

(1925) 03 AHC CK 0044
In the Allahabad High Court

Daleep Misir and Others

APPELLANT

Vs

Jadunath Misir and Others

RESPONDENT

Date of Decision : 25-03-1925

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1926 All 573 : 95 Ind. Cas. 178

Final Decision : Dismissed

Judgement

1. In the trial Court this was a suit for redemption of a mortgage executed by Mt. Pavibri, widow of one Behari Misir. The plaintiffs represented themselves to be the next reversioners to Behari on the death of Mt. Pavitri. The trial Court dismissed the suit on the ground that the question as to the plaintiff's relationship with Behari had already been decided in a previous suit and, therefore, the present suit was barred under the principles of res judicata. On appeal the lower appellate Court disagreed with this opinion and remanded the suit. This is an appeal from that order of remand.

2. The respondents' learned Counsel Dr. Agarwala put the point very shortly, so we need not discuss the reason given by the lower appellate Court. In the previous suit the plaintiffs were Deva Rai and Dwarka Rai and the present plaintiffs are not their direct descendants. In the former suit it was alleged that the plaintiffs of that suit were joint with Behari and that, therefore, Mt. Pavitri had no right of possession and was not entitled to mortgage the property. Further, it was pleaded that she had only a life-interest and the mortgage was made without consideration and without legal necessity. In that suit the Court decided several issues one of which was that it was barred under the provisions of Section 42 of the Specific Relief Act as the plaintiffs were on their own allegations contained in the plaint entitled to possession. The Court also held that the suit was barred by limitation as the widow, if the plaintiffs' allegations were correct, was in possession adversely for a period of over 30 years. Another issue decided was that Deva Rai and Dwarka Rai had not proved the pedigree put in by them with the plaint in support of their relationship with Behari.

3. In the present case the same pedigree is put in by the plaintiffs of the present suit. It was argued by the appellants' learned Counsel that the decision in the former suit that the pedigree was not proved was binding on the plaintiffs. In support the Privy Council ruling in *Kesho Prasad Singh v. Sheo Pargash Ojha* (1) was quoted. We are of opinion that Expl. VI of Section 11 will not apply because Deva Rai and Dwarka Rai were held in the former suit not to be reversioners and for that reason they could not be said to have represented the reversionary body. Dr. Agarwala's contention was correct that the finding as to the pedigree could only bind Deva Kai and Dwarka Rai and persons who claimed through them and not other reversioners who claimed independently of the plaintiffs of the former suit. The question of pedigree should be decided over again.

4. The argument of the lower appellate Court was that another issue on the basis of which the former suit would have failed entirely was decided by the Court, and so the issue as regards the pedigree would not operate by way of *res judicata*. In the view we have already expressed it is not necessary to decide this point.

5. In the result we dismiss this appeal with costs.