
(1924) 11 AHC CK 0009
In the Allahabad High Court

Budh Sagar and Another

APPELLANT

Vs

Bishun Sahai

RESPONDENT

Date of Decision : 06-11-1924

Acts Referred:

Specific Relief Act, 1877 — Section 21

Citation : AIR 1925 All 366

Hon'ble Judges : Kanhaiya Lal, J

Bench : Division Bench

Judgement

Kanhaiya Lal, J.—His Lordship after stating the facts of the case as set out above and discussing the evidence, proceeded as follows:

The onus lay on the defendants appellants to give strict proof that the plaintiff suffered from a congenital disability which excluded him from inheritance and that onus has not been discharged.

2. There is another matter which is still more conclusive on the point of the plaintiff's title. In 1919 when the plaintiff sued for a partition of his share, the defence raised by Raghubar Dayal on behalf of himself and Budh Sagar, according to the learned Subordinate Judge, was that the plaintiff had been born congenitally blind. Raghubar Dayal did not, however, proceed with the trial of that issue. He preferred to enter into an agreement with the plaintiff by which he recognized his right as a co-parcener in consideration of the then plaintiff withdrawing his claim for partition and acknowledging him as the then head of the family, and further agreed that if in future any male issue was born to the plaintiff then that very issue would be the heir of his property, and that if no male issue was born to him, the surviving male member of his family shall be "his heir" according to the Hindu law. There was a further agreement that if Raghubar Dayal showed any kind of dishonesty or unfair dealing as manager, the plaintiff would, in the first instance, refer the matter to the arbitration of Ramdat Kurmi and get it settled, or else seek his remedy in a competent Court for the partition of his share. That agreement clearly acknowledges the title of the

plaintiff as a coparcener in the family property. The right of the plaintiff was till then disputed; and that was the consideration of the agreement which operates as a family arrangement binding as much on the parties thereto as on their sons and descendants. In accordance with the agreement an application was filed in the Court in which the suit for partition was pending, on the 28th July, 1915, whereby the suit was withdrawn; and the agreement above referred to was specifically mentioned therein as settling the matters in dispute between the parties at the time.

3. The learned Counsel for the defendants-appellants has called our attention to the decision in *Lala Muddun Gopal Lal v. Khikhindu Koer* (1890) 18 Cal. 341 where their Lordships, dealing with a case in which a person had been deaf and dumb from his birth and was allowed a share, observed that it was quite natural for the other members of the family to have dealt with him with kindness and affection and even to have treated him as a member of the family entitled to equal rights. It may be that there might be circumstances in which an afflicted brother might be treated with such consideration in order to promote the peace and welfare of the family and to consider acts done out of kindness and affection to the disadvantage of the doer of them may lead to considerable injustice. But that was a case in which the finding arrived at was that the person concerned was born deaf and dumb and was incapable of inheriting or succeeding to any property under the Hindu law; and the subsequent conduct of the other members of the family was sought to be used as evidence of the creation of new title by gift. No such consideration arises in this case. The agreement of the 13th July, 1919, does not create any new title. It merely settled a dispute which was then pending, recognised an antecedent title and prescribed the manner in which the future management of the family property was to be carried on. That agreement is, in our opinion, conclusive on the rights of the parties; and inasmuch as all the members of the family, as then existed, were parties to the litigation, for the settlement of which that agreement was executed, we must regard it as a family arrangement, or final settlement of the matter in controversy, as binding on the then members of the family as on the defendants who were subsequently born.

4. As regards the objection that the agreement of the 13th July 1919, precluded the plaintiff from bringing a suit for partition without resorting to arbitration, we have only to point out that an agreement to refer future disputes has no such force and Section 21 of the Specific Relief Act 1 of 1877 does not affect the provisions of the CPC and the plaintiff is not precluded in consequence from instituting the suit. On the other hand, the agreement gave him the right to sue for partition and that right remains unaffected by the failure of the plaintiff to have recourse to this arbitration of Ram Dat. This appeal must, therefore, fail and is hereby dismissed with costs.