

(1898) 04 CAL CK 0001

In the Calcutta High Court

Case No : Appeal From Appellate Decree No. 696 of 1896

Chunder Dutt Misser and Others

APPELLANT

Vs

Bhagwat Narain Thakur and Others

RESPONDENT

Date of Decision : 05-04-1898

Acts Referred:

Citation : (1898) 04 CAL CK 0001

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit brought by the Plaintiffs, Appellants, to recover possession of certain immovable property on the allegation that it belonged originally to Rabi Nath Misser, uncle of the Plaintiffs; that on Rabi Nath Misser's death it devolved on his widow Tejbati, who sold it to the predecessor of the Defendants without any legal necessity; and that on Tejbati's death, in Magh 1295 Fusli, the Plaintiffs as reversionary heirs have become entitled to it. The defence, so far as it is necessary to consider it now, was that the suit was barred by limitation as Tejbati died more than 12 years before the institution of the suits; that the alienation by Tejbati was for legal necessity; and that it was made with consent of the then next reversioner Mathura Nath Misser, brother of Rabi, and was therefore binding on the Plaintiffs. The first Court found for the Plaintiffs, upon the questions of limitation, legal necessity and consent of the reversioner and it gave the Plaintiffs a decree.

2. On appeal, the lower Appellate Court, whilst affirming the finding of the first Court upon the question of limitation, has reversed the decree of that Court and dismissed the suit, on the ground that the consent of the then next reversioner made the alienation by the widow valid and binding on the Plaintiffs.

3. In second appeal, it is contended for the Plaintiffs, Appellants : first, that the lower Appellate Court is wrong in inferring the consent of reversioner from the mere fact of the attestation of the deed of sale by him; and secondly, that even if the attestation of the deed by the reversioners he taken to imply his consent to it, the deed does not purport to convey anything more than an estate for life.

4. In support of the first contention, the case of *Rajlukhee Delia v. Gokool Chunder Chowdhry* (1) is cited for the Appellants, while the case of *Matadeen Roy v. Mussoodun Singh* (2) is relied upon by the learned vakil for the Respondents.

5. We are of opinion that the true rule deducible from the two cases just referred to, and that of *Ram Chunder Poddar v. Haridas Sen* (3) in which the first mentioned two cases were both considered, is that though the mere attestation of a deed by relative; does not necessarily import concurrence, yet, where it is shewn by other evidence that when becoming an attesting witness, he must have fully understood what the transaction was, his attestation may support the inference that he was a consenting party, and that the question whether attestation of document should be held to imply assent to it is a question of fact which has to be determined with reference to the circumstances of each case. In the present case, there is evidence which has been believed by the lower Appellate Court to shew that Mathura Nath Mitter, the attesting witness to the conveyance by the widows was the sole surviving brother of her husband. The Court of Appeal below has further found that there was a long and unexplained delay on the part of the Plaintiffs, one of whom was aware of the conveyance in question, in bringing this suit. And upon these facts the Court of Appeal below has drawn the inference that Mathura Nath Misser's attestation imported his assent to the transaction. That being so, we do not think it is open to us in second appeal to say that the lower Appellate Court is wrong in law in coming to the finding it has arrived at.

6. In support of the second contention the learned vakil for the Appellants relies upon the case of *Jewan Singh v. Misri Lal* (4). But the facts of this case are very different from those of the case cited. The terms of the conveyance executed by Tejbati, and especially the covenant for title and quiet possession as against the acts of the vendor's heirs, go clearly to shew that what was intended to be conveyed was an absolute estate and not merely the limited interest of the widow. The contentions urged before us therefore fail; and this appeal must consequently be dismissed with costs.