

Brahmadeo Narayan Vs. Harjan Singh and ors.

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Court : Kolkata

Decided On : Feb-25-1898

Reported in : (1898)ILR25Cal778

Judge : Trevelyan and ;Stevens, JJ.

Appellant : Brahmadeo Narayan

Respondent : Harjan Singh and ors.

Judgement :

Trevelyan and Stevens, JJ.

1. In this case the assignee from a reversioner is seeking to question a sale made by a Hindu widow. The widow is now dead. The assignment was made to the plaintiff during her lifetime.

2. The learned Subordinate Judge has held that no effect can be given to that assignment, having regard to the terms of Section 6 of the Transfer of Property Act.

3. In that section the following property is stated not to be capable of transfer, namely, 'the chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature.' The question before us is whether the right of a Hindu reversioner

during the life-time of the widow is included within this expression. It is not, we are confident, possible to include it within the expression 'The chance of an heir-apparent succeeding to an estate.' The words 'heir-apparent' are always used with reference to the relation between a living person and his successor. It is not quite certain exactly what was meant by the expression 'heir-apparent.' It is an expression which is very rarely used, except with regard to the heir to the throne. As far as we can see, the provisions of Section 6 are only intended to apply to cases of a mere hope or chance of succession which may be defeated by the act of some person having the present disposal of the property. It can scarcely be said that the right of a Hindu reversioner is a mere possibility. It is an interest contingent upon the reversioner surviving the widow, and also upon the non-intervention of a full heir. This is a contingency dependent on no man's will, but upon the happening of uncertain events. It is an interest which is capable of being protected by the Court. The reversioner can sue to restrain waste; he can, on making out a proper case, obtain a receiver; and he can contest alienations made by the widow. It is an interest which may at any time cease to be contingent by the widow giving up her estate. The reversioner with the widow can make a complete title to the property. A transfer of this interest is, in our opinion, not within the letter of the law, and, moreover, it is not within the mischief which the section was intended to counteract. Mere possibilities of succession are wholly incapable of valuation, whereas with the aid of an actuary it is not difficult to put a money value upon the interest of a reversioner.

4. The decisions under the Civil Procedure Code as to what is attachable can be of no assistance to us in this case. Much which, under the law, cannot be sold in execution is capable of being dealt with by voluntary transfer, and we think that it would be wholly unsafe to apply to the Transfer of Property Act decisions which have been given with regard to the Civil Procedure Code. In our opinion there is nothing in the law to prevent the assignment to the plaintiff. An argument was addressed to us with reference to Section 43 of the Transfer of Property Act, but having regard to our view of the construction of Section 6 of the same Act, it is unnecessary for us to consider that argument. The decree of the lower Court must be set aside, and the case remanded for determination on its merits.

5. The plaintiff is entitled to his costs of this appeal as against defendants 1 and 3 to 8.

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