

(1936) 10 AHC CK 0008
In the Allahabad High Court

Alakh Narain Singh and Others

APPELLANT

Vs

Thakur Dayal Singh and Others

RESPONDENT

Date of Decision : 28-10-1936

Acts Referred:

Citation : AIR 1937 All 197

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Niamatullah, J.—This is a defendants appeal arising out of a suit for redemption. The plaintiff's right to redeem was questioned on the ground that he was not the heir of the original mortgagor who has since died. The plaintiff claimed to be the nearest heir of the mortgagor according to a pedigree propounded by him. The defendants who claimed to be nearer than the plaintiff also propounded a pedigree. Both the Courts below have rejected the plea put forward by the defendants and held that the plaintiff has succeeded in proving that he is the nearest heir of the mortgagor. The plaintiff's case depended solely upon the question whether one Bhairon Dayal was the son of Nanku Singh. Bhairon Dayal died a very long time ago and the lower appellate Court has rightly pointed out that trustworthy oral evidence cannot be had. In the shape of documentary evidence also, there was nothing definite one way or the other. The lower appellate Court was, however, able to arrive at a definite conclusion that the pedigree set up by the defendants was in part false. As regards the pedigree set up by the plaintiff, corroboration was forthcoming from a number of circumstances proved by documentary evidence. Having considered the entire evidence in the case, the lower appellate Court held, confirming the view of the first Court, that the plaintiff has proved himself to be the nearest reversioner of the mortgagor. In second appeal the finding of the lower appellate Court is contested on the ground that in the absence of clear oral and documentary evidence, the lower appellate Court acted on no evidence in holding that Bhairon

Dayal was the son of Nanku Singh. I have read the judgment of the lower appellate Court held cannot hold, as I am invited to hold, that the finding of the lower appellate Court is based on no legal evidence. A finding based on inferences derived from documentary evidence is as good a finding of fact as that based on oral and documentary evidence. In this view, the finding of the lower appellate Court is binding in second appeal which is accordingly dismissed with costs. Leave to appeal under the Letters Patent is refused.