

Laliteshwar Singh Vs. Rameshwar Singh

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Court : Kolkata

Decided On : Feb-05-1909

Reported in : (1909)ILR36Cal481,2Ind.Cas.290

Judge : Francis W. Maclean, C.J., ;Harington and ; Brett, JJ.

Appellant : Laliteshwar Singh

Respondent : Rameshwar Singh

Judgement :

Francis W. Maclean, C.J.

1. This is a suit to recover possession of the Durbhanga Raj estate, one of great value. The present Maharajah is a brother of the late Maharajah; and the plaintiff's case is that the present Maharajah and the late Maharajah had long been separate in food and worship, and owing to disputes and differences between them, they on or about the 28th of August 1880 became separate in estate and were never thereafter re-united in food, worship or estate. He further alleges that on or about the last-mentioned date the defendant Maharajah for valuable consideration moving from the late Maharajah renounced and relinquished by deed all his claims to any of the properties move-able and immoveable held by Maharajah Moheshwar Singh or which might have been subsequently acquired and added thereto: that the late Maharajah died suddenly on the 17th December 1898 intestate and without having abdicated or assigned the Raj, leaving no issue,

natural or adopted, but leaving the plaintiff and the Maharajah defendant his brother, from whom he had been separated as aforesaid, and leaving behind him amongst other things, the property described in the schedule to the plaint, whereof he was the owner, being entitled thereto as an impartible Raj, subject to the kulachar custom or usage mentioned in the 10th paragraph of the plaint. The case of the defendant put shortly is that the Durbhanga Raj is an ancient impartible estate held and enjoyed by the defendant's family for several centuries, and the devolution thereof, and the succession to the said Raj are regulated by the kulachar or family custom attaching to the said Raj, according to which the succession devolves upon, and passes, to the next immediate male heir of the last holder, to the exclusion of females, according to the rule of lineal primogeniture: and the defendant denies that the rule of ordinary primogeniture governs such succession as stated in the 10th paragraph of the plaint. He also says that it is wholly untrue that the defendant and the late Maharajah became, on the 28th day of August 1880, or at any time, separate in estate, the fact being that, on the 20th of August 1880, an arrangement was come to between the late Maharajah and the defendant, by which, according to the usual custom and practice of the family, certain properties known as Pargana Bachur were given by the late Maharajah to the defendant to have and to hold the same as a maintenance or babuana grant with the same incidents as are usually attached to babuana grants made to junior members of the said Raj family.

2. In his argument before us, Counsel for the plaintiff relied upon the deed effecting this arrangement, and which is appended to the written statement, though not set forth in the plaint. The Raj admittedly is an impartible estate, and being an impartible estate the defendant could not have separated so far as the Raj is concerned, from the late Maharajah. All interest, the defendant could then claim in the Raj, was a spes successionis which was clearly not a subject for partition. In the suit brought by the defendant against the late Maharajah the question raised was whether the Raj was partible or not, and the compromise was based on the condition that the defendant withdrew that plea and not that the defendant accepted the terms offered as compensation for the rights which he had in the Raj, which in fact was then only a spes successionis, There was nothing to separate.

3. With respect to the case that succession to the property of the Raj is governed by the rule of ordinary primogeniture and not by the rule of lineal primogeniture, it was conceded that, whether the succession to the Raj was according to the rule of ordinary primogeniture or that of lineal primogeniture, the plaintiff cannot succeed unless he can show that the defendant separated in estate from his brother, the late Maharajah. But if it was an impartible estate there was nothing upon which separation of estate could operate.

4. I now pass to the question of amendment. The suit was set down for settlement of issues. Counsel for the plaintiff admitted that without amendment, the plaint disclosed no cause of action. It is not clear what the proposed amendments were, nor is it clear that leave to amend was ever asked for: if it were admitted that the plaint as it stood disclosed no cause of action and an amendment was asked for, it would have been preferable to ascertain what the amendment asked for was, and if the Court thought that the amendment was permissible to have dealt with the case on the footing of that amendment. But apparently nothing was said as to what the proposed amendment was to be. When the case came before us, Counsel asked for leave to amend, and at the bar the amendment he asked for was of a very formal nature, merely to show how the defendant as a third son of Maharajah Kumar Ganeshwar Singh, who did not die until the year 1903, had become entitled to the Raj, notwithstanding the existence of other members of the family, the grandsons, who survived the Maharajah Kumar Ganeshwar Singh. We asked that these amendments should be reduced into writing; this has been done and they assume a different and wider aspect. But the amendments, even if we allowed them at this late stage of the case, only show that the claim of the plaintiff is dependent upon the so-called separation between the present Maharajah and his brother the late Maharajah, and, as has been shown, this Raj being impartible, there could be no such separation in estate. Apart from this, however, in the exercise of the judicial discretion which is vested in us, we think it is too late, at this stage of the case, to allow the amendment, which was not submitted or asked for to the Court of first instance. The appeal, therefore, must be dismissed. We think the suit is a vexatious one, and we dismiss the appeal with costs.

Harington and Brett, JJ. concurred.

