
(1913) 01 AHC CK 0001
In the Allahabad High Court

Ganga Sahai

APPELLANT

Vs

Kanhaiya Lal and Others

RESPONDENT

Date of Decision : 30-01-1913

Acts Referred:

Citation : 18 Ind. Cas. 811

Hon'ble Judges : Rafique, J

Bench : Single Bench

Judgement

Rafique, J.—It appears that one Jumna Das owned some zemindari property in Mauza Basi in the District of Meerut. He died more than fifty years ago, leaving him surviving a widow and a daughter called Musammat Nanhi and Musammat Dharmo, respectively. On the death of Jumna Das, Musammat Nanhi entered in possession of the zemindari property of her deceased husband as a Hindu widow. She executed in 1879 a deed of usufructuary mortgage in respect of the said zemindari property in favour of certain persons. Musammat Dharmo brought a suit in the life time of her mother for the cancellation of that mortgage but was defeated on the ground that the mortgage was given for legal necessity. Musammat Nanhi died in 1892 without redeeming the mortgage of 1879. On her death, mutation of names in respect of her husband's zemindari property was effected in 1892 in favour of one Ganga Sahai with the consent of Musammat Dharmo. The mortgagees, however, remained in possession till March 1911, when Ganga Sahai redeemed the mortgage.

2. On the 29th March 1911, Kanhaiya Lal sued in the Court of the Additional Munsif of Meerut to recover possession of the property redeemed by Ganga Sahai on the following allegations. He said that he, his cousin Gayani and Jumna Das were descended from a common ancestor and that after the death of Musammat Nanhi, he, Kanhaiya Lal, and Gyani, became entitled to succeed to the property of Jumna Das, as daughters were excluded by custom. Ganga Sahai was a stranger to the family and trespasser who had, without any right, on the death of Musammat Nanhi, which occurred about ten years prior to the

institution of the suit, managed to get his name entered in the revenue papers. He and not Musammat Nanhi had created the mortgage which he had redeemed on March 1911. The cause of action accrued in March 1911 when the plaintiff came to know of the mutation of names in favour of Ganga Sahai. The claim was brought against Ganga Sahai, Musammat Dharmo, two other ladies of the family, the descendants of the original mortgagees, a sub-mortgagee from the latter and against Gayani because he had declined to join in the suit.

3. The claim was resisted on various grounds. It was urged in defence that Kanhaiya Lal was not a reversioner of Jumna Dass, in fact he was in no way related to the latter, that Ganga Sahai was the next reversioner, that daughters were not excluded by custom that Musammat Nanhi had created the mortgage in suit, that she had died in 1892 when mutation of names was effected in favour of Ganga Sahai, and hence claim was barred by limitation, and that in any case, Kanhaiya Lal must pay the redemption money to Ganga Sahai. The learned Munsif found that the pedigree set out in the plaint was not proved, and that the claim was barred by limitation. He dismissed the suit of Kanhaiya Lal accordingly. Kanhaiya Lal preferred an appeal to the District Judge which was disposed of by the Additional Judge. The latter disagreed with the first Court on the grounds of limitation and the pedigree and decreed the claim. Ganga Sahai has come up in second appeal to this Court. He challenges the decree against him mainly on the point of limitation; though two other objections relating to the succession of daughters and the liability of the plaintiff-respondent for the redemption money of the mortgage of 1879 are also urged.

4. It is contended on his behalf that the limitation applicable to the case is that prescribed by Article 141 of Schedule I of Act IX of 1908. Under that Article, a Hindu reversioner has to bring his suit within 12 years of the death of a Hindu female. And as it is proved that Musammat Nanhi died in 1892 and the plaintiff-respondent did not sue till 19 years after her death, his claim is barred by limitation. In support of this contention, the following cases are cited:

5. Hari Har Ojha v. Dasrath Misra 33 C. 257, 9 C.W.N. 636, 1 C.L.J. 408; Bijoy Gopal Mookerji v. Srimati Krishna Mahishi Debi 34 C. 329 (P.C.); 9 Bom. L.R. 602, 11 C.W.N. 424, 5 C.L.J. 334, 2 M.L.T. 133; 17 M.L.J. 154, 4 A.L.J. 329, 34 I.A. 87; Bhagabat Pershad v. Murari Lal 15 C.W.N. 524, 7 Ind. Cas. 427, 15 C.L.J. 97; Amrit Dhar v. Bindsri Prosad 23 A, 448, (1901) A.W.N. 133; Jhamman Kunwar v. Tiloki 25 A. 435, (1903) A.W.N. 93; Nanak v. Sabba 6 A.L.J. 723, 6 M.L.T. 180, 3 Ind. Cas. 536. These cases lay down that a Hindu entitled to the possession of Immovable property on the death of a Hindu female can sue for possession within 12 years of her death even if such female had made a transfer of the property in suit more than three years or had made an adoption more than six years prior to the suit or had herself been out of possession for more than 12 years prior to her death. But if the trespasser had entered in possession after the death of the female and had retained possession for more than 12 years, then the claim of the reversioner was barred. I do not think that the facts

