

Udaichand Vs. Surajmal

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Court : Rajasthan

Decided On : Jan-11-1969

Reported in : 1969WLN43

Judge : Jagat Narain, J.

Appeal No. : S.B. Civil Revision No. 365 of 1967

Appellant : Udaichand

Respondent : Surajmal

Disposition : Petition allowed

Judgement :

Jagat Narain, J.

1. This is a revision application by the defendant against an order of Senior Civil Judge, Churu refusing to frame two issues.

2. The plaintiff-respondent brought a suit for recovery of arrears, of tent and ejection against the applicant on the allegation that he was the tenant of one Bhoordas from whom he had purchased the premises by a registered sale-deed dated 17-5-1965. It was alleged that the applicant had executed a rent note in favour of Bhoordas who was the owner of the property. The suit was inter alia on the ground that Bhoordas had no right to alienate the property firstly because he

was not chela of Adooram who was the previous mahant of Dadoo Samaj and secondly because the alienation was not justified by legal necessity. It was prayed on behalf of the applicant that issues should be framed on the question as to whether Bhoordas was the mahant of Dadoo Samaj, and if so whether there was legal necessity for the alienation. The trial court decided to frame these issues. Having heard the learned Counsel for the parties, I am satisfied that the order of the trial court is proper.

3. If the plaintiff is able to prove that Udaichand applicant obtained possession over the premises under a lease from Bhoordas, the applicant would be estopped under Section 116 of the Evidence Act from disputing that Bhoordas was the owner of the property on the date on which the applicant took it on lease from him. It is no doubt open to the applicant to show that Bhoordas subsequently lost his title to the property as was held by their Lordships of the Privy Council in *Kumar Krishna Prasad Lal Singha Dev v. Bhoordas Coal Concern Ltd.* AIR 1937 P.C. 251. But it is not the case of the applicant that Bhoordas lost his title after the date of the lease.

4. So far as the question of legal necessity is concerned, the law is settled that an alienation without legal necessity is not void but only voidable at the option of the next reversioner. In the case of a religious endowment, it may be possible to permit any person having sufficient interest in the endowment to challenge the alienation. No such interest has been pleaded in this case. Even if the applicant had pleaded that he had sufficient interest in Dadoo Samaj to be able to challenge the alienation he could only do after the death of Bhoordas. An alienation without legal necessity by Bhoordas cannot be challenged in his lifetime.

5. I accordingly dismiss the revision application with costs.