

(1916) 06 BOM CK 0005
In the Bombay High Court

Chandrika Bakhsh Singh

APPELLANT

Vs

Raja Indar Bakram Singh

RESPONDENT

Date of Decision : 22-06-1916

Acts Referred:

Citation : (1916) 18 BOMLR 846

Hon'ble Judges : Parker, J;John Edge, J;Atkinson, J;Ameer Ali, J

Bench : Full Bench

Final Decision : Allowed

Judgement

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

2. The facts necessary for the decision of this appeal may be briefly stated, The dispute relates to the appellant's title to an Oudh taluka, known as Mahgawan, which was an impartible estate. The parties are Hindus, subject to the law of the Mitakshara. On the 13th 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 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 objections, 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 this suit. He brought this suit on the nth December, 1908, in the Court of the Subordinate Judge of Barabanki for a declaration of his title as proprietor of Mahgawan.

3. 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 December, 1904, and that they had on the 9th November, 1908, executed deeds of relinquishment, in favour of the appellant, who was in proprietary possession of the taluka.

4. 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 and 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.

5. The Subordinate Judge of Barabanki 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 taluka 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 taluka; that Girdhara Singh and Kalka Singh were fictitious persons; and that Babu Pirthipal Singh not made the alleged will 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.

6. From that decree the respondent on the 31st 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 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 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 taluka at the time of the execution of the deed, and they prayed to be added as respondents to the appeal. On the 24th March, 1911, Mahabir Singh and Bechu Singh were by order of the Court of the Judicial Commissioner added as respondents to that appeal.

7. 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 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 Baksh Singh.

8. 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 Judge 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 talulja, he had no title to protect and no . interest which could give him a right to contest the declaration of title which Babu Chankrika Bakhsh 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.

9. 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 Barabanki restored.

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