

Gopal Chandra Dutt Vs. Surendra Nath Dutt

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Court : Kolkata

Decided On : Jun-05-1924

Reported in : AIR1925Cal1004,85Ind.Cas.804

Appellant : Gopal Chandra Dutt

Respondent : Surendra Nath Dutt

Judgement :

Duval, J.

1. This appeal arises out of a suit brought by the plaintiff-appellant against his nephew in respect of a 4-annas share in a certain property. It appears that the whole property in question originally belonged to two brothers, Ram Chandra and Lokenath. Ram Chandra died leaving two sons, Gopal (plaintiff) and Jadu (father of the defendants). Lokenath died leaving a widow, Lakhimoney. After the death of Lokenath, the two reversioners to the estate of Lokenath, viz., Gopal and Jadu, entered into an agreement with the widow on the 25th November, 1890 by which it was declared that Lakhimoney had surrendered her interest in the immovable property, retaining only certain movables and a hub to live in for maintenance; and in return for that Gopal and Jadu took over the whole property of Lokenath. Jadunath died on the 20th April, 1910 and Lakhimoney died on the 19th January, 1916. Thereafter, in 1917, there was a rent suit in which Surendra Nath Dutt sued a certain tenant Kinoo Sardar for rent in respect of his alleged 8-annas share in a

holding within the property. In that suit Gopal was a party and he contested the suit. He alleged that he purchased the holding in execution of a money-decree. His contention further was that on the death of Lakhimoney he had inherited the entire share in the property. It was necessary, therefore, for the learned Munsif and the learned District Judge on appeal first to decide in that suit what share of Lokenath's estate Gopal had, i.e., whether he had as the sole reversioner at the date of the death of Lakhimoney, the whole estate which Lokenath had, or whether he had only a 4-annas share, Jadu having received the other 4-annas share in the property which originally belonged to Lokenath Dutt in view of the agreement of the 25th November, 1890, leading to the transfer by Lakhimoney of her life-interest. In that rent suit the Munsif and the learned District Judge found that Surendra and Gopal were each entitled to 8-annas share of Lokenath Dutt's original share in the holding. After that the present suit has been brought, and the main point in issue in the suit before the lower Courts has been whether, on the true construction of the document of the 25th November, 1890, the whole interest of Lokenath Dutt in the property of which Lakhimoney had only a life-interest passed on that date to Gopal and Jadu, or whether that document did not accelerate the inheritance to Lokenath Dutt's estate during the lifetime of Lakhimoney in that it did not convey the whole of the life-interest of Lakhimoney to those who were at the time the legal reversioners. The learned Munsif and the Subordinate Judge have found that the document did convey the whole of the estate, and they also found that the plaintiff-appellant was estopped by his conduct from raising the issue that Surendra, on the death of Lakhimoney, had no interest in the share which belonged to Lokenath. On the question, however, of *res judicata*, the Subordinate Judge has held that the previous rent suit and the decision therein did not operate as *res judicata* so as to prevent this issue being tried in the title-suit. The points urged by the appellant before us are that there is no estoppel and that on a proper construction of the deed it would appear that it is not one which shows that Lakhimoney surrendered the whole of the life-estate to her reversioners in return for getting a maintenance; for the respondent it is argued that the decision of the lower Court is correct on these two points, but it is said that it has incorrectly decided the question of *res judicata*.

2. On an examination of the deed, which is an agreement by the two reversioners then living, Gopal and Jadu, to give regular maintenance in cash and paddy to Lakhimoney, and to allow her to occupy a hut to live in, we find the following recital therein: 'You having relinquished in favour of us two brothers, in equal shares, the right and title which you have during your life in all the immovable properties in your possession with the exception of the residential house in your possession and having given up possession of the said properties, being divested of the right thereof.' In another portion of the document it is said as follows; 'We two-brothers and our heirs and successors should possess and enjoy in our respective rights, in equal shares, the properties which were in your possession, which you have given us two brothers, during and after your life, as to which no one else will be able to make any claim.' We also find the following passage in another portion of it: 'On your death no one will get or will be able to claim as your successor, the said paddy or money on account of the said fixed allowance, and we and our heirs should get, in equal shares, the house of your residence and whatever movable properties you may have.' It is argued for the appellant that this document did not pass the whole of the original interest of Lakhimoney as she retained a house and the movables and only banded over immovable properties. But it would appear from other points of the document that there is nothing in it to show that the movables were of any value or that they had been inherited by her from her husband Lokenath; and as to the house the document itself shows that it was kept) only for her residence and its repairs had to be performed by the two brothers. It appears therefore on a proper reading of the document, that the only conclusion which can be drawn is that the widow gave up the whole of her life-estate that she got from her husband to her reversioners, and in return they undertook to maintain her by giving her more in the way of paddy and cash yearly than she would have got out of the property; and in fact this arrangement continued for 26 years. We find nothing contrary to this in the said document, and we can only conclude that in this case there has been whole giving up of the life-estate to the reversioners, and so the cases to which we have been referred, i.e., the cases of Behari Lal v. Madho Lal Ahir (1892) 19 Cal. 236, and Ananda Mohan Roy v. Gour Mohan Mullik A.I.R. 1923 P.C. 189, do not apply. The case, on the other hand, similar to the present one, is the case of Bhagwat Koer v. Dhanukdari

Prashad Singh A.I.R. 1919 P.C. 75, in which there was no formal document of surrender made by the widow, but the whole of the immovable property was transferred to the reversioners, she retaining certain movables, and the agreement was made with them for consideration of maintenance; and we hold that in this case, in fact, there has been a complete relinquishment of the property inherited from Lokenath in favour of the reversioners by the deed of 1890. On this ground alone the appeal ought to fail. We consider, however, that the whole suit must fail on the ground of res judicata. In the rent suit to which we have already referred it was clearly in issue as to what was the share of Gopal after the death of Lakhimoney; and the learned Munsif, in connection with this, says as follows: 'For the decision of the rent suit the share would have to be determined. Jadunath died in 1317. Lakhimoney died in Pous 1322. Ordinarily Gopal would inherit the share of Lakhimoney after her death.' He then recites the document and comes to the conclusion that Surendra, as the heir of Jadu, the original reversioner, was entitled to the 8-annas share and Gopal was entitled to the other 8-annas share of Lokenath's property. This decision was upheld in appeal. It is argued before us, however, that as the pleadings have not been filed in this present case, the question of res judicata does not arise. It is also suggested that the question of the share of the reversioner was not in issue in the rent suit. We do not think that there is anything in this contention. It was clearly an issue necessary for the decision of the rent suit; it had to be decided as to whether Surendra had, as heir of Jadu, inherited any part of Lakhimoney's estate which originally belonged to Lokenath; and the fact that this was only a rent suit and the case was tried rather summarily does not do away with the effect of the judgment in deciding in a Court of law the question which is really the subject-matter of the present suit. In this connection we would refer to the concluding words of the Privy Council decision in the case of Ramchandra Rao v. Ramchandra Rao A.I.R. 1922 P.C. 80. In our opinion, following the principle laid down there, we must hold that the decision in the rent suit, where the present appellant's title was clearly in issue for the purpose of deciding his right to receive a share of the rent was res judicata for the purpose of this suit. In this view of the case it is not necessary for us to deal with the question of estoppel.

3. The result is that this appeal is dismissed with costs.

Suhrawardy, J.

4. I agree.

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