

(1916) 06 PRI CK 0012

In the Privy Council

Case No : Privy Council Appeal No. 53 of 1913

Chandrika Bakhsh Singh

APPELLANT

Vs

Indar Bikram Singh

RESPONDENT

Date of Decision : 22-06-1916

Acts Referred:

Citation : (1916) AIR(PC) 14

Hon'ble Judges : Lords Atkinson and Parker of Waddington, John Edge and Ameer Ali, JJ.

Advocate : De Gruyther and O'Gorman, for Appellant; Dunne and Dube, for Respondent. Solicitors for the appellant; T.L. Wilson and Co. Solicitors for the respondent, Barrow, Rogers and Nevill.

Judgement

Sir John Edge -This is an appeal from a decree, dated the 25th of May, 1911, of the Court of the Judicial Commissioner of Oudh, which reversed a decree, dated the 3rd of January, 1910, of the Subordinate Judge of Bara Banki and dismissed the suit with costs.

The facts necessary for the decision of the appeal may be briefly stated. The dispute relates to the appellant's title to an Oudh taluqa, known as Mahgawan, which was an impartible estate. The parties are Hindus, subject to the law of the Mitakshara. On the 13th of December, 1904, Babuain Maharaj Rani, who held Mahgawan for a Hindu widow's interest, made, by a deed of gift, an absolute transfer of Mahgawan to the appellant, and he obtained possession. To that transfer Mahabir Singh and his younger brother, Bechu Singh, were consenting parties. At the time of the transfer Mahabir Singh was the heir to Mahgawan expectant on the death of Babuain Maharaj Rani, and the appellant is his only son. Upon the transfer to him the appellant applied to the Revenue authorities for mutation of names in his favour. On the 9th of January 1905, the respondent, who was not a member of the family which had held Mahgawan, filed objections to mutation of names being made in the appellant's favour, alleging that Babuain Maharaj Rani had no power to transfer the estate, and claiming title to it in

himself under an alleged will of 1866, of Babu Pirthipal Singh, who had been the husband of Babuain Maharaj Rani. In consequence of the respondent's objection, the Revenue authorities on appeal rejected the appellant's application for mutation of names, and the appellant, in order to clear his title and obtain mutation of names, was compelled to bring his suit. He brought this suit on the 11th of December, 1908, in the Court of the Subordinate Judge of Bara Banki, for a declaration of his title as proprietor of Mahgawan.

To the suit the respondent, and Babuain Maharaj Rani, Mahabir Singh, and Bechu Singh were made defendants. By their written statements Babuain Maharaj Rani, Mahabir Singh, and Bechu Singh admitted the appellant's title, and Mahabir Singh and Bechu Singh expressly alleged that it was with their consent that Babuain Maharaj Rani had executed the deed of gift of the 13th of December, 1904, and that they had on the 9th of November, 1908, executed deeds of relinquishment in favour of the appellant, who was in proprietary possession of the taluqa.

The respondent in his written statement denied the appellant's title, did not admit that Babuain Maharaj Rani had executed the deed of gift of 1904; denied that she had any power to transfer the estate to the appellant; did not admit that the appellant was in proprietary possession; alleged that Mahabir Singh and Bechu Singh were not legitimate; alleged that the nearest reversioners were persons whom he described as Girdhara Singh and Kalka Singh; and asserted title in himself through the alleged will of 1866 of Babu Pirthipal Singh.

The Subordinate Judge of Bara Banki found that Babuain Maharaj Rani had executed the deed of gift of 1904, in favour of the appellant with the consent of Mahabir Singh and Bechu Singh, who were, he found, legitimate; that the taluqa passed under that deed of gift to the appellant; that the appellant was then and had been since the date of the deed of gift in proprietary possession of the taluqa; that Girdhara Singh and Kalka Singh were fictitious persons; and that Babu Pirthipal Singh had not made the alleged will of 1866; and gave to the appellant a declaration that he was the absolute proprietor of the properties detailed in Schedules A, B, and C to the plaint, and would continue to be such proprietor after the death of Babuain Maharaj Rani.

From that decree the respondent, on the 31st of March, 1910, appealed to the Court of the Judicial Commissioner of Oudh, making the appellant and Babuain Maharaj Rani respondents to his appeal. In June, 1910, Babuain Maharaj Rani died. On the 9th of February, 1911, Mahabir Singh and Bechu Singh respectively filed petitions and affidavits in the appeal in the Court of the Judicial Commissioner, in which they asserted that the deed of gift of the 13th of December, 1904, had been executed by Babuain Maharaj Rani by their advice and with their consent; that the deed was valid, and that Babu Chandrika Bakhsh Singh had been put in proprietary possession of the taluqa at the time of the execution of the deed, and they prayed to be added as respondents to the appeal. On the 24th of March, 1911, Mahabir Singh and Bechu Singh were by

order of the Court of the Judicial Commissioner added as respondents to that appeal.

When the appeal came on for hearing in the Court of the Judicial Commissioner, Raja Indar Bikram Singh, through his counsel, informed the Court that he did not contest the decision of the Subordinate Judge as to the alleged will of 1866, or as to the non-existence of the alleged reversioners, Girdhara Singh and Kalka Singh, or as to the execution of the deed of gift of the 13th of December, 1904, and his counsel confined his contention in opposition to the decree of the Subordinate Judge to an argument that the deed of gift did not represent any genuine transaction, and that Babuain Maharaj Rani had remained in possession, and had no power to confer any valid title upon Babu Chandrika Bakhsh Singh.

The suit was not a suit for the ejectment of a defendant who was in possession, in which the plaintiff would have to prove a better title in himself to the possession of the property than the title of the defendant. On the contrary, it is a suit for a declaration of title by a plaintiff who was and is in possession. The Subordinate Judge had found that Raja Indar Bikram Singh had no title, and when the correctness of that finding was not disputed in the Court of the Judicial Commissioner of Oudh, it should have been apparent to the Judges of that Court, who were hearing the appeal, that as Raja Indar Bikram Singh had failed to prove that he was, even remotely, concerned in the title to Mahgawan and in the right to the proprietary possession of that taluqa, he had no title to protect and no interest which could give him a right to contest the declaration of title which Babu Chandrika Singh had obtained, and that the appeal to that Court should be dismissed. Raja Indar Bikram Singh was a mere impertinent intervener in another person's affair. The Judges who heard the appeal, however, instead of dismissing it, went into a long and, under the circumstances, a purely academic discussion as to the powers of a Hindu widow to dispose of property, and finally allowed the appeal and dismissed the suit with costs.

Their Lordships, at the conclusion of the argument, humbly advised His Majesty that this appeal should be allowed; that the decree of the Court of the Judicial Commissioner of Oudh should be set aside with costs; and the decree of the Subordinate Judge of Bara Banki restored.

The respondent was ordered to pay the costs of the appeal.