

(1896) 12 AHC CK 0011
In the Allahabad High Court

Bhairon and Another

APPELLANT

Vs

Janki

RESPONDENT

Date of Decision : 09-12-1896

Acts Referred:

Citation : (1897) ILR (All) 133

Hon'ble Judges : John Edge, J;Burkitt, J

Bench : Division Bench

Judgement

John Edge, Kt., C.J. and Burkitt, J.—Debi Din made a will by which he bequeathed all his property to Musammat Lachminia. She was his wife. By this will he said: "After my death the said Musammat is to be the person in possession and ownership in place of me, the executant, of all the bequeathed property aforesaid by right of this will." We need not refer to the rest of the will. Debi Din died. He was sonless, but he left his widow and a daughter surviving him. The daughter was married to Janki, the defendant in this case. She had no sons by Janki; but she had daughters, who are still living. The daughter died in her mother's life-time, and thereupon Lachminia made a will in favour of Janki. After the death of Lachminia, the plaintiffs, claiming to be reversioners of Debi Din, brought the present suit against Janki claiming to have him ejected and to get possession of the property. There is no doubt that Debi Din was a separated Hindu. There is equally no doubt that he had no male relation of near kinship. These plaintiffs, if they were related to him at all, and were reversioners, were distant. The first Court held that the property passed under the will to Lachminia as her stridhan and that on her death her heirs became entitled to it, and consequently dismissed the plaintiffs' suit, the plaintiffs not being heirs to Lachminia. The Court of First Appeal construed the will as a gift to Lachminia of nothing more than she would have taken if her husband Debi Din had died without a will, and, setting aside the order of the first Court, made an order of remand u/s 562 of the Code of Civil Procedure. From that order of remand this appeal has been brought.

2. It is contended on behalf of the respondents that, the will not containing any words to show that Debi Din intended that Lachminia should take an estate of inheritance which she could alienate of her own free will, the will gave her nothing beyond what she would have taken had there been no will. In support of that view Mr. Baldeo Ram has cited to us several cases, amongst them the case of Kunjbehari Dhur v. Premchand Dutt ILR Cal. 684. It appears to us that if the learned Judges in that case intended their view of the law to be of general application, it would be impossible for a husband ever to make a gift of immoveable property to his wife which would become her stridhan, unless he gave her the power of alienation, which we do not conceive to be a correct view of the Hindu law on this subject.

3. Another case to which Mr. Baldeo Ram referred us was Moulvie Mohamed Shumsool Hooda v. Shewuk Ram ILR. IndAp 7. In that case their Lordships of the Privy Council had not to decide the point before us, and indeed did not decide it. Another case cited to us was Hira Bai v. Lakshmi Bai ILR 11 Bom. 573. It is obvious from that case that the point before the Judges was really whether the gift was one of an estate of inheritance which could be alienated, or merely the gift of a Hindu widow's life estate. In the case before us it is obvious that Debi Din did not intend to confer upon his wife a power of alienation. Neither would he in law have intended to confer upon her a power of alienation if he had expressly given this property to her as her stridhan without adding a power to alienate. The result would have been that she could not have alienated. That may be gathered from page 762 of Mayne's Hindu Law and Usage (5th edition).

4. The question which we have to decide is--what was his intention? Did he intend that this property should be her stridhan, with the result as a matter of law that upon her death it would go to her heirs, or did he intend merely to give her that interest in the property which she would have had if he had died without making a will at all? No doubt cases do arise in which, owing to the disputes as to the property or as to the legal position of an alleged adopted son or of a widow whose husband claimed to be separate, wills are made, which, if the husband was separate or the alleged adopted son was really an adopted son, would be unnecessary. In every case, first the language of the will, and then the surrounding circumstances have to be looked at, in case the language is doubtful. Now in this case the language which was used in the will was consistent with a gift of stridhan or with the mere formality of making a gift of a life interest which would have devolved upon Lachminia, whether the will was made or not. There are no circumstances shown to have been existing at or before the date of the will which suggest that, if Debi Din had died without a will, Musammatt Lachminia's right to enjoy the property as a Hindu widow for her life would have been challenged by anyone. Consequently there was no reason for Debi Din making a will to be used in a dispute which no one suggests was likely to arise. It was reasonable under the circumstances, even from a Hindu point of view, there being no near kinsmen, and but the plaintiffs, who were doubtful reversioners, that Debi Din should make such a will, the effect of which would be to secure his

