

Sita Ram Vs. Rewa Ram and ors.

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Court : Allahabad

Decided On : Nov-15-1922

Reported in : AIR1923All366; 71Ind.Cas.390

Judge : Stuart, J.

Appellant : Sita Ram

Respondent : Rewa Ram and ors.

Judgement :

Stuart, J.

1. There are two main points argued in this appeal. The first is that the mere recital in the deed of sale is not evidence. I think it is evidence in view of the decision in Nanda Lal Dhur Biswas v. Jagat Kiskore Achariya Chowdhuri 36 Ind. Cas. 420 : 14 A.L.J. 1103 : 20 M.L.T. 535 : 31 M.L.J. 563 : (1916) 2 M.W.N. 336 : 4 L.W. 458 : 18 Bom. L.R. 868 : 24 C.L.J. 487 : 1 P.L.W. 1 : 21 C.W.N. 225 : 44 C. 186 : 10 Bur. L.T 177 : 43 I.A. 249 (P.C). But on the next point the appeal must succeed. It is this: The alienation was by a daughter to pay off her mother's debts. This is not a reason for an alienation which can operate against the interests of the reversioners. The learned Counsel for the respondents would uphold the decree on the point that the suit was barred by res judicata, a point which the lower Appellate Court has decided against them. I agree with the lower Appellate Court that the suit is not barred by res judicata for the obvious reason that the original

suit was by a vendee against one of the daughters for partition, to which the other daughter was made party. The reversioners are in no way bound by decisions against the daughters. I, therefore decree this appeal, restore the judgment of the learned Munsif and set aside the judgment of the lower Appellate Court. The defendants will pay their own costs and those of the plaintiffs in all Courts. These costs will include in this Court-fees on the higher scale.

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