

Sumaru Chamar Vs. Puddan Chamar

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Court : Allahabad

Decided On : Feb-05-1935

Reported in : AIR1935All975; 159Ind.Cas.352

Appellant : Sumaru Chamar

Respondent : Puddan Chamar

Judgement :

Ganga Nath, J.

1. This is a defendant's appeal and arises out of a suit brought against him by the plaintiff to recover possession over the occupancy holding described in the plaint. Gulzar and Hulas were two brothers, and the occupancy tenancy in dispute belonged to them. The plaintiff Puddan is the grandson of Gulzar and succeeded to half of the tenancy through his grandfather. The plaintiff claimed the other half as the nearest reversioner of Hulas. Hulas had two sons Go pal and Khedan. The defendant is Khedan's daughter's son. The plaintiff's case was that, on the death of Mt. Jarao, widow of Sheopal, who was the son of Gopal, the plaintiff succeeded to the remaining half of the tenancy. On the death of Khedan, Khedan's one-fourth share also came to Sheopal. On Sheopal's-death, Sheopal's own share and Khedan's share, that is, half of the disputed tenancy was succeeded to by his widow Mt. Jarao. Mt. Jarao died about two years ago and, on her death, the plaintiff succeeded to the half as already stated. The defendant's case was that he,

as Khedan's daughter's son, had succeeded to Khedan's share.

2. The finding of the Courts below which was based on evidence was that Khedan's share was succeeded to by Sheopal on his (Khedan's) death, and after Sheopal, by his widow Mt. jarao. The lower Court found that the appellant was not joint in cultivation with Kheda.n in Khedan's lifetime and that therefore he did not succeed to Khedan's share. This is a finding of fact based on evidence and is binding. There can be no doubt that, if the defendant did not share in cultivation, with Khedan in Khedan's lifetime, the defendant could not succeed to Khedan's tenancy. As regards the question whether the plaintiff would succeed to the remaining half of the tenancy, which belonged to Hulas's branch, the lower Court has given a decree to the plaintiff on the ground that the plaintiff though separate from Sheopal, would be legally presumed to have shared in cultivation with him. This presumption is entirely wrong. There can be no such legal presumption of jointness in the face of the finding of the two persons being separate. But as already stated, the whole of the tenancy in dispute belonged to Bas-wan the common ancestor of Gulzar and Hulas. The plaintiff is the survivor of the heirs of Baswan. Section 26, Agra Tenancy Act (Act 3 of 1926) lays down:

And except in the case of widows or of a co-tenant, who dies leaving no heir entitled to succeed under Section 24, no interest in any exproprietary, occupancy, statutory, or non-occupancy tenancy shall pass by survivorship.

3. Under this provision, the interest of a co-tenant who dies leaving no heir will pass by survivorship to his co-tenant. As held in *Rasulan v. Babu* 1930 All 350, the rule of survivorship among joint tenants is modified in India by Sections 42 and 45, Contract Act, which put the representative of the deceased joint tenant in his place, so long as there is such a representative. On failure of such a representative, the rule of survivorship among joint tenants applies. This rule has been adopted in Section 26, Agra Tenancy Act, in case of widows and co-tenants. The plaintiff therefore would succeed to the half share of the other branch. There is no reason for any interference with the decree of the lower Court. It is therefore ordered that the appeal be dismissed with costs and the decree of the lower Court be confirmed. Permission to file a Letters Patent appeal is rejected.

