

Mansa Tewari and ors. Vs. Parmeshar Tewari and ors.

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Court : Allahabad

Decided On : Feb-04-1929

Reported in : AIR1929All327

Appellant : Mansa Tewari and ors.

Respondent : Parmeshar Tewari and ors.

Judgement :

1. This is a second appeal by the defendants. The plaintiffs among whom are people, who were originally made pro forma defendants, brought the suit, out of which this appeal has arisen, for a declaration of their title and for a perpetual injunction. The suit arose out of the following facts: The pedigree given in the plaint will show that one Sheodan Tewari had four sons: Raman Tewari. Meharban Tewari, Sita Ram Tewari, and Diha Ram Tewari. These four sons divided the 'birt jajmani' of Sheodan Tewari in four equal shares, that the 'gifts' received in three months of the year went to one son and 'gifts' received in another three months to another son and so on. Diha Ram died and his heirs, according to the pedigree, were his nephews, the sons of Sita Ram. Kishun Dayal Tewari, one of the sons of Sita Ram, claimed to have been adopted by Diha Ram. In that capacity, he claimed the entire 'three months' of Diha Ram. It is said that Sita Ram was then alive and he persuaded his sons to settle their dispute. It was settled in this way that in every month Kishun Dayal was allowed to share the gifts made in 24 days and the other sons of Sita Ram were allowed to take the gifts made on six other days, in the course of a month. It is to be understood that this division was as to

the three months belonging to Diha Ram. The plaintiffs who were some of the sons of Sita Ram and descendants of others, brought the suit on the allegation that Kishun Dayal's sons were interfering with the six days which were allowed to the plaintiffs. The defence set up was that Kishun Dayal was entitled to those six days also and not only to the 24 days as admitted, as the proper share of Kishun Dayal, by the plaintiffs. The Courts below have found that the plaintiffs' case was true and they have agreed in decreeing the suit.

2. In this Court, only one point has been urged by the learned Counsel for the appellants and it is this. In the circumstances of the case, the relief of perpetual injunction was not proper. The appellant's point is that a perpetual injunction cannot be granted where pecuniary compensation would afford an adequate relief. The argument is that if and when the defendants receive any gifts, which, ordinarily, ought to go to the plaintiffs the plaintiffs' remedy would be to bring a Suit for recovery of that gift. The learned Counsel had to go so far as to admit that this might mean that at the end of every month the plaintiffs would have to institute a suit or they might let their reliefs accumulate and they might bring their suit once at the end of the year. This is a proposition of law which, in our opinion has only to be mentioned to be rejected. One of the grounds on which the perpetual injunction can be granted is mentioned in Clause (c), Section 54, Specific Relief Act. It is:

where the injunction is necessary to prevent a multiplicity of judicial proceeding.

3. If the learned Counsel's argument is correct, as we have already stated, there would be an endless litigation between the parties to the suit. Therefore, a perpetual injunction is the only adequate relief.

4. As another branch of this argument Dr. Agarwala relied on the case of *Sona Dei v. Fakir Chand* [1913] 35 All. 412. It was argued by the learned Counsel that a perpetual injunction would really amount to an injunction to the clientele of the parties, who are not parties to the suit. The argument was developed in this way. A *jajman* might think of making a special gift to one of the defendants and the result of granting an injunction would be to bind the client who wants to make a special gift from making one. In our opinion, the case of *Sona Dei v. Fakir Chand* [1913] 35 All. 412 which is quoted has no bearing on the present litigation. The facts of

that case were not similar to the facts of this case. The parties of the case of Sona Dei divided the birt jajmani by days. One of the parties to the agreement died and his share devolved, by right of inheritance, on his widow Sona Dei. A jajman refused to make a gift to Sona Dei on the ground that she was a woman. Incidentally, we might mention that a gift to a Brahman must be made to a male Brahman and not to a female Brahman. A gift to the female Brahman has not the same merits, if it has any merits at all, as a gift to a male Brahman. The jajman, as we have said, refused to make a gift to Sona Dei, seeing that she was only a female. He, however, made a sort of consolation gift to Sona Dei and made another gift to the defendant, Fakir Chand. Thereupon Sona Dei brought the suit, out of which the appeal arose, to recover the gift made to Fakir Chand. The question was whether Sona Dei could recover the amount of the gift. Two learned Judges, as against one, held that this was a special kind of gift and it was not covered by the agreement on which Sona Dei relied. The following occurs at p. 417 in the judgment of Banerji, J., with whom another learned Judge agreed:

In the present case neither of the Courts below has found that the contract between the parties was of the wide nature just now mentioned, and as I have already said, it was not the plaintiff's own case, as laid in the plaint.

5. In our opinion the facts of that case have nothing to do with the facts of the present case. The parties in this case have not pleaded that it was possible to make a special gift to anybody. The contract between the parties has not been considered by the Courts below in view of this new pleading. In the circumstances, we cannot allow what is virtually a new case to be set up-a case which must depend on allegations of fact and a consideration of the agreement in view of those allegations. We have considered the pleadings in this case. The simple case that arose between the parties was one of fact, namely, whether Diha Ram's share was or was not divided among the parties as alleged by the plaintiffs.

6. In our opinion, an injunction is the proper remedy in a case like this. It does not involve any compulsion on the clients. The parties have agreed to share in a certain way the gifts made on particular days. It will surely be the duty of the party who is not entitled to the gift, not to make any attempt to accept those gifts. His

duty would be to keep himself away. This duty can only be secured by a personal injunction and which must be of a permanent character. In the result, we dismiss the appeal with costs.

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