

(1934) 12 AHC CK 0024
In the Allahabad High Court

Chunnu Lal and Others

APPELLANT

Vs

Swami Prasad and Others

RESPONDENT

Date of Decision : 17-12-1934

Acts Referred:

Citation : AIR 1935 All 418

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Judgement

Niamatullah, J.—The appellants were plaintiffs in the Court below. The suit which they instituted was for the recovery of certain zamindari shares, shops, houses and trees which were at one time admittedly, for the most part, the property of one Ajudhia Prasad. They claimed this property as Ajudhia Prasad's reversioners. We may mention that it was alleged that a few of the properties had not belonged, to Ajudhia Prasad and there was some controversy upon this point in the Court below but these questions have not been seriously argued before us and in the view of the case which we take, it is unnecessary to go into them. Of the plaintiffs appellants 8 are the sons and grandsons of Faqire, Jagannath and Bankey who were the nephews of Ajudhia Prasad. The 9th plaintiff is a transferee of part of the property from some of the other plaintiffs. It is admitted that the right of the plaintiffs to claim possession could not have arisen before the death of Mt. Lalta. Bai Ajudhia Prasad's daughter, and that at that time Faqire was alive and Jagannath and Bankey were dead. It is therefore evident that it is only the heirs of Faqire who can have any right to the property even if the allegations made by the plaintiffs are true. At the death of Mt. Lalta Bai Faqire was the nearest reversioner and the other plaintiffs were remote reversioners who could have no claim to possession. If Faqire's heirs can be said to have established a right to the property, it is no concern of ours that they should have allowed the other plaintiffs to join with them in claiming the property. But if Faqire's heirs cannot succeed, the suit must be dismissed in its entirety.

2. Ajudhia Prasad had a daughter Mt. Lalta Bai, as we have already mentioned, and he also had a son Kallu who died before him. When Ajudhia Prasad died in the year 1890, Mt. Lalta Bai was alive and there were also alive Ajudhia Prasad's widow, Mt. Sai and Kallu's two widows Mt. Saloni and Mt. Ladli. Mt. Sai died sometime after her husband. Some of the property was already entered in the revenue register as being in the possession of some of these ladies, but whether they were entitled to it in their own right is, as we have already said, a question into which we do not propose to enter. It is sufficient to say for the purposes of this appeal that after Ajudhia Prasad's death the property in suit was entered in the register as in the possession of Mt. Lalta Bai and Mt. Saloni, between them. Mt. Ladli had also died soon after Ajudhia Prasad. Mt. Saloni in the year 1890 made gifts by two deeds of some of the property to Tantia, Prasad. This man was the husband of Mt. Lalta Bai's only daughter Mt Gaura. Swami Prasad was their son. He lived with Mt. Saloni and Mt. Lalta Bai and in the year 1909, these ladies set up a claim that Mt. Saloni was entitled to adopt him as a son to her deceased husband and there was, as a result an arrangement between them and Tantia Prasad and Faqire about the distribution of the property. This arrangement is evidenced by four documents. The first is an agreement to refer the disputes to arbitration the second is the award of the arbitrators, the third is an agreement accepting the award and the fourth is a declaration by Mt. Saloni that she has adopted Swami Prasad. The effect of the agreement is set forth in the award. It is that Faqire shall get 1/3rd of the property on the death either of Mt. Saloni or Mt. Lalta Bai whoever shall die first, that Mt. Saloni and Mt. Lalta Bai shall have the power to give the other 2/3rds of the property to Swami Prasad after taking him in adoption or to do with it whatever they think proper; that the movable, property and houses shall remain in the possession of Mt. Saloni, Mt. Lalta Bai and Swami Prasad and that Faqire and his heirs shall have nothing to do with it, that the shares in the villages which stand recorded in the name of Swami Prasad or Tantia Prasad shall continue to be in possession of Swami Prasad and that certain property which" had been dedicated to a temple shall continue to remain in dedication. This dedication was made in the year 1892 by Mt. Lalta Bai. The four documents, that is, the agreement to refer to arbitration, the award of the arbitrators, the agreement to accept the award and the declaration of adoption, are all dated 13th May 1909, and are clearly parts of the same transaction which in effect amounted to an agreement that Faqire should obtain 1/3rd of the property on the death of Mt. Saloni or Mt. Lalta Bai, whoever died first, and. that the remaining 2/3rds of the property should go to Swami Prasad on the allegation that he was the adopted son of Kallu.

3. Mt. Saloni died soon after this agreement was made and Faqire, according to its terms, took possession of 1/3rd of the property and he and his heirs have been in possession ever since. Mt. Lalta Bai. In the year 1913, attempted to obtain possession of this 3rd share, but the suit which she instituted was withdrawn by her as the result presumably of a compromise. In the year 1910, Bhagwan Das, one of the plaintiffs, the son of Bankey, instituted a suit in order

to obtain a declaration that the arrangement which Faqire had made with Mt. Lalta Bai, Mt. Saloni and Tantia Prasad, was not binding upon the reversioners. He obtained a decree from this Court and that decree was affirmed by their Lordships of the Privy Council, who however made it clear that the declarations would have no effect between the defendants of that suit inter se, i.e., that they would have no effect as between Faqire and the other persons to the agreement. As in the result Faqire became the nearest reversioner on the death of Mt. Lalta Bai in the year 1918, the decision in the suit can have no effect whatsoever upon the result of the suit with which we are now dealing. A number of issues were raised, but the main issue on which the decision of the Court below dismissing the suit proceeded and the main issue which has been argued before us is whether the agreement entered into by Faqire on 13th May 1909 prevents his heirs from claiming 2/3rds of the property of Ajudhia Prasad, which is the property in suit.