of the present case admit of the application of the authorities cited by the learned Vakil for the appellant. The limitation given in Article 141 is applicable only in case the reversioner is entitled to possession of Immovable property on the death of the females. In the present case, the mortgagees were in possession of the property in suit from the life-time of Musammat Nanhi until March 1911 when the appellant redeemed the mortgage. On the death of Musammat Nanhi, the plaintiff-respondent was not entitled to the possession of the property in suit unless he chose to treat the mortgage of 1879 a nullity. Had he elected to challenge the said mortgage, he could have sued and should have sued the mortgagees within 12 years of the death of Musammat Nanhi. His failure to do so would debar him from contesting the validity of the mortgage but would not prevent him from suing the defendant-appellant for possession who got possession in 1911 only. The defendant-appellant did not get possession immediately after the death of Musammat Nanhi. The entry of his name in the khewat made in 1892, would not be tantamount to his having obtained actual possession of the property. The Article applicable as between Ganga Sahai and the plaintiff-respondent would be Article 144, and the time will begin to run from the date of the adverse possession of Ganga Sahai, that is, March 1911.

6. I find that the claim of the plaintiff-respondent is not barred by limitation.

7. The next contention for the appellant is that daughters are not excluded by custom. The plaintiff-respondent has no right to recover the property in suit in the life-time of Musammat Dharmo, the daughter of Jamna Das. I think that the contention is against the weight of evidence on the record. The evidence for the plaintiff-respondent clearly proves the exclusion of daughters. The witnesses give specific instances of the exclusion of daughters. The defendant-appellant examined Musammat Dharmo and one Naidar to rebut the case of the plaintiff-respondent. Musammat Dharmo is obviously a very partial witness, She has all along taken sides with the defendant-appellant. Her statement that daughters are not excluded, is false on the face of it. Were daughters not excluded, she herself would have succeeded to her father and resisted the defendant-appellant in the mutation proceedings at the time of the redemption of the mortgage. Naidar's evidence is also not convincing and it lacks the ring of truth. I find that the custom of the exclusion of daughters is proved.

8. The last point taken for the appellant is that the payment made by him on the mortgage of 1879 was not voluntary. The plaintiff-respondent must refund the redemption money. It is said that the appellant honestly believed himself to be the next reversioner of Jumna Das and he was supported in that belief by Musammat Dharmo, the daughter of the latter. The relationship of the plaintiff-respondent to Jumna Das was not quite so obvious as he would make out. The difference of opinion between the two lower Courts on the question of pedigree goes to show that. However, it was under the belief that he, the appellant, was the next reversioner of Jumna Das that the former obtained mutation of names in his favour on the death of Musammat Nanhi and when for nineteen years, no

one with a better title came forward the appellant's belief that he was the next reversioner was strengthened and acting under that belief, he redeemed the mortgage created by Musammat Nanhi. The plaintiff-respondent, who has now succeeded in proving a better title, must, therefore, pay to the appellant the money paid by the latter under a mistaken belief.

9. I think that the contention of the appellant must prevail. It is quite probable that when no one came forward to claim the property in suit for 19 years or more, the defendant-appellant came to believe himself to be the next reversioner of Jumna Das and under that belief redeemed the mortgage of 1879. The redemption was obtained under a bona fide mistake. The plaintiff-respondent must, therefore, refund the redemption money, that is, the sum of Rs. 330 only.

10. The appeal fails on the main question but the decree of the lower Appellate Court has to be modified in view of my finding as to the liability of the plaintiff-respondent for redemption money. I, therefore, modify the decree of the Court below by decreeing the claim of the plaintiff-respondent for the possession of the property in suit, subject to payment by him of Rs. 330 (three hundred and thirty only) to the defendant-appellant, Ganga Sahai, within three months. Proportionate costs allowed to parties.