

(1927) 02 CAL CK 0016
In the Calcutta High Court

Gangadaya Misir

APPELLANT

Vs

Srimati Chhakina Bhanu and Others

RESPONDENT

Date of Decision : 16-02-1927

Acts Referred:

Citation : AIR 1927 Cal 806

Hon'ble Judges : Mitter, J

Bench : Division Bench

Judgement

Mitter, J.—This is an appeal on behalf of the plaintiff from a decision of the Additional Subordinate Judge of Noakhali, dated the 8th August 1924, which modified a decision of the Munsiff, 2nd Court, Lakhimpur, dated the 7th July 1922.

2. The plaintiff's case is that there was a raiyati holding of which three persons were the owners, that is," Ganga Dayal, the plaintiff, himself, Baldeo and one Ram Prosad who is cousin of the plaintiff. Principal defendants were subtenants under all the three persons whom I have named. In execution of a decree for rent this sub-tenancy which is also described as osat-raiyati was sold and was purchased by Baldeo and Subhadrat the widow of Ram Prosad, on the 9th January 1919. They took delivery of symbolical possession on the 27th August 1919. On the 21st November 1919 Subhadra, the widow of Ram Prosad, executed a deed of relinquishment by which she gave up her interest in all the properties of her husband in favour of the plaintiff who was alleged to be Ram Prosad's next and sole reversionary heir. The deed only made certain provisions for maintenance in favour of the widow of Ram Prosad. The widow of Ram Prosad, Subhadra, is also a party to the suit. She is one of the defendants.

3. The Court of first instance granted a decree to the plaintiff declaring his title to the extent of one-third share in the holding but refused to grant the plaintiff joint possession by the demolition of the huts which were on the land. An appeal was carried to the subordinate judge by the plaintiff and in appeal the subordinate judge varied the decree of the munsiff by declaring plaintiff's title to two-thirds share in the land in suit. The subordinate judge also did not grant the prayer for

khas possession and held that the defendants could not be turned out of the land at the instance of the plaintiff alone.

4. A second appeal has been preferred to this Court by the plaintiff and this appeal concerns only the one-third share which belonged originally to Ram Prosad and in respect of which there has been a surrender by his widow by a deed, dated 21st November 1919. Both the Courts below have dismissed the plaintiffs suit with regard to his one-third share, holding that the deed was a mere deed of release and as such could not pass title in favour of the plaintiff to the extent of one-third share which belonged to Ram Prosad. In this second appeal it has been contended before me that both the Courts below have taken an erroneous view with regard to the legal effect of the so-called deed of release dated the 21st November 1919 in holding that it was a mere deed of release. The Courts below have overlooked the provisions in the deed which suggest that it was a deed of relinquishment by Subhadra, a Hindu widow, of the entire interest in her husband's estate in favour of the next and the sole reversioner. I may mention that this deed was referred to in para. 2 of the plaint and that the defendants had full notice that in that deed it was alleged that it was a deed of relinquishment in favour of the plaintiff who was described as the next sole reversioner of Subhadra's husband. The learned subordinate judge in appeal assumes that the plaintiff was the next? reversioner of Ram Prosad and was entitled to the property after the death of the widow, Subhadra. It has been argued that if the deed which has been placed before me was a deed of surrender, it was sufficient to pass title in favour of the plaintiff with respect to one-third share which belonged to Ram Prasad, and reliance has been placed on three decisions of the Judicial Committee of the Privy Council in support of this contention. The first case referred to is the case of Rangasami Gounden v. Nachiappa Gounden AIR 1918 P.C. 196. The second case referred to is another decision of the Judicial Committee in the case of Bhagwat Koer v. Dhanukhdhari Prashad Singh AIR 1919 P.C. 75. The third decision referred to is the case of Sureshivar Misser v. Maheshrani Misrain AIR 1921 P.C. 107. I have read the deed of release in the present case and to me it seems that it amounts to a complete relinquishment by Subhadra of her husband's estate in favour of Gangadayaal the present plaintiff.

5. It is necessary to notice the arguments which have been raised by Mr. Sen on behalf of the respondents in support of the judgment of the lower appellate Court. It is contended that this point about the deed of release being deed of surrender by a Hindu widow should not be allowed to be raised here for the first time as it was not raised in either of the Courts below. The answer to this contention is that although the plaint was not artistically drawn inasmuch as it did not state the precise case in a precise form the facts were alleged in the plaint which would lead the Court to infer that the case of relinquishment was set up in the plaint as reference was made to the document in para. 2 of the plaint. The plaint might have been more artistically drawn, but the Court would be justified in disregarding the form of the plaint if it appears that in substance all

the facts necessary to raise¹ the point now in controversy were mentioned in plaint. I think by giving notice of this document in the plaint the defendants had been given notice of the contents of the deed which showed that it was a deed by which the lady Subhadra relinquished all interests of her husband's property in favour of the next reversioner.

6. It is also necessary to notice another argument of Mr. Sen. The property in dispute, it is said, did not belong to Subhadra's husband. This argument is based on the fact that this osat-raiyati interest was purchased by Subhadra after the death of her husband. But it is to be remembered that the purchase was in execution of a decree, obtained by Subhadra for rent against tenants who held a subordinate interest under the raiyati which she inherited from her husband. It was really a case of the reversion falling in; Subhadra's husband was all along entitled to sell the property in execution of the decree for rent and if the property is now made khas in execution of the said decree the property does not lose the character of its being property which she inherited from her husband. These are the two substantial contentions which have been raised on behalf of the respondents. It is also necessary to notice another minor contention, namely that the release is ineffective as it was not stamped as a deed of relinquishment should have been. But it has been pointed out by the Judicial Committee in several cases that what is to be looked up is whether the facts lead to the inference that there was a relinquishment. In the case of *Bhagwat v. Dhanukhdhari* AIR 1919 P.C. 75 there was no deed and the Judicial Committee held that the fact that the lady parted with possession in respect of the property was sufficient to justify the Court to infer surrender. So I think there is no substance in this contention of the respondents.

7. The result is that the decree of the lower appellate Court, so far as it dismisses the Suit of the plaintiff to the extent of one-third share which originally belonged to Subhadra, is set aside. The consequence is that the plaintiff's suit is decreed in its entirety and he will be entitled to recover possession of the property in dispute from the defendants. In the circumstances of the present case, the plaintiff will not be entitled to costs of this appeal. The order of the lower Court with regard to costs will be affirmed.