
(1891) 12 PRI CK 0006

In the Privy Council

Behari Lal

APPELLANT

Vs

Madho Lal Ahir Gayawal and another

RESPONDENT

Date of Decision : 12-12-1891

Acts Referred:

Citation : (1892) 19 ILRPC 236

Hon'ble Judges : Watson, Morris, R. Couch, Shand, JJ.

Judgement

Morris, J. 1. Damodhur Mahton was the owner of the immoveable property, the subject of this suit; he died in the year 1845, leaving his widow, Lachoo Dai, and two daughters, Rani Dai and Phula Dai, him surviving. The plaintiff Behari Lal is the son of Rani Dai by her marriage with Gungabishen Meherwar; the defendant Madho Lal is the son of Phula Dai by her marriage with Sadashib Ahir; the plaintiff and defendant are thus first cousins. On the death of Damodhur Mahton, his widow Lachoo Dai succeeded to the immoveable property as a Hindu widow under the Hindu law. On the 13th September 1849 Lachoo Dai executed an ikrarnama of that date. Lachoo Dai died in 1878; Behari Lal has brought this suit against Madho Lal and Rani Dai, seeking to be declared entitled to the immoveable property left by his grandfather Damodhur Mahton; Rani Dai does not resist the plaintiff's claim, and the question lies between Behari Lal and Madho Lal. The case really depends on what is the construction of the ikrarnama. The material part of it is as follows:

Whereas I, the declarant, and my husband have two daughters by me, viz., Mussummat Rani Dai and Mussummat Bhola Dai. My husband died by the will of God (on the 11th Pous 1253 Fusli), leaving me as heiress. All the mauzas of this district and zillah Tirhut, jatris, houses and household furniture, ready money, grain, ornaments set with precious stones, plates, weapons, woollen stuff, silk, and male and female slaves left by him are held by me, without the partnership and possession of any other individual. Whereas Mussummat Bhola Dai, my daughter, has got no son, and Mussummat Rani Dai, my daughter, has got a son, by name Behari Lal Meherwar, and consequently as I have no son, according to

the Shashtra the said Behari Lal Meherwar, my daughter's son, is the heir of my husband and myself, and he has been performing the Gyawal duties for the jattris of my husband and myself, who come from Tirhut and other places. Notwithstanding this, with a view to completion, I (with the permission of my husband) do hereby declare and give in writing that all the mauzas lying in this district and zillah Tirhut, houses, household furniture, ready money, grain, ornaments, jewels, plates, weapons, woollen clothes, silk stuff, slaves, and jattris, especially Maharaja Ruder Narain Singh, Bahadur, the Raja of Darbhanga, and his relatives and descendants, and others left by my husband, and owned and held by me, and debts and dues of my husband and myself, belong to Behari Lal Meherwar, aforesaid. I, the declarant, shall, till the end of my life, hold possession, as I have heretofore done, without the partnership and possession of any other individual, and shall perform acts of charity (shall receive my maintenance). After my death, Behari Lal Meherwar shall enter into possession and enjoy all the profits of all the mouzahs lying in this district, and in the district of Tirhut, and all the properties moveable and immoveable, personal and standing in my own name (cash and household effects), etc., left by my husband and by me, to which no one shall have any right, demand, or dispute. 2. After the execution of the ikrarnama the widow applied to have Behari Lal's name put on the Collector's records, but with herself as the registered owner. 3. At the time of the execution of the ikrarnama Madho Lal was not born, so that the plaintiff was then the apparent reversionary heir, subject to the life-estate of his grandmother Lachoo Dai; it may be accepted that, according to Hindu law, the widow can accelerate the estate of the heir by conveying absolutely and destroying her life-estate. 4. It was essentially necessary to withdraw her own life-estate, so that the whole estate should get vested at once in the grantee. The necessity of the removal of the obstacle of the life-estate is a practical check on the frequency of such conveyances. Now in the ikrarnama in question Lachoo Dai, so far from destroying her life-estate, expressly says: "I shall, till the end of my life, hold possession, as I have heretofore done, without the partnership and possession of any other individual," and again she says "after my death, Behari Lal Meherwar shall enter into possession, etc." The object of Lachoo Dai was to declare the rights of Behari Lal, who was performing the Gyawal ceremonies, and obtaining the fees for her; she wished to leave the management in his hands, but not to surrender her life-estate. As to an alleged custom amongst Gyawals, that the widow could, overriding Hindu law, have an absolute and entire power over the immoveable estate of her husband, it is sufficient to say that no such custom has been proved. Their Lordships will therefore humbly advise Her Majesty to affirm the judgment of the High Court, and dismiss the appeal with costs.