property to his own descendants, though in the female line, and to secure it, as he probably hoped, without any objections being raised by questionable reversioners. The wisdom of his making a will is apparent from the present suit; for here are people coming forward to claim as reversioners as to whose position as reversioners there may be some doubt. In our opinion Debi Din intended to confer upon his wife after his death an estate larger than, and possessing incidents different from those appertaining to, the estate which Lachminia would have taken as his widow if Debi Din had died intestate. We hold that he did confer upon her an estate which was more extensive than that which she would have had simply as a Hindu widow, and consequently that the estate conferred upon her became her stridhan and that the plaintiffs, whether they are Debi Dins reversioners or not, have no title. We allow the appeal, and set aside the decree below and the order of remand, and restore and affirm the decree of the first Court with costs.

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1. In his appeal in this Court one Bir Bhaddar obtained a decree reversing the decree of the Subordinate Judge of Gorakhpur with costs. Bir Bhaddar was a defendant in the suit. The plaintiff appealed to Her Majesty in Council making Bir Bhaddar the respondent to his appeal. Her Majesty in Council set aside the decree of this Court and restored with costs the decree of the Subordinate Judge of Gorakhpur. Now on the 2nd of December 1887, the plaintiff in the suit presented his application to this Court for a certificate u/s 599 of the Code of Civil Procedure. The certificate was granted in January 1888. On the 24th of December 1887, Bir Bhaddar had assigned the decree for costs which he had obtained in this Court to Madho Ram. The appeal to the Privy Council was admitted on the 25th of July 1888. The order of Her Majesty in Council was dated the 15th of March 1893. The plaintiff in the suit had notice long before the termination of the appeal to Her Majesty in Council that Madho Ram was the assignee of Bir Bhaddar's decree for costs, and, long before the determination of the appeal to Her Majesty in Council, Madho Ram in his life-time, and subsequently Jamna Prasad, the appellant here, as Madho Ram's representative, executed, u/s 232 of the Code of Civil Procedure, the decree of the High Court for costs against the plaintiff and obtained satisfaction of that decree. The plaintiff took no steps to bring either Madho Ram, or, after his death, his representative Jamna Prasad, on the record of the appeal to Her Majesty in Council. The plaintiff now seeks u/s 583 of the CPC to obtain restitution from Jamna Prasad of the costs which he paid under the decree of the High Court to Madho Ram and Jamna Prasad.

2. Assuming for the present purposes, but not deciding, that Section 583 of the CPC would apply to a decree passed in an appeal to Her Majesty in Council, we are of opinion that the plaintiff in the suit cannot have execution of the decree of Her Majesty in Council against Jamna Prasad personally or against him as representative of Madho Ram. Neither Madho Ram nor Jamna Prasad was made a

party to the appeal before Her Majesty in Council; and it appears to us that, as neither of them was a party to that appeal, and as Her Majesty in Council did not order that Jamna Prasad personally or as representative of Madho Ram should make restitution, the order of Her Majesty could not be executed so far as Jamna Prasad is concerned.

3. No case has been brought to our attention in which a decree was held to have been executable u/s 583 for restitution against a person who could have been made, but was not made, a party to the appeal in which the decree was passed. We have been referred to the decision of this Court in *Kishen Sahai v. The Collector of Allahabad* ILR All. 137. It appears to us that, that case was not in point. In that case the order of Her Majesty in Council set aside the decree of the Sadr Court and restored and affirmed the decree of the District Judge, although one Banke Lal, who had derived a material advantage as a litigant in the suit from the decree of the Sadr Court, was not a party to the appeal to Her Majesty in Council. It does not appear whether or not their Lordships of the Privy Council when they delivered their judgment advising Her Majesty to set aside the decree of the Sadr Court and to restore and affirm the decree of the District Judge were aware that in so doing they were advising that the decree which Banke Lal had obtained from the Sadr Court should be taken away from him, although he was not a party to the appeal to Her Majesty in Council. All that can be said about that case is that Her Majesty in Council having set aside the decree of the Sadr Court, reinstated and affirmed the decree of the District Judge, and under that decree Banke Lal as a party to it was liable.

4. This Court has, we believe, invariably declined in appeal adversely to alter the position of a decree-holder who has not been a party to the decree before it. We think it would be dangerous to depart from that principle. We dismiss the appeal with costs in this Court and affirm the order of the Court below.