of his estate.

And on this ground it was held that the widows had acquired title by adverse possession, there being no arrangement between them and the reversioners authorising them to take possession of the property.

15. In *Rikhi Deo Tewari v. Sukh Deo Tewari* : AIR1928 All45 , also the same test was adopted and it was laid down that

Where a Hindu widow is not entitled to a Hindu widow's possession at the time when she obtained possession of certain property, she obtains an absolute title in the property by adverse possession and that absolute title is acquired not only against the reversioners of the property but as against any reversioners to her husband's property.

16. The above test was also emphasised by this Court on the authority of the above Privy Council decisions in the case of *Uma Shanhar v. Mt. Aisha Khatun* A.I.R. (11) 1924 ALL. 88, and the case of *Prag Narain v. Mathura, Prasad* A.I.R. (11) 1924 ALL. 740, both being Bench decisions. The observations made in these cases evolve the actual rule of burden of proof to be applied. In the former case their Lordships held that:

So long, however, as the plaintiff has not shown that she entered into possession of the estate with assertion of only a limited interest, it seems to us impossible to hold that her possession had all along remained either permissive or qualified.

17. These cases fully apply to the present case, in which also, as pointed out by me, Mt. Sunehri could not be regarded as having entered into possession of the property as the widow of Mithan Lal, the latter himself having never left it as his asset on his death. She could be deemed to have done this only in her own capacity independently of her position as the widow of her husband. Such a position was analogous to that of any other person, male or female, acquiring possession of the property of another, otherwise than as his heir.

18. There was no reliable evidence, and none has been referred to in the judgments of the Courts below as showing that Mt. Sunehri had either entered into possession of the property initially as a limited owner or even afterwards regarded herself as such during the rest of her life. Indeed, it is difficult to conceive how she could assign to herself such a character, when she had not at the inception acquired it by virtue of her right as the widow of Mithan Lal. On the contrary, we find that, after the lady had perfected her title by adverse possession, she executed two sale-deeds, one dated 27th April 1936, and the other dated 7th June 1940, concerning two houses which had formed part of the estate of Shugun Chand. She had done this professedly as the absolute owner of those houses and not merely as a widow representing the estate of her husband. In fact, she could not have done this for the simple reason that there had been no such estate. On those occasions she undoubtedly asserted her absolute title not only in those houses but, by parity of reasoning, in the entire set of properties left by Shugun Chand, of which they formed part. In the case of *Choudhary Satgur Prasad v. Raj Kishore Lal and Ors.* A.I.R. (6) 1919 P.C. 60, a Hindu widow in possession of her husband's property was found to have openly asserted her absolute title in that property and remained in hostile possession of it for over 12 years, and their Lordships held that she had acquired absolute title by reason of such possession. That was obviously a much weaker case from the point of view of the defendant-respondent who is claiming through her mother Mt. Sunehri, who herself had never inherited it from her husband, but held it in her own right and independently

of him.

19. In the case of *Dungar Singh and Anr. v. Mt. Maid Kunwar and Anr.* : AIR1933 All822 , the relevant case law was discussed by the Bench in some detail and it was held that:

Where a Hindu widow takes the property to which she is not entitled to succeed under Hindu law, the (question, whether she acquires a limited estate or an absolute estate depends on the question of fact whether she claimed to take the property through her husband or not. If she has taken through her husband she acquires by prescription only a limited estate of a Hindu widow and does not obtain an absolute estate. But if there is no evidence that she has so limited her claim, she takes an absolute estate as stridhan.

20. The question arose again in this Court in the case of *Mt. Hardei v. Debi Bahai* L.P.A. No. 90 of 1934, decided on 28th February 1935 by Hon'ble C.J. and King J. in which the widow of one of the sons of a deceased proprietor was found to have remained in possession of her father-in-law's property for over 12 years. The reversioner's suit for possession against the daughter of the daughter-in-law of the original owner was held time barred on the ground that the daughter-in-law had perfected her title by adverse possession and become the owner of the property which had rightly devolved on her daughter. That case and the present are almost mutually convertible except for the difference in names.

21. The learned Counsel for the appellant has cited in support of the appeal the well-known case of *Mt, Lajwanti and Ors. v. Safa Chand and Ors.* A.I.R. (11) 1924 P.C. 121. In that case the widow of a deceased Hindu, on whose death a posthumous son was born, had acquired possession of her husband's estate on his death. After the birth of the son, the possession of the widow obviously became unlawful, and the question was what rights precisely she had acquired by virtue of that possession having lasted for over 12 years. Their Lordships found that:

the Hindu widow as often pointed out, is not a life renter but has a widow's estate, that is to say a widow's estate in her deceased husband's estate. If possessing as

widow she possesses adversely to any one as to certain parcels she does not acquire the parcels as stridhan but she makes them good to her husband's estate.

In this case the widow was found to have remained in possession of her husband's estate only as his widow and she was held by virtue of her long possession to have perfected only a widow's estate in her favour in the property of her husband.

22. This case has since been considered in a number of cases, and so far as this Court is concerned, it has been explained, among others, by the cases reported in *Kali Charan v. Mt. Peare* A.I.R. (11) 1924 ALL. 740 and *Rikhdeo Tewari v. Suhhdeo Tewari* : AIR1928 All45 . The Bench in the former case explained the Privy Council case as one in which the widow had taken possession of the estate originally belonging to her husband of his death, although a posthumous son was subsequently born to him, without claiming 'anything more than the limited estate of a Hindu female'. The learned Judges fortified this interpretation by quoting a passage from the previous ruling of the Privy Council in *Lachckan Kunwar v. Manorath Ram* 22 Cal. 445 already referred to by me, to the effect that the rights of the reversioners would be extinguished

unless it were clearly shown that when Jit Kunwar took possession, she professed to do so as claiming only the limited estate of a widow.

