

AshiruddIn Mohammad Vs. Taher Mohammad and ors.

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SooperKanoon Citation : sooperkanoon.com/873047

Court : Kolkata

Decided On : May-20-1920

Reported in : 59Ind.Cas.306

Judge : N.R. Chatterjea and ;Panton, JJ.

Appellant : AshiruddIn Mohammad

Respondent : Taher Mohammad and ors.

Judgement :

1. The plaintiffs-respondents purchased the property (in respect of which rent has been claimed against the appellant for the years 1319 to 1322 B.S.), from the son, the widow and the daughters of one Rasul Bukhsh. There were five daughters, two of whom had assigned their interest to their brother. The other three daughters were minors, and their interest was sold by the mother as their natural guardian.

2. The Court below has held that the plaintiff had acquired title to the entire property and was entitled to maintain the suit for rent.

3. But, having regard to the decision of the Judicial Committee in the case of Imambandi v. Mutsaddi 47 Ind. Cas. 513, 45 O. 878 : 35 M.L.J. 422 : 16 A.L.J. 800 : 24 M.L.T. 330 : 28 C.L.J. 409 : 23 C.W.N. 50 : 5 P.L.W. 276 : 20 Bom. L.R. 022 : 19.9, M.W.N. 91 : 9 L.W. 518 : 46 I.A. 73 (P.C.), there is no doubt that the mother cannot alienate the property of her minor daughters as their de facto guardian. That being so, the plaintiff did not acquire the interest in the property to more than

10 annas; in other words, the plaintiff did not acquire the interest of the three minor daughters, which amount to six annas.

4. It is contended on behalf of the appellant that, in the absence of any evidence that there was separate realisation in respect of the 10-annas share, the plaintiff cannot maintain the suit.

5. This appears to be so, but the learned Pleader for the respondent has asked us to remand the case to the lower Court and that he may be permitted to amend the plaint by adding the three minor daughters as parties to the suit.

6. Having regard to the fact that the decision of the Judicial Committee came out after the present case had been decided by the lower Appellate Court, we think that the plaintiff should be permitted to amend the plaint, as prayed. But this must be on terms.

7. We accordingly direct that, upon the plaintiff - respondent paying to the defendant-appellant costs of the lower Appellate Court and of this Court within a month of the arrival of this order in the Court of first instance, the plaintiff be permitted to amend the plaint by adding the three minor daughters of Rasul Bukhsh as parties to the suit, subject to any objection that may be legally raised by the defendant, and then the case be decided according to law.