
(1929) 12 AHC CK 0073
In the Allahabad High Court

Ganga Baksh

APPELLANT

Vs

Shibba

RESPONDENT

Date of Decision : 20-12-1929

Acts Referred:

Citation : 124 Ind. Cas. 26

Hon'ble Judges : Mukerji, J; Bennet, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This is a Letters Patent Appeal brought by the defendant against a decree of a learned Judge of this Court allowing the appeal of the plaintiff and decreeing possession to the plaintiff of certain property as nearest reversioner of one Hardeo deceased. The property was held by the widow of Hardeo Musammatt Shibbo and she died shortly before the suit was brought. The question at issue is whether the plaintiff has proved that he, Shibba, is the nearest reversioner of the deceased Hardeo. The plaintiff set up a pedigree in his plaint in which he claimed to be the nearest reversioner through his grandfather, a name which is read as Zukki. Subsequently the plaintiff alleged that it should be read as Zulfi. The plaintiff produced oral and documentary evidence in support of this claim and the lower Appellate Court did not believe the oral evidence. The documentary evidence produced by the plaintiff, was a settlement entry as follows:

Zemindar Mangat of Zulfi of Khase biradarzad Sunda, deceased.

2. It is claimed on behalf of the plaintiff that this entry proves that Mangat and Zulfi and Sunda were brothers. It is possible that the entry might be construed in this manner but the lower Appellate Court has construed it in a different manner. We consider that the finding of the lower Appellate Court on this point is a finding of fact. In that view we are supported by the decision in Privy Council Appeal No. 12 of 1927, Narendra Nath Dutta v. Abdul Hakim 111 Ind. Cas. 288 : AIR 1928 P.C. 243 : 28 L.W. 547 : 48 C.L.J. 557 : 55 I.A. 380 : 56 M.L.J. 1 , decided on

21st June, 1928. In this their Lordships stated:

Again, the mere fact that a writing has to be read and understood in order to determine the answer to the question, does not of itself make the question one of law.

3. We are of opinion, therefore, that the interpretation of this particular settlement record, which was only apart of the entire evidence, by the lower Appellate Court, was a question of fact and that we are bound by that finding of fact in second appeal. The question before the lower Appellate Court was one of the right of the plaintiff to inherit and as shown by the facts set forth in his plaint and, in finding that the plaintiff had failed to prove this particular fact in his pedigree, the decision was one on a question of fact. We may also refer to *Raja of Pittapur v. Secretary of State* 117 Ind. Cas. 481 : (1929) A.L.J. 702 : AIR 1929 P.C. 152 : 33 C.W.N. 725 : 31 Bom.L.R. 366 : 6 O.W.N. 503 : Ind. Rul. (1929) P.C. 249 : 30 L.W. 9 : 57 M.L.J. 64 : 52 M. 538 : (1929) M.W.N. 442 : 50 C.L.J. 30 (P.C.) in which their Lordships of the Privy Council laid down that the High Court has no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be.

4. For these reasons, we allow this Letters Patent Appeal and we set aside the decree of the learned Judge of this Court and we dismiss the suit of the plaintiff with costs in all Courts.