The Bench in the latter case also explained that ruling by observing that:

at the time when the widow entered into possession, she was entitled to the property as widow and it was only subsequently that the birth of a posthumous son made her liable to dispossession.

whereas,

in the present case *Rikh Deo Tewari v. Suhh Deo Tewari* : AIR1928 All45 Mt. Naulasi was not entitled under any view to a Hindu widow's possession at the time when she obtained entry.

Another case *Chandra Bali Pathak v. Bhagwan Prasad Pande* 1944 A.L.J. 344, was also relied upon on behalf of the appellant. Apart from a certain expression to be found in the judgment in that case, I do not think it helps the appellant at all. It was held there that:

possession, unless it is based upon title, must be deemed to be adverse, but the possession of a Hindu widow must be treated on a different basis. The true test has always been furnished by the character in which she steps into possession. If she has entered possession not as a widow of the last male owner or as a widow of the family, the possession will be deemed to be adverse, but if she had entered in possession as a widow of the last male owner or as a widow of the family her possession cannot be treated as adverse. If there are no indications to the contrary, a woman claiming an estate expressly by inheritance must be deemed to be claiming a limited estate.

23. Much of what is contained in the above enunciation agrees with the statement of the law as I have made in the preceding portion of this judgment. In the present case, Mt. Sunehri had never entered into possession of the property as a widow of her husband Mithan Lal, the property not having been his at all. She could not, therefore, be regarded to have taken possession as the widow of the last male owner, that is to say, she could not be deemed, when entering into possession of the property, to be claiming it by inheritance, and as such her possession, even according to the above dictum, must be taken to be adverse as against the reversionary heirs of the last male owner. The words 'the possession of a Hindu widow must be treated on a different basis' or the words 'as a widow of the family' do appear ostensibly to suggest some complication. But so far as the effect or implications of the character in which the widow enters into possession of the property of her late husband's family are concerned, the words first quoted do not affect the position in the least. The words next quoted if examined in the light of the context, do not appear, speaking respectfully, to convey any easily intelligible notion. No female can be conceived as 'a widow' of an entire family, though certainly she can be a widow of a particular individual now dead. If the words are taken too literally, they would necessarily conflict with the position stated in the remaining portions of the passage quoted, inasmuch as it is clearly mentioned

there that a female cannot be deemed to be holding adversely to her husband's reversioners, if she is claiming the property in question by inheritance. Surely, no woman can as 'a widow' of the family claim as an heir of the family. If the idea intended to be conveyed by the expression was of the widow of a member of the husband's family who is now dead, there would in the context be no meaning in it. It may also be remarked that even in this case emphasis was laid on the fact that the lady, Mt. Surta in that case had 'never made any departure from her claim as a Hindu widow'. This is not the fact in the present case here, as already noted by me.

24. On a consideration of the law, as explained in the above pronouncements I may enunciate the following results:

(1) That, where on the death of a member of an undivided Hindu family, his widow assumes possession of the family property or a portion thereof, there is no presumption that she has been allowed this for her mere consolation or in lieu of maintenance - unless the surviving 'member proves an arrangement making her possession permissive, it would be deemed to be adverse.

(2) That, where on the death of an absolute Hindu proprietor, his widow, on assuming possession of his property, renounces her character as a limited owner by asserting an absolute title and remains in possession of the property for over 12 years, she prescribes a full estate for herself to the exclusion of her husband's heirs.

(3) That, where the widow in the last case, making no such renunciation or assertion, acquires adverse possession over a certain property and retains it for the full statutory period, she prescribes only a limited estate in respect of that property which, on her death, would revert to her husband's heirs.

(4) That the question of the widow's possession as a limited owner can arise only if she claims through the last male owner, that is to say, if she is his heir and not otherwise, and

(5) That a fortiori, if she is not the heir of the last male owner, her possession is adverse to the latter's heirs, and after the lapse of 12 years the property becomes her stridhan, descendible on her own heirs.

25. This exactly is the position in the present case. The last male owner of the property which Mt. Sunehri took into possession was Shugun Chand, her father-in-law, whose heir she was not. She was the heir only of her husband, Mithan Lal, who having predeceased his father, the original absolute proprietor, could have left no heritable interest in the property. She could not, therefore, in any sense be regarded as having taken possession as a limited owner. She took possession only as a stranger and to the detriment of the legal heirs of Shugun Chand, through one of whom the plaintiff is claiming as his adopted son. There is nothing on the record even to suggest that Mt. Sunehri held the property for the long period of about 24 years as a 'limited owner'. That expression in this case could in fact have no meaning. On the contrary, and consistently with her initial position qua the property when Shugun Chand died-the position of a mere wrongful holder-she gave herself out as the absolute owner of it, and even transferred a portion of it by sales after perfecting her title by prescription. In this view Jawahir Mal, the adoptive father of the plaintiff had himself lost all title in the property, and the latter acquired no interest therein under the adoption. His suit was clearly time-barred.

26. I, therefore, hold that the view taken by the lower appellate Court was perfectly correct, and I dismiss this appeal with costs.

27. Leave to appeal under the Letters Patent is granted.