4. It has been argued before us that the so-called award of the arbitrators is not one which can operate as a binding decision between the parties, that Mt. Lalta Bai could not enter into an agreement to divide the estate with the nearest reversioner, that Faqire could not transfer the mere possibility of succeeding to the estate and that even if Faqire obtained some consideration in that he was in possession of 1/3rd share, all that a Court can do is to compel his heirs to make restitution. Reference has been made to a number of cases, of which we may mention the following : Lakshmi Narayana Jaganadha v. Vararah Lakshmi Narasimha 1916 Mad 579. Annada Mohan Roy v. Gour Mohan Mullick 1923 P.C. 189, Hem Chunder Sanyal v. Sarnamoyi Debi (1895) 22 Cal 354 and Harnath Kuar v. Indar Bahadur Singh 1922 P.C. 403.

5. It has also been argued that there can be no question of an estoppel by representation and reliance is placed on the case of Rangaswami Goundan v. Nachiappa Goundan 1918 P.C. 196. We do not think that it is necessary for us to go into these questions or to discuss the rulings which have been quoted. It is possible that the arguments addressed to us might have some force if the claim was made by persons who were not parties to the agreement and who were not claiming through Faqire. It seems to us that this case should be decided upon the simple ground that Faqire and the two ladies came to a family arrangement in respect of disputed claim to the property. It has been said that the arrangement cannot be described as a family arrangement because it was clearly not binding upon all the members of the family as is evidenced by the decision in the case instituted by Bhagwan Das. We do not think that there is any force in this argument. The agreement was entered into by Facie and it so happened that he was the nearest reversioner when the succession opened upon the death of Mt. Lalta Bai. In so far as he agreed to settle the dispute which arose out of the claim of the ladies that Swami Prasad could legally be adopted and accepted consideration for recognizing the adoption, we consider that he and his heirs are bound by the arrangement. We find support for our opinion in the decision of their Lordships of the Privy Council in the case of Kanhai Lal v. Brij Lal 1918 P.C.

70. We may quote a passage from the judgment in that case which sets forth the facts and the decision thereon. Their Lordships say:

In 1892 the family was a Hindu joint family to which the ordinary Hindu law applied. All the sons of Balak Ram had died. Ganga Ram had died childless in 1874, and Badri Prasad had died childless in 1877. Bahadur Lal had died sonless in 1883, leaving his widow, Mt. Ram Dei, surviving him. Mt. Ram Dei became, on the death of Bahadur Lal, entitled for life to a Hindu widow's right to the whole of the family property. Lala Kanhai Lai had then no right of any kind to any share in the family property, but he set up a claim to the whole property based on the allegation that he had been, validly adopted by Mt. Parbati to her deceased husband, Badri Prasad. If that claim had been substantiated by proof of a valid adoption, Lala Kanhai Lal would have been entitled to the whole family property, and Mt. Ram Dei would have been entitled merely to maintenance. Although as a general rule of Hindu Law a man cannot adopt his sister's son, the claim was a serious one. Lala Kanhai Lal's case was that, according to an Agarwal custom (the family was of the Agarwal caste), which governed the family; a man could lawfully adopt his sister's son; and he alleged that Badri Prasad had given Mt. Parbati authority to make the adoption, and that he, Lala Kanhai Lai, had been validly adopted, to Badri Prasad, That Lala Kanhai Lal might have found it difficult or impossible to prove that he had been validly adopted is immaterial. He made the claim; it was a serious one, and it was supported by Mt. Parbati and it must have influenced Mt. Ram Dei, who was induced, doubtless mainly by that claim, to consent to a division of the family property, in which she obtained for herself merely, a one-fourth share. The claims which were set up by Mt. Parbati and Mt. Kausilla, that the three sons of Balak Ram had separated, must also have influenced Mt. Ram Dei to agree to the compromise of 1892. Lala Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Mt. Ram Dei, against her own interests and those of her daughter, Mt. Kirpa, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordship's opinion he is bound by it, and cannot now claim as a reversioner.

6. Much of the passage which we have quoted might be applied verbatim to the facts of the case before us. It is true that in the case of Kanhai Lal v. Brij Lal 1918 P.C. 70. Kanhai Lal himself was claiming that he was an adopted son but here we have the converse case that the two ladies Mt. Lalta Bai and Mt. Saloni were claiming that Swami Prasad might legally be adopted and that they intended to make the adoption. If their claim was a valid one Faqire would have no possibility of succeeding as a reversioner. In Kanhai Lal v. Brij Lal 1918 P.C. 70, he allowed the widow a right to a share of the property and he was not allowed thereafter to claim the property. In the present case, Faqire allowed Swami Prasad 2/3rds of the property and he should not be allowed to claim that share and his heirs can be in no better position than that in which he would have been himself. It has been suggested that there was no valid ground in the

present case for the claim of the two ladies that Swami Prasad could legally be adopted. The position is much the same as that in *Kanhai Lal v. Brij Lal* 1918 P.C. 70. The claim was made and it is possible that there might have been an allegation of custom according to which the adoption would have been lawful. There was certainly a possibility of litigation and Kanhai Lal who was a member of the family would not have been likely to give up his title to any part of the property if there had not been any basis at all for the claim made by the ladies. In the circumstances, if he preferred to accept the possibility of having his interests advanced on the death of one of the ladies (as in fact it was advanced in 1909, on the death of Mt. Saloni), in preference to awaiting the chance that the reversion might fall to him on the death of Mt. Lalta Bai, he should not be allowed now to avoid the election which he made. That being so, his heirs cannot sustain their claim and, as we have already said, if they cannot do so, the other plaintiffs have no rights in the property.

7. The result is that the appeal fails and it is dismissed with costs.