
(1926) 04 AHC CK 0035
In the Allahabad High Court

Ajudhia Prasad

APPELLANT

Vs

Mathura Prasad

RESPONDENT

Date of Decision : 19-04-1926

Acts Referred:

Citation : (1926) 04 AHC CK 0035

Hon'ble Judges : Dalal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dalal, J.—One Mathura Prasad one of two reversioners to the property of a Hindu on the death of his widow sued for the cancellation of a sale deed executed by the widow and for possession of the entire property.

2. On the death of the widow the next reversioners were the plaintiff Mathura Prasad and his brother Ram Sahai. When the sale deed was executed Ram Sahai consented to the sale and such is the finding of the two subordinate Courts. They have, however, held that Mathura Prasad can alone recover the entire property and was not restricted to the recovery of the half-share of his property. The defendant vendees, therefore, have come here in second appeal. In my opinion the appeal must succeed. In his plaint Mathura Prasad gives no reason why he was entitled to the other half of the property, on Ram Sahai losing his right to recover it. He sued on behalf of himself and of Ram Sahai whom he made a party defendant to the suit. In para. 5 of the plaint it is stated that he and Ram Sahai became owners of the property on the death of the widow. "When Ram Sahai consented to the sale by the widow and accepted the legal necessity of the sale consideration he could not become owner of the property on the death of the widow.

3. Every reversioner succeeds to property on the death of a widow in his own right and the property becomes his self-acquired property and not joint family property. The argument of the respondent's learned Counsel was that the whole

sale failed, on the legal necessity as regards the entire consideration not being established, and on the failure of the sale Mathura Prasad could take possession of the entire property. The Court, however, was not told how Mathura Prasad become entitled to the share of Ram Sahai when Ram Sahai had by his conduct lost the right of recovering possession of half the property on the death of the widow. In Fateh Singh Vs. Thakur Rukmini Ramanji Maharaj, a Full Bench of this Court held that a reversioner to the estate of a deceased separated Hindu who has assented expressly to an alienation of a property forming part of the estate made by the widow in possession, cannot, on succeeding to the estate, after the widow's death, repudiate his action and sue for possession of the property alienated by the widow. It is clear, therefore, that Ram Sahai himself could not sue for the property. In Mahadeo Prasad Singh Vs. Mata Prasad and Another, a Divisional Bench of this Court after review of previous authorities held that a reversioner who had joined in making a document ratifying a particular transfer by a Hindu widow could not in the event of the succession opening in his favour be permitted to question the validity of that transfer. So far as Ram Sahai was concerned the transfer was valid and he was precluded from questioning it.

4. I am of opinion that when Ram Sahai was precluded from questioning the transfer, Mathura Prasad could not do so, so far as the right of Ram Sahai was concerned, to half the property in suit. Mathura Prasad purported to sue on behalf of his brother, but when his brother had lost the right to sue for possession Mathura Prasad could not sue on behalf of his brother. I am of opinion that Mathura Prasad was entitled to possession of half the property only. In the result I modify the decree of the lower Appellate Court and decree possession of half the property to Mathura Prasad on payment of Rs. 150 to the defendants appellants. If the money is not deposited, two months further time shall be granted from today's date. If Rs. 300 is deposited Mathura Prasad shall be entitled to get half that amount back. Ground No. 5 of this appeal was not pressed, so the lower appellate Court's decree is maintained with respect to other matters covered thereby except in so far that profits shall be recoverable by Mathura Prasad of half the property only.

5. Parties shall bear their own costs of all the Courts.